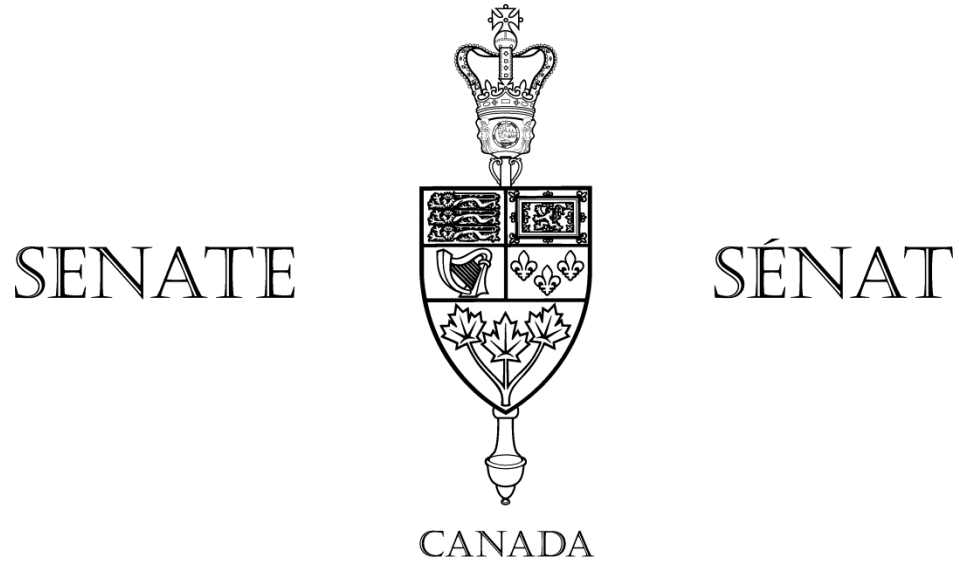


SENATE PROCEDURE IN PRACTICE



June 2015

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In memory of

The Honourable Pierre Claude Nolin
1950–2015

Senator (1993–2015) and Speaker of the Senate (2014–2015)

PREFACE

The Senate met for the first time on November 6, 1867, one day before the Speech from the Throne to open the first session of the first Parliament. This historic event occurred less than five months after the coming into force of the *British North America Act*, now the *Constitution Act, 1867*. At the time, the Senate had 72 members, divided equally between each of the new country's three divisions – Ontario, Quebec and the Maritime provinces of Nova Scotia and New Brunswick. The upper house has since grown to 105 members with the expansion of the country from coast to coast and the establishment of new provinces and territories. There is now a fourth division, for the Western provinces, in addition to representation for the other areas of the country.

The Senate was, from the outset, intended to be substantively different from the House of Commons. Its members were originally appointed for life, rather than elected, and had to be stakeholders in the new nation, as demonstrated by the requirement to own property and to have a certain minimum net worth. The wealth criteria have not changed since 1867, and have long ceased to be a serious barrier to membership to the Senate. No longer appointed for life, senators have been obliged to retire at the age of 75 since 1965. Instead of being a house of the elite, as initially conceived, the modern Senate has more often than not seen itself as the protector of constitutional and minority rights. Its membership, including women who have been eligible for appointment since the Persons Case of 1929, has come to better mirror the extensive cultural and ethnic diversity of the country. The regional equality of the Senate was also designed to supplement representation in Parliament of the less populated provinces to better ensure the protection of regional interests and the rights of minorities, without undermining the demographic weight of the more populous provinces as reflected in the House of Commons. In fact, this particular feature of the Senate was essential to achieving agreement on Confederation.

The Senate possesses fundamentally the same powers as the elected Commons, except with respect to the initiation of bills imposing taxes or authorizing public expenditures, and the approval of certain constitutional amendments. While it has the same duty as the House of Commons in holding the government of the day to account, the Senate has never had a role in challenging the mandate of the government through a vote of confidence. As the chamber of sober second thought, the Senate has generally played a complementary role to the House of Commons. It can revise legislation already considered and adopted by the Commons with the aim of improving it, and the Commons usually accept changes proposed by the Senate. The ability of the Senate to reject bills outright and to disagree with the Commons on the final version of a bill remain constitutionally secured, but is now rarely used.

Committees have always been a significant feature of the Senate. It is in committees that the talents and experience of senators are applied to great advantage. Their professional background and skills, together with the knowledge that senators acquire during their tenure in Parliament, provide a firm base for their engagement in committees. The solid work of committees is also enhanced through the stability and continuity of membership. Senators have an opportunity to gain an in depth understanding of complex issues studied over the years. Furthermore, without the heavy responsibility of maintaining an ongoing relationship with constituents, senators have been able to focus more freely on the examination of bills and, in more recent times, on the consideration of issues related to public policy.

From the beginning, the *Rules of the Senate* have guided the deliberations of the Senate and its committees. After the first Speech from the Throne in 1867 and the introduction of the standard pro forma bill, the Senate proceeded to appoint a select committee “to frame Rules, Orders and Regulations for the guidance of government of this House, and of the several Officers and Servants connected therewith.” As an interim measure, the Senate also agreed to follow the Rules and Orders of the Legislative Council of the Province of Canada as they were in force before Confederation. In the end, the Rules actually adopted by the Senate in mid-December 1867 resembled very closely those of the Legislative Council which, in turn, had a close affinity to the practices then in place at Westminster.

The original Rules were relatively simple. There were 113 rules in 1868 when the *Rules, Orders, and Forms of Proceeding of the Senate of Canada* were published, and many of them, particularly those respecting order and decorum, have direct links to provisions still in force today. The Rules reflected the scope and nature of parliamentary activity of the time. Particular attention was given to the consideration of private bills, which featured prominently in the work of Parliament through much of the nineteenth century. The Rules also contained extensive provisions for the treatment of divorce petitions, which continued to be a major aspect of Senate activity until the 1960s. There were few details in the Rules on the operations of Committees of the Whole or on standing committees, despite their importance. The very last rule, number 113, dealt with the question of exceptional cases and it recalls how the Senate saw itself as modeled on the Upper House of the Westminster Parliament. In 1868, it stated simply that “[i]n all unprovided cases, the Rules, Usages, and Forms of Proceedings of the House of Lord are to be followed.”

Since the first adoption of the Rules, the Senate has taken measures to revise and update them several times. The first significant changes occurred in 1906. These changes were promoted by Senator Power, who had been a law clerk at the Nova Scotia House of Assembly before his appointment to the Senate in 1877. At that time, the Rules were amended to provide greater authority to the Speaker to preserve order and decorum, and to decide points of order. Other changes affected the order of business, clarified notice requirements, provided for the right of reply and adjusted voting procedures – including restrictions on voting by a senator with a “pecuniary interest” in a matter. Additional changes were made in 1915, notably the inclusion of the same question rule (now rule 5-12).

It was not until 1968 that the Rules were again reviewed and substantively rewritten. There were significant changes to the provisions relating to standing committees and their powers. Each committee was given a specific mandate as well as the authority to publish proceedings and call for persons, papers and records. Previously, committees had had to request authorization from the Senate to publish their minutes and evidence of proceedings. The size of committees – which had sometimes been as large as 50 senators – was also made more manageable. The attention given to committees reflected their serious work not only in reviewing bills, but also in the field of public policy review. In terms of proceedings in the Senate Chamber, the 1968 changes included making reference in unprovided cases to the practices of the Canadian Parliament, rather than the House of Lords. Question Period, a longstanding practice, was also formally recognized. There were also adjustments in voting procedures.

Several minor modifications were made in subsequent years, but those that occurred 1991 were the most far reaching. They were put in place following an unprecedented level of partisan rancor arising from the debate over the introduction of the Goods and Services Tax (GST). Among the changes incorporated into the Rules were time limits for specific proceedings, including Senator's Statements, Routine Proceedings and Question Period. Time limits were also established for most speeches and for the bells for standing votes. An ordinary time of adjournment – midnight most days and 4 p.m. on Friday – was also fixed. In addition, priority was given to Government Business, which would be called in the order determined by the Government Leader or Deputy Leader. Provisions were also added to allow the government to impose time allocation for its business, and new procedures for dealing with questions of privilege were established.

Over the following years several minor changes were made to the Rules, including the establishment of new committees, a process for dealing with government responses to committee reports and adjustments required by the adoption of the *Ethics and Conflict of Interest Code for Senators*.

Most recently, in 2012, the Senate adopted a report presented by the Committee on Rules, Procedures and the Rights of Parliament proposing a comprehensive revision of the Rules. The purpose of this exercise, initiated more than a decade earlier by the former Speaker, the late Senator Molgat, was to organize the Rules more logically, to provide more chapter divisions and marginal notes as an aid to users, to simplify the language, and to improve the quality of the French version. The task took some years for the Rules Committee, working mainly through a subcommittee, to complete. Separate chapters have been created for time allocation, emergency debates and questions of privilege. One innovative element is to give clearer information about the relationship between different rules through lists of exceptions. Another change was to significantly expand the glossary, first added in 1906, and to make it an appendix rather than incorporating it into the body of the Rules. As much as possible the language has been simplified and the French has been improved. The revised *Rules of the Senate* were debated in the Senate before being sent to a Committee of the Whole, which recommended several amendments. The entire package was adopted on June 19, 2012, with the new Rules to take effect on September 17. These revised Rules are not, of course, the immutable end state for the Senate's Rules, and adjustments have been made since.

Through these years of procedural evolution, one noticeable gap has been the lack of a manual explaining the operations of the Senate. It is this gap that this work, *Senate Procedure in Practice*, addresses. This publication is the first of its kind to focus exclusively on the modern Senate and to describe in the scope and method of the Senate's deliberations in the chamber and in its committees. Beginning with an account of the Senate's constitutional foundations, and its relationship to the Crown and Governor General, the manual proceeds with individual chapters that explain how the Senate structures its sittings, prepares its agenda, conducts debate, holds votes, considers bills, and uses its committees. The final chapters deal with points of order and questions of privilege.

The publication of this manual follows a long line of guides and textbooks that have been written to assist parliamentarians to better understand the arrangement and conduct of business in the chamber and committees. The very first procedural manuals to appear in Canada actually predate the Erskine May's magisterial work published in London in 1844. During this early colonial era, the legislatures of British North America naturally looked to Westminster as their model and they tended to imitate its procedures. Even when they did not follow specific elements of practice, the legislatures still used the British Parliament as a guide. This is clearly reflected in the manuals that were published prior to Confederation

which were based on such texts as that of John Hatsell, whose work grew to four volumes and appeared in various editions between the 1776 and 1818. The Canadian procedural works included one by Samuel Phillips in Lower Canada, another by Hugh Thomson from 1828, and a third produced by George Benjamin in 1862, only a few years before Confederation.

Among the various works on parliamentary procedure authored in Canada before Confederation, by far the most comprehensive was undoubtedly that of Alpheus Todd, published in 1840 and entitled *The Practices and Privileges of the Two Houses of Parliament*. Prepared while he was the assistant librarian of the House of Assembly of Upper Canada, the book was a great success, and the Legislative Assembly officially adopted it for the use of its members. Todd, unlike Erskine May, never issued updated editions, and it was eventually superseded by other resources.

For many years after Confederation the books of John George Bourinot and Arthur Beauchesne remained the major manuals on parliamentary practice. With Erskine May, these two works provided the principal sources for understanding procedure in Canada. Bourinot's work, *Parliamentary Procedure and Practice in the Dominion of Canada*, first appeared in 1884 and was comparable in scope and intent to Erskine May's. While the practices of the Senate are featured in Bourinot together with those of the House of Commons, the book has not been updated since its fourth edition in 1916. Arthur Beauchesne's useful guide on *Parliamentary Rules and Forms*, the first of six editions published in 1922, deals only with the House of Commons. However, in the absence of any other authority, the editions of Beauchesne were often used in the Senate by default, together with May and Bourinot, when points of order or questions of privilege were raised.

The last version of Beauchesne was printed in 1986. It has since been completely supplanted by the superb *House of Commons Procedure and Practice*, now in its second edition. Like Erskine May, the separate manuals that have been published by the two houses of the Australian Commonwealth Parliament, the manuals produced by the houses of the Indian Parliament, and that of the New Zealand Parliament, *House of Commons Procedure and Practice* is a comprehensive text that explains all aspects of the process of deliberation that govern the proceedings of the House of Commons.

The only publication printed since Bourinot that specifically addresses the Senate and its practices is the *Companion to the Rules of the Senate of Canada*, a working document issued in 1994 and updated in late 2013 to take account of the revisions to the Rules. It provides an annotated commentary on each of the Senate's rules, with related citations from the parliamentary authorities and relevant rulings. Despite the Companion's undoubted usefulness, its focus is on individual rules, and it does not describe the procedures and practices of the Senate in a comprehensive or systematic way. This gap has now been filled with *Senate Procedure in Practice*.

Like the 2012 *Rules of the Senate*, the manual of *Senate Procedure in Practice* has had a long gestation. The project started more than ten years ago, but the limited time and personnel that could be devoted to it meant that the effort took more time than originally, and optimistically, envisioned. The years of dedication have, however, finally born fruit. I am sure that readers will find the effort worthwhile in providing insight and clarity of the working of one of the fundamental institutions of Canada's Parliament.

Charles Robert
Clerk of the Senate and Clerk of the Parliaments

ACKNOWLEDGEMENTS

In the rooms occupied by the Speaker of the Senate, there is a series of Latin inscriptions carved into the woodwork. Each phrase reflects the ideal character of the Senate as a chamber of sober second thought. One of them comes from Lucius Seneca, the first century Roman philosopher and tutor of the Emperor Nero. The phrase is “*Nihil ordinatum est quod praecipitatur et properat,*” which translates as “Nothing that rushes headlong and is hurried is well ordered.” This observation is fitting for this first edition of *Senate Procedure and Practice*, the result of careful work over many years.

The effort to produce this work began more than ten years ago, inspired by the practical guide to proceedings produced by the House of Lords. As it progressed, the project proved to be both more involved and more time consuming than initially anticipated. First, it was necessary to identify the responsible service that would take charge of the project. Anchoring it in what is now the Chamber Operations and Procedure Office was an obvious decision. This office houses most of the material needed to provide the research base, including the *Journals of the Senate* and the *Debates of the Senate*, plus the files of precedents collected over the years. Identifying the team to write the text covering the range of the Senate’s work and methods of deliberation was a natural extension of the first decision. The procedural and legislative clerks within the office formed the core team for preparing the text. Both at the beginning and through the years, all of the clerks involved proved to be willing, knowledgeable and patient participants. Procedural clerks from the former Deputy Clerk’s Office and from the Committees Directorate also offered their skills and expertise in writing and reviewing the chapters in their various drafts.

Since writing the manual was a part time effort, undertaken when other duties to support the operations of the Senate were completed, progress respected Seneca’s maxim, and was neither rushed nor hurried. The goal was to make *Senate Procedure in Practice* a simple, accessible guide on the work of Senate. This explains the title. It is mostly about procedure “in” practice; it is an explanatory guide to the Rules, forms and conventions followed in the Senate and in its committees. The historical component, at least for this first edition, has been kept to a minimum, although it may be enhanced in future editions. In the meantime, the *Companion to the Rules of the Senate* can be consulted for useful information on the changes made to the Rules since Confederation.

The arrangement of the manual follows a standard pattern. The initial chapter deals with the constitutional basis of the Senate, its composition and the appointment of its members on the basis of regional equality, as well as the criteria to determine eligibility. The second chapter explains the internal organization of the Senate, while the third chapter reviews the role of the Crown in various events involving the Senate. The following chapter then describes the structure of a sitting and the documents that either assist or record those sittings. The remainder of *Senate Procedure in Practice* explains the nuts and bolts of the Senate’s work, including the rules of debate, voting, proceedings on public and private bills, committees, and, finally, points of order and questions of privilege.

The first team of writers and researchers who worked on the early drafts included some individuals who have since retired. Among these early writers were Serge Pelletier, Jean Cochrane, Lise Levesque, Mary Mussell and Suzanne Langlois. Others who became involved included Daniel Charbonneau, Jessica Richardson, Tonu Onu, and Marcy Zlotnick, as well as Charles Walker and Marie-Ève Belzile. Without their efforts, this work would not have been completed. Vanessa Moss-Norbury, Gaëtane Lemay and Colette Verjans have also provided essential assistance over the long process, and we also benefitted from the expertise of Michael Lukyniuk, developed during his lengthy career in Parliament.

One of the major complications with this work arose several years into the project, in late 2012, when there was a substantial revision to the *Rule of the Senate*. Although the basic content of the Rules did not change, the wording was modernized, the structure completely updated and peripheral changes made. This required a substantial revision to the existing draft. Once this task was accomplished, the greatest challenge has been the verification of the numerous references in the text, and the review of the English and French versions. These essential tasks were coordinated by Katie Castleton, Allison Button and Silvina Danesi. In the final stages the assistance of Caroline Gagnon with formatting and design was invaluable.

A project of this nature has obviously involved many other individuals who dedicated many hours, in addition to their other responsibilities. They reviewed material, provided input and offered suggestions. Thanks are therefore due to the current and former table officers, procedural clerks and others who contributed to this work, whether in its initial stages or by reviewing the manual as it neared completion. Special thanks should also be extended to the translators for their excellent work, and also to the Senate's Printing Service for the constant help.

The production of *Senate Procedure in Practice* has spanned the terms of the Clerks of the Senate. The greatest appreciation is due to Paul C. Bélisle, Gary W. O'Brien and Charles Robert for their support of this project and their insight.

The preparation of this work has been a major enterprise, and thanks to the contribution and cooperation of all these individuals, the Senate now has a manual that, it is hoped, will be useful to senators, their staff, the Senate Administration and anyone who is interested in better understanding Senate proceedings.

Till Heyde
Chamber Operations Clerk

TABLE OF CONTENTS

PREFACE	i
ACKNOWLEDGEMENTS	v
INTRODUCTION	1
CHAPTER 1	
The Senate’s Constitutional, Legal and Regulatory Framework	5
1. THE HISTORICAL CONTEXT	5
The Parliament of Canada.....	5
The Origins of the Senate.....	6
2. THE CONSTITUTIONAL FOUNDATIONS OF THE SENATE	7
The <i>Constitution Act, 1867</i>	7
Appointment and Composition of the Senate.....	7
Senators’ Qualifications	8
Duration of Membership	9
Quorum and Voting.....	9
Powers of the Senate in the Legislative Process.....	9
Speakership	10
Official Languages	10
The <i>Constitution Act, 1982</i>	10
Constitutional Amendments	10
<i>Canadian Charter of Rights and Freedoms</i>	11
3. ACTS OF PARLIAMENT AFFECTING THE FUNCTIONING OF THE SENATE	12
The <i>Parliament of Canada Act</i>	12
Part I: Senate and House of Commons.....	12
Part II: Senate	12
Part IV: Remuneration of Parliamentarians	12
Part V: General.....	13
The <i>Royal Assent Act</i>	13
The <i>Official Languages Act</i>	13
4. INTERNAL RULES	14
The <i>Rules of the Senate</i>	14
The <i>Senate Administrative Rules</i>	15
The <i>Ethics and Conflict of Interest Code for Senators</i>	16

CHAPTER 2

Senators and the Organization of the Senate	17
1. SENATORS	17
New Senators: Summons, Declaration of Qualification, and Oath or Solemn Affirmation	17
Swearing-in	18
Once a Senator	19
Duty to Attend and Circumstances for Absences	19
Attendance	19
Leaves of Absence and Suspensions	21
Disqualification of a Senator	22
Resignation of Senator	22
Death of a Senator	22
Sessional and Other Allowances	22
Renewed Declaration of Qualification	23
<i>Ethics and Conflict of Interest Code for Senators</i>	23
2. THE ORGANIZATION OF THE SENATE	25
The Speaker of the Senate	25
Speaker <i>pro tempore</i> and Absence of Speaker	26
The Leadership and Political Structures	27
The Leadership	27
Ministers in the Senate	28
Committee Chairs and Deputy Chairs	28
Political Parties and Independent Senators	29
In-House Committees	29
Standing Committee on Internal Economy, Budgets and Administration	29
Standing Committee on Rules, Procedures and the Rights of Parliament	30
Standing Committee on Ethics and Conflict of Interest for Senators	30
The Senate Administration	31
Senate Chamber Officers and Clerk at the Table	32
Clerk of the Senate and Clerk of the Parliaments	32
Law Clerk and Parliamentary Counsel	32
Usher of the Black Rod	32
Table Officers	33
Appendix A: Writ of Summons to the Senate (Province or Territory Other Than Quebec)	34
Appendix B: Writ of Summons to the Senate (Quebec)	35
Appendix C: Declaration of Qualification	36
Appendix D: Commission Appointing a Senator as Speaker	37

CHAPTER 3

The Crown, the Governor General and the Senate	39
1. OPENING OF A NEW PARLIAMENT	40
Address in Reply to the Speech from the Throne	43
2. OPENING OF A NEW SESSION DURING THE SAME PARLIAMENT	45
3. PROROGATION	45
Procedure for Prorogation	45

4. DISSOLUTION OF PARLIAMENT	46
Procedure for Dissolution	47
5. EFFECTS OF PROROGATION AND DISSOLUTION	48
The Standing Committee on Internal Economy, Budgets and Administration.....	49
Parliamentary Associations and Interparliamentary Groups.....	49
The Senate Administration	50
6. MESSAGES FROM THE CROWN	50
7. ROYAL ASSENT	50
Parliamentary Ceremony	51
Written Declaration.....	52

CHAPTER 4

The Senate Chamber, Its Sittings and Publications	55
1. THE SENATE CHAMBER	55
2. SCHEDULE OF SITTINGS	57
Parliamentary Calendar.....	57
Sittings of the Senate	58
3. DECORUM IN THE CHAMBER	60
Rules of Conduct in the Senate Chamber	60
Presence of Strangers in the Senate	60
Visitors in the Gallery	61
4. PRIOR TO A SITTING	61
Speaker's Parade.....	61
Temporary or Extended Absence of the Speaker.....	61
Quorum	62
5. STRUCTURE OF A SITTING	62
Prayers	63
Moment of Silence.....	63
Tributes	63
Senators' Statements.....	64
Routine Proceedings	65
Tabling of Documents	66
Presenting or Tabling Reports from Committees	67
Government Notices of Motions	67
Government Notices of Inquiries	68
Introduction and First Reading of Government Bills	68
Introduction and First Reading of Senate Public Bills	68
First Reading of Commons Public Bills.....	69
Reading of Petitions for Private Bills.....	69
Introduction and First Reading of Private Bills.....	69
Tabling of Reports from Interparliamentary Delegations	69
Notices of Motions	69
Notices of Inquiries	70
Tabling of Petitions	70
Question Period.....	72
Delayed Answers	72

Orders of the Day	73
Government Business	74
Other Business	74
Notice Paper (Motions and Inquiries)	75
Adjournment	75
6. CHAMBER DOCUMENTS	76
<i>Journals of the Senate</i>	77
<i>Order Paper and Notice Paper</i>	77
Written Questions	78
<i>Debates of the Senate</i>	78
Broadcasting	79
7. MESSAGES BETWEEN THE TWO CHAMBERS	79
8. JOINT ADDRESSES	79
Appendix: A Sitting of the Senate	81

CHAPTER 5

Rules of Debate	83
1. CONDUCT AND CONVENTIONS OF DEBATE	83
Languages	83
Seating	84
Addressing Other Senators	84
Attire	84
Sharp and Taxing or Unparliamentary Language	85
Reflections on Certain Persons and Institutions	85
References to Members of the Public	85
Moving Around the Senate and Holding Private Conversations	86
<i>Sub judice</i> Convention	86
Relevance and Repetition	86
Quotations from Parliamentary Debates	86
Use of Exhibits and Notes	87
Senator Called to Order	88
2. DEBATE ON MOTIONS	88
Types of Motions	88
A. Debatable and Non-debatable Motions	88
B. Substantive, Subsidiary, Procedural and Privileged Motions	89
1. Substantive Motions	89
2. Subsidiary Motions	89
3. Procedural Motions	89
4. Privileged Motions	89
Amendments	90
Superseding Motions	90
Previous Question	91
Dilatory Motions	91
Process for Dealing with Motions	92
A. Notice	92
B. Leave of the Senate	93
C. Moving and Seconding	93

D. Debate	94
Two or More Senators Rising at Once.....	94
Yielding the Floor and Questions	95
Time Limits.....	95
Speaking Only Once	96
Same Question Rule.....	96
Rule of Anticipation.....	97
Adjournment of Debate	98
Non-Government Business	98
Government Business.....	99
Right of Final Reply	99
Conclusion of Debate.....	100
E. Only One Motion at a Time; Stacking Amendments.....	100
F. Deciding on a Motion and Voting	100
3. OTHER TYPES OF DEBATE	101
Inquiries	101
A. Notice.....	101
B. Debate	101
Reports of Committees	102
Address in Reply to the Speech from the Throne	103
Emergency Debates	103
A. Presentation and Content of Written Notice	103
B. Consideration of Request and Decision	104
C. Time of Emergency Debate	104
Disallowance Reports	105
Federal Budget.....	106
4. CURTAILING DEBATE AND EXPEDITING DECISIONS	106
Previous Question	107
Time Allocation on Government Business	107
A. Agreement between the Parties.....	108
B. Failure to Reach an Agreement.....	108
C. Debate on Motion to Allocate Time	109
D. Debate and Vote on a Time-Allocated Government Order	109
E. Interruptions Allowed During Debate on a Motion to Allocate Time or on a Time-Allocated Government Order.....	110
Orders for the Disposition of Business	110
Appendix A: Debatable Motions in the Senate.....	111
Appendix B: Non-debatable Motions in the Senate.....	112
Appendix C: Speaking Times in the Senate.....	114

CHAPTER 6

Voting.....	117
1. PUTTING THE QUESTION.....	117
On Division.....	117
Voice Vote	117
Standing Vote	118
Ring of the Bells for a Standing Vote.....	118

2. STANDING VOTE	119
3 DEFERRED VOTE	120
4. OTHER POINTS RELATING TO VOTES	121
When the Voices are Equal.....	121
Voting Rights of Senators.....	121
Speaker’s Vote.....	121
Abstentions	122
Changing or Withdrawing a Vote.....	122
Missing a Vote.....	122
Record of Decisions.....	122
Cancelling a Request for a Standing Vote	123
Rescinding or Correcting a Decision of the Senate	123
Free Votes.....	123
Appendix: Time Limits for the Ringing of Bells.....	125

CHAPTER 7

Public Bills	127
1. TYPES OF PUBLIC BILLS	127
Public Bills in General.....	127
Government Bills.....	127
Senate Public Bills and Commons Public Bills	128
Numbering of Bills	128
2. STRUCTURE OF BILLS	128
3. STAGES OF THE LEGISLATIVE PROCESS	130
Introduction and First Reading	131
Second Reading	131
Amendments at Second Reading	132
Conclusion of Second Reading Stage	134
Committee Stage.....	135
Testimony and Evidence.....	135
Clause-by-clause Consideration of Bills.....	135
A. Obligation to Consider a Bill Clause-by-Clause.....	136
B. Order for Considering Different Elements of a Bill	137
C. Standing Clauses.....	138
D. Reconsideration of Clauses Already Dealt With	138
E. Committee Deciding Against a Bill.....	138
F. Amendments	139
G. Order for Considering Amendments.....	139
H. Admissibility of Amendments	140
I. Form and Language of Amendments.....	143
J. Subamendments	143
Preparation of Report.....	144
Time Allocation	144
Consideration of a Bill by a Committee of the Whole.....	144
Report Stage.....	145
Observations	147

Third Reading	147
Amendments at Third Reading	148
4. MESSAGES BETWEEN THE CHAMBERS	149
Bills Passed by the Senate.....	149
Commons Bills Amended by the Senate.....	149
Senate Bills Amended by the House of Commons	150
5. FREE CONFERENCES.....	150
6. ROYAL ASSENT.....	151
7. PRE-STUDY OF BILLS	151
8. MONEY BILLS	152
Bills requiring a Royal Recommendation.....	153
Appropriation Bills	155
Consideration of Appropriation Bills by the Senate.....	156
Budget Implementation Bills	157
9. ROYAL CONSENT	158
10. NEW BILL WITH THE SAME OBJECT DURING THE SAME SESSION	159
Appendix A: Key Elements of a Bill	160
Appendix B: Legislative Process in the Senate	163

CHAPTER 8

Private bills	165
1. HISTORY	165
Decline in Frequency of Private Bills since Confederation	165
Current Situation.....	166
2. PROCESS FOR DEALING WITH PRIVATE BILLS.....	168
Notice.....	168
Fees	169
Drafting of the Petition	169
Documents	170
The Role of the Senate Law Clerk and Parliamentary Counsel.....	170
Introduction of a Private Bill in the Senate.....	170
First Reading.....	171
Second Reading and Reference to Committee.....	172
Consideration in Committee	172
Committee’s Report to the Senate	172
Third Reading	173
Senate Private Bills in the House of Commons	173
Royal Assent.....	173

CHAPTER 9

Committees	175
1. HISTORICAL BACKGROUND OF COMMITTEES	175
2. RULES	176

3. COMMITTEE MEMBERSHIP	176
Appointment of Members	176
Membership Changes.....	177
Senators Who Do Not Belong to a Recognized Party	178
Ex Officio Members	178
Non-Members	178
Quorum	179
4. TYPES OF COMMITTEES	179
Standing Committees	179
Committee of Selection.....	180
Special and Legislative Committees	180
Joint Committees	181
Subcommittees.....	181
Committee of the Whole.....	182
5. ORGANIZATION MEETING	184
6. MANDATE — ORDERS OF REFERENCE.....	185
Bills.....	186
Pre-Study of Bills still before the House of Commons and Study of the Subject Matter of Bills at Second Reading in the Senate	187
Estimates	188
Special Studies	188
Other Work	189
Disallowance of Regulations	189
User Fee Proposals.....	189
7. POWERS OF COMMITTEES.....	190
In Camera Meetings.....	191
Motions of Instruction.....	191
8. ROLE OF THE CHAIR.....	192
9. COMMITTEE MEETINGS	193
Sitting Times.....	193
General Restrictions on Committee Meetings	193
10. PROCEDURE	194
Meeting Notices	194
Motions	195
Debate	195
Voting	195
Points of Order and Questions of Privilege in Committee.....	195
11. BUDGETS	196
Types of Budgets	197
Special Study Budgets.....	197
Legislative Budgets	198
Partial Releases.....	198
Supplementary Budget	198
Emergency Funds	199
Report of Expenses.....	199

12. WITNESSES	199
Sending for Persons, Papers and Records	200
Steps to Exercise the Power to Send for Persons, Papers and Records	201
Oaths	202
Ministers and Public Servants.....	202
Provincial and Territorial Governments	203
Parliamentary Privilege.....	203
Official Languages.....	203
Expenses	203
Videoconferencing.....	203
13. COMMITTEE TRAVEL	204
Power to Travel.....	204
Travel for Committee Meetings and Fact-Finding Work	204
14. COMMITTEE REPORTS	205
Reporting to the Senate.....	205
Report with Observations on a Bill.....	205
Reporting Dates	206
Tabling or Presenting a Report	206
Depositing a Report with the Clerk.....	206
Motions to Adopt Reports.....	207
Confidentiality of Committee Reports	207
Government Responses.....	208
15. ADMINISTRATION OF COMMITTEES	209
Committees Directorate	209
Committee Staff	210
Committee Clerks.....	210
Analysts.....	210
Consultants	210
16. COMMITTEE DOCUMENTS	211
Minutes of Proceedings and Evidence (Issue)	211
Reports to the Senate	211
Briefs, Submissions, Correspondence and Other Documents.....	212
Other Documents and Exhibits	212
17. EXTERNAL RELATIONS	212
Media	212
Broadcasting	212
Senate Website.....	213

CHAPTER 10

Points of Order	215
1. DEFINITION AND PURPOSE	215
Difference between a Point of Order and a Question of Privilege.....	215
2. PROCESS FOR RAISING A POINT OF ORDER	216
When to Raise a Point of Order	216
Restrictions on Raising Points of Order.....	217

Use of Points of Order to Gain the Right to Speak.....	217
How to Raise a Point of Order.....	218
3. RESOLVING A POINT OF ORDER.....	218
Role of the Senate.....	218
Role of the Speaker.....	219
Appealing a Speaker’s Ruling.....	221
CHAPTER 11	
Privileges and Immunities.....	223
PART I – DEFINITION AND HISTORICAL OVERVIEW OF PRIVILEGE.....	223
1. PRIVILEGE DEFINED.....	223
2. COLLECTIVE AND INDIVIDUAL PRIVILEGES, AND CONTEMPTS.....	225
Regulation of Proceedings.....	226
Penal Powers.....	226
Attendance of Senators.....	226
Institute Inquiries, Summon Witnesses and Request the Production of Papers.....	227
Administration of Oaths to Witnesses.....	227
Protection of Parliamentary Papers.....	227
Freedom of Speech.....	228
Freedom from Arrest in Civil Matters, Freedom from Molestation, Exemption from Jury Duty and Freedom from Appearing as a Witness in a Court Case.....	228
Duration of the Protection of Privilege.....	229
Contempt.....	230
3. HISTORICAL EVOLUTION OF PRIVILEGE —THE ORIGINS.....	230
Pre-1688 Period.....	231
1689: <i>Bill of Rights</i>	231
1704: Limits on the Creation of New Privileges.....	232
1737 and 1770: <i>Parliamentary Privileges Act</i>	232
1840: Protection of Parliamentary Papers.....	233
Recent Studies and Developments in the United Kingdom.....	234
4. HISTORY AND THE EVOLUTION OF PRIVILEGE IN CANADA.....	236
Historical Background.....	236
Power to Administer Oaths to Witnesses.....	237
Role of the Courts in the Evolution of Privilege in Canada.....	239
Senate Study of Privilege.....	239
PART II – PROCESSES FOR RAISING AND ESTABLISHING	
A QUESTION OF PRIVILEGE IN THE SENATE.....	240
Raising a Question of Privilege with One Day’s Notice.....	240
Raising a Question of Privilege with Respect to the Unauthorized Release of Committee Documents or Proceedings.....	241
Raising a Question of Privilege by Means of a Committee Report.....	242
Raising a Question of Privilege Without Notice (rule 13-4(a)).....	242
Process for Raising a Question of Privilege with Written and Oral Notices.....	243
Written Notice.....	244
Oral Notice.....	244
Consideration of a Notice of a Question of Privilege.....	244

Resolution of a Question of Privilege Prior to a Speaker’s Ruling	245
The Role of the Speaker	246
Appealing a Speaker’s Ruling	247
Motion to Deal with a Case of Privilege	248
Contempt as Question of Privilege	249
Report from Standing Committee on Rules, Procedures and the Rights of Parliament on a Case of Privilege	250
Appendix: Key Canadian Court Decisions Relating to Privilege	251
PARLIAMENTS AND SESSIONS	257
REFERENCES	263

INTRODUCTION

This work describes the procedures, practices and conventions of the Senate of Canada. Of course, the parliamentary rules and practices employed within the Senate are similar to those of other legislative bodies based on the Westminster model of government. These similarities are reflected in the fact that this work contains many references to procedural authorities from other legislative bodies – the House of Commons of Canada, the House of Lords and House of Commons of the United Kingdom, and the Senate and House of Representatives of Australia. There are, of course, distinct rules and practices in the Senate resulting from its composition and roles. This text clarifies and explains the rules, procedures and practices governing the work of the Senate as an important part of the Canadian system of government.



The Parliament of Canada is composed of the Queen, the Senate and the House of Commons, each of which has a particular role to perform within our system of government. The Queen, represented by the Governor General, receives advice from the Prime Minister but also has the right to advise, encourage and warn the executive authority of government. The most critical role of the Governor General is to ensure that the position of prime minister is filled and that the government maintains the confidence of the House of Commons.

The House of Commons, as the elected house of Parliament, represents the interests of the citizens and holds the government accountable for its actions. It accomplishes this mainly through the questioning of cabinet ministers, the examination of legislation, and the consideration of taxation and appropriation requests from the Crown.

The Senate, as an appointed body, has roles that differ in certain respects from those of the House of Commons. Although the formal constitutional powers of the Senate are equal to those of the House of Commons (with the exceptions that money bills must originate in the House of Commons¹ and that some amendments to the Constitution can be made without the consent of the Senate²), the role of the Senate is first and foremost one of carefully reviewing legislation, conducting long-term investigations, representing the regions, and protecting linguistic and other minorities.

As has been noted by the Supreme Court of Canada, “[t]he Senate is one of Canada’s foundational political institutions. It lies at the heart of the agreements that gave birth to the Canadian federation.”³ The

¹ *Constitution Act, 1867*, s. 53.

² *Constitution Act, 1982*, s. 47(1).

³ *Reference re Senate Reform*, [2014] 1 S.C.R. 704, 2014 SCC 32, par. 1.

Senate was intended to provide “sober second thought” to measures adopted by the House of Commons.⁴ The Senate complements the work of the elected house, thereby strengthening Canada’s Parliament.⁵ As the Speaker of the Senate has stated:

The idea of complementarity does not imply that one house is inferior to the other. Instead, the Senate and the House of Commons play different roles and interact with each other in a way that may sometimes, it is true, result in a level of tension. But this leads to an effective system of government that is greater than the sum of its parts. This interaction has been a key part of the country’s constitutional architecture since its founding. Working together the houses enrich and strengthen our national Parliament. The Senate provides a different perspective from the House of Commons, even when studying similar questions, and focuses on different issues. This house can therefore provide a careful and autonomous second review of measures adopted by the elected house.⁶

The basic features underlying the Senate were agreed to in 1864, during the Charlottetown and Quebec City Conferences on the proposed union of the colonies of British North America, leading up to Confederation in 1867. The formal structure and powers of the Senate, as well as the method of selecting senators, have changed very little since Confederation.

The Senate is the upper house of the Parliament of Canada, which refers to its position in the order of precedence for the purpose of protocol. Formal parliamentary events uniting the three components of Parliament, such as the Opening of Parliament and the Royal Assent ceremony, are held in the Senate Chamber, where a throne is located for the use of the Queen or the Governor General, and members of the House of Commons assemble outside the bar of the Senate. Today, the Senate is composed of 105 members appointed by the Governor General in the Queen’s name and on the advice of the Prime Minister. For the purposes of representation, section 22 of the *Constitution Act, 1867* divides the country into four geographical divisions, each with 24 senators: Ontario, Quebec, the Maritime provinces and the Western provinces. The province of Newfoundland and Labrador, and the three territories are, together, represented by nine senators.

Although the Senate and the House of Commons function independently of one another, both cooperate in order to realize certain goals. Since legislation must pass both houses before it is presented to the Governor General for Royal Assent, both houses keep in close communication with one another. The houses formally communicate by way of messages. One house will send a message when, for example, a bill passes third reading and its adoption is requested from the other house. Messages may also be sent for the two houses to adopt resolutions, to form joint committees or to address the Crown. The Senate and House of Commons also work together in representing the Canadian Parliament abroad and in administering certain services.

A significant characteristic of the Senate is that it does not act as a confidence chamber; it cannot force the resignation of a government on a non-confidence vote as can the House of Commons. Since most or all of the cabinet sits in the House of Commons, the role of the Senate in the oversight of the government differs from the role exercised by the House of Commons.

⁴ *Reference re Senate Reform*, [2014] 1 S.C.R. 704, 2014 SCC 32, par. 15.

⁵ *Reference re Senate Reform*, [2014] 1 S.C.R. 704, 2014 SCC 32, par. 52.

⁶ *Journals of the Senate*, February 3, 2015, p. 1547.

Section 53 of the *Constitution Act, 1867* stipulates that “Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.” As a result, the examination by the Senate of government spending plans in the estimates is conducted in a different fashion from that of the House of Commons. In advance of an appropriation bill arriving in the Senate, the estimates – the government’s spending plans – are normally subjected to a careful review by the Standing Senate Committee on National Finance; before a budget implementation bill is studied, a debate is often held on an inquiry drawing attention of the Senate to the initiatives contained in the federal budget.

In terms of its general role with respect to legislation, the Senate possesses identical powers to those of the House of Commons, except for those regarding money bills. However, the way in which the Senate has exercised these powers is different from the House of Commons. Since the majority of government bills are introduced in the House of Commons, once they arrive in the Senate there can be an unstated expectation that passage through the upper house will proceed expeditiously, given that they may have already undergone considerable public debate and amendment in the Commons. The task of the Senate in this regard can best be summarized by Sir John A. Macdonald who stated:

There would be no use of an Upper House if it did not exercise, when it thought proper, the right of opposing or amending or postponing the legislation of the Lower House. It would be of no value whatever were it a mere chamber for registering the decrees of the Lower House. It must be an independent House, having a free action of its own, for it is only valuable as being a regulating body, calmly considering the legislation initiated by the popular branch, and preventing any hasty or ill-considered legislation which may come from that body, but it will never set itself in opposition against the deliberate and understood wishes of the people.⁷

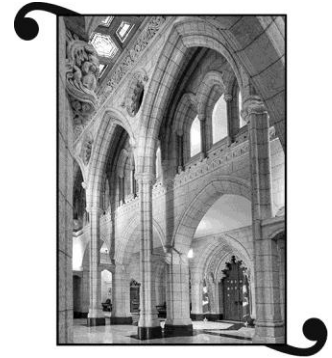
Although the above statement was made almost 150 years ago, it reflects fairly accurately the modern role of the Senate in regard to legislation. Its function is distinct from that of the House of Commons insofar as it is often *reviewing* legislation which has been given extensive public scrutiny by the other house. Being aware of this public debate, the Senate may be satisfied in some cases to quickly pass a bill with little comment. In other cases, it may want to examine technical aspects of the proposed law, suggest amendments or question the fundamental purpose of the bill. In order to expedite the legislative process, the Senate may decide to pre-study the bill or to sit for extended hours. As a revising chamber, much of the work of the Senate is determined by the flow of business from the House of Commons.

This work clarifies and explains the rules, procedures and practices governing the work of the Senate as an important part of the Canadian system of government. These rules and practices are indeed complex. They have been evolving since Confederation. Yet the essence of these rules is based on the foundations of a system which is centuries old.

⁷ Waite, p. 36.

CHAPTER 1

The Senate's Constitutional, Legal and Regulatory Framework



A product of negotiation and compromise, the Senate of Canada borrows a number of characteristics from other parliaments, while also exhibiting its own unique characteristics, which stem from the circumstances surrounding its establishment. This chapter describes the historical factors that shaped the Senate's structures. It reviews the main constitutional provisions that establish the Senate's composition, the process for selecting senators and the Senate's legislative powers in the legislative process. It also discusses the impact of various acts of Parliament on the way the Senate functions: the Parliament of Canada Act, the Royal Assent Act and the Official Languages Act. Finally, this chapter outlines the content of the three sets of internal rules the Senate has developed to govern itself: the Rules of the Senate, the Senate Administrative Rules and the Ethics and Conflict of Interest Code for Senators.

1. THE HISTORICAL CONTEXT

The Parliament of Canada

Section 17 of the *Constitution Act, 1867*¹ provides that:

There shall be One Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons.

Parliament exercises legislative power in matters falling under federal jurisdiction, in addition to performing a range of other essential public functions, including the following: providing representation for Canadians from all parts of the country, controlling the actions of the ministry and the federal public service generally, investigating and making recommendations on issues of public policy, providing a national stage upon which major issues of the day can be debated, and, in the case of the House of Commons, providing a guide to determine which party will form the government.²

¹ 30 & 31 Victoria, c. 3 (U.K.). Before 1982, the various *Constitution Acts* were called the *British North America Acts*. Many earlier works therefore refer to the act of 1867 and its successors by that name (often simply abbreviated as the BNA Act).

² This is a far from exhaustive list, and any text on the Canadian government will identify a range of different functions for Parliament, which may be categorized in a variety of ways.

*The Origins of the Senate*³

Agreement on the structure of the Senate was one of the key conditions for Confederation in 1867. Canada East (now Quebec) accepted the principle of representation by population in the House of Commons provided that there was divisional (not provincial) equality in the Senate.

Before 1867, all the colonies of British North America except British Columbia had bicameral legislatures – an elected lower house (called either the Legislative Assembly or the House of Assembly) and an upper house (called the Legislative Council) whose members were either appointed (New Brunswick, Newfoundland and Nova Scotia) or elected (Province of Canada, beginning from 1856, and Prince Edward Island, from 1862⁴). While experience from the various legislative councils influenced the structure of the Senate, institutions in other countries, including the House of Lords, French political structures and the American political system, also influenced decisions on this matter. Discussions during the pre-Confederation negotiations emphasized the need for representation of the provinces in the upper house, as well as the importance of striking a balance between majority and minority interests and rights.

The fundamental features of the Senate were agreed to in 1864, during the Charlottetown and Quebec City conferences on the proposed union of the colonies of British North America. Discussions covered various issues, including the method for choosing senators (appointment or election), the representation of the different areas, the powers of the Senate, the protection of religious and language minorities, and the Senate's role as a counterweight to cabinet and the House of Commons.

When established, the Senate represented a composite of features and principles derived from various models; the institution was, and remains, distinct in its particular configuration. The basic characteristics of the Senate, notably a long-term appointed membership based on the representation of the different areas of the country, were the result of negotiation, debate, careful reflection, and lessons derived from the practices of a range of other institutional structures. Since 1867 there have been a number of changes in the structures of the Senate. These include: the expansion of membership from the original 72 to the current 105 as the country has grown; the establishment of the Western division in 1915; the determination in 1929 that women were eligible for appointment; the introduction, for appointments made after 1965, of mandatory retirement at age 75; and the establishment, in 1982, of processes for amending the Constitution in which the Senate's opposition can, in some cases, be overridden by the House of Commons. Of equal, or perhaps greater, importance, the role of the Senate within Parliament has continued to evolve since Confederation.

³ Reference may be made on this topic to a variety of works such as Joyal, *Protecting Canadian Democracy*; Ajzenstat et al, eds. *Canada's Founding Debates* (see, in particular, Janet Ajzenstat, "Bicameralism and Canada's Founders: The Origins of the Canadian Senate"); Ajzenstat et al, eds., *Canada's Founding Debates*; and Browne.

⁴ In the case of the Legislative Council of Canada, there was a transitional period during which some members were elected, while Councillors who were members before the change to election remained in office. The Council was abolished at the time of Confederation when the Province ceased to exist; its membership was never entirely elected. In the case of Prince Edward Island, the former appointed Council was abolished in late 1862, and its successor, which was in turn abolished in 1893, was entirely elected (MacKinnon, p. 102).

2. THE CONSTITUTIONAL FOUNDATIONS OF THE SENATE

The basic characteristics of the Senate – membership, powers, term of office and processes for changing these characteristics – are established in the Constitution. The two main acts that make up the Constitution of Canada are the *Constitution Act, 1867*, with its amendments, and the *Constitution Act, 1982*. In addition, several other laws, principles and conventions are essential to understanding the operation of the Canadian political and government structures. The following section focuses on the primary constitutional provisions relating to the Senate.

The Constitution Act, 1867

The *Constitution Act, 1867* established the Dominion of Canada by dividing the earlier Province of Canada into the provinces of Ontario and Quebec, and uniting them with the colonies of Nova Scotia and New Brunswick.⁵ While the country has evolved and grown enormously in terms of area, population, political, social and economic complexity in the years since Confederation, it has retained many of the key institutions and structures established at that time, including the Senate.

Appointment and Composition of the Senate

Senators are summoned to the Senate by the Governor General in the Queen's name.⁶ The Governor General acts on the advice of the Prime Minister.

The Senate's normal maximum membership has increased with the expansion of the country from the original 72 in 1867 to 105 today.⁷ For the purposes of representation in the Senate, section 22 of the *Constitution Act, 1867* divides the country into the following four geographical divisions:

- Ontario, represented by 24 senators;
- Quebec, represented by 24 senators;
- the Maritime provinces, represented by 24 senators (10 from Nova Scotia, 10 from New Brunswick and four from Prince Edward Island); and

⁵ The original four provinces grew to the current ten provinces and three territories as follows: Rupert's Land and the North-western Territory (subsequently designated the Northwest Territories) were admitted to Canada in 1870; Manitoba was established in 1870 out of land previously part of the Northwest Territories; British Columbia joined Canada in 1871; Prince Edward Island joined Canada in 1873; Yukon was established in 1898 out of land previously part of the Northwest Territories; Alberta and Saskatchewan were established in 1905 out of land previously part of the Northwest Territories; Newfoundland (now Newfoundland and Labrador) joined Canada in 1949; and the Northwest Territories was again divided in 1999, with the eastern portion becoming Nunavut and the western portion retaining its previous name.

⁶ *Constitution Act, 1867*, s. 24.

⁷ *Constitution Act, 1867*, s. 21. "Originally, the Senate was composed of 72 members and its size increased as the country grew and changed geographically and demographically. In the first forty years of Confederation, a series of arrangements to provide representation to Manitoba, British Columbia, Prince Edward Island, Alberta and Saskatchewan brought the total number of Senate seats to 87. For example, in 1870, Manitoba was given two seats. In 1871, British Columbia was awarded three seats. In 1905, Alberta and Saskatchewan were each given four seats. Only in 1915 was the *British North America Act* amended to create a fourth division of the Western provinces with 24 seats. Newfoundland entered confederation in 1949 with six seats and the three territories of Yukon (in 1975), The North-West Territories (in 1975) and Nunavut (in 1999) each have been awarded one seat" (Hays, pp. 14-15n).

- the Western provinces, represented by 24 senators (six from each of Manitoba, British Columbia, Alberta and Saskatchewan).

The other areas of the country (Newfoundland and Labrador, and the three territories) are not part of any division. Newfoundland and Labrador is represented by six senators, while each territory is represented by one senator. The breakdown of membership into four divisions illustrates the will to provide a voice to regions of the country regardless of population, as well as to various minorities. In the case of Quebec, senators are appointed for specific areas of the province, reflecting the electoral divisions of the Legislative Council of the Province of Canada as they existed prior to Confederation.⁸ The boundaries of these areas have not changed since they were established; they do not, therefore, include the significant areas added to the province since 1867. Elsewhere, senators are appointed for an entire province or territory, although they frequently choose to adopt a more specific geographical designation within their particular province.

While the usual maximum membership of the Senate is now 105, the Queen can direct that four or eight additional persons, representing the four geographical divisions equally, be summoned to the Senate.⁹ This power is exercised on the recommendation of the Governor General, advised by the Prime Minister. At no time can the total number of senators exceed 113.¹⁰

Senators' Qualifications

To be eligible for appointment to the Senate, a person must meet the following requirements:¹¹

- be 30 years of age or older;
- be a natural-born subject of the Queen or subsequently naturalized (in practice, this now means having Canadian citizenship);
- own real property worth at least four thousand dollars in the province represented;
- possess a net worth of at least four thousand dollars;¹² and
- be a resident in the province or territory represented.

As already noted, Quebec senators are appointed for specific areas within that province. They must fulfil their real property qualification or be resident in the specific area for which they are appointed.

⁸ *Constitution Act, 1867*, s. 22. The following is a list of the divisions: Alma, Bedford, De la Durantaye, De la Vallière, De Lanaudière, De Lorimier, De Salaberry, Grandville, Gulf (“Golfe” in French), Inkerman, Kennebec, La Salle, The Laurentides (“Les Laurentides” in French), Lauzon, Mille Isles, Montarville, Repentigny, Rigaud, Rougemont, Saurel, Shawinigan (“Chaouinigan” in French), Stadacona, Victoria and Wellington.

⁹ *Constitution Act, 1867*, s. 26. To date, this provision has been used only once, in 1990.

¹⁰ *Constitution Act, 1867*, s. 28.

¹¹ *Constitution Act, 1867*, s. 23. The act’s reference to “qualified Persons” in section 24 was originally interpreted as excluding women. In late 1929, in the “Persons Case” (*Edwards v. A.G. of Canada* [1930] A.C. 124), the Judicial Committee of the Privy Council rejected this interpretation, calling it “a relic of days more barbarous than ours,” and in February 1930, the Honourable Cairine Reay Wilson became the first woman summoned to the Senate.

¹² This amount and that for real property have not changed since 1867.

The *Constitution Act, 1867* also specifies the form of oath that shall be used when a senator takes office.¹³

Duration of Membership

Senators may remain in office until they reach the mandatory retirement age of 75¹⁴ unless they choose to voluntarily resign¹⁵ or are disqualified.¹⁶

Quorum and Voting

The presence of 15 senators, including the Speaker, constitutes a quorum, allowing the Senate to transact business and make decisions.¹⁷ Questions are decided by a majority of the senators voting. The Speaker of the Senate can vote on all questions with the other senators but, unlike the Speaker of the House of Commons, does not have a casting vote in case of a tie. Instead, a tie vote results in the rejection of the question under consideration.¹⁸

Powers of the Senate in the Legislative Process

All bills must be passed by both the Senate and the House of Commons in identical form before receiving Royal Assent. There are few constitutional limitations on the Senate's power to initiate, reject or amend legislation. The fundamental constitutional constraint on the Senate's powers is in section 53 of the *Constitution Act, 1867*, which states that:

Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.

Section 54 further requires that votes, resolutions, addresses, or bills appropriating any public monies or any tax or impost, must be recommended to the House of Commons by the Governor General.

The patriation of the Constitution in 1982 resulted in one additional formal limitation on the Senate's powers; it is now possible for certain types of constitutional amendments to be made without the approval of the Senate. This more recent limitation on the Senate's formal powers is discussed later in this chapter.

Although the formal constitutional powers of the Senate are almost equal to those of the House of Commons,¹⁹ strong constitutional conventions operate in Canada and shape relations between the two

¹³ Section 128, referring to the Fifth Schedule, contains the text of the oath. The schedule also contains the Declaration of Qualification that senators must make upon appointment. Under rule 15-6(1), senators must make a Declaration of Qualification in the same form at the beginning of each Parliament. See Chapter 2 for further details.

¹⁴ Appointments before June 1, 1965, had been for life (*Constitution Act, 1867*, s. 29).

¹⁵ *Constitution Act, 1867*, s. 30.

¹⁶ *Constitution Act, 1867*, s. 31. See Chapter 2 for further details.

¹⁷ *Constitution Act, 1867*, s. 35.

¹⁸ *Constitution Act, 1867*, s. 36.

¹⁹ Other non-constitutional measures – not discussed here – may assign different roles to the houses.

houses. This means that the Senate is able to play an essential complementary role within the federal Parliament, while usually deferring to the House of Commons as the elected house.²⁰

Speakership

The Speaker of the Senate is appointed by the Governor General.²¹ This appointment is on the advice of the Prime Minister and is for no fixed term.

Official Languages

Both English and French may be spoken in the Senate, and the official records of Senate sittings are prepared in both official languages. All acts of Parliament are published and adopted with equally authoritative English and French texts.²² Additional specific requirements relating to official languages, which derive from other acts, are discussed later in this chapter. The use of non-official languages in proceedings is addressed in Chapter 5.

The Constitution Act, 1982

The *Constitution Act, 1982*²³ includes a number of provisions that are relevant to the Senate, in particular those relating to constitutional amendments and to minority and linguistic rights.

Constitutional Amendments

Part V of the *Constitution Act, 1982* establishes various processes for amending the Constitution of Canada.²⁴ The general formula requires the approval of the Senate, the House of Commons and the legislative assemblies of at least two thirds of the provinces representing at least half the population of all the provinces.²⁵ Paragraphs 42(1)(b) and (c) of the act specifically state that this formula shall apply to amendments relating to the powers of the Senate, the method of selecting senators, the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of senators. The Senate does not, however, have a veto over such constitutional changes. Under section 47 of the act, the Senate has 180 days,²⁶ from the date the House of Commons approves such an amendment, to agree to it. If the Senate has not agreed to an amendment within this time, the amendment can proceed if the House of Commons again adopts it and the requisite provincial approval is achieved.

Constitutional amendments affecting the powers and composition of the Senate are not the only case in which a Senate veto or delay can be overridden by the House of Commons. Such is also the case for all

²⁰ See, for example, Joyal, *Protecting Canadian Democracy*; and Heard, particularly pp. 87-100.

²¹ *Constitution Act, 1867*, s. 34.

²² *Constitution Act, 1867*, s. 133.

²³ Enacted as Schedule B of the *Canada Act, 1982*, (U.K.) 1982, c. 11.

²⁴ For a more complete discussion of all the amending formulae, reference may be made to Hurley.

²⁵ *Constitution Act, 1982*, s. 38(1).

²⁶ Excluding any period during which Parliament is prorogued or dissolved (*Constitution Act, 1982*, s. 47(2)).

amendments that fall under the general amending formula,²⁷ that require unanimous agreement of the provinces²⁸ or that relate to some but not all provinces.²⁹

Amendments relating exclusively to the executive government of Canada, the Senate or the House of Commons, and that do not fall under any other formula, may be made by means of normal legislation passed by Parliament.³⁰ Since these amendments are made by federal legislation, the Senate must approve them, as with all other laws passed by Parliament.³¹

Canadian Charter of Rights and Freedoms

In addition to providing for entirely domestic processes for amending the Constitution, the *Constitution Act, 1982* also includes the *Canadian Charter of Rights and Freedoms*.³² The Charter entrenches, within limits, a wide range of important rights and makes them enforceable by the courts.³³ Since the Senate has shown particular interest in ensuring that minority rights and concerns are taken into account in law and policy, Charter-related issues often arouse special attention when they come before the Senate.³⁴

The Charter guarantees equal protection under the law without discrimination based on a range of grounds. These include, but are not limited to, “race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.”³⁵ The Charter also entrenches fundamental freedoms (freedom of conscience, religion, thought, belief, opinion and expression, the press, peaceful assembly, and association),³⁶ basic legal rights,³⁷ and democratic and mobility rights.³⁸

In addition, the Charter states that English and French are Canada's official languages. It guarantees rights to services in these languages in Parliament, in head or central offices of the government, and in offices located in areas where there is a significant demand or a reasonable expectation for services in both languages.³⁹ The Charter also makes provisions for minority language education rights and gives Parliament the authority to advance the equality of status or use of English and French.⁴⁰

²⁷ See *Constitution Act, 1982*, ss. 38, 39, 40 and 42.

²⁸ For these classes of amendments, see *Constitution Act, 1982*, s. 41.

²⁹ For these classes of amendments, see *Constitution Act, 1982*, s. 43.

³⁰ *Constitution Act, 1982*, s. 44.

³¹ In addition to the types of amendments discussed here, in which the Senate is involved, most amendments that relate solely to the constitution of a province may be made by the provincial legislature without the involvement of Parliament (*Constitution Act, 1982*, s. 45).

³² *Constitution Act, 1982*, Part I, ss. 1-34.

³³ *Constitution Act, 1982*, ss. 1 and 24.

³⁴ Evidence of the Senate's interest in issues of minority rights goes back to the 19th century. See, for example, Anderson, pp. 21-26.

³⁵ *Constitution Act, 1982*, s. 15.

³⁶ *Constitution Act, 1982*, s. 2.

³⁷ *Constitution Act, 1982*, ss. 7-14.

³⁸ *Constitution Act, 1982*, ss. 3-6.

³⁹ *Constitution Act, 1982*, ss. 16(1), 17(1), 18(1) and 20(1).

⁴⁰ *Constitution Act, 1982*, ss. 16(3) and 23.

3. ACTS OF PARLIAMENT AFFECTING THE FUNCTIONING OF THE SENATE

Numerous federal statutes apply expressly to the Senate and to senators. Some of the most significant of these are listed below, with a brief description of their content.

The Parliament of Canada Act

The *Parliament of Canada Act*⁴¹ contains a number of provisions that apply to both houses of Parliament. The following summarizes those that are relevant to the Senate:

Part I: Senate and House of Commons

Part I of the act deals with the demise of the Crown, parliamentary privilege, the publication of proceedings, and the administration of oaths and affirmations. In particular, sections 2 and 3 provide that Parliament can continue to sit and act despite the death of the Sovereign, although a prorogation or dissolution can still occur in such a situation; sections 4 to 6 embody the privileges, immunities and powers of the Senate and House of Commons; sections 7 to 9 contain provisions relating to civil or criminal proceedings arising from the publication of parliamentary documents; and sections 10 to 13 and the schedule authorize the administration of oaths and affirmations to persons testifying before the Senate, the House of Commons and their committees.

Part II: Senate

Part II of the act pertains to the powers of the Senate. Section 16 prohibits offering a senator any direct or indirect compensation for services relating to any matter before Parliament or to induce a senator to influence another parliamentarian; sections 17 to 19 allow for a senator to act in the place of the Speaker; sections 19.1 to 19.9 makes provisions for the internal administration of the Senate and the powers of the Standing Committee on Internal Economy, Budgets and Administration; section 20 provides for the allowances of senators and the expenditures for the service of the Senate; and sections 20.1 to 20.7 provide for the Senate Ethics Officer.

Part IV: Remuneration of Parliamentarians

Part IV of the act pertains to the remuneration of members of the Senate and the House of Commons. Sections 54.1 to 56, 67 and 67.1 establish the sessional allowances for members of the Senate and House of Commons; sections 57 to 59 deal with deductions for non-attendance; sections 60 to 62.3 provide additional allowances for senators holding certain offices; section 63 and subsection 65(2) allow for the reimbursement of expenses for moving, transportation, travel and telecommunications; subsection 65(1) contains provisions for a statement of attendance for senators; section 71.1 provides for disability allowances; and section 72 provides for payments to be made from the Consolidated Revenue Fund.

⁴¹ *Parliament of Canada Act*, R.S.C., 1985, c. P-1.

Part V: General

Part V of the act relates to the administration of the Library of Parliament. In particular, section 74 provides that the administration of the Library of Parliament is vested under the authority of the Speakers of the Senate and the House of Commons assisted by the Standing Joint Committee on the Library of Parliament; section 75 establishes the position of Parliamentary Librarian and authorizes staff for the Library; section 75.1 governs the selection of the Parliamentary Poet Laureate; and sections 79.1 to 79.5 creates the position and mandate of the Parliamentary Budget Officer within the Library.

The Royal Assent Act

The *Royal Assent Act*⁴², passed in 2002, maintains the traditional ceremony for Royal Assent during which the three elements of Parliament assemble together in the Senate Chamber. The act retains this traditional ceremony, while also establishing that Royal Assent may be granted by means of a written declaration by the Governor General or a deputy to the Governor General, subsequently announced to each house by its Speaker. The act mandates that the traditional ceremony be used at least twice in each calendar year and for the first supply bill of a session.

The Official Languages Act

In its preamble, the *Official Languages Act*⁴³ takes note of the provisions of the Constitution on the status and use of English and French in Canada. Specific provisions in the *Official Languages Act* relate to federal institutions, including the Senate, and the act confers equality on both official languages and on the versions of documents in each language. Among its provisions the act:

- establishes English and French as the official languages of Parliament, and provides that they may be used in debates and other proceedings (s. 4(1));
- requires that simultaneous interpretation be available for parliamentary debates and proceedings (s. 4(2)); that reports of debates and proceedings of Parliament be in both languages (s. 4(3)); that the *Journals of the Senate* and other records be in both languages (s. 5); and that acts be enacted, printed and published in both languages (s. 6);
- makes it mandatory, with limited exceptions, that instruments made under legislative authority, and public and general instruments made in the exercise of a prerogative or other executive power, be in both languages (s. 7);
- requires that documents produced by a federal institution and tabled in either house be in both languages (s. 8);
- requires that the government take all possible measures to ensure that treaties and conventions, as well as most federal-provincial agreements, be in both languages (s. 10 (1) and (2));

⁴² *Royal Assent Act*, S.C. 2002, c. 15. Chapter 3 contains further information on Royal Assent.

⁴³ *Official Languages Act*, R.S.C., 1985, c. 31 (4th Supp.)

- makes it mandatory that published notices – advertisements, and other matters issued by a federal institution and addressed to the public – appear either in a publication in each language that is in general circulation in the region to which the matter applies or, if this condition cannot be met, that they appear in bilingual format in a unilingual publication (s. 11); and
- directs that all instruments to provide notice to the public made under the authority of a federal institution be in both languages (s. 12).

The act has a number of provisions concerning oral and written communications with the Canadian public, and the delivery of services by federal institutions, including the Senate. Section 21 of the act provides that the public has the right to communicate with such institutions in either official language, and sections 22 and 28 provide that the institutions must ensure that such communication is possible and do so in an active manner. This requirement also applies to federal institutions that report to Parliament,⁴⁴ including the offices of:

- the Auditor General;
- the Chief Electoral Officer;
- the Commissioner of Lobbying
- the Commissioner of Official Languages;
- the Information Commissioner;
- the Public Sector Integrity Commissioner; and
- the Privacy Commissioner.

Finally, federal institutions must make effective and efficient use of media that will reach members of the public in the language of their choice (s. 30), including signs identifying a federal institution (s. 29).

4. INTERNAL RULES

In addition to the constitutional and statutory measures reviewed above, three key documents regulate the functions of the Senate. These are the *Rules of the Senate*, the *Senate Administrative Rules*, and the *Ethics and Conflict of Interest Code for Senators*.

The Rules of the Senate⁴⁵

While the practices and procedures of parliamentary bodies are governed and influenced by a variety of sources⁴⁶ – including statutes, the rules and orders adopted in the chamber and in committee, Speaker's rulings, the procedural authorities, and the usages and precedents developed over time – it is the *Rules of the Senate* that establish the framework within which most Senate business is conducted. The *Companion to the Rules of the Senate* notes that the Rules:

⁴⁴ *Official Languages Act*, R.S.C., 1985, c. 31 (4th Supp.), s. 24.

⁴⁵ References to the *Rules of the Senate* in this text are to the version tabled in the Senate on March 4, 2014 (*Journals of the Senate*, p. 467), as modified on May 7, 2015 (*Journals of the Senate*, p. 1823).

⁴⁶ The *Rules of the Senate* is the primary tool guiding Senate procedure. Other authorities may be useful, particularly when the *Rules of the Senate* are not explicit on a matter. Useful references include the practices of the House of Commons and works dealing with them, such as O'Brien and Bosc, Beauchesne, and Bourinot. Useful foreign texts, such as Erskine May and Odgers, may also be consulted. Previous rulings of Senate Speakers are also of key importance. For additional discussion on the sources of parliamentary procedure and practice, see, for example, Chapter 5 of O'Brien and Bosc, and Chapter 1 of Beauchesne, 6th ed.

... derive from constitutional and statutory sources, as well as parliamentary conventions, traditions and usages, and the practices adopted from time to time. The status of individual rules is relevant in terms of their legal implications and the procedures for amending them.⁴⁷

The Senate adopted its first Rules shortly after Confederation. They have been regularly amended to reflect evolving circumstances and needs.⁴⁸ Changes to the Rules must be approved by the Senate. In practice such matters are often initiated by the Standing Committee on Rules, Procedures and the Rights of Parliament, or proposed changes are referred to that committee for study.

Rule 1-1(2) establishes that, in cases not provided for in the Rules, reference may be made, with necessary adjustments, to “the practices of the Senate, its committees and the House of Commons.” This rule also allows for reference to the practices of equivalent bodies as required.⁴⁹

The Senate is the master of its own proceedings, subject to the limitations of the Constitution and law. As such it can vary from its normal rules and procedures.⁵⁰ This is often done with leave of the Senate, but can also follow the adoption of a substantive motion to suspend provisions of the Rules or normal practice, which would require one day's notice.⁵¹

The *Companion to the Rules of the Senate* expands on each of the Senate rules, providing extracts from Speaker's rulings and other precedents.⁵²

The Senate Administrative Rules

The *Senate Administrative Rules* were approved by the Senate in May 2004, and govern the institution's administrative practice. They complement and are equal in authority to the *Rules of the Senate*, and codify the fundamental principles and policies governing the internal administration of the Senate and the allocation and use of resources. The *Senate Administrative Rules* are supplemented by policies, guidelines, opinions, directives, forms and practices adopted or implemented by the Senate, the Standing Committee on Internal Economy, Budgets and Administration, or other competent authorities. The Standing Committee on Internal Economy, Budgets and Administration is responsible for the administration of the *Senate Administrative Rules* and for giving guidance on their interpretation to senators and the Senate Administration.⁵³

⁴⁷ *Companion to the Rules of the Senate*, 2nd edition, 2013, p. iii.

⁴⁸ Most recently, the *Rules of the Senate* were significantly revised and restructured in late 2012.

⁴⁹ See, for example, Speaker's ruling, *Journals of the Senate*, February 21, 2001, pp. 77-83.

⁵⁰ See Speaker's ruling, *Journals of the Senate*, May 17, 2012, pp. 1304-1306.

⁵¹ Rule 5-5(a).

⁵² The second edition of the *Companion* is dated November 2013, and is available at sen.parl.gc.ca.

⁵³ Preface to the *Senate Administrative Rules*.

The *Ethics and Conflict of Interest Code for Senators*

The *Ethics and Conflict of Interest Code for Senators* was originally adopted by the Senate on May 18, 2005, and has since been amended in 2008, in 2012 and twice in 2014.⁵⁴ The Code sets out the rules of conduct for senators as well as a process for the disclosure of private interests. The Code is administered and interpreted by the Senate Ethics Officer, operating under the general direction of the Standing Committee on Ethics and Conflict of Interest for Senators. The Code states that senators “shall uphold the highest standards of dignity inherent to the position of senator”⁵⁵ and that senators must perform their “parliamentary duties and functions with dignity, honour and integrity.”⁵⁶ The Code contains provisions requiring the declaration by senators of any private interest that might reasonably be seen to influence their judgment or their impartiality on matters that are before the Senate or a committee. It is the responsibility of individual senators to determine whether they have a private interest in a matter before the Senate and, in case of doubt, the Senate Ethics Officer must be consulted. Under rule 2-1(2), the Speaker’s authority with respect to the Code “is limited to those provisions of the Code expressly incorporated in the *Rules of the Senate*.”⁵⁷

⁵⁴ See, respectively, *Journals of the Senate*, May 18, 2005, p. 928; May 1, 2012, p. 1213; April 1, 2014, p. 630; and June 16, 2014, p. 1080. Originally named the *Conflict of Interest Code for Senators*, the Code received its new name with the changes adopted by the Senate on June 16, 2014 (*Journals of the Senate*, p. 1080).

⁵⁵ *Ethics and Conflict of Interest Code for Senators*, s. 7.1(2).

⁵⁶ *Ethics and Conflict of Interest Code for Senators*, s. 7.2.

⁵⁷ See Chapter 2 for further information on the Code.

CHAPTER 2

Senators and the Organization of the Senate



Before new senators take office, they must sign a Declaration of Qualification to solemnly affirm they have met the specific age, residence and personal property requirements set out in the Constitution. New senators also take the oath of allegiance, and they then have a duty to attend the Senate, unless they are suspended or on a leave of absence. Senators must also follow the provisions of the Ethics and Conflict of Interest Code for Senators. This chapter covers the content of the declaration and oath required of all new senators. It also explains the organizational structure of the Senate, including the Speaker, the political leadership and the in-house committees.

1. SENATORS

The total membership of the Senate, the distribution of seats by province and territory, and the qualifications required to become and remain a senator were discussed in Chapter 1. Senators are appointed by the Governor General on the advice of the Prime Minister and must meet certain qualifications relating to property, net worth, residence and citizenship. A senator retains office until the age of 75 except in the case of resignation, death or the seat being declared vacant.¹

New Senators: Summons, Declaration of Qualification, and Oath or Solemn Affirmation

An appointment to the Senate is made by summons from the Governor General under the Great Seal of Canada, effective from the date on the writ of summons.² Prior to taking office, new senators must make a Declaration of Qualification in the form set out in the Fifth Schedule to the *Constitution Act, 1867*.³ The declaration is normally signed in the presence of the Clerk of the Senate or the Law Clerk and Parliamentary Counsel, both of whom are typically commissioners appointed to receive and witness the said declaration.

¹ *Constitution Act, 1867*, s. 29(2).

² *Constitution Act, 1867*, s. 24. See Appendix A to this chapter for an example of a summons for a senator representing a province or territory other than Quebec, and Appendix B for an example of a summons for a senator representing a division of Quebec.

³ The text of the declaration is found in Appendix C to this chapter.

Swearing-in

The swearing-in ceremony for a new senator takes place in the Senate Chamber⁴, usually at the beginning of a sitting. The Speaker informs the Senate that the Clerk of the Senate has received a certificate showing that the person named has been summoned to the Senate, and then indicates that the senator is waiting to be introduced. The new senator is escorted to the table by the leader of his or her party and another senator. The clerk at the table then reads the summons, and the new senator takes the oath of allegiance, administered by the Clerk of the Senate. The text of the oath, established in the Fifth Schedule to the *Constitution Act, 1867*, is as follows:

I _____ do swear, That I will be faithful and bear true Allegiance to Her Majesty Queen Elizabeth the Second.⁵

While the *Constitution Act, 1867* only refers to an oath, the fourth edition of Beauchesne notes that:

In accordance with Instructions passed under the Royal Sign Manual and Signet on the 15th June, 1905, the Governor General is authorized to administer the oath of allegiance or affirmation to persons who shall hold places of trust in Canada in the form provided by an Act passed in the thirty-first and thirty-second years of the Reign of Queen Victoria intituled: “An Act to Amend the Law relating to Promissory Oaths.” Affirmation, though not mentioned in the British North America Act, is allowed under the authority of the above Instructions.⁶

Section 3 of the *Oaths of Allegiance Act*⁷ provides that:

Every person allowed by law in civil cases to solemnly affirm instead of taking an oath shall be permitted to take a solemn affirmation of allegiance in the like terms, with such modifications as the circumstances require, as the oath of allegiance, and that affirmation, taken before the proper officer, shall in all cases be accepted from the person in lieu of the oath and has the like effect as the oath.

The text used when a new senator chooses to take a solemn affirmation is the following:

I, _____, do solemnly, sincerely, and truly declare and affirm that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second.⁸

By taking the oath or solemn affirmation, a senator is both pledging loyalty to the Queen, and

... also swearing or solemnly affirming allegiance to the institutions the Queen represents, including the concept of democracy. Thus, [senators] are making a pledge to conduct themselves in the best interests of the country. The oath or solemn affirmation reminds [senators] of the serious obligations and responsibilities they are assuming.⁹

⁴ On at least one occasion, the oath was taken outside the Senate Chamber in the presence of the Clerk of the Senate, and the Senate was informed of this by the Speaker (*Journals of the Senate*, October 3, 1990, p. 1804).

⁵ While the Fifth Schedule mentions Queen Victoria, it also specifies that the name of the King or Queen at the time the oath is actually taken should be used.

⁶ Beauchesne, 4th ed., §15, p. 13. The act in question is a British act, c. 72 of 31 & 32 Vict.

⁷ *Oaths of Allegiance Act*, R.S.C., 1985, c. O-1.

⁸ See O'Brien and Bosc, p. 200.

⁹ O'Brien and Bosc, pp. 199-200.

After taking the oath or solemn affirmation, the senator signs a written copy of the oath or affirmation. A senator may not in any way change or add words to the established text at any of these stages.¹⁰ The new senator is welcomed by the Speaker and then takes his or her seat.

Since the Senate's membership is continuous - only changing gradually with resignations, retirements and deaths – a member is a senator at all times, whether Parliament is in session, prorogued or dissolved.

Once a Senator

Duty to Attend and Circumstances for Absences

Rule 15-1(1) imposes upon senators a duty to comply with the command to attend the Senate “when it is in session for the purposes of advising and assisting in the affairs of Canada, laying aside all difficulties and excuses to do so.” However, rule 15-1(3) does recognize that a senator may be absent from sittings for public or official business, due to illness, or for the 21 personal leave days allowed per session. For each additional sitting day missed, \$250 is deducted from the senator's sessional allowance if the absence was not due to public or official business, or illness.¹¹

Rule 15-1(2) requires that the Clerk of the Senate report to the Senate if a senator has failed to attend the Senate during two consecutive sessions and that “[t]he Senate shall consider and determine as soon as possible whether the Senator's seat should be declared vacant because of the failure to attend.”

Attendance

The names of the senators attending each sitting of the Senate have been listed in the *Journals of the Senate* throughout the Senate's history. Since 1998, after the adoption of the Senators Attendance Policy, discussed below, the Journals have included a second list, indicating senators who were in “attendance to business” (this second list also automatically includes all senators who actually attended the sitting).

A register of senators' attendance and activities was established in 1990 in order to provide greater transparency and accountability.¹² Policies relating to the way in which senators' work is recorded were substantially adjusted with the adoption of the Senators Attendance Policy in 1998.¹³ The purpose of the policy is threefold:

¹⁰ See, for example, the *Debates of the Senate*, April 18, 2002, p. 2628.

¹¹ Rule 15-1(3). The provision for 21 leave days without deduction from the sessional allowance is based on the *Parliament of Canada Act*, R.S.C., 1985, c. P-1, s. 57. While subsection 57(1) of the act indicates a deduction of \$120, the Senate has, through rule 15-1(3), exercised its authority under section 59 of the act to set a more stringent provision.

¹² See the fourth report of the Standing Committee on Standing Rules and Orders presented on May 10, 1990 (*Journals of the Senate*, pp. 935-937). The report was adopted on May 24, 1990.

¹³ See the fifth report of the Standing Committee on Privileges, Standing Rules and Orders presented on June 3, 1998 (*Journals of the Senate*, pp. 754-761). The report was adopted on June 9, 1998 (there have been minor amendments since the policy was adopted).

2: Senators and the Organization of the Senate

- to document each senator's compliance with the attendance requirements of subsection 31(1) of the *Constitution Act, 1867*;
- to satisfy the requirement of subsection 65(1) of the *Parliament of Canada Act* that a signed monthly statement of attendance be prepared for each senator; and
- to communicate an accurate and fair picture of the time senators work on behalf of Canadians.¹⁴

Under the policy, the Clerk of the Senate is responsible for maintaining the Senators Attendance Register, which, for each day during months in which the Senate is in session, records information such as whether the Senate sat; whether each senator was in attendance to business; on public business or absent due to illness; and the number of committee meetings each senator attended. The register is a public document and may be consulted during ordinary office hours.¹⁵

The policy distinguishes between attendance to business and public business. Attendance to business is defined as the following:¹⁶

- attending a sitting of the Senate;
- attending a meeting of a Senate committee authorized to sit within the National Capital Region during a sitting of the Senate, or to sit or be on travel status (including formal committee meetings and fact-finding work) outside the National Capital Region during a sitting of the Senate;
- participating in a delegation of a recognized parliamentary association that is on business outside the National Capital Region on a sitting day, or being on travel status for such an activity; or
- engaging in certain types of official business outside the National Capital Region on a sitting day, or being on travel status for such business.¹⁷

Public business, on the other hand, refers to senators' activities on all public or official business that is not included in attendance to business.

The information included in the register is compiled from the Journals, the minutes of committee meetings, the International and Interparliamentary Affairs Directorate, and written notices received from senators.¹⁸ Written notices must state whether the senator was on public or official business, the nature of the business, and the date and location where such business was carried out.¹⁹ Each senator receives a draft statement of attendance shortly after the end of each month and has two weeks to identify any errors or omissions. Within two weeks of receipt of the draft, or a corrected copy, the senator must sign and return it to the Clerk of the Senate. A copy is then included in the Senators Attendance Register and may be consulted by the public.²⁰

¹⁴ Section 1 of the policy.

¹⁵ Section 7 of the policy.

¹⁶ Subsection 8(2) of the policy.

¹⁷ To qualify as attendance to business, official business must meet the following conditions: (i) the business could only have been conducted on a sitting day, (ii) it required that the senator be absent from the sitting, and (iii) it was either (a) authorized by the Senate or one of its committees, or (b) undertaken at the written request of a federal minister that the senator represent the government (subsection 8(3) of the policy).

¹⁸ Subsections 3(2) and (3) of the policy.

¹⁹ Subsection 4(1) of the policy.

²⁰ Section 9 of the policy.

Leaves of Absence and Suspensions

Although senators are under an obligation to attend sittings, the Senate may order a leave of absence or suspend a senator if there is sufficient cause.²¹ While suspended or on a leave of absence, a senator is not allowed to attend sittings of the Senate or its committees.²² The Rules are clear that “When a leave of absence is granted, it is solely to protect the dignity and reputation of the Senate and public trust and confidence in Parliament.”²³

If a senator is charged with a criminal offence for which the senator may be prosecuted by indictment, the Senate is informed of this fact at the first possible opportunity, either by the accused senator sending a written notice to the Clerk of the Senate, who causes it to be laid on the table, or by the Speaker tabling proof of the charge provided by the court.²⁴ The senator is granted a leave of absence automatically until the charge is withdrawn; proceedings are stayed; the charge is proceeded with in summary conviction proceedings; or the senator is acquitted, convicted or discharged.²⁵ The Rules are again explicit that a leave of absence in these circumstances is granted to protect the dignity and reputation of the Senate.²⁶ The presumption of innocence until proven guilty is explicitly recognized.²⁷

If a senator is convicted of a criminal offence in proceedings by indictment, the senator is suspended from the time of the imposition of a sentence other than a discharge.²⁸ The suspension lasts until the conviction is overturned on appeal or replaced by a discharge on appeal, or until the Senate decides whether the senator’s place has become vacant by reason of the conviction.²⁹ When suspended, a senator does not receive a sessional allowance, although the unpaid amounts will be paid if the conviction is overturned on appeal.³⁰ Suspension also leads to a loss of the right to use Senate resources otherwise available for carrying out parliamentary functions, including moving, transportation, travel and telecommunication expenses.³¹

²¹ The Senate has granted a leave of absence on two occasions (see *Journals of the Senate*, June 22, 2007, p. 1848; and February 12, 2012, p. 1907), and suspended four senators (see *Journals of the Senate*, February 19, 1998, p. 460; and November 5, 2013, pp. 140-145).

²² A senator who is on a leave of absence or suspended for more than a full session may attend the Senate once each session, after giving written notice to the Clerk of the Senate, in order to avoid disqualification. The Clerk tables the notice, and the senator can then attend on the sixth sitting day thereafter (see rule 15-2).

²³ Rule 15-2(2).

²⁴ Rule 15-4(1).

²⁵ Rules 15-4(2) and (3).

²⁶ Rule 15-2(2).

²⁷ Rule 15-4(5).

²⁸ Rule 15-5(1).

²⁹ Rule 15-5(2).

³⁰ Rules 15-3(1) and (3). Under rule 15-3(4), the Standing Committee on Internal Economy, Budgets and Administration can also order that the payable portion of the senator’s allowance be withheld after a finding of guilt with respect to a criminal offence prosecuted by indictment but before sentencing.

³¹ Rule 15-3(1). Under rule 15-4(6), the Standing Committee on Internal Economy, Budgets and Administration can also suspend some or all access to the same resources in the case of a senator who is on a leave of absence as a result of criminal charges.

Disqualification of a Senator

A senator may be disqualified from membership in the Senate on one of the following grounds:³²

- failing to be present in the Senate at least once over two consecutive sessions;³³
- taking an oath of allegiance to a foreign power;
- filing for bankruptcy;
- being found guilty of treason, or convicted of a felony or an “infamous crime;” or
- ceasing to meet the requirements with respect to residency or ownership of property.

The question of disqualification is an issue determined by the Senate.³⁴

Resignation of a Senator

Although senators are appointed until the age of 75, they can relinquish their seat voluntarily by means of a written resignation addressed to the Governor General.³⁵

Death of a Senator

When a sitting senator passes away, the Speaker announces the news to the Senate immediately after the doors of the chamber have been opened or at the earliest opportunity if informed of the death during the sitting. The Speaker then asks senators to observe a minute of silence. This is often immediately followed by a motion to adjourn the Senate.³⁶ In addition, the Senate often does not sit on the day of the senator’s funeral, allowing colleagues to attend.³⁷ Tributes to the deceased senator may be paid in the chamber, under rule 4-3(1), at the request of one of the leaders.

Sessional and Other Allowances

Senators are paid a sessional allowance under the *Parliament of Canada Act*, with senators occupying certain specified positions receiving additional amounts.³⁸ A senator may waive the allowance with the authorization of the Senate, or may remit it in whole or in part to Her Majesty in right of Canada.³⁹

³² *Constitution Act, 1867*, s. 31.

³³ The last time a senator’s seat was declared vacant for non-attendance was in 1915. In all cases where a seat was declared vacant for non-attendance, the declaration followed a report from the Committee on Orders and Customs of the Senate and Privileges of Parliament. See, for example, the *Journals of the Senate*, April 13, 1915, pp. 224-225.

³⁴ *Constitution Act, 1867*, s. 33.

³⁵ *Constitution Act, 1867*, s. 30.

³⁶ See, for example, *Debates of the Senate*, February 9, 2012, p. 1128; June 13, 2006, p. 493 (the Senate did not adjourn after the minute of silence in this case); October 1, 2002, p. 9; and February 28, 2001, p. 195.

³⁷ See, for example, *Debates of the Senate*, June 13, 2006, p. 496.

³⁸ *Parliament of Canada Act*, R.S.C., 1985, c. P-1, s. 60. The positions in question are the following: Speaker, Speaker *pro tempore*, the leaders and deputy leaders of the government and the opposition, the government and opposition whips, and the chairs and deputy chairs of standing or special committees (except for the joint chairs of the Standing Joint Committee on the Library of Parliament).

³⁹ *Senate Administrative Rules*, 4:01, ss. 2 and 3.

Expenses incurred for travel for parliamentary functions during a session between a senator's place of residence and Ottawa are paid by the Senate. A senator is provided with office space in the parliamentary precinct and funds to run the office. Each senator also receives funds to hire administrative, research or other staff, who work under the direction of the senator. In addition, a senator is entitled to the services of one staff member for up to two months after leaving office to assist in closing the office.

Renewed Declaration of Qualification

All senators must complete a renewed Declaration of Qualification during the first 20 sitting days of the first session of each Parliament.⁴⁰ The form for this declaration is the same as that in the Fifth Schedule of the *Constitution Act, 1867*. The declaration is filed with the Clerk of the Senate who, at the end of the 20-day period, tables the list of senators who have complied with the rule in the Senate Chamber.⁴¹

Ethics and Conflict of Interest Code for Senators

Senators must follow the provisions of the *Ethics and Conflict of Interest Code for Senators* with regard to the disclosure of private interests. To do this, senators may consult with the Senate Ethics Officer who is responsible for the administration and the interpretation of the Code.

Subsection 12(1) of the Code stipulates that:

- a senator must determine if there are reasonable grounds to believe that the senator or a family member has a private interest that might be affected by a matter that is before the Senate or a committee of which the senator is a member;
- if the senator believes there is such an interest, the senator shall make a declaration either orally or in writing on the general nature of the private interest; such declaration shall be made no later than the first occasion at which the senator is present during consideration of the matter;
- if made in writing, a declaration is made either to the Clerk of the Senate (for matters before the Senate) or to the committee clerk (for matters before committee);
- in the Senate, the Speaker shall cause the declaration to be recorded in the *Journals of the Senate*;⁴² and
- in committee, the chair shall cause the declaration to be recorded in the minutes of proceedings of the committee,⁴³ subject to certain conditions.⁴⁴

All declarations are submitted to the Senate Ethics Officer, who files them with the individual senator's public disclosure summary⁴⁵. A senator need normally make only one declaration of a private interest for the purposes of having it filed by the Senate Ethics Officer.⁴⁶ If a senator becomes aware at a later date of a private interest that should have been declared, the senator must make the declaration immediately.⁴⁷

⁴⁰ Rule 15-6(1).

⁴¹ Rule 15-6(2).

⁴² Also see rule 15-7(1)(a).

⁴³ Rule 15-7(1)(b).

⁴⁴ See s. 12(4) of the *Ethics and Conflict of Interest Code for Senators* regarding declarations made during in camera meetings.

⁴⁵ *Ethics and Conflict of Interest Code for Senators*, s. 12(3).

⁴⁶ See rule 15-7(2).

⁴⁷ *Ethics and Conflict of Interest Code for Senators*, s. 12(2).

2: Senators and the Organization of the Senate

If a declaration is made during an in camera meeting of a committee, the chair and the Senate Ethics Officer must seek the consent of the Subcommittee on Agenda and Procedure (steering committee) of the committee concerned to have the declaration recorded in the minutes of the meeting in question or filed with the senator's public disclosure summary, as the case may be.⁴⁸ All declarations recorded in committee minutes are also published in the *Journals of the Senate*.⁴⁹

“A Senator who has made a declaration [of a private interest] regarding a matter that is before the Senate may not participate in debate or any other deliberations in the Senate with respect to that matter.”⁵⁰ Similarly, a senator who has made a declaration of a private interest or has “reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected by a matter that is before a committee” must not participate in debate or other deliberations on that matter before the committee, and “must withdraw from the committee for the duration of those proceedings.”⁵¹ This rule applies whether the senator is a member of the committee or not. The senator is not, however, obliged to resign from the committee.⁵²

If a senator is required to make a declaration but has not yet done so, the senator may not participate in debate or any other deliberations on the matter, and in the case of committee proceedings, the senator must withdraw from the committee for the duration of the proceedings.⁵³

A declaration, once made, may be retracted, after which the prohibitions against participating in debate and voting no longer have effect.⁵⁴ All retractions made in the Senate Chamber are published in the *Journals of the Senate*, as are those recorded in committee minutes.⁵⁵

A senator who has made a declaration of a private interest or who is required to but has not yet done so shall not vote on the matter in the Senate, but may abstain.⁵⁶ Prior to any standing vote in the Senate, the Speaker announces the names of senators present who have made and not retracted a declaration, and their names are not be called during the vote, except to abstain.⁵⁷ The Speaker also “inform[s] the Senate, if applicable, that a Senator who is the subject of a report of the Standing Committee on Ethics and Conflict of Interest for Senators shall not vote on any motion relating to the report.”⁵⁸ The same would occur in committee in relation to a recorded vote.⁵⁹

⁴⁸ *Ethics and Conflict of Interest Code for Senators*, s. 12(4). When a declaration made in camera has not been recorded in the minutes nor filed in the senator's public disclosure summary, it “is only valid in respect of the proceeding during which the declaration was made or the matter that the declaration concerned was discussed, and the Senator shall make a further declaration at the first possible opportunity” (*Ethics and Conflict of Interest Code for Senators*, s. 12(5)). Also see rule 15-7(3).

⁴⁹ Rule 15-7(1)(b).

⁵⁰ *Ethics and Conflict of Interest Code for Senators*, s. 13(1). Also see rule 15-7(2)(a).

⁵¹ *Ethics and Conflict of Interest Code for Senators*, ss. 13(2) and (3). Also see rule 15-7(2)(b).

⁵² *Ethics and Conflict of Interest Code for Senators*, s. 13(2).

⁵³ *Ethics and Conflict of Interest Code for Senators*, s. 13(4).

⁵⁴ *Ethics and Conflict of Interest Code for Senators*, s. 12(7).

⁵⁵ Rule 15-7(1).

⁵⁶ *Ethics and Conflict of Interest Code for Senators*, s. 14. Also see rule 15-7(2)(a).

⁵⁷ Rule 9-7(1)(a).

⁵⁸ Rule 9-7(1)(b). Also see rule 12-30(6), as well as subsection 51(5) of the *Ethics and Conflict of Interest Code for Senators*.

⁵⁹ Rule 12-20(2). This situation should not arise in committee, since senators who have made and not retracted a declaration of private interest must withdraw from committee proceedings on the matter (s. 13(2) of the Code and rule 15-7(2)(b)). If such senators were present during a vote, the chair would announce their names, and their names would not be called during a vote, except to abstain.

2. THE ORGANIZATION OF THE SENATE

The Speaker of the Senate

The Speaker is appointed by the Governor General,⁶⁰ on the recommendation of the Prime Minister. At the sitting following the appointment, the new Speaker sits in the Clerk of the Senate's chair and informs the Senate that a commission has been issued under the Great Seal of Canada making the appointment.⁶¹ The Clerk of the Senate then reads the commission, after which the Speaker is escorted to the Speaker's chair by the Leaders of the Government and Opposition.⁶²

The Speaker is the presiding officer of the Senate and is responsible for presiding over proceedings, ruling on points of order and questions of privilege, and preserving order and decorum.⁶³ As the presiding officer, at each sitting of the Senate, the Speaker calls out the headings under Routine Proceedings as well as any items on the Notice Paper, recognizes senators wishing to speak, puts questions to a vote and announces the results of votes. The Speaker also reads messages from the Governor General and the House of Commons, and introduces visitors who are in the Senate galleries.

The role of the Speaker was patterned, in certain respects, on the former role of the Lord Chancellor in the House of Lords.⁶⁴ The Speaker was originally expected to be partisan when necessary; indeed, on two occasions in the period following Confederation, the Speaker was also a minister without portfolio.⁶⁵ In such circumstances, the Senate did not initially give the Speaker any specific powers to enforce the *Rules of the Senate* unless a matter of order was raised by a senator.

The Speaker's role has evolved and become generally less partisan. The Rules were amended in 1906 to give the Speaker the role of preserving order and decorum and to decide points of order, although it was several years before this had a significant effect on the actual functioning of the Senate.⁶⁶ In 1991, the Senate gave the Speaker the power to act on the Speaker's own initiative to preserve order and decorum and to enforce the Rules, and also gave the Speaker authority to suspend a sitting for a maximum period

⁶⁰ *Constitution Act, 1867*, s. 34.

⁶¹ An example of such a Commission can be found in Appendix D to this chapter. Also see *Journals of the Senate*, May 5, 2015, p. 1787; November 27, 2014, p. 1385; and April 3, 2006, p. 3.

⁶² Four Speakers have died while in office: the Honourable Pierre Claude Nolin, who died on April 23, 2015; the Honourable Georges Parent, who died on December 14, 1942; the Honourable Hewitt Bostock, who died on April 28, 1930; and the Honourable Josiah Burr Plumb, who died on March 12, 1888. The deaths of Speakers Parent and Bostock occurred while the Senate was adjourned for an extended period of time, and a new Speaker was introduced at the next sitting. In the case of Speakers Nolin and Plumb, the Senate met within a few days of their deaths, but conducted no legislative business before adjourning. At the next sitting, the new Speaker was then introduced in the usual way.

⁶³ Rule 2-1(1).

⁶⁴ For a discussion of the role of the Speaker and its evolution, refer to Dawson.

⁶⁵ The Honourable Robert Duncan Wilmot was Speaker of the Senate from November 7, 1878 to February 10, 1880 and Minister without Portfolio from November 8, 1878 to February 10, 1880. The Honourable David Lewis Macpherson was Speaker of the Senate from February 11 to 15, 1880 and from April 19, 1880 to October 16, 1883, and Minister without Portfolio from February 11, 1880 to October 16, 1883.

⁶⁶ See Dawson, p. 29.

of three hours in cases of grave disorder.⁶⁷ The 1991 amendments also made explicit the Speaker's role in determining whether a prima facie question of privilege exists.⁶⁸

The Speaker may, if considered necessary, order strangers to leave the Senate, including persons in the public galleries.⁶⁹ A "stranger" is anyone who is not a senator or Senate official. In addition, the Speaker may modify or disallow a notice of motion or inquiry containing unparliamentary expressions or offending any rule or order of the Senate.⁷⁰

When an emergency debate is requested, the Speaker makes the decision as to whether the matter is of urgent public importance as defined by the Rules.⁷¹ The Speaker's decision is subject to appeal.⁷²

Under rule 2-3 "[t]he Speaker may participate in any debate except when hearing arguments on a point of order, a question of privilege or a request for an emergency debate, on each of which the Speaker is required to rule," but must leave the chair to do so.⁷³ The Speaker has a deliberative vote,⁷⁴ unlike the casting vote of the Speaker of the House of Commons, and therefore votes before all other senators. In practice, however, the Speaker does not vote often and rarely takes part in debate.

During a period of adjournment, the Speaker, if satisfied that it is in the public interest, may recall the Senate earlier than the date fixed at the time of adjournment⁷⁵. Conversely, if satisfied that the public interest does not require the Senate to meet on the date identified at adjournment, the Speaker may consult with the leaders of the government, the opposition and any other recognized parties, and set a later date for the next sitting.⁷⁶ In the absence of the Speaker or when that office is vacant, the Clerk of the Senate can exercise this responsibility.⁷⁷

The Speaker of the Senate ranks fourth in the Canadian Order of Precedence, after the Governor General, the Prime Minister and the Chief Justice of the Supreme Court. Consequently, in addition to duties as presiding officer, the Speaker is often called upon to participate in different official and protocol activities, both within and outside Canada.

Speaker *pro tempore* and Absence of Speaker

The Speaker *pro tempore* is, in essence, a deputy speaker who presides whenever the Speaker is absent or cannot perform the duties of the chair,⁷⁸ and has the same powers as the Speaker while in the

⁶⁷ Rule 2-6.

⁶⁸ See Chapters 10 and 11 for details on the processes for dealing with points of order and questions of privilege.

⁶⁹ Rule 2-13.

⁷⁰ Rule 5-4.

⁷¹ Rules 2-1(1)(b) and 8-3(5).

⁷² Rule 2-5(3). See, for example, *Journals of the Senate*, March 31, 2009, pp. 418-419.

⁷³ The Speaker has a desk in the chamber from which to participate in debate.

⁷⁴ Rule 9-1.

⁷⁵ Rule 3-6(1).

⁷⁶ Rule 3-6(2).

⁷⁷ Rule 3-6(5).

⁷⁸ At the time of Confederation, there were no provisions allowing the Senate to function if the Speaker was absent. To accommodate absences, the Speaker would be removed from office and a new Speaker appointed, sometimes for only a matter of days. When the incumbent could again take the chair, he would then be reappointed as Speaker. This system lasted until 1895, when legislative changes were made allowing the selection of senators to act in cases of the unavoidable absence of the Speaker. See Dawson, p. 23.

chair.⁷⁹ The Speaker *pro tempore* is nominated in a report of the Committee of Selection at the beginning of each session⁸⁰ and usually serves as chair of meetings of a Committee of the Whole.

When the Speaker and the Speaker *pro tempore* are absent, another senator can preside as Speaker. If the absence occurs at the beginning of a sitting, the Clerk of the Senate advises the Senate of this, and the Senate chooses an alternate senator;⁸¹ if the absence occurs during the sitting, the Speaker can call upon another senator to take the chair.⁸²

The Leadership and Political Structures

The Leadership

The Rules recognize the positions of Leader of the Government in the Senate, Leader of the Opposition in the Senate, and leader of any other recognized party in the Senate, although there have been no cases of other recognized parties in the Senate since 2002, when these provisions were established.⁸³ The method of selection of the leaders is a matter for the relevant political group. The Leaders of the Government and the Opposition are members ex officio of the Committee of Selection, and of all standing and special committees, except the Standing Committee on Ethics and Conflict of Interest for Senators and joint committees.⁸⁴ In most cases, the leaders are allowed longer speaking times than other senators — often unlimited.⁸⁵ Questions relating to public affairs can be put to the Leader of the Government during Question Period.⁸⁶

In addition to these provisions contained in the Rules, the leaders — as the very title implies — play pivotal roles heading their respective caucuses.

The Leaders of the Government and the Opposition are each assisted by a deputy leader. The deputy leaders play key roles in ensuring consultations between the parties and in generally assisting the Senate with the orderly conduct of its business. In the absence of the leaders, the deputy leaders are ex officio members of the Committee of Selection, and of all standing and special committees, except the Committee on Ethics and Conflict of Interest for Senators, and joint committees.⁸⁷

Each party has a whip, with general responsibility for keeping caucus members informed about the business of the Senate, its schedule, expected votes, and the work of committees, as well as co-ordinating attendance in the chamber and in committees. The whips also usually exercise, on behalf of their leaders, the authority under rule 12-5 to make changes to committee memberships. Finally, the whips determine

⁷⁹ Rules 2-4(2) and (3).

⁸⁰ Rule 12-2(1). See, for example, *Journals of the Senate*, December 2, 2014, p. 1397; November 20, 2013, p. 200; and June 9, 2011, p. 37.

⁸¹ See Chapter 4.

⁸² Rule 2-4(1).

⁸³ See definitions in Appendix I of the *Rules of the Senate*.

⁸⁴ Rule 12-3(3) and Appendix III of the *Rules of the Senate*.

⁸⁵ See Chapter 5 for details on speaking limits.

⁸⁶ Rule 4-8(1)(a).

⁸⁷ Rule 12-3(3).

where members of their respective parties will sit in the chamber and communicate any changes to the Usher of the Black Rod, who adjusts the seating plan accordingly.

The senators occupying various positions within each party – notably the leader, deputy leader and whip – are often referred to collectively as the “leadership” for that party.⁸⁸ The term is also used to refer collectively to the leaderships of both parties.

Ministers in the Senate

The Leader of the Government has often been a cabinet minister, sometimes without portfolio. Other senators may also be appointed to the cabinet, often to give cabinet representation to a region in which the governing party has few or no members in the House of Commons. The number of senators in cabinet has declined since Confederation. Sir John A. Macdonald’s first cabinet had five senators out of 13 members. In the early 1980s, Joe Clark’s cabinet had three senators in a larger cabinet, and Pierre Trudeau’s subsequent cabinet had four. In the past, senators have held cabinet positions such as Minister of Justice and Attorney General of Canada, Minister of State for Economic Development, and Minister of Public Works and Government Services. On two occasions senators have served as prime minister: Sir John Abbott (1891-1892) and Sir Mackenzie Bowell (1894-1896).

More recently, there has often been only one minister in the Senate (the Leader of the Government), and at the time of writing, there was no minister in the Senate. When the Leader of the Government is not a minister, government bills can still be introduced in the Senate in his or her name. The Leader of the Government still answers questions on public affairs during Question Period and accompanies the Queen’s representative when he or she comes to the Senate.

The Leader of the Government is the only minister who may be a member of a Senate committee. Appendix III of the *Rules of the Senate* states that it is “undesirable to have any cabinet minister other than the Leader of the Government as a member of Senate Committees.”

As already noted, a question during Question Period can be addressed to the Leader of the Government on public affairs. Questions can also be asked of other ministers sitting in the Senate, but only on subjects relating to their ministerial responsibilities.⁸⁹

Committee Chairs and Deputy Chairs

The committee chair and deputy chair play important leadership roles that combine elements of the speakership and of the chamber leadership. The chair presides over committee meetings, with the deputy chair performing this role if the chair is absent. Questions about a committee’s activities may be put to the chair of a committee during Question Period,⁹⁰ and the chair presents or tables reports of the committee in the Senate, or designates another senator to do so.⁹¹ The chair and deputy chair are members of the

⁸⁸ See definition in Appendix I of the *Rules of the Senate*.

⁸⁹ Rule 4-8(1)(b). Also refer to Speaker’s ruling, *Journals of the Senate*, October 31, 2006, pp. 675-677.

⁹⁰ Rule 4-8(1)(c).

⁹¹ Rule 12-22(2).

steering committee and are involved in setting the agenda and selecting witnesses. For further information on committee chairs and deputy chairs, see Chapter 9.

Political Parties and Independent Senators

The Rules set the conditions a political party must meet to be recognized in the Senate. The party must:

- initially have five or more members in the Senate and be registered under the *Canada Elections Act*; and
- continue, without interruption, to have five or more members in the Senate, whether or not it ceases to be a registered party under the *Canada Elections Act*.⁹²

Most senators sit as members of the government or the opposition, although some senators sit as independents or belong to parties that do not meet the conditions to be recognized as parties in the Senate.⁹³ Furthermore, a senator who was a member of one party at the time of appointment may change affiliation or decide to sit as an independent. Senators may meet, sometimes with members of the House of Commons, as caucuses.

Senators who are not members of the government or opposition parties can participate fully in the work of the Senate and be appointed to committees.⁹⁴

In-House Committees

There are three standing committees that play essential “in-house” regulatory roles in the Senate. These are the Standing Committee on Internal Economy, Budgets and Administration; the Standing Committee on Rules, Procedures and the Rights of Parliament; and the Standing Committee on Ethics and Conflict of Interest for Senators. These committees have permanent orders of reference and, unlike other committees, can act on their own initiative on these matters, without a specific reference from the Senate.⁹⁵

Standing Committee on Internal Economy, Budgets and Administration

This committee (often simply referred to as the Internal Economy Committee) is composed of 15 senators, four of whom constitute a quorum. The *Rules of the Senate* give the committee a broad mandate to act on all financial and administrative matters concerning the internal administration of the Senate, and to interpret and determine, subject to the *Senate Administrative Rules*, the propriety of any use of Senate resources.⁹⁶ The committee is also responsible for administration of the *Senate Administrative Rules* and for giving guidance on their interpretation to senators and the Senate Administration.

⁹² See definition of “recognized party” in Appendix I of the *Rules of the Senate*.

⁹³ Even if a senator’s political party does not meet the conditions to be recognized as a party in the Senate, this affiliation is recognized in sources of information produced by the Senate.

⁹⁴ The Committee of Selection has regularly recommended the appointment of independent senators to committees. Independent senators who are members of a committee can voluntarily subject themselves to the provisions of the Rules respecting changes in membership (see Speaker’s ruling, *Journals of the Senate*, May 9, 2007, pp. 1509-1512). Except in the case of in camera meetings of the Standing Committee on Ethics and Conflict of Interest, a senator who is not a member of a committee has the right to attend and participate in its deliberations, but may not vote (see rules 12-14 and 12-28(2)).

⁹⁵ See Chapter 12 of the *Rules of the Senate* for committee procedures and practices.

⁹⁶ Rule 12-7(1).

2: Senators and the Organization of the Senate

The *Parliament of Canada Act* gives the committee a range of responsibilities relating to the Senate's internal administration, including the power to:

- enter into contracts, memoranda of understanding and other arrangements in the name of the Senate or the committee;⁹⁷
- prepare the Senate's estimates;⁹⁸ and
- generally act "on all financial and administrative matters respecting (a) the Senate, its premises, its services and its staff; and (b) the members of the Senate."⁹⁹

"In exercising its functions and powers under [the *Parliament of Canada Act*], the Committee is subject to the rules, direction and control of the Senate."¹⁰⁰ In addition, "[w]here the Chairman of the Committee deems that there is an emergency, the Committee's Sub-committee on Agenda and Procedure may exercise any power of the Committee under th[e] Act."¹⁰¹

The committee also has the power to make regulations on certain matters¹⁰² and has exclusive authority to determine the propriety of the previous, current or proposed use of funds, goods, services or premises by a senator. Senators may apply to the committee for an opinion on the use of funds, goods, services and premises.¹⁰³

Unlike other committees, the Standing Committee on Internal Economy, Budgets and Administration continues to exist and operate "[d]uring a period of prorogation or dissolution of Parliament and until the members of a successor Committee are appointed by the Senate."¹⁰⁴

Standing Committee on Rules, Procedures and the Rights of Parliament

This committee is composed of 15 senators, four of whom constitute a quorum. It is authorized to propose on its own initiative amendments to the *Rules of the Senate*. The committee may also examine any case of privilege referred to it by the Senate, as well as matters relating to the orders and practices of the Senate, and the privileges of Parliament more generally.¹⁰⁵ Bills have also been referred to the committee on occasion.¹⁰⁶

Standing Committee on Ethics and Conflict of Interest for Senators

This committee has five members, three of whom constitute a quorum. Unlike other standing committees, its membership is not recommended by the Committee of Selection. Instead, subsection 35(4) of the *Ethics and Conflict of Interest Code for Senators* provides that:

⁹⁷ *Parliament of Canada Act*, R.S.C., 1985, c. P-1, s. 19.2.

⁹⁸ *Parliament of Canada Act*, R.S.C., 1985, c. P-1, s. 19.4.

⁹⁹ *Parliament of Canada Act*, R.S.C., 1985, c. P-1, s. 19.3.

¹⁰⁰ *Parliament of Canada Act*, R.S.C., 1985, c. P-1, s. 19.1(4).

¹⁰¹ *Parliament of Canada Act*, R.S.C., 1985, c. P-1, s. 19.1(5).

¹⁰² *Parliament of Canada Act*, R.S.C., 1985, c. P-1, s. 19.5.

¹⁰³ *Parliament of Canada Act*, R.S.C., 1985, c. P-1, s. 19.6.

¹⁰⁴ *Parliament of Canada Act*, R.S.C., 1985, c. P-1, s. 19.1(2).

¹⁰⁵ Rule 12-7(2). On cases of privilege, see rule 13-6(1).

¹⁰⁶ For example, Bill S-207, An Act to amend the Conflict of Interest Act (gifts), was referred to the committee on May 8, 2014. Previously, Bill S-219, An Act to amend the Parliamentary Employment and Staff Relations Act, was referred to the committee on May 31, 2007; while Bill C-4, An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other acts in consequence, was referred to it on February 26, 2004.

2: Senators and the Organization of the Senate

Two of the Committee members shall be elected by secret ballot in the caucus of Government Senators at the opening of the session; two of the Committee members shall be elected by secret ballot in the caucus of Opposition Senators at the opening of the session; the fifth member shall be elected by the majority of the other four members after the election of the last of the other four members.

The Leader of the Government then moves a motion in the Senate, which must be seconded by the Leader of the Opposition, on the full membership of the committee. This motion is deemed adopted without debate or vote.¹⁰⁷ A similar motion is moved for any substitutions in the membership of the committee. When a vacancy occurs on the committee, the new member is selected by the same method as the former member being replaced.¹⁰⁸ The leaders and deputy leaders are not ex officio members of this committee, and they have no authority to change its membership.¹⁰⁹ The chair of the committee must be elected by at least four members of the committee.¹¹⁰

The committee exercises general direction over the Senate Ethics Officer. It is also “responsible, on its own initiative, for all matters relating to the *Ethics and Conflict of Interest Code for Senators*, including all forms involving Senators that are used in its administration, subject to the general jurisdiction of the Senate.”¹¹¹ The committee is also required to undertake a comprehensive review of the Code, its provisions and its operation every five years, and report thereon to the Senate.¹¹²

The Code establishes that, upon a prorogation or dissolution of Parliament and until members of the successor committee are appointed, a Senate Intersessional Authority on Ethics and Conflict of Interest, whose members are those who were on the committee, shall provide general direction to the Senate Ethics Officer¹¹³ and “shall carry out such other of the Committee’s duties and functions as the Committee gives to it by resolution.”¹¹⁴

Rule 12-31 provides that “[a] report of the committee may be deposited with the Clerk at any time the Senate stands adjourned and the report shall be deemed to have been presented to the Senate at the next sitting.” Special procedures govern how the Senate deals with reports of the committee made on the conduct of an individual senator under the Code.¹¹⁵

The Senate Administration

The work of the Senate is supported by a strictly non-partisan administration. This administration is composed of a number of directorates that provide the administrative, logistic, procedural and strategic support the Senate and its committees need to function effectively. The Senate Administration was headed by the Clerk of the Senate, but in January 2015, an interim organizational change was implemented, whereby it is currently headed by an Executive Committee composed of the Clerk of the Senate, the Law Clerk and Parliamentary Counsel, and the Chief Corporate Services Officer.

¹⁰⁷ Rule 12-27(1) and *Ethics and Conflict of Interest Code for Senators*, s. 35(5).

¹⁰⁸ Rule 12-27(1) and *Ethics and Conflict of Interest Code for Senators*, s. 35(8).

¹⁰⁹ Rules 12-3(3) and 12-27(1) and *Ethics and Conflict of Interest Code for Senators*, s. 35(3).

¹¹⁰ *Ethics and Conflict of Interest Code for Senators*, s. 35(6).

¹¹¹ Rule 12-7(16). Also refer to the *Ethics and Conflict of Interest Code for Senators*, s. 37.

¹¹² *Ethics and Conflict of Interest Code for Senators*, s. 53.

¹¹³ *Ethics and Conflict of Interest Code for Senators*, ss. 38 to 40.

¹¹⁴ *Ethics and Conflict of Interest Code for Senators*, s. 40(2).

¹¹⁵ See rule 12-30 and chapter 9.

Senate Chamber Officers and Clerks at the Table

Clerk of the Senate and Clerk of the Parliaments

The Clerk of the Senate, who is also Clerk of the Parliaments, is the Senate's chief table officer and adviser on procedure. The Clerk is accountable to the Senate through both the Speaker and the Standing Committee on Internal Economy, Budgets and Administration.

The Clerk of the Senate has a rank equal to that of a deputy head of a department and is appointed by the Governor-in-Council pursuant to paragraph 130(b) of the *Public Service Employment Act*. In the list of the protocol established by the Department of Canadian Heritage, the Clerk of the Senate is second in rank among chief officers of the public service after the Clerk of the Privy Council. As such, the Clerk is called upon to participate in a variety of official and diplomatic functions, both within and outside Parliament.

As Clerk of the Parliaments,¹¹⁶ the Clerk of the Senate is responsible for:

- organizing and preserving the records of Parliament; and
- providing access to and copies of those records as required by law or practice.

During sittings of the Senate, the Clerk of the Senate keeps the Clerk's scroll¹¹⁷, on which the *Journals of the Senate* are based, and provides procedural advice to the Speaker and all senators.

Law Clerk and Parliamentary Counsel

The Law Clerk and Parliamentary Counsel is the Senate's chief legal adviser and serves as parliamentary counsel, legislative drafter, law clerk and corporate counsel. The Law Clerk is also a table officer. The Law Clerk responds to requests from the Senate, its committees and individual senators for legal advice and legislative drafting services. The core legal advice provided by the Law Clerk concerns parliamentary law and the constitutional rights and obligations of the Senate and senators. The office of the Law Clerk assists in the legislative process by drafting bills and amendments to bills for senators. The Law Clerk also serves as corporate counsel to the Senate Administration. The Law Clerk and Parliamentary Counsel is appointed by resolution of the Senate on the recommendation of the Standing Committee on Internal Economy, Budgets and Administration.

Usher of the Black Rod

The Usher of the Black Rod is responsible for coordinating the protocol and logistics for certain parliamentary ceremonies and official events, such as the investiture of the Governor General, the Opening of Parliament and the Speaker's parade. When the presence of the House of Commons is required in the Senate Chamber (e.g., for the Speech from the Throne or Royal Assent by the traditional ceremony), the Usher proceeds to the House of Commons to advise it of this fact. The Usher also manages the Senate Page Program and participates in various outreach programs and visits by foreign

¹¹⁶ The office of the Clerk of the Parliaments dates from the early parliaments of the reign of Edward I.

¹¹⁷ The Clerk's scroll is an official hand-written record of proceedings kept for each sitting.

dignitaries. The title of this officer derives from the ebony staff carried as a symbol of the office. The Usher of the Black Rod is an order-in-council appointment.

Table Officers

The Clerk of the Senate, the Principal Clerk of the Chamber Operations and Procedure Office, and one other procedural official of the Senate Administration sit at the table during sittings to assist the Speaker and senators by providing advice on matters of parliamentary procedure. The table officers – also known as clerks at the table – call out the Orders of the Day, record the time taken by senators during debate, and call out senators' names during standing votes.

APPENDIX A: Writ of Summons to the Senate
(Senator representing a province or territory other than Quebec)

CANADA

[Name of Governor General]
(G.S.)

Elizabeth the Second, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories QUEEN, Head of the Commonwealth, Defender of the Faith.

TO

Our Trusty and Well-beloved,
[Senator's name]
of [residence], in the Province [or Territory] of [name of province or territory],

GREETING:

KNOW YOU, that as well for the especial trust and confidence We have manifested in you, as for the purpose of obtaining your advice and assistance in all weighty and arduous affairs which may the State and Defence of Canada concern, We have thought fit to summon you to the Senate of Canada.

AND WE do command you, that all difficulties and excuses whatsoever laying aside, you be and appear for the purposes aforesaid, in the Senate of Canada at all times whensoever and wheresoever Our Parliament may be in Canada convoked and holden, and this you are in no wise to omit.

IN TESTIMONY WHEREOF, We have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed.

WITNESS:

Our Right Trusty and Well-beloved [name of Governor General], Chancellor and Principal Companion of Our Order of Canada, Chancellor and Commander of Our Order of Military Merit, Chancellor and Commander of Our Order of Merit of the Police Forces, Governor General and Commander-in-Chief of Canada.

AT OUR GOVERNMENT HOUSE, in Our City of Ottawa, this [date] day of [month] in the year of Our Lord [year] and in the [number] year of Our Reign.

BY COMMAND,

[NAME]

Registrar General of Canada

APPENDIX B: Writ of Summons to the Senate
(Senator representing a division in the province of Quebec)

CANADA

[Name of Governor General]
(G.S.)

Elizabeth the Second, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories QUEEN, Head of the Commonwealth, Defender of the Faith.

TO

Our Trusty and Well-beloved,
[Senator's name]
of [residence], in the Province of Quebec,

GREETING:

KNOW YOU, that as well for the especial trust and confidence We have manifested in you, as for the purpose of obtaining your advice and assistance in all weighty and arduous affairs which may the State and Defence of Canada concern, We have thought fit to summon you to the Senate of Canada and We do appoint you for the Division of [division] in Our Province of Quebec.

AND WE do command you, that all difficulties and excuses whatsoever laying aside, you be and appear for the purposes aforesaid, in the Senate of Canada at all times whensoever and wheresoever Our Parliament may be in Canada convoked and holden, and this you are in no wise to omit.

IN TESTIMONY WHEREOF, We have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed.

WITNESS:

Our Right Trusty and Well-beloved [name of Governor General], Chancellor and Principal Companion of Our Order of Canada, Chancellor and Commander of Our Order of Military Merit, Chancellor and Commander of Our Order of Merit of the Police Forces, Governor General and Commander-in-Chief of Canada.

AT OUR GOVERNMENT HOUSE, in Our City of OTTAWA, this [date] day of [month] in the year of Our Lord [year] and in the [number] year of Our Reign.

BY COMMAND,

[NAME]

Registrar General of Canada

APPENDIX C: Declaration of Qualification

(From the Fifth Schedule of the *Constitution Act, 1867*.)

Also see rules 15-6(1) and (2))

I *A.B.* do declare and testify, That I am by Law duly qualified to be appointed a Member of the Senate of Canada [*or as the Case may be*], and that I am legally or equitably seised as of Freehold for my own Use and Benefit of Lands or Tenements held in Free and Common Socage [*or seised or possessed for my own Use and Benefit of Lands or Tenements held in Franc-alieu or in Roture (as the Case may be),*] in the Province of Nova Scotia [*or as the Case may be*] of the Value of Four thousand Dollars over and above all Rents, Dues, Debts, Mortgages, Charges, and Incumbrances due or payable out of or charged on or affecting the same, and that I have not collusively or colourably obtained a Title to or become possessed of the said Lands and Tenements or any Part thereof for the Purpose of enabling me to become a Member of the Senate of Canada [*or as the Case may be*], and that my Real and Personal Property are together worth Four thousand Dollars over and above my Debts and Liabilities.

APPENDIX D: Commission Appointing a Senator as Speaker

CANADA

[Name of Governor General]
(G.S.)

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories QUEEN, Head of the Commonwealth, Defender of the Faith.

TO

The Honourable [new Speaker's name],
A Member of the Senate,

GREETING:

KNOW YOU, that reposing special trust and confidence in your loyalty, integrity and ability, We have constituted and appointed, and We do hereby constitute and appoint you,

[new Speaker's name]
SPEAKER OF THE SENATE.

TO HAVE, hold, exercise and enjoy the said office of Speaker of the Senate, unto you, [new Speaker's name], with all the powers, rights, authority, privileges, profits, emoluments and advantages unto that office of right and by law appertaining during Our Pleasure.

IN TESTIMONY WHEREOF, We have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed.

WITNESS:

Our Right Trusty and Well-beloved [name of Governor General], Chancellor and Principal Companion of Our Order of Canada, Chancellor and Commander of Our Order of Military Merit, Chancellor and Commander of Our Order of Merit of the Police Forces, Governor General and Commander-in-Chief of Canada.

AT OUR GOVERNMENT HOUSE, in Our City of Ottawa, this [date] day of [month] in the year of Our Lord [year] and in the [number] year of Our Reign.

BY COMMAND,

[NAME]
Registrar General of Canada

[NAME]
Attorney General of Canada

CHAPTER 3

The Crown, the Governor General and the Senate



Canada is both a constitutional monarchy and a parliamentary democracy whose Parliament has three components: the Queen, the Senate and the House of Commons. A constitutional monarchy means that the Queen, as head of state, embodies the continuity of the state and always acts on ministerial advice. For practical purposes, the Queen is represented by the Governor General, who carries out Her Majesty's duties in Canada on a daily basis. The Governor General is appointed by the Queen on the advice of the Prime Minister. The Governor General's parliamentary duties include calling Parliament together after every general election, opening each session of Parliament by reading the Speech from the Throne, and signifying Royal Assent to bills passed by the Senate and the House of Commons. This chapter reviews the principal ways the Governor General takes part in Senate activities and details the procedures for Royal Assent.

The Governor General's parliamentary duties include calling Parliament together after every general election, opening a session by reading the Speech from the Throne, and signifying Royal Assent to bills passed by the Senate and the House of Commons. The last two activities (except for those occasions when Royal Assent is signified by written declaration¹) take place during ceremonies when Parliament (i.e., the Governor General as the Queen's representative, the Senate and the House of Commons) is assembled in the Senate Chamber. In addition, the installation of a new Governor General also takes place in the Senate Chamber.

If the Governor General is unavailable to perform these duties due to death, incapacity, absence or removal from office, the powers of the office are temporarily conferred upon the Chief Justice of the Supreme Court who acts as the Administrator of the Government.²

All justices of the Supreme Court are routinely designated as deputies of the Governor General and granted all powers and authorities vested in the Governor General except for the power to dissolve Parliament. Other individuals can also be named as Deputies to the Governor General, and the authority

¹ See section below on Royal Assent for a detailed explanation of the two methods in which Royal Assent may be signified.

² *Letters Patent Constituting the Office of Governor General of Canada (1947)*, R.S.C., 1985, Appendix II, No. 31, clause VIII.

of the deputies can be restricted.³ The judges can represent the Governor General at an Opening of Parliament and can also grant Royal Assent to bills.⁴

1. OPENING OF A NEW PARLIAMENT

The Opening of Parliament⁵ signals the formal commencement of the work of a new Parliament following a general election. The three elements of Parliament (i.e., the Queen represented by the Governor General, the Senate and the House of Commons) participate in the opening. Since a Parliament is usually comprised of two or more sessions, the Opening of Parliament also marks the opening of the first session of the new Parliament.

The proclamation dissolving the old Parliament for the purposes of a general election is always accompanied by two other proclamations. The first is for the issuance of writs of election for the House of Commons. The second is for the summoning of the next Parliament. This latter proclamation appoints a day for the meeting of the new Parliament after the election. However, this date of summons may be brought forward or postponed by a subsequent proclamation of the Governor General on the advice of the new cabinet, as long as the constitutional requirement that Parliament must assemble at least once every 12 months is met.⁶ Since 1930, the proclamation summoning Parliament has indicated not only the date but also the time that Parliament is convened.

The following is an extract from an initial proclamation summoning Parliament that is issued at the time of dissolution:

“TO ALL TO WHOM these Presents shall come or whom the same may in any way concern,

Greeting:

A Proclamation

Whereas We are desirous to meet Our People of Canada as soon as may be and to have their advice in Parliament;

We do hereby, by and with the advice of Our Prime Minister of Canada, summon and call together the House of Commons of Canada, to meet at Our City of Ottawa, on [date], then and there to have conference and treaty with the Senate of Canada.”

³ On December 15, 2011 and July 23, 2012, respectively, the Secretary and the Deputy Secretary to the Governor General were also designated deputies of the Governor General and granted all powers and authorities vested in the Governor General except for the power to dissolve, recall or prorogue Parliament; to appoint members of the cabinet; and to signify Royal Assent by means of a traditional ceremony (*Journals of the Senate*, December 16, 2011, pp. 793-794; and June 21, 2013, pp. 2726-2727.)

⁴ The commissions constituting deputies to the Governor General are tabled in the Senate. See, for example, *Journals of the Senate*, June 21, 2013, pp. 2726-2727. The commissions are not tabled in the House of Commons.

⁵ For information on some of the formal and procedural issues surrounding the opening of a Parliament and of subsequent sessions, see Speaker’s ruling, *Journals of the Senate*, October 29, 2002, pp. 123-127.

⁶ *Constitution Act, 1982*, s. 5.

3: The Crown, the Governor General and the Senate

The following is an extract of a subsequent proclamation extending the date of summons for a Parliament:

“To Our Beloved and Faithful the SENATORS of Canada, and the MEMBERS elected to serve in the House of Commons of Canada, and to each and every one of you,

Greeting:

A Proclamation

Whereas by Our Proclamations of the [date], We did dissolve the [number] Parliament of Canada and summon and call together the House of Commons to meet at Our City of Ottawa, on [date], to have conference and treaty with the Senate of Canada;

Now know you that, for various reasons and taking into account the well-being of Our Loving Subjects, We have thought fit, on the advice of Our Prime Minister of Canada, to hereby

- (a) relieve you of your attendance on that date, and
- (b) direct you to meet Us, in Our Parliament of Canada, at Our City of Ottawa, on [date], there to consider the state and welfare of Canada and to do what is necessary.”

The following is an extract of a subsequent proclamation setting the date and time of summons for a Parliament:

“To Our Beloved and Faithful SENATORS of Canada, and MEMBERS elected to serve in the House of Commons of Canada, and to all to whom these Presents may in any way concern,

Greeting:

A Proclamation

Whereas Our Parliament of Canada was dissolved on [date];

Therefore We, by these Presents, command each of you and all others interested in this behalf to appear in person on [date], at [time] at Our City of Ottawa, for the DISPATCH OF BUSINESS, to treat, do, act and conclude upon those things that Our Parliament of Canada may, by the Grace of God, ordain. ”

The opening of a new session, whether at the start of a new Parliament or of a subsequent session, can be in one of two formats, differentiated essentially by their scale. For larger openings – often known as a bench opening – the seating in the Senate is altered. All senators’ desks are removed and benches are added to make room for both senators and dignitaries, who include the Chief Justice and puisne judges of the Supreme Court, former prime ministers, provincial lieutenant-governors, members of the Privy Council, representatives of the diplomatic corps and spouses. The two Senate galleries are reserved for other guests, and additional space is usually made available in the Senate foyer or in a nearby committee room where the proceedings can be viewed on television.

By contrast, a smaller opening – often known as a desk opening – does not require a change in the seating of the Senate. Senators’ desks are not replaced with benches because fewer guests are invited. This reduced guest list normally includes: the Chief Justice and puisne judges of the Supreme Court, the deans of the diplomatic corps, the Chief of Protocol of Canada, and guests of the Governor General and the Prime Minister.

It is the responsibility of the Speaker of the Senate to establish the guest list for all openings after wide consultations. The decision as to the size of the opening of a new parliamentary session is discretionary and is exercised by the Prime Minister.

Since 1986, the opening of the first session of a Parliament has taken place over two consecutive days. On the first day the Senate has frequently met for about 30 minutes prior to the time Parliament is set to convene to conduct purely formal business that does not require any decisions. Such business includes receiving a message from Rideau Hall confirming the time of arrival of the Governor General, the acknowledgement of a newly appointed Speaker of the Senate and the swearing in of new senators. After the Senate completes such business, the sitting is suspended to await the arrival of the Deputy of the Governor General (a Justice of the Supreme Court). Once the Deputy of the Governor General has arrived in the Senate Chamber, the Speaker commands the Usher of the Black Rod to proceed to the House of Commons to summon its members to the Senate. Upon their arrival, the Speaker addresses the senators and members as follows:

Honourable Members of the Senate:

Members of the House of Commons:

I have it in command to let you know that His⁷ Excellency the Governor General does not see fit to declare the causes of his summoning the present Parliament of Canada, until a Speaker of the House of Commons shall have been chosen, according to law; but tomorrow, [date], at [time], His Excellency will declare the causes of his calling this Parliament.

The members of the House of Commons then withdraw to their chamber to elect a Speaker, and the Deputy of the Governor General departs.

On the second day, the Governor General comes to the Senate Chamber for the purpose of reading the Speech from the Throne.⁸ Once the Governor General has arrived, the Usher of the Black Rod is sent to the House of Commons to summon the house to the Senate Chamber. Upon arrival, the Speaker of the House of Commons stands at the bar of the Senate and addresses the Governor General to claim the rights and privileges of the House of Commons and its members. The Speaker of the Senate replies on behalf of the Governor General that the Governor General “will recognize and allow their constitutional privileges.”

⁷ The text used by the Speaker is adjusted according to the gender of the Governor General. At the time of publication this was His Excellency the Right Honourable David Lloyd Johnston, appointed on July 8, 2010. Subsequent quotes in this chapter reflect the gender of the current occupant of the relevant position.

⁸ On one occasion, Queen Elizabeth II opened the first session of Parliament and read the Speech from the Throne (*Journals of the Senate*, October 14, 1957, pp. 14-19). On two other occasions, the Administrator of the Government (Chief Justice of the Supreme Court) opened Parliament and read the speech in the absence of the Governor General (*Journals of the Senate*, September 30, 1974, pp. 6-11; and May 16, 1963, pp. 10-14).

The Governor General then reads the Speech from the Throne, formally opening the first session of the new Parliament. This speech, which is written by the government, outlines the legislative and policy agenda for the session. While the speech is being read, etiquette dictates that it is inappropriate to show any form of approval (including applause) or disapproval, as its merits and weaknesses are to be expressed only afterwards during the debate on the Address in reply to the Speech from the Throne.⁹ The table is removed to provide seating for the Supreme Court justices, so the mace is held by the Mace Bearer standing to the side of the throne¹⁰.

After the reading of the Speech from the Throne and the departure of the House of Commons, the Governor General, and guests, the Senate begins to conduct its business. Since no formal business can be conducted by the Senate until after the Speech from the Throne is delivered, no *Order Paper and Notice Paper*¹¹ is published for the first two sittings of a Parliament.

The first order of business after the Speech from the Throne is always the introduction of a pro forma bill by the Deputy Leader of the Government.¹² This bill is immediately given first reading, but is not subject to any further proceedings. This practice follows the long-standing parliamentary custom to affirm the Senate's independence from the Crown, as well as its right to deliberate on any matter of its choosing without reference to the policy or direction announced in the Speech from the Throne.¹³ The title of the pro forma bill in the Senate has remained unchanged since Confederation: An Act relating to Railways.

After the pro forma bill is introduced, the Speaker begins to read a copy of the Speech from the Throne to the Senate.¹⁴ Although the *Journals of the Senate* always show the speech as having been read by the Speaker, the Speaker does not normally read it in its entirety because copies are widely distributed, and it is published in both the *Journals of the Senate* and the *Debates of the Senate*. Once the Senate has dispensed with reading the speech, the Speaker asks: "When shall this speech be taken into consideration?" The Deputy Leader of the Government moves the following motion: "That the speech of His Excellency the Governor General delivered this day from the Throne to the two Houses of Parliament be taken into consideration at the next sitting." Immediately after the adoption of this procedural motion, it is customary for the Deputy Leader of the Government to move a motion for the creation of the Committee of Selection.¹⁵

Address in Reply to the Speech from the Throne

At the next sitting of the Senate, the order for the consideration of the Governor General's Speech from the Throne is called under Orders of the Day, Government Business, "Motions." A senator from the government side then moves the following motion for an Address in reply to the Speech from the Throne:¹⁶

⁹ Speaker's ruling, *Journals of the Senate*, October 29, 2002, p. 125.

¹⁰ As explained in chapter 4, the mace represents royal authority, parliamentary privilege, as well as the authority of the Senate and the Speaker.

¹¹ The *Order Paper and Notice Paper*, the Senate's official agenda, is discussed in Chapter 5.

¹² Rule 10-1.

¹³ Bourinot, p. 94.

¹⁴ Rule 2-2.

¹⁵ See Chapter 9 for information on the Committee of Selection.

¹⁶ When the Speech from the Throne is read by the Queen, the motion for the Address in reply is modified accordingly (*Journals of the Senate*, November 9, 1977, pp. 58-59; December 10, 1957, p. 256). The motion for the Address in reply is also modified when the Administrator of the Government (Chief Justice of the Supreme Court) reads the speech in the Governor General's absence (*Journals of the Senate*, October 24, 1974, p. 63; July 31, 1963, pp. 425-426; and March 19, 1931, p. 29).

That the following Address be presented to His Excellency the Governor General of Canada:

To His Excellency the Right Honourable [name of Governor General], Chancellor and Principal Companion of the Order of Canada, Chancellor and Commander of the Order of Military Merit, Chancellor and Commander of the Order of Merit of the Police Forces, Governor General and Commander-in-Chief of Canada.

MAY IT PLEASE YOUR EXCELLENCY:

We, Her Majesty's most loyal and dutiful subjects, the Senate of Canada in Parliament assembled, beg leave to offer our humble thanks to Your Excellency for the gracious Speech which Your Excellency has addressed to both Houses of Parliament.

The form of the Address in reply was originally a detailed reply to the content of the speech, but since 1897 it has been moved as a single-paragraph resolution, thanking the Governor General for the gracious speech. The Address may be debated and amended. The scope of debate is wide ranging, allowing senators to comment on all aspects of the government's proposals. Amendments to the Address in reply have the effect of challenging the government. However, in the Senate, votes on the Speech from the Throne are not confidence matters and cannot precipitate the fall of the government. On at least two occasions, an amendment was adopted.¹⁷

The first two speakers to be recognized during the debate on the Address in reply are normally the mover and seconder of the motion. These may be recently-appointed senators from the government side who are not ministers.

Since the consideration of the Address in reply is Government Business, it may remain on the Order Paper indefinitely. However, the government has on occasion moved a motion to curtail debate on the eighth sitting day on which the order is debated.¹⁸ This motion is debatable and amendable. It has been rescinded at least once¹⁹ and withdrawn on another occasion.²⁰

Once the motion for the Address in reply is adopted,²¹ a related motion is immediately proposed and adopted for the Address to be "engrossed and presented to His Excellency the Governor General by the Honourable the Speaker." At a convenient time, a ceremony takes place at Government House to present the Address to the Governor General. The Speaker of the House of Commons usually presents the Address adopted by that chamber at the same time.

¹⁷ *Journals of the Senate*, May 9, 2006, pp. 115-116; and November 2, 2004, pp. 124-126.

¹⁸ This type of motion was proposed as early as 1968 (*Journals of the Senate*, September 17, 1968, p. 43).

¹⁹ *Journals of the Senate*, April 30, 1980, p. 66.

²⁰ *Journals of the Senate*, December 14, 1999, p. 283.

²¹ On at least two occasions, the motion for an Address in reply was not adopted by the Senate: during the 1st Session of the 40th Parliament (2008) and the 1st Session of the 34th Parliament (1988-1989). In both cases, the motion was debated but never adopted because the sessions ended quickly.

2. OPENING OF A NEW SESSION DURING THE SAME PARLIAMENT

The events and proceedings for the opening of a new session during the same Parliament closely resemble those for the opening of a new Parliament after a general election.²² The main difference is that all proceedings and subsequent business take place on a single day as opposed to two, since the House of Commons is not required to elect a new Speaker for subsequent sessions within the same Parliament.

3. PROROGATION

A parliament is the period between two elections. Under the Constitution, the maximum duration of a parliament is five years, except in cases of real or apprehended war, invasion or insurrection, when it may be extended beyond five years under certain conditions.²³ Since 2007, the *Canada Elections Act* also provides that a general election must be held on the third Monday of October in the fourth calendar year following polling day for the last general election, unless there has been a prior dissolution of Parliament.²⁴

Each parliament is divided into sessions. The number of sessions in a parliament has ranged from one to seven. There is no fixed length for a session; some have lasted a few days and others several years. Each session begins with a Speech from the Throne and ends with prorogation (whereby the meetings of Parliament end without calling a general election) or dissolution (see section on Dissolution of Parliament). Governments use prorogations to establish a new legislative agenda and policy program or to resolve a parliamentary deadlock. The term “recess” is often used to refer to the non-sitting period between two sessions.

A prorogation of Parliament should be distinguished from the adjournment of one of the houses of Parliament. While it is the Crown that prorogues Parliament on the advice of the Prime Minister, each house of Parliament adjourns its own proceedings (i.e., its sittings) from one day to the next and may decide to adjourn for longer periods within a session (such as the summer adjournment).²⁵

Procedure for Prorogation

Prorogation may be announced in the Senate Chamber if it is sitting,²⁶ or by proclamation published in the *Canada Gazette* during an adjournment. When done in person, the Governor General or the Deputy of the

²² For information on some of the formal and procedural issues surrounding the opening of a Parliament and of subsequent sessions, see Speaker’s ruling, *Journals of the Senate*, October 29, 2002, pp. 123-127. While the Governor General normally reads the Speech from the Throne opening a new session of Parliament, on one occasion, Queen Elizabeth II opened a new session and read the Speech from the Throne (*Journals of the Senate*, October 18, 1977, pp. 2-10). On another occasion, the Administrator of the Government (Chief Justice of the Supreme Court) opened a new session and read the speech in the absence of the Governor General (*Journals of the Senate*, March 12, 1931, pp. 2-5).

²³ *Constitution Act, 1867*, s. 50; and *Constitution Act, 1982*, s. 4.

²⁴ *Canada Elections Act*, S.C. 2000, c. 9, s. 56.1.

²⁵ The House of Commons has a calendar of sittings established under its Standing Orders, which includes longer adjournments such as the summer break. The Senate, on the other hand, decides on its adjournments, including the longer breaks, on a case-by-case basis, although often taking account of the sitting schedule of the House of Commons.

²⁶ For the last time that prorogation took place in person with a speech, see *Journals of the Senate*, November 30, 1983, pp. 3428-3443.

Governor General proceeds to the Senate Chamber. Upon arrival, the Usher of the Black Rod is sent to the House of Commons to summon its members to the Senate Chamber. At this time, a Royal Assent ceremony may take place followed by the delivery of a prorogation speech which is written by the government and summarizes the achievements of the session. This proceeding is analogous to the Speech from the Throne at the start of a session. Once the speech is completed, the Speaker of the Senate reads a message from the Governor General proroguing Parliament and establishing the date and time for the opening of the new session.²⁷ More recently, practice has tended toward proroguing by way of a proclamation during an adjournment period.

The following is an extract from a prorogation proclamation issued while both houses were adjourned:

<p>“To Our Beloved and Faithful SENATORS of Canada, and the MEMBERS of the House of Commons of Canada, and to all to whom these Presents may in any way concern,</p> <p style="text-align: right;"><i>Greeting:</i></p> <p>A Proclamation</p> <p>Whereas we have thought fit, by and with the advice of Our Prime Minister of Canada, to prorogue the present Parliament of Canada;</p> <p>And whereas the adjournment of the Senate and the House of Commons renders impossible the announcement to both Houses;</p> <p>Now Know You that We, by and with the advice of Our Prime Minister of Canada, do by this Our Proclamation prorogue the present Parliament of Canada to [date].”</p>
--

Although Parliament is prorogued to a specific day, this date may be brought forward or postponed by a subsequent proclamation of the Governor General on the advice of cabinet, as long as the constitutional requirement that Parliament must assemble at least once every 12 months is met.²⁸ Prorogations have at times been as short as one day and as long as 363 days.²⁹

4. DISSOLUTION OF PARLIAMENT

A dissolution of Parliament formally ends a Parliament and is followed by a general election. Prorogation, on the other hand, is merely the end of the current session, which is usually followed by a new session of the existing Parliament. The summoning, prorogation and dissolution of a Parliament are prerogative acts of the Crown,³⁰ and are done on the advice of the Prime Minister and proclaimed under the Great Seal of Canada by the Governor General.³¹ Prorogation and dissolution thus involve the Crown, and are not decisions of the houses themselves.

²⁷ See *Journals of the Senate*, November 30, 1983, p. 3443. Also see O’Brien and Bosc, p. 362.

²⁸ *Constitution Act, 1982*, s. 5.

²⁹ The period between the 2nd and 3rd Sessions of the 34th Parliament was one day, while that between the 4th and 5th Sessions of the 1st Parliament was 363 days.

³⁰ *Letters Patent Constituting the Office of Governor General of Canada (1947)*, R.S.C., 1985, Appendix II, No. 31, clause VI.

³¹ In June 1926, Governor General Byng refused a request from Prime Minister Mackenzie King to dissolve Parliament, which resulted in the Prime Minister’s resignation. See O’Brien and Bosc, p. 385.

Parliament is normally dissolved by proclamation prior to the expiration of the five-year limit established in the *Constitution Act, 1867*, and reaffirmed in the *Constitution Act, 1982*.³² An exception occurred during World War I, when the House of Commons elected in 1911 was continued to 1917 by constitutional amendment.³³

As already noted, following an amendment to the *Canada Elections Act* in May 2007, a general election must be held on the third Monday of October in the fourth calendar year following polling day for the last general election, unless there has been a prior dissolution of Parliament.³⁴

Since dissolution terminates a Parliament, the Senate and the House of Commons are prevented from assembling until next summoned.³⁵ To this effect, the proclamation for dissolution clearly states that “Senators and the Members of the House of Commons are discharged from their meeting and attendance.”

Procedure for Dissolution

The calling of a general election³⁶ is initiated when the Prime Minister presents the Governor General with an Instrument of Advice recommending that Parliament be dissolved, after which the Governor General issues a proclamation to dissolve Parliament. The Prime Minister then presents the Chief Electoral Officer with an order-in-council requesting the issuance of writs of election, and the Governor General issues a Proclamation for the issuance of these writs of election. In addition to these two proclamations, a third is issued at the same time to summon the new Parliament on a specified date.³⁷ As with a prorogation, this date of summons may be brought forward or postponed by a subsequent proclamation of the Governor General on the advice of the new cabinet as long as the constitutional requirement that Parliament must assemble at least once every 12 months is met.³⁸

³² *Constitution Act, 1867*, s. 50; and *Constitution Act, 1982*, s. 4.

³³ This extension was authorized by the *British North America Act, 1916*, which was repealed in 1927 (see *Statute Law Revision Act, 1927* (17-18 Geo. V, c. 42 (U.K.))). Since 1949, provisions have existed allowing for the extension of the term of a House of Commons beyond five years. Section 4(2) of the *Constitution Act, 1982* allows for an extension in cases of real or apprehended war, invasion or insurrection, provided that “such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.”

³⁴ *Canada Elections Act*, S.C. 2000, c. 9, s. 56.1.

³⁵ On Saturday, October 1, 1988 the Social Affairs Committee was meeting when Parliament was dissolved. The chair, upon being informed of this, interrupted the witness and immediately adjourned the meeting. See *Proceedings of the Standing Senate Committee on Social Affairs, Science and Technology*, October 1, 1988, pp. 15:8-9 and 15:165-166.

³⁶ *Canada Elections Act*, S.C. 2000, c. 9, ss. 56.1, 57 and 58. Also see O’Brien and Bosc, p. 187.

³⁷ O’Brien and Bosc, p. 385.

³⁸ *Constitution Act, 1982*, s. 5.

The following is an extract from a dissolution proclamation:

“To Our beloved and faithful SENATORS of Canada, and the MEMBERS elected to serve in the House of Commons of Canada, and to all to whom these Presents may in any way concern,

Greeting:

A Proclamation

Whereas We have thought fit, by and with the advice of Our Prime Minister of Canada, to dissolve the present Parliament of Canada;

Now know you that We do for that end publish this Our royal proclamation and do hereby dissolve the Parliament of Canada accordingly, and the Senators and the Members of the House of Commons are discharged from their meeting and attendance.”

Extract from a proclamation for the issuance of election writs:

“TO ALL TO WHOM these Presents shall come or whom the same may in any way concern,

Greeting:

A Proclamation

Whereas We are desirous to meet Our People of Canada as soon as may be and to have their advice in Parliament;

We do hereby make known Our royal will and pleasure to call a Parliament, and do further declare that, by and with the advice of Our Privy Council for Canada, We have this day given Orders for issuing Our Writs of Election in due form according to law, which Writs are to be dated [date], to set forth [date] as the polling day and to be returnable to the Chief Electoral Officer on [date].”

5. EFFECTS OF PROROGATION AND DISSOLUTION

The proclamation dissolving Parliament is addressed to members of both houses and discharges them from their parliamentary duties until the next Parliament assembles. As a result, the Senate cannot meet during a period of prorogation or dissolution. Furthermore, given that all business before the Senate is terminated as of prorogation or dissolution, all items on the *Order Paper and Notice Paper* die³⁹ and all standing, special and joint committees cease to exist.⁴⁰ The exceptions are the Standing Committee on Internal Economy, Budgets and Administration (see section below) as well as the Standing Committee on

³⁹ Speaker’s rulings, *Journals of the Senate*, December 11, 2007, pp. 365-369; February 19, 2004, pp. 152-154; and May 9, 1996, pp. 191-193.

⁴⁰ Beauchesne, 6th ed., §763, p. 223.

Ethics and Conflict of Interest for Senators, which is authorized to meet as the Senate Intersessional Authority on Ethics and Conflict of Interest for Senators.⁴¹

All bills and other business before the Senate at the time of a prorogation or a dissolution are terminated, so any senator who wishes to have the Senate study a bill again must reintroduce the bill at first reading once again during the new session.⁴²

Prorogations and dissolutions have no effect on senators' terms of office. Similarly, the Speaker of the Senate remains Speaker until replaced, both during the period of prorogation or dissolution and into the next session.⁴³ Past practice has also allowed the Speaker *pro tempore* to remain in that position and to be remunerated as such during the intersessional period.⁴⁴ However, committee chairs and deputy chairs cease to hold office and to be remunerated for those duties upon prorogation or dissolution, since their committees cease to exist.

The Standing Committee on Internal Economy, Budgets and Administration

Under the terms of the *Parliament of Canada Act* the Standing Committee on Internal Economy, Budgets and Administration continues to exist during a prorogation or dissolution.⁴⁵ In addition, the Leaders of the Government and the Opposition, or their designates, may change this standing committee's membership during periods of prorogation or dissolution.⁴⁶ The chair and deputy chair of the standing committee remain in office and are remunerated for their extra duties during a prorogation or dissolution until replaced.

Parliamentary Associations and Interparliamentary Groups

Canada's international parliamentary relations are carried out in part through 12 parliamentary associations as well as a number of less formal interparliamentary groups that operate on bilateral and multilateral levels to promote Canada's interests abroad on a continuing basis.⁴⁷ These bodies are composed of senators and members of the House of Commons. Associations are not affected by prorogation or dissolution and all senators who are association members remain in their positions. During a dissolution senators often carry out essential association functions.

⁴¹ *Ethics and Conflict of Interest Code for Senators*, ss. 38 to 40. See Chapter 2 for more information on the Standing Committee on Ethics and Conflict of Interest for Senators.

⁴² This process differs from that in the House of Commons, where private members' bills "need not be reintroduced in a new session as they automatically are deemed to have passed all stages completed in the previous session" at the beginning of the new session of the same Parliament (O'Brien and Bosc, p. 1154). In the case of a Commons' private members' bill that had previously been sent to the Senate, but had not received Royal Assent before a prorogation, the bill would be sent to the Senate again by the House of Commons and would start the process in the Senate anew at first reading.

⁴³ *Constitution, Act, 1867*, s. 34.

⁴⁴ *Parliament of Canada Act*, R.S.C., 1985, c. P-1, s. 62.1(1).

⁴⁵ R.S.C., 1985, c. P-1, s. 19.1(2).

⁴⁶ *Parliament of Canada Act*, R.S.C., 1985, c. P-1, ss. 19.1(2) and (3).

⁴⁷ For more information, see the International and Interparliamentary Affairs website: parl.gc.ca/IIA (consulted on February 9, 2015).

The Senate Administration

As discussed in Chapter 2, the Senate Administration is a permanent service of the Senate that is accountable to both the Speaker and the Standing Committee on Internal Economy, Budgets and Administration. The work of the Senate Administration continues uninterrupted during a period of prorogation or dissolution.

6. MESSAGES FROM THE CROWN

Messages from the Crown are read in the Senate Chamber and published in the *Journals of the Senate*. Historically, messages from the Governor General acknowledging receipt of the Address in reply to the Speech from the Throne were read out in the chamber, but the practice of sending such messages has fallen into disuse in recent years. Since the adoption of the *Royal Assent Act* in 2002, which allows Royal Assent to be given by written declaration, the Speaker or Speaker *pro tempore* reads letters regarding the written declaration of Royal Assent aloud in the Senate.⁴⁸

A variety of messages may also be received from the Crown, either to inform Parliament of a development or to reply to messages. To cite a few examples, on January 14, 1937, the Leader of the Government in the Senate read out a message from King Edward VIII, dated December 10, 1936, in which he renounced the Throne, communicated the contents of the Instrument of Abdication and noted that the Duke of York should be his lawful successor. On April 27, 1948, the Speaker read out a message from His Majesty King George VI, thanking the Senate members for their congratulations on the royal couple's 25th wedding anniversary. Messages received from Her Majesty Queen Elizabeth II have included appreciation for condolences expressed upon the death of Her father in 1952, and appreciation for having been invited to participate at the Centennial Celebrations of the first meetings of the Fathers of Confederation in 1964.

The Queen personally attended the Opening of Parliament on October 14, 1957 (1st Session, 23rd Parliament) and the opening of a session on October 18, 1977 (3rd Session, 30th Parliament). On both occasions, she delivered the Speech from the Throne. King George VI was in the chamber on May 19, 1939, when he gave Royal Assent to several bills and then delivered a speech.⁴⁹

7. ROYAL ASSENT

Royal Assent is the final step in the legislative process in which a bill becomes an act of Parliament and consequently the law of the land. It signifies the Crown's acceptance of a bill that has been passed in identical form by both houses of Parliament. Royal Assent is given by the Governor General (or a deputy) in the name of the Queen.⁵⁰ The participation of all three component parts of Parliament – the Queen, the Senate and the House of Commons – is required in order for a bill to receive assent.⁵¹ In fact, every bill begins with the following statement:

⁴⁸ *Royal Assent Act*, S.C. 2002, c. 15, s. 4.

⁴⁹ This speech was neither a Speech from the Throne to open a session nor a prorogation speech. Rather, it was a speech delivered by the King mid-session.

⁵⁰ As noted earlier, the judges of the Supreme Court of Canada are normally named as deputies to the Governor General, and other individuals can be as well.

⁵¹ For more information concerning the history and practice of Royal Assent in Canada (including both the parliamentary ceremony and the written declaration procedure), see Richardson, pp. 32-36.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows: ...

Once a bill has been passed by both chambers, it is up to the executive (cabinet) to set the date when Royal Assent is to be given. By convention, Royal Assent cannot be withheld from bills that have duly been passed by both chambers of Parliament.⁵² Bills are normally presented for Royal Assent in the order in which they were adopted by the two houses. Supply bills, however, are presented by the Speaker of the House of Commons after other bills. For non-supply bills, public bills are presented before private bills.⁵³

Until June 2002, Royal Assent could only be given by means of the traditional parliamentary ceremony in the Senate Chamber. Since then, a written declaration procedure may also be used to signify Royal Assent as provided for in the *Royal Assent Act*. Today, the usual practice tends toward using the written declaration procedure as a matter of expediency and convenience. Nonetheless, the act requires that a parliamentary ceremony be used at least twice each calendar year. In addition, a ceremony must be used for the first appropriation bill of each session of Parliament.⁵⁴ The first written declaration of Royal Assent occurred on February 13, 2003.

A bill comes into force at Royal Assent unless it contains a provision stating that the act or a portion of the act will come into force on a specific day or on a day fixed by an Order of the Governor-in-Council.

Parliamentary Ceremony

On the day that a Royal Assent ceremony is to take place, the Speaker announces, usually at the start of the sitting, that a communication has been received from the Secretary to the Governor General. The letter states that the Governor General or a named justice of the Supreme Court, acting as Deputy of the Governor General, will proceed to the Senate Chamber at a specified time for the purpose of giving Royal Assent to certain bills.⁵⁵ Once this letter has been read, the Senate may not adjourn until Royal Assent has taken place, even if it has finished its business prior to that time.⁵⁶ In addition, all proceedings under way in the Senate are interrupted at the prescribed time and can only resume once Royal Assent has taken place.⁵⁷ If a deferred vote is scheduled to take place during the time for Royal Assent, it is automatically further deferred until the ceremony is completed.⁵⁸ Once the Speaker has suspended the sitting to await the arrival of the Governor General (or the deputy), the Speaker leaves the chair and takes a place to the right of the Thrones, while the Mace Bearer removes the mace from the table and stands next to the Speaker.

Once the Governor General's procession has made its way into the Senate Chamber and the Governor General (or the deputy) is seated in the Speaker's chair, the Speaker commands the Usher of the Black Rod to proceed to the House of Commons and acquaint the House as follows: "It is the desire of His Excellency the Governor General (or the deputy) that they attend him immediately in the Senate Chamber."

⁵² Erskine May, 24th ed., p. 643; and Bourinot, p. 549. Also see Twomey, pp. 580-602.

⁵³ See, for examples, *Journals of the Senate*, December 9, 2014, p. 1439; and June 26, 2011, p. 159.

⁵⁴ *Royal Assent Act*, S.C. 2002, c. 15, ss. 3(1), 3(2) and 7.

⁵⁵ Rule 16-1(2).

⁵⁶ Rules 16-1(4) and (5). A subsequent letter indicating that the Governor General will no longer attend allows the adoption of an adjournment motion (*Journals of the Senate*, April 10, 2014, p. 767).

⁵⁷ Rule 16-1(7).

⁵⁸ Rule 16-1(6).

The Usher of the Black Rod then proceeds to the House of Commons, and once admitted into that chamber by the Sergeant-at-Arms, delivers the message. The Usher of the Black Rod then returns to the Senate in procession with the Speaker and members of the House of Commons, the Sergeant-at-Arms carrying the mace, and the House of Commons Table Officers. Upon arriving at the Senate, all members of the procession stop at the bar of the Senate, except the Usher of the Black Rod, who enters the Senate Chamber and stands next to the Governor General.

All bills that have been adopted by both houses, except appropriation bills, are then presented to the Governor General (or the deputy) for Royal Assent. A Senate clerk at the table formally makes the request for assent to the bills and reads their titles in both official languages. The Governor General then signifies assent by a nod of the head. Immediately thereafter, the Clerk of the Senate states: “In Her Majesty's name, His Excellency the Governor General (or the deputy) doth assent to these bills.”

If there are any appropriation bills to receive assent, the Speaker of the House of Commons addresses the Governor General and reads the titles of the bills. The Senate clerk at the table, having received the bills from the Speaker of the House of Commons, then reads their titles again. After the Governor General has signified assent to the appropriation bills, the Clerk of the Senate states: “In Her Majesty’s name, His Excellency the Governor General (or the deputy) thanks her loyal subjects, accepts their benevolence and assents to these bills.” Once this is done, the Speaker and members of the House of Commons withdraw from the Senate Chamber. The Governor General’s procession then leaves. At this point, the Speaker returns to the chair, the mace is placed back on the table and the sitting of the Senate resumes from where it left off. If there is no further business to transact, the Senate adjourns for the day.⁵⁹

Written Declaration

When Royal Assent by written declaration is signified by the Governor General or one of the deputies who is not a judge, it usually takes place at Government House. When one of the justices of the Supreme Court of Canada acts as a Deputy to the Governor General, Royal Assent by written declaration may be signified at the court. Since the *Royal Assent Act* does not specify a location for Royal Assent by written declaration, it may be given anywhere within Canada.

The participants normally present for Royal Assent by written declaration are the Governor General (or the deputy), the Clerk of the Senate in the role of Clerk of the Parliaments, a Senate table officer and a representative of the Privy Council Office. If a supply bill is to receive Royal Assent, a table officer of the House of Commons is also present. The *Royal Assent Act* also allows interested parliamentarians to attend.⁶⁰

When a written declaration of Royal Assent takes place, the Clerk of the Parliaments presents the parchments of the bills and a letter requesting that Royal Assent be granted to the bills, to the Governor General (or the deputy). If there are any appropriation bills to receive Royal Assent, a table officer of the House of Commons presents these bills to the Governor General. After the bills have been duly presented, the Governor General signs a Declaration of Royal Assent, which is witnessed by the Clerk of the Parliaments.

⁵⁹ For an example of a Royal Assent by traditional parliamentary ceremony, see *Journals of the Senate*, December 12, 2013, pp. 299 and 303-304.

⁶⁰ *Royal Assent Act*, S.C. 2002, c. 15, s. 3(3).

After the written declaration procedure is concluded, the Secretary to the Governor General prepares letters addressed to the Speakers of the Senate and the House of Commons formally advising them that Royal Assent has been signified. These letters are then entrusted to a Senate table officer, who delivers them to the two Speakers. The Speakers read the letter in their respective chambers. This serves as an official notification that Royal Assent has been granted to certain bills.⁶¹

Royal Assent is only deemed to have been granted to a bill once both houses have been notified of a written declaration of Royal Assent.⁶² While notice of Royal Assent may be given when the House of Commons is adjourned by publishing a special issue of the *Journals of the House of Commons*, the Senate must be sitting in order for the letter to be read in the chamber by the Speaker. Both chambers need not be notified on the same day. Thus, if one chamber is not sitting on a particular day, the written declaration will be announced at the next sitting, and the bill is deemed assented to on that day.

When a message from the Crown concerning Royal Assent is expected, the Leader or Deputy Leader of the Government may indicate this at any time after the completion of the Orders of the Day. Once this announcement has been made, no motion to adjourn the Senate can be received, and the rules for the ordinary time of adjournment are suspended until the message is received or it is indicated that the message is no longer expected. If the Senate has not received the letters before it has completed its business, the sitting shall be suspended to the call of the Speaker.⁶³

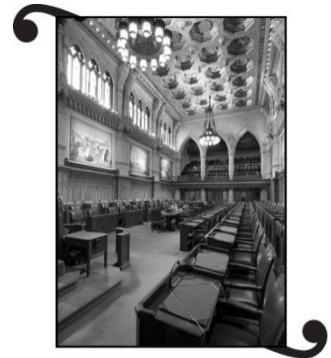
⁶¹ *Royal Assent Act*, S.C. 2002, c. 15, s. 4. For an example of Royal Assent by written declaration, see *Journals of the Senate*, April 10, 2014, p. 768.

⁶² *Royal Assent Act*, S.C. 2002, c. 15, s. 5.

⁶³ Rule 16-1(8). See, for example, *Journals of the Senate*, March 27, 2014, p. 617; and *Debates of the Senate* of the same date, p. 1190.

CHAPTER 4

The Senate Chamber, Its Sittings and Publications



This chapter describes the physical setting of the Senate Chamber, where proceedings take place. It also describes the schedule of sittings, the organization of Senate business, the rules of conduct in the chamber and the publications relating to the proceedings of the Senate. The way in which the Senate and the House of Commons officially communicate with one another through messages is also described, as is the procedure for joint addresses to Parliament by distinguished visitors.

1. THE SENATE CHAMBER

The Senate Chamber, or the “Red Chamber” as it is sometimes called because of its colour, is located at the east end of the Centre Block, the building on Parliament Hill dominated by the Peace Tower. It is there that senators meet to consider and debate legislation and issues of public policy.

Decorated in brilliant royal red and gold, the Senate Chamber is where the Queen, or her representative the Governor General, addresses Parliament and gives Royal Assent to bills destined to become law. It is the venue for state ceremonies, including the Opening of Parliament, the Speech from the Throne and the installation of a new Governor General.

At the north end of the chamber is a raised platform with a pair of thrones, the larger of the two for the Queen or the Governor General, and the smaller for the spouse of the Queen or the Governor General.

The Speaker's chair is located in front of the thrones, but is removed when the Queen or the Governor General is present for certain events. From the chair, the Speaker maintains order during the proceedings in the chamber. The Speaker is assisted in this task by the Clerk of the Senate and other table officers who provide advice on parliamentary procedure. These individuals sit at the table in the centre aisle directly in front of the Speaker's chair.

The mace, a symbol of royal authority, parliamentary privilege, as well as the authority of the Senate and the Speaker, rests on the table when the Senate is sitting,¹ its crown placed in the direction of the throne. The Senate cannot sit if the mace is not present, and the mace must not be touched during proceedings.² Made of brass and gold, the 1.6 metre-long mace dates, in its current form, from the mid-nineteenth century and is carried into the chamber during the Speaker's parade, which starts each sitting of the Senate.

¹ The mace is removed from the table when the Senate sits as a Committee of the Whole, during Royal Assent ceremonies and during the ceremonies for the opening of a Parliament or a new session.

² *Journals of the Senate*, April 30, 2014, p. 798. For details about the mace, refer to Wilding and Laundry; and Pike and McCreery.

4: The Senate Chamber, Its Sittings and Publications

Generally, senators affiliated with the government sit to the Speaker's right, while those associated with all other parties, including those who have chosen to sit as independents, sit on the Speaker's left.

At the south entrance of the chamber, there is a brass barrier known as the bar of the Senate. Its purpose is to prevent strangers – anyone who is not a senator or an official of the Senate – from coming onto the floor of the chamber. Senators must be within the bar when a question is put in order to take part in a recorded vote and to be counted in a quorum.

Senate proceedings are open to both the public and to journalists. The second-floor galleries at the north and south ends of the chamber can accommodate 350 people. Each gallery is equipped with an audio system allowing visitors to listen to the debates in either official language. Television monitors in the galleries provide visitors with real-time captioning of the proceedings, making them accessible to those who are hearing impaired.

The Senate Chamber is adorned with artistic expressions of Canada's history and heritage, which remind senators of the people and country they serve. The coffered ceiling, decorated in gold leaf, depicts the French fleur-de-lys, the English lion, the Irish harp, the Welsh dragon and the Scottish lion, together with the Canadian maple leaf. Two massive bronze chandeliers, weighing approximately two tonnes each, hang from the ceiling.

The chamber's carved oak panelling depicts Canadian flora and fauna. A marble bust of Queen Victoria surveys the chamber from high above the thrones and the Speaker's chair.

Eight large oil paintings portraying various scenes from the First World War dominate the Senate Chamber. Painted by different artists, they commemorate scenes of the Great War and the participation of Canadian soldiers.



- A – Platform with thrones and Speaker’s chair
- B – Government desks
- C – Opposition desks
- D – Table with clerks and mace
- E – Public galleries
- F – Official debates reporters

2. SCHEDULE OF SITTINGS

Parliamentary Calendar

As a revising chamber, much of the work of the Senate is dependent upon the flow of business from the House of Commons. This flow often results in slow periods at the beginning of a session and a demanding schedule before longer adjournment periods, prorogation or dissolution.

According to the Rules, every day from Monday to Friday is a possible sitting day and there is no prohibition against sitting on statutory holidays.³ The Senate does not sit on Saturdays or Sundays, unless otherwise ordered by the Senate.⁴ Whenever the Senate adjourns, it is automatically adjourned until the

³ Rule 3-1. The Senate has, on occasion, sat on statutory holidays such as on November 11, 1957, and March 27, 1964 (Good Friday).

⁴ Rule 3-1(2)The Senate sat on Sunday, June 26, 2011 after the Speaker recalled the Senate pursuant to powers granted under rule 3-6(1). For other examples of weekend sittings or business that would have allowed such sittings without them actually occurring, see *Journals of the Senate*, June 26, 2011, p. 147; November 25, 2005, pp. 1330 and 1340; April 25, 1997, p. 1288; March 23 to 26, 1995, pp. 805, 810-811; and February 1, 1958, p. 329. Also see *Debates of the Senate*, October 9, 1997, pp. 130 and 135-136.

next sitting day and time as determined by the Rules, unless the Senate explicitly chooses to alter the length of the adjournment by adopting a motion to this effect. Such a motion must be agreed to prior to the adoption of the daily adjournment motion.⁵

Although not required by the *Rules of the Senate*, each autumn the party leaderships in the Senate issues a calendar of sitting days, subject to change without notice. This calendar is based on the House of Commons' sitting calendar,⁶ with the addition of extra sittings just prior to the summer and winter adjournments.

When the Senate adjourns for a longer period, for example over the summer months, the period is often informally called a recess. However, the true meaning of a recess is the period of time between sessions within a Parliament (i.e., from the time a session is prorogued until the opening of a new session). Unlike recess periods during a prorogation or dissolution, when the Senate is adjourned it retains its powers, the *Order Paper and Notice Paper*⁷ remains the same, and the Speaker can recall the Senate or extend the adjournment.⁸

Sittings of the Senate

Under the Rules sittings start at 2 p.m. Mondays to Thursdays and at 9 a.m. on Fridays.⁹ In practice, however, the Senate usually sits only on Tuesdays, Wednesdays and Thursdays. If the Senate does sit on a Monday, it is common to start at 6 p.m. or later. In the past few years, sessional orders¹⁰ have been adopted to start sittings at 1:30 p.m. on Wednesdays and Thursdays and to advance the time for adjournment on Wednesdays to allow committees to meet.¹¹ Although these sessional orders all have the same general purpose, they have varied in their details from session to session.

Although the Senate may sit until midnight on Mondays through Thursdays and until 4 p.m. on Fridays,¹² the usual practice is for the Senate to sit several hours in the afternoon to complete its work and then adjourn to permit committees to meet. Any item of Government Business or Other Business under consideration at the ordinary time of adjournment is automatically adjourned and placed on the Orders of the Day for the next sitting.¹³ Even though an adjournment time is stipulated in the Rules, there are a few notable exceptions. For example, the Senate will sit outside its normal sitting time in the case of a

⁵ Motions concerning sitting days, times or adjournment periods require notice and are debatable. See rules 5-5(g) and 5-8(1)(q).

⁶ See House of Commons Standing Order 28(2).

⁷ The *Order Paper and Notice Paper* is the official agenda of the Senate and is discussed in detail later in this chapter.

⁸ Rule 3-6.

⁹ Rule 3-1(1).

¹⁰ A sessional order is one "governing the conduct of the business of the Senate or of its committees that has effect only for the remainder of the session in which it is adopted" (Appendix I of the Rules).

¹¹ See, for example, *Journals of the Senate*, February 6, 2014, p. 369; November 19, 2013, pp. 185-186; October 18, 2011, p. 240; April 15, 2010, p. 238; and February 10, 2009, p. 91.

¹² Rule 3-4.

¹³ Rule 3-5(1).

4: The Senate Chamber, Its Sittings and Publications

deferred vote,¹⁴ if a standing vote is requested,¹⁵ or when notice has been given that either the Sovereign, the Governor General or a deputy will be arriving at a specified time (e.g., for Royal Assent).¹⁶ Provisions for extending the adjournment time also apply to time allocation procedures and time-allocated Government Business,¹⁷ for the consideration of cases of privilege,¹⁸ and in relation to an emergency debate.¹⁹

If the Senate is still sitting at 6 p.m., rule 3-3(1) requires a suspension of the sitting until 8 p.m. If at 6 p.m. a standing vote has been ordered, the Speaker will not leave the chair until the vote and all related business are completed.²⁰ The provisions of rule 3-3(1) apply to sittings of Committee of the Whole. A decision of the Senate is therefore required to allow a Committee of the Whole to sit through the evening suspension, since it cannot suspend the rule on its own.²¹ When the Senate does suspend for an evening break, the bells to call the senators ring for 15 minutes prior to the 8 p.m. resumption of the sitting.

The Senate may, at 6 p.m., decide to continue to sit, with leave, until business is completed. This practice is referred to as “not seeing the clock.”²² On occasion, the Senate has, with leave, decided to see the clock as if it were 6 p.m., even though it was earlier, and suspend the sitting until 8 p.m.²³

A “meeting” of the Senate refers to the assembling of senators in the Senate Chamber at a certain time, as set out in the Rules or as otherwise ordered by the Senate.²⁴ A “sitting” of the Senate begins with Prayers and continues until the adoption of a motion to adjourn the Senate.²⁵ The Westminster parliamentary tradition allows for a chamber to conduct secret meetings. This rare occurrence can take place either by not opening the doors to the public after the Speaker has read Prayers, or by a motion ordering the withdrawal of strangers.²⁶ Such secret meetings would be held to deal with internal or confidential matters.²⁷

¹⁴ Rule 9-10(7).

¹⁵ Rule 9-9. Also see *Journals of the Senate*, December 10, 2009, p. 1611; December 12, 2007, p. 423; and June 6, 2007, pp. 1616-1617.

¹⁶ Rule 16-1(4).

¹⁷ Rules 7-3(1)(c) and 7-4(2).

¹⁸ Rule 13-6(6).

¹⁹ Rules 8-4(5) and (7).

²⁰ Rule 3-3(2).

²¹ See, for example, *Journals of the Senate*, April 18, 2007, p. 1345; November 3, 2003, pp. 1304-1305.

²² See, for example, *Debates of the Senate*, June 11, 2013, p. 4213.

²³ See *Journals of the Senate*, June 19, 2007, p. 1775; and December 12, 2006, p. 954.

²⁴ See definition of “meeting of the Senate” in Appendix I of the *Rules of the Senate*.

²⁵ See definition of “sitting of the Senate” in Appendix I of the *Rules of the Senate*.

²⁶ Rule 2-13. Such a motion must be put forthwith by the Speaker and requires no notice. For further information, refer to section below on the presence of strangers in the Senate.

²⁷ There are no known secret meetings of the Senate. The House of Commons has met in secret on four occasions, all during wartime. For further information, see O’Brien and Bosc, p. 408. Also see Erskine May, 24th ed., pp. 14 and 321.

3. DECORUM IN THE CHAMBER

Rules of Conduct in the Senate Chamber

Certain rules and customs are followed in the Senate to ensure that debate takes place in an orderly fashion and that appropriate respect is shown to the Speaker. For example:

- senators and other persons allowed on the floor of the Senate Chamber must not pass between the Speaker's chair and the table or between a senator who has the floor and the chair;²⁸
- when entering, leaving or crossing the Senate Chamber, senators bow to the chair;²⁹
- senators must hold any private conversations outside the bar of the Senate Chamber, otherwise the Speaker will order them to do so;³⁰
- electronic devices which produce any disruptive sound are forbidden in the Senate Chamber;³¹
- when the Senate adjourns, senators stand until the Speaker has left the chamber;³²
- smoking is prohibited at meetings of the Senate and its committees;³³ and
- senators are expected to wear appropriate attire (i.e., jacket, shirt and tie for men, and suits or other business dress for women) during sittings of the Senate.

Presence of Strangers in the Senate

The term "strangers" is used for anyone who is not a senator or an official of the Senate. Strangers are admitted to the galleries in the Senate Chamber but may be removed if there is a disturbance or if they are ordered out by the Senate.³⁴ Disturbances that interfere with the Senate's proceedings are not tolerated. The Speaker may, when necessary, order the galleries to be cleared without a prior order of the Senate.³⁵ In addition, if a senator objects to the presence of strangers, the Speaker must immediately put the question, without any debate or amendment, to order the withdrawal of strangers.³⁶ When the Senate orders strangers to withdraw, the galleries are cleared and only senators and authorized personnel continue to have access to the Senate Chamber.³⁷

²⁸ Rules 2-7(1)(b) and (c).

²⁹ Rule 2-7(1)(a).

³⁰ Rule 2-8(a).

³¹ Rule 2-8(b). Also see Speaker's rulings, *Journals of the Senate*, May 2, 2007, p. 1415; May 16, 2006, pp. 155-156; April 27, 2006, p. 67; April 5, 2006, p. 24; March 22, 2005, pp. 616-617; and February 12, 2004, p. 92. Also see *Debates of the Senate*, February 2, 2012, p. 1077.

³² Rule 2-7(5).

³³ Rules 2-8(c) and 12-21.

²⁶⁰ See O'Brien and Bosc, pp. 285-286 for further information about strangers.

³⁵ Rule 2-13(2).

³⁶ Rule 2-13(1). It follows from this rule that no notice is required for such a motion.

³⁷ Rule 2-13(3). Also see the description of secret meetings of the Senate under the above section on "Sittings of the Senate" for further information on the withdrawal of strangers.

Visitors in the Gallery

The Senate has no restrictions as to whom the Speaker may recognize in the gallery. The Speaker may formally recognize retired senators, foreign dignitaries and other public figures. Senators who have invited guests to sit in the galleries may advise the Speaker, with prior written notice, so that their guests may be welcomed to the Senate by the Speaker.³⁸ Only the Speaker is permitted to do this. Senators should refrain from doing so – or even alluding to their presence during the proceedings.³⁹

4. PRIOR TO A SITTING

Speaker's Parade

Approximately two minutes before a scheduled meeting of the Senate, the Speaker's parade leaves the Speaker's office in the following order:

- a member of the security staff;
- the Usher of the Black Rod;
- the Mace Bearer;
- the Speaker;
- the Speaker *pro tempore*;
- two pages (the Chief Page and the page assigned to parade that day);
- the Clerk of the Senate; and
- two clerks at the table.

The parade moves down the Speaker's corridor and enters the Senate Chamber. The parade continues through the chamber to the Speaker's chair, passing between the table and the opposition desks. The Speaker bows to the thrones and moves toward the chair. At this point the pages take their places on each side of the chair. The Chief Page receives the hat and gloves from the Speaker, who in turn receives a copy of the Prayers, which are then read. On Thursdays, the parade takes a longer route through the Hall of Honour, located in the middle of the Centre Block, before entering the Senate Chamber.⁴⁰ There is no parade on the first day on which both the Speaker and Speaker *pro tempore* are absent.

Temporary or Extended Absence of the Speaker

Should the Speaker be unavoidably absent, the Clerk of the Senate informs the Senate of this fact at the start of the meeting.⁴¹ The Speaker *pro tempore*, chosen at the beginning of each session, presides over the Senate when the Speaker is absent. When the Speaker *pro tempore* is also away, the Clerk of the

³⁸ Rule 2-11.

³⁹ See *Debates of the Senate*, April 9, 2014, p. 1348. Also refer to O'Brien and Bosc, p. 327 (in particular, note 173).

⁴⁰ The longer route was taken for the first time on April 6, 2006.

⁴¹ Rule 2-4(2). See, for example, *Journals of the Senate*, March 16, 2013, p. 2061.

Senate informs the Senate of this and receives a motion to designate an Acting Speaker.⁴² If the Speaker leaves the chair during the course of a sitting, he or she chooses any senator to preside over the proceedings for the remainder of the sitting or until the Speaker returns.⁴³

Quorum

Fifteen senators, including the Speaker, constitute quorum, the minimum number of senators needed for the Senate to sit and conduct business.⁴⁴ Fifteen minutes prior to a scheduled meeting of the Senate, the bells to call in the senators start to ring and continue until quorum is seen for the Senate to conduct business.⁴⁵ The Speaker enters the Senate Chamber at the scheduled meeting time whether quorum is present or not.⁴⁶ As soon as the Speaker sees quorum, Prayers are read.⁴⁷ If quorum is not seen within two hours after the time the Senate is scheduled to meet, the Speaker declares the Senate unable to meet and leaves the chair until the next sitting day.⁴⁸

During a sitting, any senator may draw the attention of the Senate to the fact that a quorum is not present. The clerks at the table will proceed at once to count the senators present in the chamber and, if quorum is not present, the Speaker will send the pages to summon senators who may be in the adjoining rooms. If after five minutes quorum is still not found, the bells are rung for no more than 15 minutes.⁴⁹ If, after 15 minutes, no quorum is seen, the Speaker must adjourn the Senate until the next sitting day without the question being put.⁵⁰ Any item under consideration at that time, except an emergency debate, is automatically placed on the Orders of the Day for consideration at the next sitting.⁵¹ The names of the senators present when the Senate adjourns for want of quorum are not taken down. There are only two known occasions when the Senate adjourned due to a lack of quorum.⁵²

5. STRUCTURE OF A SITTING

A sitting of the Senate is divided into two main parts. The first part is devoted to Tributes, Senators' Statements, Routine Proceedings, Question Period and Delayed Answers. The second part consists of the Orders of the Day followed by motions and inquiries on the Notice Paper.⁵³

⁴² Rule 2-4(2). The motion is generally moved by the Leader of the Government and seconded by the Leader of the Opposition. See, for example, *Journals of the Senate*, March 16, 2013, p. 2061.

⁴³ Rule 2-4(1). Usually the Speaker *pro tempore* replaces the Speaker in such instances; however, any other senator can also replace the Speaker. See Chapter 2 for additional information on the roles of the Speaker, the Speaker *pro tempore* and the Acting Speaker.

⁴⁴ *Constitution Act, 1867*, s. 35; rule 3-7(1).

⁴⁵ Rule 3-2(2).

⁴⁶ Rule 3-2(1).

⁴⁷ Rule 4-1.

⁴⁸ Rule 3-2(3).

⁴⁹ Rule 3-7(2).

⁵⁰ Rule 3-7(3).

⁵¹ Rule 3-7(4).

⁵² See *Journals of the Senate*, May 15, 2007, p. 1533; and June 11, 1914, p. 491. On at least two other occasions, the question of whether quorum was present was raised in the chamber, but it was quickly confirmed that quorum was indeed present in both cases. See *Debates of the Senate*, February 26, 2003, p. 902; and December 2, 1982, p. 5125.

⁵³ See Appendix to this chapter for an outline of a typical sitting day.

Prayers

Prayers have been recited in the Senate since 1867. After entering the chamber and seeing quorum, the Speaker recites Prayers in both official languages.⁵⁴ The text of the Prayers has changed several times since Confederation. The current text is as follows:

Almighty God, we beseech thee to protect our Queen and to bless the people of Canada. Guide us in our endeavours; let your spirit preside over our deliberations so that, at this time assembled, we may serve ever better the cause of peace and justice in our land and throughout the world. Amen.

During Prayers, the doors to the chamber and galleries are closed, and no one is admitted. After Prayers, the Speaker directs that the doors be opened.

Moment of Silence

The Senate may observe a minute of silence in memory of a senator, a former senator, another prominent Canadian, a foreign dignitary, or a fallen soldier, as well as on the occasion of Remembrance Day during the sitting just prior to November 11.⁵⁵ This minute of silence normally takes place immediately after Prayers. However, if the Senate is informed of a death during a sitting, the minute of silence has been observed during the course of the sitting. As mentioned in Chapter 2, when a sitting senator dies, the Speaker announces the news to the Senate immediately after the doors have been opened or at the earliest opportunity when informed during the sitting. The Senate then observes a minute of silence, which is often followed by a motion to adjourn the Senate.⁵⁶ In addition, the Senate will often not sit on the day of the senator's funeral, allowing colleagues to attend. Tributes to the deceased senator are usually paid at a subsequent sitting after arrangements have been made to allow family members the opportunity to attend.

Tributes

Since April 2003, the *Rules of the Senate* have included a provision for Tributes to current or former senators.⁵⁷ At the request of either the government or the opposition leader, Tributes may be made immediately following Prayers for 15 minute.⁵⁸ Practice dictates that the Speaker be given prior written notice, allowing sufficient time to notify family members. The purpose of Tributes is to acknowledge the service and life of a departing senator or a deceased senator.⁵⁹ Normally, Tributes may be paid to only one individual per sitting.⁶⁰ Each senator paying tribute may speak only once and for no more than three

⁵⁴ Rule 4-1.

⁵⁵ The Senate has also observed a moment of silence for other tragic events and days of remembrance such as the National Day of Remembrance and Action on Violence Against Women on the anniversary of the shooting at l'École polytechnique de Montréal. See, for example, *Journals of the Senate*, December 4, 2014, p. 1413; and December 6, 2012, p. 1793.

⁵⁶ See, for example, *Debates of the Senate*, February 9, 2012, p. 1128.

⁵⁷ *Journals of the Senate*, April 1, 2003, pp. 631-632.

⁵⁸ Rule 4-3(1).

⁵⁹ Rule 4-3(1). Tributes have also been paid to distinguished persons by means other than the period designated for Tributes (see rule 4-3(6)). See, for example, *Journals of the Senate*, December 1, 2004, p. 241; and *Debates of the Senate* for the same date, p. 371.

⁶⁰ Rule 4-3(1). For an example of Tributes being paid, with leave, to two senators during the same sitting, see *Journals of the Senate*, April 1, 2004, p. 421.

minutes.⁶¹ The Rules do not permit the extension of time for Tributes beyond the prescribed 15-minute period,⁶² but senators may pay further tribute by way of a statement, inquiry, motion or other proceeding.⁶³ The senator to whom tribute is being made may respond, without a time limit, after all tributes have been completed.⁶⁴ A senator who intends to resign from the Senate may make a brief statement prior to Tributes informing the Senate of the date that the resignation will take effect.⁶⁵

Senators' Statements

After Prayers and Tributes (if any), the Speaker calls for Senators' Statements. These are declarations made by senators on matters of public interest the rules and practices do not allow to be brought to the immediate attention of the Senate. Statements cannot anticipate consideration of an item on the Orders of the Day and should not give rise to debate.⁶⁶ Senators may speak only once for up to three minutes,⁶⁷ and the time for statements may last up to 15 minutes.⁶⁸ Either whip may approach the Speaker during statements and request that the time for statements be extended by up to thirty minutes. The Speaker will then ask the chamber if leave is granted for the extension.⁶⁹ If the time for statements is extended and the Senate has not completed its business by 6 p.m., the Speaker does not leave the chair as provided by rule 3-3(1), but rather the sitting is extended by a period equal to the time taken for the extended statements. Once this extended time is exhausted, the Speaker will leave the chair pursuant to rule 3-3(1).⁷⁰

Motions and standing votes are not permitted during the time for Senators' Statements, so the provisions of rule 6-4(2) (i.e., a motion to allow another senator to speak) cannot be used.⁷¹

⁶¹ Rule 4-3(2).

⁶² Rule 4-3(3). This rule was suspended, with leave, to allow a period of sixty minutes for Tributes on June 13, 2007 (*Debates of the Senate*, p. 2649).

⁶³ Rule 4-3(6). For an example of Tributes being carried over into the time for Senators' Statements, see *Debates of the Senate*, June 19, 2013, p. 4357. For examples of Tributes being carried over into an inquiry, see *Journals of the Senate*, May 27, 2010, p. 619; November 25, 2009, p. 1803 and 1809; and June 3, 2009, p. 989.

⁶⁴ Rule 4-3(4).

⁶⁵ *Debates of the Senate*, June 27, 2012, p. 2338; *Journals of the Senate*, December 12, 2007, p. 409; June 13, 2007, p. 1725; October 5, 2006, p. 497; January 20, 1994, p. 26; May 26, 1993, p. 2070; and May 25, 1993, p. 2056.

⁶⁶ Rules 4-2(5)(b) and 4-2(6). For rulings relating to the content of Senators' Statements, see *Journals of the Senate*, March 20, 2013, p. 2022; February 5, 2013, pp. 1881-1882; October 2, 2012, p. 1586; December 8, 2010, p. 1064; June 3, 2010, pp. 488-489; and May 12, 2009, pp. 660-661. Also see *Debates of the Senate*, May 24, 1995, p. 1660; and May 3, 1995, pp. 1572-1573.

⁶⁷ Rule 4-2(3).

⁶⁸ Rule 4-2(2).

⁶⁹ Rule 4-2(8)(a). Such an extension has been granted on occasion (*Journals of the Senate*, November 29, 2007, p. 209; May 5, 2005, p. 841; and April 12, 2005, p. 700). Extensions have also been given by way of a motion (*Journals of the Senate*, February 11, 2009, p. 97).

⁷⁰ Rule 4-2(8)(b).

⁷¹ Rule 4-2(7).

In the event that an application for an emergency debate is received, Senators' Statements are suspended except to receive an oral notice of a question of privilege or for Tributes.⁷² Instead, the Senate hears the reasons for the request for an emergency debate.⁷³

In the event that a written notice of a question of privilege is received pursuant to rule 13-3(1), a senator must give oral notice during Senators' Statements. Normally, the Speaker recognizes such a senator first.⁷⁴

Routine Proceedings

Routine Proceedings are a portion of the proceedings that allows senators:

- to give notices of motions or inquiries that they will raise at future sittings;
- to provide reports and other documents for the Senate's information and, in some cases, future consideration; and
- to introduce bills.

Routine Proceedings allow the Senate to organize its business for future sittings. No points of order or questions of privilege can be raised during Routine Proceedings, but the Speaker can still exercise the general authority to preserve order and decorum.⁷⁵

Routine Proceedings consist of the following thirteen headings:⁷⁶

- Tabling of Documents;
- Presenting or Tabling Reports from Committees;
- Government Notices of Motions;
- Government Notices of Inquiries;
- Introduction and First Reading of Government Bills;
- Introduction and First Reading of Senate Public Bills;
- First Reading of Commons Public Bills;
- Reading of Petitions for Private Bills;
- Introduction and First Reading of Private Bills;
- Tabling of Reports from Interparliamentary Delegations;
- Notices of Motions;
- Notices of Inquiries; and
- Tabling of Petitions.

These headings are called out by the Speaker in English and French. Senators do not need to give notice to be recognized under Routine Proceedings. The maximum time allowed for Routine Proceedings is 30 minutes from the time the first heading is called.⁷⁷ On occasion, leave is granted to immediately consider

⁷² Rule 4-4(2).

⁷³ See Chapter 5 for more information on emergency debates.

⁷⁴ See Chapter 11 for more information on questions of privilege.

⁷⁵ Rule 2-6(1).

⁷⁶ Rule 4-5.

⁷⁷ Rule 4-7.

a bill, report, motion or inquiry. In such cases, the Speaker has ruled that debate on the item is permitted and that points of order are admissible during those proceedings, since the Senate has stepped out of Routine Proceedings until the debate in question is either decided or adjourned. Nonetheless, the 30-minute limit stipulated in rule 4-7 still applies, and any proceeding underway at the end of the 30 minutes must be interrupted.⁷⁸

Tabling of Documents

The Leader or Deputy Leader of the Government may table a document required by an act, a Senate resolution or a Senate rule, as well as any papers dealing with the administrative responsibilities of the government.⁷⁹ No leave is required for such tabling.

The Speaker may table documents prepared by the Clerk of the Senate that are required by the *Rules of the Senate*, and may table reports from various parliamentary officers, such as the Privacy Commissioner or the Information Commissioner, when required by statute. Again, no leave is required to table these documents. In addition, the Speaker may also table documents relating to the administrative or diplomatic functions of the Speaker's office. When this happens, the Speaker seeks leave to table the documents, as is the case with any other senator, since there is no rule, resolution or statute requiring these documents to be tabled and so they must be tabled with leave.⁸⁰

Any other senator may, with leave, table documents at this time during the sitting.⁸¹

The method of tabling documents in the chamber explained above is often referred to as front door tabling. Documents that must be tabled pursuant to an act of Parliament, a resolution or a Senate rule can be deposited with the Clerk of the Senate and are deemed tabled in the Senate.⁸² This procedure is often referred to as back door tabling. A record of such tabling is noted in the *Journals of the Senate*.⁸³ Documents deposited with the Clerk during periods of adjournment are entered in the Journals on the next sitting day.⁸⁴

All documents tabled in the Senate that are prepared by or under the authority of a federal institution must be provided in both official languages.⁸⁵ This applies whether the tabling is front door or back door. Sessional paper numbers are assigned to all documents tabled during a sitting or deposited with the Clerk of the Senate, and they are listed in the Journals.

⁷⁸ See Speaker's rulings, *Journals of the Senate*, February 23, 2005, pp. 490-492; and November 2, 1999, pp. 60-62. Also see *Journals of the Senate*, May 6, 1993, pp. 2026-2029; and *Debates of the Senate*, May 6, 1993, pp. 3199 and 3201-3202.

⁷⁹ Rule 14-1(1).

⁸⁰ See rule 14-1(3).

⁸¹ Rule 14-1(3). See Speaker's statement, *Journals of the Senate*, February 8, 2005, p. 415. For examples of documents tabled by senators, see *Journals of the Senate*, October 30, 2013, p. 101; and October 28, 2013, pp. 82-83. Under rule 14-1(4), a senator who has the floor can, with leave, also table a document relating to a debate that is underway.

⁸² Rule 14-1(6).

⁸³ Rule 14-1(5).

⁸⁴ Rule 14-1(7).

⁸⁵ *Official Languages Act*, R.S.C., 1985, c. 31 (4th Supp.), s. 8.

After a prorogation or dissolution, documents required by an act of Parliament are not accepted by the Clerk of the Senate in advance for tabling in the next session or Parliament. Resolutions of the Senate ordering a return, including requests for government responses to committee reports pursuant to rule 12-24(1), cease to have effect at prorogation or dissolution.⁸⁶

Presenting or Tabling Reports from Committees

Committees authorized by the Senate to undertake a study into a matter or to examine a bill usually provide a report that explains the conclusions of their work. It is the responsibility of the chair of the committee (or a designate) to present or table reports.⁸⁷

The Senate distinguishes between presented reports and tabled reports.

A report is presented if it requires a decision of the Senate. Presented reports are read aloud by a clerk at the table and must, by motion, be placed on the Orders of the Day for future consideration and a decision of the Senate.⁸⁸ The only exception to this is a report presented on a bill without amendment, which is deemed adopted without debate or vote.⁸⁹ The full text of a presented report is published in the *Journals of the Senate*.

A report is tabled if it is for information purposes only. A tabled report is not read aloud. It may be placed on the Orders of the Day for future consideration and possible adoption, but there is no obligation to do so.⁹⁰ The text of a tabled report is not published in the *Journals of the Senate*. Instead, a sessional paper number is assigned to the report, and the tabling is noted in the Journals.

If a committee report is placed on the Orders of the Day for consideration later the same day, copies of such report are distributed to all senators in the chamber. A Speaker's ruling has stated that "committee reports that are not for consideration later during the same sitting are not handed out as a matter of course, but can be requested from the pages."⁹¹

A committee may on occasion request the power to deposit a report with the Clerk of the Senate while the Senate is not sitting.⁹² If this power is granted and used, a senator subsequently informs the Senate of this fact under this heading and can then move that the report be placed on the Orders of the Day for future consideration.

Government Notices of Motions

The government uses this heading to give notices of motions it wants the Senate to consider. Government notices of motions appear on the Order Paper under the heading "Motions" in the Government Business

⁸⁶ Speaker's ruling, *Journals of the Senate*, December 11, 2007, pp. 365-369.

⁸⁷ Rule 12-22(2). See Chapter 9 for further information on committee reports. Also see definition of "report (of a committee)" in Appendix I of the *Rules of the Senate*.

⁸⁸ Rules 12-22(3) and (4), and 12-23(3).

⁸⁹ Rule 12-23(2).

⁹⁰ Rule 12-22(3).

⁹¹ *Journals of the Senate*, November 6, 2012, p. 1697.

⁹² The Standing Committee on Ethics and Conflict of Interest for Senators has the power to deposit reports with the Clerk at any time the Senate stands adjourned (rule 12-31).

section. They remain there until a decision is taken or the end of a session. Motions usually require either one or two days' notice before they can be moved.⁹³ Only the Leader of the Government, the Deputy Leader or a minister in the Senate can give notice for a government motion.⁹⁴ Some examples of notices of motions that are typically from the government include:

- motions to refer Government Business (such as the expenditures set out in the estimates⁹⁵) to a committee for study and report;
- motions to establish or change the sitting schedule of the Senate; and
- motions to approve the appointment of certain officers of Parliament.

Government Notices of Inquiries

This heading of Routine Proceedings was added to the Rules in September 2012. It allows the Leader of the Government, the Deputy Leader or a minister in the Senate to give notice of government inquiries. All inquiries require two days' notice,⁹⁶ and government notices of inquiries appear under the heading "Inquiries" in the Government Business section of the Order Paper. They remain there either until the conclusion of debate or the end of the session.

Introduction and First Reading of Government Bills

This heading is used for the introduction of government bills that originate in the Senate. In addition, a message received from the House of Commons with a government bill originating in that chamber can be read by the Speaker under this heading. If the message is received later during the sitting, the Speaker will read it at the earliest convenient opportunity.⁹⁷

The first reading of a bill is a pro forma proceeding. It occurs automatically without notice, debate or vote. If the bill originates in the Senate, it is then printed.⁹⁸ If the bill came from the House of Commons, the version adopted by that chamber is used.

After a government bill has been read a first time, the Deputy Leader of the Government proposes a motion that second reading be set for two sitting days later.⁹⁹

Introduction and First Reading of Senate Public Bills

Senate public bills are legislative proposals not introduced on behalf of the government. The senator who introduces a bill under this heading proposes a motion for consideration at second reading stage two sitting days later.¹⁰⁰

⁹³ Rules 5-5 and 5-6(1).

⁹⁴ The Speaker has ruled that an acting Deputy Leader of the Government may give notice of a government motion. See Speaker's ruling, *Journals of the Senate*, March 18, 1997, p. 1127. See Chapter 5 for more information on notices and motions.

⁹⁵ Consideration of the estimates is Government Business (*Journals of the Senate*, May 31, 2005, p. 944; and June 16, 1998, p. 842).

⁹⁶ Rule 5-6(2).

⁹⁷ Rule 16-2(2).

⁹⁸ Rules 5-7(j) and 10-3.

⁹⁹ Rule 5-6(1)(f). See Chapter 7 for more information on public bills.

¹⁰⁰ Rule 5-6(1)(f). See Chapter 7 for more information on public bills.

First Reading of Commons Public Bills

All Commons public bills are brought to the Senate by way of a message that is read by the Speaker. Usually a senator from the same party as the member who introduced the bill in the Commons will sponsor it in the Senate. If the bill was sponsored by a member of the House of Commons belonging to a party that is not represented in the Senate, that member must find a senator who is willing to act as the Senate sponsor for the bill. Once the bill has received first reading, it is the responsibility of the Senate sponsor or the sponsor's deputy leader to propose a motion for consideration at second reading two days later.¹⁰¹

Reading of Petitions for Private Bills

This heading is used once a petition for a private bill that was previously tabled under "Tabling of Petitions" at an earlier sitting has been certified as in order by the Examiner of Petitions.¹⁰² The petition is read aloud in the chamber by the clerk at the table, and the accompanying bill can be then introduced (see next section).

Introduction and First Reading of Private Bills

Once a petition for a private bill has been read by the clerk at the table under the heading "Reading of Petitions for Private Bills," the sponsor of the bill may introduce the bill, which is then read a first time. This process is similar to the introduction of public bills (see above). The sponsor proposes a motion for consideration at second reading stage two days later.¹⁰³

Tabling of Reports from Interparliamentary Delegations

Parliamentary associations table reports on activities that include travel to participate in meetings or conferences.¹⁰⁴ These reports are tabled for information purposes only. Research has not found any examples of such reports being set down for consideration at a future sitting. Nonetheless, the content of such reports has, on occasion, been considered by way of an inquiry.¹⁰⁵ As with all other tabled documents, these reports are assigned a sessional paper number.

Notices of Motions

Notice is required for most types of motions, and those that do not relate to Government Business are given under this heading. Motions usually require one or two days' notice before they can be moved.¹⁰⁶ A non-government notice of motion appears on the Notice Paper and remains there until the sponsor

¹⁰¹ Rule 5-6(1)(f). See Chapter 7 for more information on public bills.

¹⁰² Rule 11-3(3).

¹⁰³ Rule 5-6(1)(f). See Chapter 8 for further information on private bills.

¹⁰⁴ For more information, see the International and Interparliamentary Affairs website: parl.gc.ca/IIA.

¹⁰⁵ See, for example, *Journals of the Senate*, February 27, 2003, p. 542; and February 22, 2000, p. 359.

¹⁰⁶ Rules 5-5 and 5-6(1). For motions not requiring notice, see rule 5-7.

initiates debate by moving its adoption. If the notice is not proceeded with during 15 consecutive sitting days that it is called, the item is automatically dropped from the Notice Paper.¹⁰⁷ Once a notice has been dropped, it may only be proceeded with after a new notice has been given.¹⁰⁸ Some common examples of non-government motions include:

- resolutions stating the opinion or judgment of the Senate;
- motions urging the government to take action; and
- orders of reference (mandates) for committee work.

Notices of Inquiries

Notices of inquiry that are not initiated on behalf of the government are given under this heading. The notice period for all inquiries is two days.¹⁰⁹ Non-government notices of inquiry appear on the Notice Paper and remain there until the sponsor initiates debate on the inquiry. Any such notice not proceeded with for 15 consecutive sitting days that it is called is automatically dropped from the Notice Paper.¹¹⁰ Once a notice has been dropped, it may only be proceeded with after a new notice has been given.

Inquiries are a means to prompt a debate on an issue that will not involve a decision or vote by the Senate. Almost any topic that is not related to an order of the day can be raised as an inquiry.¹¹¹

Tabling of Petitions

Citizens have the right to petition Parliament to seek redress or to propose a remedy to a complaint. A petition is a written request and represents the most direct means of communication between the people and Parliament.¹¹² Originally, petitions used to be the vehicle for bringing a grievance to the attention of Parliament for legislative remedy. Although petitions of this sort are no longer used for public bills, they are still required for all private bills.

Two kinds of petitions may be tabled in the Senate: those on which private bills are based and those which request Parliament to redress a grievance.

A petition asking for the passage of a private bill is tabled by the sponsoring senator under this heading, and the text of the petition is published in the Journals.¹¹³

¹⁰⁷ Rule 4-15(2). Also see Speaker's ruling, *Journals of the Senate*, February 27, 1992, pp. 554-555.

¹⁰⁸ See Chapter 5 for more information on motions.

¹⁰⁹ Rule 5-6(2).

¹¹⁰ Rule 4-15(2). Also see Speaker's ruling, *Journals of the Senate*, February 27, 1992, pp. 554-555.

¹¹¹ Rule 5-2. See Chapter 5 for more information on inquiries.

¹¹² See definition of "petition" in Appendix I of the *Rules of the Senate*.

¹¹³ For further information on the form and subsequent procedure relating to petitions for private bills, see Chapter 8.

Other petitions, signed by Canadians asking Parliament to rectify an injustice or to take action, may also be tabled by a senator. A brief description of the object of the petition and of the petitioners is entered in the Journals. Generally, no further action is taken on such petitions, although on occasion they have been referred to committee for study and report by way of a substantive motion.¹¹⁴

When tabling a petition in the Senate, a senator may make a brief statement about its content (e.g., the subject matter, where it originated, the number of signatures, etc.). It is out of order to make a speech or present an argument in support of the petition at the time it is tabled.¹¹⁵

The *Rules of the Senate* do not prescribe what form petitions should take. The following points based on practice can be used as general guidelines:¹¹⁶

- Petitions must be clearly written and signed by the petitioners.¹¹⁷ Only original signatures are accepted; photocopies, faxes, e-mails, electronic petitions and other reproductions are not acceptable.¹¹⁸
- Petitions must include the full name (printed) and address of the petitioners. All Canadians may petition Parliament, but foreigners who are not residents in Canada have no right to petition Parliament.¹¹⁹
- Petitions must be addressed to the Senate in Parliament Assembled.¹²⁰ They should not be addressed to other entities or officials such as the Government of Canada, the Prime Minister or the House of Commons.
- Petitions must be written using respectful language and not show any discourtesy to the Sovereign, Parliament or the courts. Furthermore, petitions ought not to express an opinion with regard to the Senate, the government or positions taken by senators.¹²¹
- The subject matter of a petition must relate to something within the jurisdiction of the federal Parliament (i.e., not matters within a provincial or municipal jurisdiction).¹²²
- The full text of a petition, or, if it is very long, at least a clear summary of its subject matter must appear on every page that has signatures. Signatures must be on the petition itself and cannot be attached to it in any way (e.g., a page only containing signatures cannot be attached to a petition).¹²³
- Petitions may be prepared in one or both official languages.

¹¹⁴ See, for example, *Journals of the Senate*, April 29, 2004, p. 488. For additional information on substantive motions, refer to Chapter 5 and the definition on Appendix I of the *Rules of the Senate*.

¹¹⁵ Beauchesne, 6th ed., §§1041 and 1042, p. 281.

¹¹⁶ In the absence of detailed rules or practices relating to petitions, rule 1-1(2) permits the Senate to look to House of Commons practice for guidance.

¹¹⁷ Rule 11-1(1).

¹¹⁸ *Debates of the Senate*, July 18, 2005, p. 1764; and Beauchesne, 6th ed., §1024, p. 278, and §1028, p. 279.

¹¹⁹ Beauchesne, 6th ed., §1035, p. 280. Petitions for private bills may be accepted from foreigners (see §1035(2)).

¹²⁰ Beauchesne, 6th ed., §§1017 and 1019, pp. 277-278.

¹²¹ Beauchesne, 6th ed., §1029, p. 279.

¹²² Beauchesne, 6th ed., §1030, p. 279.

¹²³ Beauchesne, 6th ed., §1024, p. 278.

Question Period

Question Period is an accountability exercise that is called every sitting day. Questions may be directed to the Leader of the Government with respect to public affairs, or to a senator who is a minister with respect to that senator's ministerial responsibilities. Questions may also be directed to committee chairs about the activities of their committee.¹²⁴

Question Period lasts at most 30 minutes.¹²⁵ The usual rules of conduct and decorum apply.¹²⁶ Only brief remarks may accompany questions or answers, and they should not give rise to debate.¹²⁷ Supplementary questions on the same subject are permitted.¹²⁸ Although the Opposition leadership may provide the Speaker with a list of senators who wish to ask questions, the Speaker is not bound to follow this list and may recognize any senators who indicate their interest in posing questions.¹²⁹

When an answer cannot be readily provided to an oral question, the question can be taken as notice and answered at a later time in writing.¹³⁰ Once the answer is prepared, it is tabled under Delayed Answers. There is no requirement in the *Rules of the Senate* for an answer to be provided nor is there a specified time limit that must be respected.¹³¹ For further information on Delayed Answers, reference may be made to the following section.

Questions that seek statistical or more detailed information, or to which a written answer is desired, may be sent in writing to the Clerk of the Senate for inclusion in the *Order Paper and Notice Paper*. For further information on written questions see the following section.

Delayed Answers

Delayed answers are prepared written responses to questions submitted in writing¹³² and to oral questions that were previously taken as notice.¹³³ These responses are tabled after Question Period.¹³⁴ Responses to written questions are tabled and become sessional papers. This tabling is recorded in the *Journals of the Senate*; however, the full response is not published. A copy of the response is provided to the senator who asked the question.¹³⁵

Responses to oral questions taken as notice are also given to the senator who asked the question. They are published in full in the *Debates of the Senate*, but they are not officially tabled in the Senate, and they do not become sessional papers. Although there is no requirement that a response be provided nor that a time

¹²⁴ Rule 4-8(1). Also see Speaker's rulings, *Journals of the Senate*, May 14, 2008, p. 1070; April 8, 2008, pp. 742-743; March 20, 2007, pp. 1160-1162; October 31, 2006, pp. 675-677; and May 10, 2006, pp. 134-135.

¹²⁵ Rule 4-7. Also see Speaker's ruling, *Journals of the Senate*, May 9, 2007, p. 1512.

¹²⁶ Speaker's ruling, *Journals of the Senate*, April 14, 2005, p. 727.

¹²⁷ Rule 4-8(2).

¹²⁸ Rule 4-8(3).

¹²⁹ Speaker's rulings, *Journals of the Senate*, July 20, 2005, pp. 1126-1127; and May 29, 1996, pp. 251-252.

¹³⁰ Rule 4-9.

¹³¹ Speaker's ruling, *Journals of the Senate*, May 9, 1996, pp. 191-193.

¹³² Rules 4-10(1) and (2).

¹³³ Rule 4-9.

¹³⁴ Rule 4-10(3).

¹³⁵ Rule 4-10(2).

limit be respected,¹³⁶ if a response is provided, it must be written. The Speaker has ruled that the time provided for delayed answers is not an occasion to extend Question Period.¹³⁷

The Speaker must call for Delayed Answers no later than thirty minutes after Question Period has been called.¹³⁸

Orders of the Day

The Orders of the Day comprise the bulk of the Senate's agenda for a particular sitting day. It lists all items of business – orders – that have been previously set down for consideration. The Orders of the Day are divided into two main categories: Government Business and Other Business. This distinction has been in place since 1991 when changes to the *Rules of the Senate* gave priority to the consideration of items sponsored by the government.¹³⁹ Prior to this change, there was no such distinction.

The Speaker calls for Orders of the Day after Delayed Answers.¹⁴⁰ The Speaker must call Orders of the Day no later than 8 p.m. on any sitting day except Fridays, when the Orders of the Day must be called no later than noon.¹⁴¹ A clerk at the table announces each item to be considered by calling the entries on the Order Paper. All items on the Order Paper for a particular day are called. There is no fixed time limit for each category under the Orders of the Day, nor is there a time limit for any particular item, unless it is subject to time allocation. The time spent on the Orders of the Day thus varies from sitting to sitting.

The Senate can either proceed with an item on the *Order Paper and Notice Paper* (i.e., continue debate or make a decision, etc.) or “stand” it (i.e., not deal with the item on a particular sitting day and postpone it to the next sitting). In the latter case, the Speaker confirms that an item is not to be proceeded with for that sitting and will be allowed to “stand” on the *Order Paper and Notice Paper* until the next sitting. If any senator objects to standing an item, it is debated and then must either be formally adjourned or the question put.¹⁴² Items of Government Business can remain on the Order Paper either until disposed of or until the end of the session. Items of non-Government Business can remain on the Order Paper for a maximum of 15 consecutive sitting days that they are called without being proceeded with.¹⁴³

When an item of Government Business is adjourned, it is adjourned until the next sitting and does not stand in the name of any senator.¹⁴⁴ A non-government item can be adjourned either to the next sitting or to a specified future day. It stands in the name of the senator who moved the adjournment motion or in the name of the senator in whose name the motion was adjourned.¹⁴⁵ Even though an item of non-Government Business may stand in the name of a particular senator, that senator does not hold the right to speak to it next and cannot block further debate or a decision. Rather, it is taken as an indication that that

¹³⁶ Speaker's ruling, *Journals of the Senate*, May 9, 1996, pp. 191-193.

¹³⁷ Speaker's rulings, *Journals of the Senate*, May 10, 2006, pp. 134-135; and May 3, 2005, pp. 825-826.

¹³⁸ Rule 4-7.

¹³⁹ Rule 4-13(1).

¹⁴⁰ Rule 4-12.

¹⁴¹ Rule 4-16(1).

¹⁴² In the case of an inquiry, debate is simply concluded at the end of proceedings if the item is not adjourned.

¹⁴³ Rule 4-15(2). Also see Speaker's ruling, *Journals of the Senate*, February 27, 1992, pp. 554-555.

¹⁴⁴ Rule 6-10(1).

¹⁴⁵ Rule 6-10(2).

senator intends to speak to the item. Nonetheless, any other senator who has not already spoken to the item is permitted to speak to it. The Speaker has ruled that if another senator is prepared to speak to the item, it is not necessary to obtain the permission of the senator in whose name the item stands, although this is often done as a courtesy.¹⁴⁶

Government Business

Government Business is divided into eight categories¹⁴⁷:

- Bills – Messages from the House of Commons
- Bills – Third Reading
- Bills – Reports of Committees
- Bills – Second Reading
- Reports of Committees – Other
- Motions
- Inquiries
- Other

These categories contain all bills, reports, motions or inquiries initiated by the government. Government notices of motions and inquiries do not appear on the Notice Paper, but are published under the appropriate category of Government Business. The “Reports of Committees – Other” category is used for committee reports on business, aside from bills, initiated by the government; for example, a report on the expenditures set out in the estimates.¹⁴⁸

The government can determine the order in which its business is dealt with. The Leader or Deputy Leader of the Government can indicate to the Senate the sequence in which items will be dealt with.¹⁴⁹ If the government leadership does not specify an order for the consideration of its business, all items are called by a clerk at the table as they appear on the Order Paper. Once the Senate has either dealt with or stood all items of Government Business for a particular sitting, the Senate then moves on to Other Business. Leave would be required to return to an item of Government Business.

Other Business

Other Business consists of non-governmental items and is divided into the following categories:

- Bills – Messages from the House of Commons
- Senate Public Bills – Third Reading

¹⁴⁶ Speaker’s rulings, *Journals of the Senate*, February 7, 2007, pp. 1024-1026; and December 10, 1996, pp. 744-745.

¹⁴⁷ Rule 4-13(2). The “Other” heading, both under Government Business and Other Business, is used, for example, after an order is made for some future sitting that does not fall under one of the other categories – for example when the Senate decides to resolve itself into a Committee of the Whole on a future date. The consideration of a message from the House of Commons not dealing with a bill, and business arising from such a message, is also placed under this category.

¹⁴⁸ Speaker’s statements, *Journals of the Senate*, March 6, 2008, p. 648; and May 31, 2005, p. 944.

¹⁴⁹ Rule 4-13(3). Also see Speaker’s ruling, *Journals of the Senate*, June 16, 1998, p. 842.

- Commons Public Bills – Third Reading
- Private Bills – Third Reading
- Senate Public Bills – Reports of Committees
- Commons Public Bills – Reports of Committees
- Private Bills – Reports of Committees
- Senate Public Bills – Second Reading
- Commons Public Bills – Second Reading
- Private Bills – Second Reading
- Reports of Committees – Other
- Motions
- Inquiries
- Other

Within each category, various criteria determine the order, including how recently the items have been debated.

Items under Other Business are called by a clerk at the table in the order that they appear on the Order Paper. Leave of the Senate is required to deviate from this order. An item under Other Business can “stand” on the Order Paper for a maximum of 15 consecutive sitting days without being proceeded with, after which it will be dropped.¹⁵⁰

Notice Paper (Motions and Inquiries)

The Notice Paper contains all non-government notices of motions and notices of inquiries, and is divided into two sections: “Notices of Motions” and “Notices of Inquiries.” Unless there is a requirement to consider a case of privilege, an emergency debate or a question of privilege, once the Senate has completed its consideration of the Orders of the Day, the Speaker calls all items that appear on the Notice Paper. These motions and inquiries, for which notice has been given but which have not yet been moved or debated, remain on the Notice Paper for a maximum of 15 consecutive sitting days that they are called, after which they will be dropped.¹⁵¹ Once a motion or inquiry is debated and adjourned it is placed on the Order Paper under “Motions” or “Inquiries” in Other Business.

Adjournment

When the Senate has completed its business for the day as set out on the *Order Paper and Notice Paper*, the Deputy Leader of the Government usually moves a motion to adjourn the Senate. When the Senate adjourns other than to the next sitting, a separate motion must be adopted prior to the adjournment motion setting the date and time of the next sitting.¹⁵² Without such a motion, the Senate will automatically adjourn until the next sitting day under the Rules, at the normal sitting time.¹⁵³

¹⁵⁰ Rule 4-15(2). Also see Speaker’s rulings, *Journals of the Senate*, May 8, 2008, p. 1055; and February 27, 1992, pp. 554-555.

¹⁵¹ Rule 4-15(2). Also see Speaker’s ruling, *Journals of the Senate*, February 27, 1992, pp. 554-555.

¹⁵² Rules 5-5(g) and 5-8(1)(q). Motions concerning sitting times, days or adjournment periods (including motions to suspend the sitting) require notice and are debatable. See Speaker’s ruling, *Journals of the Senate*, June 28, 2005, pp. 1064-1065.

¹⁵³ Rule 3-1.

A motion to adjourn the Senate can be moved pursuant to rule 5-13(1) at any time during a sitting unless otherwise prohibited by the Rules or by an order of the Senate.¹⁵⁴ A senator may move this motion if recognized to participate in debate, but not on a point of order.¹⁵⁵ A motion to adjourn the Senate is non-debatable, and the Speaker must put the question forthwith.¹⁵⁶ If a standing vote is requested for such a motion, it cannot be deferred, and the bells to call in senators may ring for up to one hour.¹⁵⁷ If the Senate defeats a motion to adjourn the Senate, the same motion cannot be moved again until some intermediate proceeding has taken place.¹⁵⁸ An intermediate proceeding is defined in the Rules as any item that is recorded in the *Journals of the Senate*. Debate is not an intermediate proceeding.¹⁵⁹ All Orders of the Day that are not disposed of before the adjournment of the Senate stand on the Order Paper for the next sitting.¹⁶⁰

If the Senate is sitting at the time set out in the Rules for the adjournment of the sitting, the Speaker rises and declares the Senate adjourned. Similarly, if the Senate has adopted a sessional order to adjourn at a certain time, the Speaker declares the Senate adjourned at that time.

In some circumstances, the sitting goes beyond the ordinary time of adjournment. This occurs, for example, in the case of a deferred vote, a request for a standing vote, when notice has been given that either the Sovereign, the Governor General or a deputy will arrive at a specified time (e.g., for Royal Assent), or when a message regarding Royal Assent is anticipated. The adjournment may also be delayed when dealing with a time allocation motion or time-allocated Government Business, as well as for the consideration of cases of privilege or emergency debates.

6. CHAMBER DOCUMENTS

The Senate maintains exclusive control over its publications. Rule 14-5 provides that the publishing of any documents relating to the proceedings of the Senate shall be as ordered by the Senate. In accordance with the Constitution¹⁶¹ and the *Official Languages Act*,¹⁶² all chamber documents are published in English and French, and both versions are equally authoritative. Chamber documents include the *Journals of the Senate*, the *Order Paper and Notice Paper*, and the *Debates of the Senate*. With the exception of the *Order Paper and Notice Paper*, these documents are no longer produced in paper form, but are available electronically on the Internet (at sen.parl.gc.ca and parl.gc.ca).

¹⁵⁴ The *Rules of the Senate* prohibit the adjournment of the Senate under certain circumstances. Some examples include: during Senators' Statements (rule 4-2(7)), when a vote has been deferred (rule 9-10(7)), when the Senate is considering a time allocation order or an item of Government Business subject to time allocation (rules 7-3(1) and 7-4(1)), and when a message concerning Royal Assent has been received (rule 16-1(4)) or is anticipated (rule 16-1(8)).

¹⁵⁵ Rule 5-13(2).

¹⁵⁶ Rule 5-13(3).

¹⁵⁷ Rules 5-13(4) and 9-5.

¹⁵⁸ Rule 5-13(5).

¹⁵⁹ See definition of "intermediate proceeding" in Appendix I of the *Rules of the Senate*. Also see Beauchesne, 6th ed., §§385 and 386, pp. 112-113; and O'Brien and Bosc, p. 546.

¹⁶⁰ Rule 3-5(2). This would include any item under debate at the time a motion to adjourn the Senate is adopted.

¹⁶¹ *Constitution Act, 1982*, s. 18(1).

¹⁶² *Official Languages Act*, R.S.C., 1985, c. 31 (4th Supp.), ss. 4(3) and 5.

Journals of the Senate

The *Journals of the Senate* are the official record of Senate proceedings.¹⁶³ The Journals note all proceedings, decisions and votes taken by the Senate in the course of a sitting. They also contain attendance lists of senators who were present in the chamber and those in attendance to business pursuant to the Senators Attendance Policy.¹⁶⁴ The unrevised Journals are prepared based on the Clerk's scroll¹⁶⁵ and published after each sitting in a bilingual format. Any errors or omissions are noted in a corrigendum included at the end of a subsequent issue of the unrevised Journals at the earliest opportunity. The unrevised Journals are posted on the Internet (at sen.parl.gc.ca and parl.gc.ca) the morning after each sitting.

The Clerk of the Senate sends a certified copy of the *Journals of the Senate* after each sitting day to the Governor General.¹⁶⁶ The Rules allow the Senate to follow and take cognizance of the proceedings of the House of Commons by searching its *Journals*. Similarly, the House of Commons may search the *Journals of the Senate*.¹⁶⁷

At the end of each session, the unrevised Journals are edited and issued in bound volumes.¹⁶⁸ Proclamations relating to the appointment of a Governor General and to the opening, prorogation and dissolution of Parliament, as well as full indices and various lists of senators, committees, officers of the Senate, the Ministry and Senate Administration are included in the bound volume.

Order Paper and Notice Paper

The *Order Paper and Notice Paper* is the official agenda of the Senate. It sets out all items of business before the Senate. It is prepared in advance of each sitting based on decisions taken at the previous sitting.¹⁶⁹ The document is divided into two main sections, the Orders of the Day and the Notice Paper.

All items of business – bills, motions, reports and inquiries – are listed according to the various categories already reviewed in this chapter. As already noted, government notices of motions and notices of inquiries are included in the Orders of the Day, while notices for non-government motions and inquiries are included in the Notice Paper. With certain exceptions, such as a case of privilege, an emergency debate or a question of privilege, the Senate cannot consider an item that does not appear on the *Order Paper and Notice Paper* unless leave is granted.

An order of the day is any matter that has been set down by order of the Senate for consideration on a particular day (usually by way of a procedural motion). In the Senate, the Orders of the Day are distinguished from notices appearing on the Notice Paper, and have priority over them.¹⁷⁰

¹⁶³ The *Journals of the Senate* may be used as evidence in a court of law (Bourinot, pp.186-188). Also see *Parliament of Canada Act*, R.S.C., 1985, c. P-1, ss. 6 to 9.

¹⁶⁴ For additional information on the Senators Attendance Policy, see Chapter 2.

¹⁶⁵ A hand written record of proceedings kept by the Clerk for each sitting.

¹⁶⁶ Rule 14-3.

¹⁶⁷ Rule 14-4.

¹⁶⁸ Rule 14-6.

¹⁶⁹ A notable exception to this practice is that no *Order Paper and Notice Paper* is prepared for the first two sittings of a new Parliament, nor for the first sitting of a subsequent session of Parliament.

¹⁷⁰ Government notices of motions and inquiries are included on the Orders of the Day under Government Business. See rule 4-13(2).

Motions and inquiries are assigned a number chronologically based on when the notice was given, with separate sequences of numbers for Government Business and Other Business. To facilitate their tracking, they retain this number for the entire session. The assigned number can usually be found on the *Order Paper and Notice Paper*.¹⁷¹ The two exceptions are for a motion moved with leave and adopted the same day, and an inquiry debated with leave and concluded on the same day. These motions and inquiries receive a number as well, but do not appear on the *Order Paper and Notice Paper* since they are disposed of on the same day.

It is possible to discharge, postpone or revive an order of the day by means of a motion moved without notice.¹⁷² If an order of the day that has fallen off the Order Paper is revived, the item is set down for consideration at a future sitting.¹⁷³

Items of non-government business have an indication of the number of sittings they have been called and stood without being debated or adjourned by motion. If the item is called for 15 consecutive sittings without being debated or adjourned by motion, it will be dropped from the *Order Paper and Notice Paper* the next time it is called if it is once again neither debated nor adjourned. If, however, the item is debated or adjourned by motion without debate at any time, this “counter” drops back to zero.¹⁷⁴

Written Questions

Questions that seek statistical or other information not readily available, or questions to which a written response is desired, may be submitted to the Clerk of the Senate in writing for inclusion in the *Order Paper and Notice Paper*.¹⁷⁵ There is no requirement that a response be provided nor is there a time limit that must be respected. Written questions remain on the *Order Paper and Notice Paper* until answered by the government or until the end of the session. If a response is still desired in a subsequent session or Parliament, the written question must be resubmitted.¹⁷⁶ Responses that are prepared must be tabled in the Senate, and a copy is provided to the senator who asked the question.¹⁷⁷

Debates of the Senate

The *Debates of the Senate* are a substantially verbatim report of the proceedings of the Senate published after each sitting. They are not verbatim transcripts, but are prepared from the edited text of the transcript of proceedings called the “blues.”¹⁷⁸ The transcripts are edited for various reasons, including to reduce repetition and to increase clarity.¹⁷⁹ Senators may correct errors or make minor alterations based on the

¹⁷¹ The procedures followed for determining the exact order of items on the *Order Paper and Notice Paper* takes into account both the Rules and practice. See, for example, rules 4-13 and 4-14. Also see O’Brien, “The Senate Order Paper.”

¹⁷² Rule 5-7(k).

¹⁷³ For further information on reviving Orders of the Day in the Senate, see O’Brien, “Reviving Orders of the Day.”

¹⁷⁴ Rule 4-15(2).

¹⁷⁵ Rule 4-10(1). Such questions appear at the end of the *Order Paper and Notice Paper* and are published the day after their receipt and at the start of each subsequent sitting week, until answered.

¹⁷⁶ Speaker’s ruling, *Journals of the Senate*, May 9, 1996, pp. 191-193.

¹⁷⁷ Rule 4-10(2). See section on delayed answers for further information on responses to written questions. Also see Speaker’s ruling, *Journals of the Senate*, November 23, 2005, p. 1302.

¹⁷⁸ At one time the unedited transcripts of proceedings were produced on blue paper.

¹⁷⁹ Beauchesne, 6th ed., p. 18, §55.

blues before these are published as the Debates, but substantial corrections must be brought to the attention of the Senate and published as a correction. The Debates are published in separate English and French documents that are available on the parliamentary website the morning after a sitting. At the end of each parliamentary session, the Debates are further revised and combined with full indices to produce the bound volumes of the Debates.

Broadcasting

The audio feed of sittings of the Senate is broadcast over the internet, but proceedings are not usually televised. From time to time, however, the Senate permits the televising of portions of its proceedings, such as a meeting of a Committee of the Whole, a Speech from the Throne or a Royal Assent ceremony. Some committee meetings are televised on the Cable Public Affairs Channel (CPAC), which has an agreement with the Senate to record and broadcast committee proceedings. The audio feed of public committee meetings is also available over the internet. Public proceedings in the Senate or in any committee may be recorded or broadcast but only through the use of installed audio feed facilities.¹⁸⁰

7. MESSAGES BETWEEN THE TWO CHAMBERS

The Senate and the House of Commons communicate frequently with each other during the course of a parliamentary session through formal written messages. In addition to messages about bills, other messages can deal with the appointment of special joint committees, the membership of joint committees, joint resolutions, those dealing with joint addresses to the Crown, the request for the presence of a member or officer of one house to give evidence before the other house, and other matters connected with the proceedings of Parliament. It is the responsibility of the Clerk of the Senate to arrange for the transmission of messages to the House of Commons, as ordered by the Senate, and for the reception by the Senate of messages from the House of Commons.¹⁸¹ Senate messages are prepared by the Journals Office, signed by the Clerk of the Senate and transmitted to the House of Commons Journals Branch. When messages are received from the House of Commons, the Speaker reads them in the chamber at the earliest appropriate time,¹⁸² but proceedings in the Senate are not necessarily interrupted to do so. Any message from the House of Commons is published in the *Journals of the Senate* once received.¹⁸³

8. JOINT ADDRESSES

A Joint Address to Parliament is a speech made by a distinguished visitor, usually a foreign head of state or head of government, to members of the Senate and the House of Commons. Other distinguished guests may be invited to attend such as the Justices of the Supreme Court, Canadian and foreign dignitaries, and members of the diplomatic corps. These events are not part of the proceedings of Parliament, but rather constitute a gathering of parliamentarians for a special non-deliberative purpose.

¹⁸⁰ Rules 14-7(1) and (2). For further information on the broadcasting of committee proceedings, see Chapter 9.

¹⁸¹ Rule 16-2(1).

¹⁸² Rule 16-2(2).

¹⁸³ See, for example, *Journals of the Senate*, October 17, 2013, p. 34. For further information on messages relating to bills, see Chapter 7.

For logistical and space reasons, such addresses are held in the House of Commons Chamber. That house's proceedings are suspended for the occasion¹⁸⁴ The Joint Address is presided over by the Speakers of the Senate and of the House of Commons. The event is usually televised, and the Senate frequently appends the text of the address, along with the related remarks by Canadian parliamentarians (such as the Prime Minister and both Speakers), to the *Debates of the Senate*, by way of a motion.¹⁸⁵

¹⁸⁴ On one occasion the Joint Address was held outside in order to allow greater attendance.

¹⁸⁵ See, for example, *Journals of the Senate*, February 27, 2014, p. 451; September 27, 2011, p. 166; May 27, 2010, p. 442; and May 27, 2008, p. 1085.

APPENDIX: A Sitting of the Senate

Senators' Statements (including Tributes, if any)

ROUTINE PROCEEDINGS

- Tabling of Documents
- Presenting or Tabling of Reports from Committees
- Government Notices of Motions
- Government Notices of Inquiries
- Introduction and First Reading of Government Bills
- Introduction and First Reading of Senate Public Bills
- First Reading of Commons Public Bills
- Reading of Petitions for Private Bills
- Introduction and First Reading of Private Bills
- Tabling of Reports from Interparliamentary Delegations
- Notices of Motions
- Notices of Inquiries
- Tabling of Petitions

Question Period

Delayed Answers

ORDERS OF THE DAY

Government Business

- Bills – Messages from the House of Commons
- Bills – Third Reading
- Bills – Reports of Committees
- Bills – Second Reading
- Reports of Committees – Other
- Motions
- Inquiries
- Other

Other Business

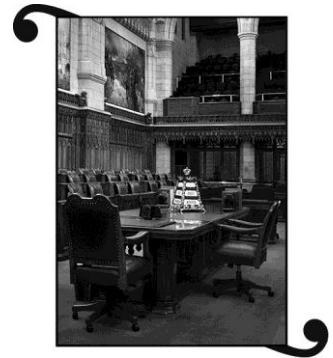
- Bills – Messages from the House of Commons
- Senate Public Bills – Third Reading
- Commons Public Bills – Third Reading
- Private Bills – Third Reading
- Senate Public Bills – Reports of Committees
- Commons Public Bills – Reports of Committees
- Private Bills – Reports of Committees
- Senate Public Bills – Second Reading
- Commons Public Bills – Second Reading
- Private Bills – Second Reading
- Reports of Committees – Other
- Motions
- Inquiries
- Other

NOTICE PAPER

- Notices of Motions
- Notices of Inquiries

CHAPTER 5

Rules of Debate



Parliamentary procedure is based on various principles and rights, including the right of the majority to dispatch business and the right of the minority to be heard. It seeks to balance the need to ensure the orderly transaction of public business with parliamentarians' right to be heard.¹ Debate is the process that gives senators an opportunity to express their views and have them placed on the record in the Debates of the Senate. This chapter begins with an overview of the principal rules governing debate, relating to matters such as language, attire and the use of exhibits or notes. It then lists the types and categories of motions and the process by which the Senate is duly notified of them and decides on them. Debate can also take place on other specific business, such as inquiries – which require no decision and are designed simply to increase awareness or provide information – emergency debates, certain committee reports and the federal budget. Finally, various ways of limiting the length of debate and moving more quickly to a decision are explained: the previous question, time allocation on government business and orders for the disposition of business.

The Senate is often flexible in the application of the various rules and practices governing debates. As stated by Speaker Molgat in a ruling on April 2, 1998:

It is my view that matters are presumed to be in order, except where the contrary is clearly established to be the case. This presumption suggests to me that the best policy for a Speaker is to interpret the rules in favour of debate by Senators, except where the matter to be debated is clearly out of order.²

1. CONDUCT AND CONVENTIONS OF DEBATE

Languages

Senators have the right to speak in either English or French,³ both in the Senate and in committee, and simultaneous interpretation must be provided.⁴ Although the use of other languages is not prohibited, it can create difficulties in terms of recording and transcription, and in ensuring understanding. The Senate

¹ See, for example, Bourinot, pp. 200–202; Beauchesne, 6th ed., §1, p. 3; and O'Brien and Bosc, pp. 249–250.

² *Journals of the Senate*, April 2, 1998, p. 579. Also see Speaker's rulings, *Journals of the Senate*, March 25, 2014, pp. 542-544; April 16, 2013, pp. 2075-2076; February 24, 2009, pp. 128-129; April 8, 2008, pp. 742-743; and February 20, 2007, pp. 1095-1098.

³ *Constitution Act, 1867*, s. 133; *Constitution Act, 1982*, s. 17; and *Official Languages Act*, R.S.C., 1985, c. 31 (4th Supp.), s. 4(1).

⁴ *Official Languages Act*, R.S.C., 1985, c. 31 (4th Supp.), s. 4(2).

allows the use of Inuktitut during proceedings.⁵ At times, leave has also been granted by the Senate to use other languages.⁶

Seating

Each senator has an assigned place in the Senate from which to speak.⁷ The whips determine the seating assignments for their respective caucuses. Factors such as membership in the Privy Council and seniority are often taken into account. General practice has been that senators who are not members of a recognized party have their seats designated by the Government Whip after consultation with the Opposition Whip. Changes in the seating plan are communicated to the Usher of the Black Rod, who has the seating plan printed and makes other necessary arrangements.

Addressing Other Senators

Senators address each other rather than the Speaker.⁸ Remarks are usually prefaced by “honourable senators” or similar expressions. Senators can also refer to each other by name. This is a notable difference from practice in the House of Commons, where members address the Speaker and normally refrain from using each other’s names.

Attire

Although there are no fixed rules for appropriate dress in the chamber, senators wear contemporary business dress. Senators are expected to wear attire in keeping with the decorum and dignity of a house of Parliament. Male senators normally wear jacket, shirt and tie, while female senators typically wear suits or other business attire.⁹ The Speaker and Speaker *pro tempore*, as well as the table officers, wear distinctive black robes and traditional law court clothing.

⁵ In 2008, the Senate agreed to a proposal of the Standing Committee on Rules, Procedures and the Rights of Parliament to allow the use of Inuktitut during debate. A senator wishing to speak in that language must give reasonable notice in order to allow the arrangement of simultaneous interpretation. Such notice is given to the Chamber Operations and Procedure Office. Where possible, a copy of the remarks should be provided in English and French to facilitate interpretation. Such interventions are interpreted into both official languages. See the fifth report of the committee presented on April 9, 2008 (*Journals of the Senate*, pp. 759 and 764-770), and adopted on May 14, 2008 (*Journals of the Senate*, p. 1071). For examples of the use of Inuktitut in the Senate, see *Debates of the Senate*, June 10, 2014, pp. 1766-1767; February 8, 2012, pp. 1113-1114; December 9, 2010, pp. 1558-1559; June 15, 2010, pp. 768-769; and June 9, 2010, p. 721.

⁶ In a ruling, the Speaker suggested that when a senator wishes to speak in a third language “an English and French translation [should] be provided to the Senate Chamber staff well in advance of the sitting to allow for distribution to all Senators in the Chamber in a similar way that Speaker’s rulings are distributed. Nonetheless, it is important to bear in mind that when a third language is used in the Chamber, meaningful debate is rendered more difficult given that few Senators, if any, will understand what is being said, and the ability to provide English and French interpretation remains a challenge” (*Journals of the Senate*, September 26, 2006, p. 445).

⁷ Rule 6-1.

⁸ Rule 6-1.

⁹ O’Brien and Bosc, p. 605. Also refer to Erskine May, 24th ed., p. 451. The British restriction on wearing decorations is not applied in the Senate, provided that they are not intrusive.

Sharp and Taxing or Unparliamentary Language

Senators may be called to order by the Speaker for using unparliamentary language — that is to say “personal, sharp or taxing.”¹⁰ There is no definitive list of words or expressions that are deemed unparliamentary. Determination of what constitutes unparliamentary language is left primarily to the judgment of the Speaker and the sense of the Senate. The circumstances and tone of the debate in question play important roles in this determination.¹¹ In addition, parliamentary practice and custom dictate that the presence or absence of a member should not be alluded to during proceedings.¹²

Reflections on Certain Persons and Institutions

Parliamentary practice does not accept disrespectful references to the Queen, the Royal Family, the Governor General and judges of the courts.¹³ Similarly, “[d]isrespectful reflections on Parliament as a whole, or on the House [of Commons] and the Senate individually are not permitted.”¹⁴ The need for prudence when referring to the House of Commons is manifested by the general — although not obligatory — practice of referring to that house as “the other place.”¹⁵

References to Members of the Public

Senators enjoy an absolute freedom of speech when it comes to remarks within the Senate and in committee. Because of this great privilege, against which there is no recourse for any person who is not a senator and who may be wronged in debate, “referring by name to persons who are not Members of Parliament and who do not enjoy parliamentary immunity” is discouraged “except in extraordinary circumstances when the national interest calls for this.”¹⁶ In the House of Commons,

The Speaker has ruled that Members have a responsibility to protect the innocent, not only from outright slander, but from any slur directly or indirectly implied, and suggested that Members avoid as much as possible mentioning by name people from outside the House who are unable to reply in their own defence.¹⁷

¹⁰ Rule 6-13(1).

¹¹ See Speaker’s rulings, *Journals of the Senate*, October 2, 2012, p. 1586; and December 16, 2011, pp. 798-799. Also see O’Brien and Bosc, p. 619.

¹² O’Brien and Bosc, p. 614.

¹³ O’Brien and Bosc, p. 616; and Erskine May, 24th ed., pp. 443-444.

¹⁴ O’Brien and Bosc, p. 614. Also see Erskine May, 24th ed., pp. 444-445. Also see the Speaker’s ruling of March 25, 2014 (*Journals of the Senate*, pp. 542-544), where the Speaker noted that “[t]he basic independence and mutual respect of each chamber must be adhered to. Comments about the actions of one house or its members ought to be framed with care, so as not to unduly stretch or violate the principle of comity” (p. 543).

¹⁵ See, for example, Speaker’s rulings, *Journals of the Senate*, March 25, 2014, pp. 542-544; and December 16, 2011, pp. 798-799.

¹⁶ O’Brien and Bosc, p. 616.

¹⁷ O’Brien and Bosc, pp. 616-617.

Moving Around the Senate and Holding Private Conversations

The Rules state that no one is to go between the table and the Speaker's chair, or between the senator speaking and the Speaker's chair.¹⁸ Senators bow to the Speaker's chair when entering, leaving or crossing the chamber.¹⁹ Private conversations that disrupt proceedings are not allowed, and senators who engage in such conversations may be called to order by the Speaker.²⁰ Finally, the use of electronic devices that produce sounds is prohibited on the floor, outside the bar, and in the galleries. Hearing aids are allowed.²¹

Sub Judice Convention

The *sub judice* convention is a voluntary restraint by parliamentarians from discussing matters that are before the courts. Its purpose is to ensure a reasonable balance between the right to a fair trial and parliamentarians' right to free speech.²² The convention has been generally applied in criminal cases before judgment has been rendered and during any appeal. With respect to civil cases, no clear practice has emerged. Generally, however, the convention is limited in application to bodies designated by statute as "courts of record."

Because the *sub judice* convention has not been codified and is voluntary, the Speaker's jurisdiction over the matter is not entirely clear. The need to protect free speech must be balanced against the rights of the person undergoing trial.²³

Relevance and Repetition²⁴

A senator's speech should be relevant to the item under debate. Otherwise, the Speaker may call the senator to order. There is no easy and clear definition of relevance, and the Speaker usually gives senators a degree of latitude in their speeches.

A closely linked rule of debate, the rule of repetition, seeks to prevent the unnecessary waste of the Senate's time. Once again, the Speaker allows a level of latitude on this point. "It is not always possible to judge the relevance (or the repetition) of a Member's remarks until he or she has spoken at some length or even completed his or her remarks."²⁵

Quotations from Parliamentary Debates

It is out of order to quote a speech made in the House of Commons during the current session, unless it is

¹⁸ Rules 2-7(1)(b) and (c).

¹⁹ Rule 2-7(1)(a).

²⁰ Rule 2-8(a).

²¹ Rule 2-8(b).

²² See O'Brien and Bosc, pp. 627-631; and Beauchesne, 6th ed., §§505-511, pp. 153-154. Also refer to Steele, pp. 5-15.

²³ O'Brien and Bosc, p. 630. The previously cited article by Steele offers examples of the application of the convention that the author considers "proper" or "improper."

²⁴ On this issue, refer to O'Brien and Bosc, pp. 620-627. Also see Erskine May, 24th ed., pp. 438 and 452.

²⁵ O'Brien and Bosc, p. 620.

a speech of a minister in relation to government policy.²⁶ A speech in the House of Commons from a previous session, whether from a minister or not, may be quoted. Quotations from speeches in the Senate during the current session could be challenged under the rules of repetition and relevance.

Use of Exhibits and Notes

Parliamentary usage does not allow the use of exhibits –physical objects used with the goal of reinforcing a point.

Speakers have consistently ruled out of order displays or demonstrations of any kind used by Members to illustrate their remarks or emphasize their positions. Similarly, props of any kind, used as a way of making a silent comment on issues, have always been found unacceptable in the Chamber.²⁷

In addition, both Canadian and British authorities generally discourage the reading of speeches, while accepting the use of reference material such as notes on paper or a tablet computer, and books.²⁸ This “is to maintain the cut and thrust of debate, which depends upon successive speakers meeting in their speeches to some extent the arguments of earlier speeches; debate is more than a series of set speeches prepared beforehand without reference to each other.”²⁹ There is not, however, an absolute prohibition on this, even in theory. “The rule against reading speeches is ... relaxed for opening speeches or whenever there is special reason for precision, as in important ministerial statements, notably on foreign affairs, in matters involving agreements with outside bodies or in highly technical bills.”³⁰

In the Senate, the Speaker has noted that “[n]otes may be necessary for prepared interventions, but are generally not appropriate for remarks that should be extemporaneous, such as supplementary questions.”³¹ In practice, therefore, this limitation is rarely enforced.³² When senators do have notes or texts for speeches, they are encouraged to send them to the Chamber Operations and Procedure Office in advance. Such material is sent to Debates Services and to the parliamentary interpreters to assist them with their work, and it is treated in confidence. After a senator has completed a speech, the pages collect any notes or materials used and send them to Debates Services to assist in the preparation of the *Debates of the Senate*.

²⁶ Rule 6-6. A Speaker’s ruling of December 9, 2004 (*Journals of the Senate*, pp. 285-287) concluded that a speech given by a parliamentary secretary in the Commons, being in some cases an expression of government policy, may sometimes be quoted under this rule.

²⁷ O’Brien and Bosc, p. 612; quoted in a ruling of the Speaker of the Senate, *Journals of the Senate*, November 6, 2012, pp. 1696-1697.

²⁸ O’Brien and Bosc, p. 607; Erskine May, 24th ed., pp. 430-431; and Speaker’s ruling, *Journals of the Senate*, November 6, 2012, pp. 1696-1697. Such tools must not be disruptive and must not produce sound (rule 2-8(b)).

²⁹ Erskine May, 24th ed., p. 430.

³⁰ Erskine May, 24th ed., p. 430.

³¹ Speaker’s ruling, *Journals of the Senate*, November 6, 2012, pp. 1696-1697.

³² Speaker’s ruling, *Journals of the Senate*, December 9, 2004, p. 287.

Senator Called to Order

A senator who is called to order by the Speaker during debate must stop speaking. The senator may not speak further, except on the point of order, until the issue has been resolved.³³

2. DEBATE ON MOTIONS

The Rules define a motion as a “proposal made for the purpose of eliciting a decision of the Senate or a committee.”³⁴ The Senate indicates its decision on a motion by either adopting or defeating it.³⁵ If the adopted motion regulates the Senate’s affairs or gives an instruction, it becomes an order of the Senate. If the adopted motion does not require any action to be taken but solely expresses the opinion of the Senate, it becomes a resolution of the Senate.³⁶

The Rules distinguish between a motion and a question. Except in relation to Question Period or a question of privilege, a question is defined as “[t]he matter before the Senate or a committee for consideration and decision.”³⁷ To place such a proposal before the Senate, a senator must move a motion. The Speaker then uses some variant of the formula “It is moved by the Honourable Senator _____, seconded by the Honourable Senator _____,³⁸ that...,” followed by the text of the motion. If the motion is debatable, a debate can take place before a decision is taken.

Types of Motions

There are various ways of classifying motions, depending on the procedural authorities consulted.³⁹ The following arrangement of motions relate to the practices and usages in the Senate.

A. *Debatable and Non-debatable Motions*

There is a fundamental distinction between motions that can be debated and those that must be decided without any debate. Rule 5-8(1) lists debatable motions.⁴⁰ All other motions are non-debatable.⁴¹ Non-debatable motions cannot be amended,⁴² and a vote on a non-debatable motion cannot be deferred.⁴³

Two important types of non-debatable motions — to adjourn the Senate and to adjourn debate — are discussed in further detail in the section on dilatory motions below.

³³ Rule 2-7(4).

³⁴ See definition of “motion” in Appendix I of the *Rules of the Senate*.

³⁵ For more information on voting, see Chapter 6.

³⁶ O’Brien and Bosc, p. 528.

³⁷ See definition of “question” in Appendix I of the *Rules of the Senate*.

³⁸ A seconder is not required for a motion in committee (rule 12-20(1)(b)).

³⁹ See, for example, O’Brien and Bosc, p. 531; Beauchesne, 6th ed., §559, pp. 173-174; Erskine May, 24th ed., p. 392; and Bourinot, Chapter IX.

⁴⁰ See Appendix A to this chapter: “Debatable Motions in the Senate.”

⁴¹ Rule 5-8(3). See Appendix B to this chapter: “Non-debatable Motions in the Senate.”

⁴² Rule 5-8(3).

⁴³ Rules 5-13(4), 4-6(2), and 9-10. For further information on the deferral of votes, see Chapter 6.

B. Substantive, Subsidiary, Procedural and Privileged Motions

The following four categories of motions have different levels of dependency on other motions or proceedings before the Senate.⁴⁴

1. Substantive Motions

A substantive motion is one that can stand on its own. The Rules define a substantive motion as a motion “that stands independently of other business, in that it does not relate to any other proceeding or order of the day before the Senate.”⁴⁵ Such a motion seeks to bring forth an opinion or action of the chamber. Substantive motions require notice⁴⁶ and are debatable and amendable.

2. Subsidiary Motions

A subsidiary motion, sometimes called an ancillary motion, is dependent on some other order or proceeding already before the Senate and is used to move the item of business forward. Subsidiary motions include, notably, the motions for second and third reading of a bill, and those to adopt a report that has been placed on the Orders of the Day for consideration and to refer the question under debate to committee.⁴⁷ Subsidiary motions are debatable and amendable.

3. Procedural Motions

A procedural motion is “[a] non-debatable motion dealing with a routine matter necessary to move an item of business forward. A procedural motion gives a direction as to how or when to deal with a matter before the Senate.”⁴⁸ This would include motions for placing a bill on the Orders of the Day for second or third reading, or for referring a bill to committee.

4. Privileged Motions

Privileged motions arise from and depend on the matter under debate. They are not stand-alone motions (substantive motions), and they are not used as a vehicle to move forward an item of business (subsidiary motions) or to give formal direction as to the time of the next stage (procedural motions). Instead, a privileged motion arises from or depends on another matter under debate. Such a motion can be moved without notice when the motion to which it relates is under debate, and it then takes priority over the original motion.⁴⁹ This category of motion should be distinguished motions relating to questions of privilege.

The two types of privileged motions are amendments and superseding motions.

⁴⁴ Appendix I of the *Rules of the Senate* provides definitions of the different types of motions under the heading “motion.”

⁴⁵ See definition of “substantive motion” under “motion” in Appendix I of the *Rules of the Senate*.

⁴⁶ Rule 5-5(j).

⁴⁷ See definition of “subsidiary motion” under “motion” in Appendix I of the *Rules of the Senate*. Also see O’Brien and Bosc, p. 532; and Erskine May, 24th ed., p. 392.

⁴⁸ See definition of “procedural motion” under “motion” in Appendix I of the *Rules of the Senate*.

⁴⁹ See definition of “privileged motion” under “motion” in Appendix I of the *Rules of the Senate*. Also see O’Brien and Bosc, p. 532.

Amendments

A motion in amendment may be moved during the course of debate and proposes that the motion under consideration be modified by replacing, removing or adding words. Only one amendment can normally be before the Senate at a time, and it must be disposed of before the main motion (as amended, if the amendment carries) can be debated again.⁵⁰

Various practices govern the receivability of amendments.⁵¹ These include that an amendment:

- cannot render the main motion unintelligible or inconsistent;
- must be relevant to the main motion;
- cannot raise a question that is, in substance, the same as one on which the Senate has already made a decision during the current session;
- cannot conflict with amendments to the main motion already agreed to;
- cannot anticipate a notice of motion on the Notice Paper; and
- cannot directly negative the main motion.

The senator who moved the main motion cannot modify it without leave of the Senate.⁵²

A senator who moves an amendment is considered to have spoken to it as well as to the main motion, but all other senators — whether they have spoken to the main motion or not — can speak to the motion in amendment.⁵³

It is also possible to propose a subamendment (an amendment to an amendment). The practices governing amendments to a main motion generally apply to a subamendment. Beauchesne explains that:

The purpose of a sub-amendment (an amendment to an amendment) is to alter the amendment. It should not enlarge upon the scope of the amendment but it should deal with matters that are not covered by the amendment. If it is intended to bring up matters foreign to the amendment, the [senator] should wait until the amendment is disposed of and move a new amendment.⁵⁴

Subamendments cannot be further amended.⁵⁵

Superseding Motions

A superseding motion proposes to replace (supersede) the question before the Senate. “Such motions may be moved without notice when a debatable motion is under consideration, and require that the Senator moving the motion have been recognized to speak (they cannot be moved if a Senator rises on a point of order). There are two kinds of superseding motions ... the previous question and dilatory motions.”⁵⁶

⁵⁰ The Senate has developed a process whereby multiple amendments may, with leave, be considered simultaneously. This process, known as “stacking” amendments, is discussed later in this chapter.

⁵¹ O’Brien and Bosc, pp. 533-534.

⁵² Rule 5-10(1).

⁵³ O’Brien and Bosc, p. 600; and Bourinot, p. 345. Also see *Debates of the Senate*, June 13, 2012, p. 2104.

⁵⁴ Beauchesne, 6th ed., pp. 176-177, §580(1). For an example of a subamendment that was rejected by the Speaker because it attempted to enlarge upon the scope of the amendment, see Speaker’s ruling, *Journals of the Senate*, May 21, 2013, p. 2536.

⁵⁵ O’Brien and Bosc, pp. 534-535.

⁵⁶ See definition of “superseding motion” under “motion” in Appendix I of the *Rules of the Senate*.

Previous Question

The previous question is a motion “That the question be now put.”⁵⁷ It is discussed in detail later in this chapter in the section on “Curtailing Debate and Expediting Decisions.”

Dilatory Motions

Dilatory motions propose to dispose of the motion under debate, either for that sitting or permanently. Such motions can be moved without notice and are not debatable.⁵⁸ While dilatory motions are usually thought of as delaying debate, they can also be used to advance business by forcing the Senate to move to the next item on the Order Paper. Dilatory motions include motions:

- to adjourn the Senate;
- to adjourn debate; and
- to postpone consideration of a question until a certain day.

The motion to adjourn the Senate is one important type of dilatory motion is. Such a motion “may only be moved by a Senator who is recognized to speak in a debate, and may not be moved on a point of order.”⁵⁹ The motion is non-debatable. If a standing vote is requested the bells ring for one hour, unless there is leave for a shorter bell.⁶⁰ A motion to adjourn the Senate is only debatable when it is moved as part of the emergency debate process, discussed later in this chapter. A motion to adjourn the Senate is always in order, unless specifically prohibited in the Rules⁶¹ or by order of the Senate.

A motion to adjourn a debate is a motion to postpone the debate to the next sitting of the Senate. In the case of non-Government Business, the Order Paper indicates the senator in whose name the item stands adjourned.⁶² A motion to adjourn debate cannot be moved when a motion to allocate time for a government motion is under debate,⁶³ or when a motion to which time has been allocated is under debate.⁶⁴

⁵⁷ See rule 6-9(1).

⁵⁸ See definition of “dilatory motion” under “motion” in Appendix I of the *Rules of the Senate*. Also see rule 4-6(2). On the subject of dilatory motions generally, refer to O’Brien and Bosc, pp. 539-546.

⁵⁹ Rule 5-13(2).

⁶⁰ Rules 5-13(4) and 9-5.

⁶¹ For example, a motion to adjourn the Senate cannot be moved when a deferred standing vote is scheduled (rule 9-10(7)), when a motion to which time has been allocated is under debate (rule 7-4(1)), when a motion to allocate time for a government motion is under debate (rule 7-3(1)(d)), when a message has been received that the Sovereign, the Governor General or a deputy will arrive in the Senate (rule 16-1(4)), or when receipt of a message concerning a written declaration of Royal Assent is anticipated (rule 16-1(8)).

⁶² Rule 6-10(2). For further information on the adjournment of debate, see later in this chapter.

⁶³ Rule 7-3(1)(a).

⁶⁴ Rule 7-4(1)(a).

Two motions to adjourn the Senate cannot be moved in succession if they are only separated by debate; some type of intermediate proceeding must be recorded in the Journals.⁶⁵ Normal practice is also to apply this prohibition to two successive motions to adjourn debate.⁶⁶ However, motions to adjourn the Senate and to adjourn debate can be moved one after the other.

Process for Dealing with Motions

The process for the consideration of a motion entails a series of steps, as follows:

1. a senator gives notice of the motion, if required to do so;
2. the senator moves the motion, which must be seconded by another senator;⁶⁷
3. the Speaker reads the motion, putting the question before the Senate;
4. the motion may be debated, if the Rules so allow;
5. the motion may be amended, if the Rules so allow;
6. at the conclusion of debate, the Speaker again reads the motion to the Senate, with any amendments that may have been adopted; and
7. the Senate decides whether it adopts or rejects the motion (a standing vote may be requested).

Not all motions have to pass through all of these steps. For example, subsidiary motions do not require notice, and even debatable motions are often decided without debate. If a motion has not yet been moved, the senator who gave notice of it can withdraw it by making a statement to that effect in the Senate when the item on notice is called; leave is not required in such a case.⁶⁸ If, however, the motion has been moved, then leave of the Senate is required to withdraw it.⁶⁹

A. Notice

The purpose of notice is to give senators time to prepare for debate. Depending on the kind of motion, the Rules specify whether one day's notice (rule 5-5), two days' notice (rule 5-6(1)) or no notice (rule 5-7) is required.⁷⁰

For motions requiring notice, a senator must give notice during Routine Proceedings,⁷¹ under the heading "Government Notices of Motions" for government motions, or under the heading "Notices of Motions" for all other motions. A notice of motion must be submitted in writing and signed. After being read aloud by the senator, a page brings it to the table.⁷² One senator may give a notice for an absent senator.⁷³ The usual practice is for notices of motion to be submitted in both English and French. Senators are encouraged to inform the Chamber Operations and Procedure Office of any motions of which they plan to give notice or to move. If necessary, the office can arrange for translation, and all such information

⁶⁵ Rule 5-13(5). Debate by itself does not constitute an intermediate proceeding. See definition of "intermediate proceeding" in Appendix I of the *Rules of the Senate*.

⁶⁶ O'Brien and Bosc, p. 546; and Beauchesne, 6th ed., §385, p. 112. Also see *Debates of the Senate*, February 28, 2008, pp. 882-883.

⁶⁷ Rule 5-11.

⁶⁸ Rule 5-10(2).

⁶⁹ Rule 5-10(1).

⁷⁰ In one situation – rescission of a decision – five days' notice is required (rule 5-12).

⁷¹ In certain circumstances, a notice of motion may be given at other times during a sitting. See, for example, rules 7-2(2) and 10-11(2)(a).

⁷² Rule 5-1.

⁷³ Rule 5-3.

is treated in confidence. To assist in the conduct of business during the sitting, the Chamber Operations and Procedure Office will, as far as possible, inform the Speaker ahead of time of any notices of motion expected.

A motion cannot contain a preamble, unless it is for a resolution to amend the Constitution.⁷⁴ A motion also cannot be the same in substance as one that has already been decided during the same session of Parliament.⁷⁵ A notice containing unparliamentary language, or that is contrary to a rule or an order of the Senate, can be disallowed by the Speaker.⁷⁶

Notice periods are calculated based on all potential sitting days under the Rules and any orders in effect at the time the notice is given. The calculation is not based only on the days that the Senate actually sits. In some cases, therefore, weekdays on which the Senate does not sit may count towards fulfilling the notice requirement.⁷⁷

B. Leave of the Senate

Notice requirements can be set aside by leave of the Senate. Leave signifies that permission has been granted by the Senate without any objection being raised in the chamber.⁷⁸ If leave is sought to move a motion without the required notice, the Speaker verifies that no senator present objects. If leave is granted, the motion can then be moved and dealt with normally. If leave is not granted, the motion cannot be put until the notice requirements are met. A request for leave to move a motion does not have to be made under the headings for “Government Notices of Motions” or “Notices of Motions.” Such requests are often made during consideration of the Orders of the Day or while the Senate is going through items on the Notice Paper.

C. Moving and Seconding

Once the necessary notice period has been satisfied, a senator can move a motion by standing and saying “I move the motion standing in my name” when it is called. A motion standing in one senator’s name may be moved by another senator if it is generally understood that the senator moving the motion is doing so with the agreement of the senator in whose name it stands.

If a motion does not require notice, a senator can simply stand at the appropriate time and move it.

All motions moved in the Senate must be seconded.⁷⁹ The seconder must be present in the chamber when the Speaker first reads the question to the Senate. If, as is usually the case, the senator moving the motion does not specify a seconder, the Speaker will choose another senator from those present. A senator can

⁷⁴ Rule 5-9.

⁷⁵ Rule 5-12. For further information on the ‘same question rule’, see later in this chapter.

⁷⁶ Rule 5-4.

⁷⁷ See definition of “notice period” in Appendix I of the *Rules of the Senate*. Also see *Debates of the Senate*, December 4, 1997, p. 566.

⁷⁸ Rule 1-3(1). Also see definition for “leave of the Senate” in Appendix I of the *Rules of the Senate*.

⁷⁹ Rule 5-11.

decline to second a motion, in which case another senator will typically be selected.⁸⁰ Some motions, such as the motion to appoint the membership of the Standing Committee on Ethics and Conflict of Interest for Senators, require a specific seconder.⁸¹

D. Debate

Debate on a motion begins when a senator moves a motion and the Speaker reads it, thus placing it before the Senate. “The essential characteristic of debate is that it is a process whereby the senators participating seek to support their own position and to bring others around to it.”⁸² Senators who wish to speak must stand in their places and be recognized by the Speaker. Unlike members of the House of Commons, senators do not address their remarks to the Speaker. Instead, senators speak directly to their colleagues,⁸³ usually beginning with the expression “honourable senators.” Ordinarily the senator who proposes the motion speaks first, followed by other senators wishing to speak on the matter. If, however, the mover and seconder do not speak at the beginning of debate, they may do so later.⁸⁴

During debate on a bill the Speaker normally calls on the sponsor of the bill to speak first, followed by the critic.⁸⁵ Usual practice is for the Speaker to recognize senators alternating between the government and the opposition sides. Debate on an inquiry is typically less structured and the Speaker recognizes any senators interested in speaking on the item.

The government and opposition leaderships may organize lists of senators who want to participate in a debate, in particular on Government Business. Senators wishing to take part in the debate often consult their party leadership. Senators may also indicate their desire to participate in debate directly to the Speaker or by simply rising in their place in the Senate at the appropriate time.

The list of senators who are expected to speak on an item during the sitting is usually followed by the Speaker. However, the list is a guide, and it has no binding authority. The Speaker may recognize senators in a different order or senators who are not on the list. Only one senator shall have the floor at a time.⁸⁶

Two or More Senators Rising at Once

If two or more senators rise to speak at the same time, the Speaker calls upon the senator who, in the Speaker’s opinion, rose first.⁸⁷ Before that senator begins speaking, another senator may rise on a point of order and move that one of the senators who rose to speak “be now heard” or “do now speak.” That motion is decided without debate or amendment.⁸⁸ If the motion is adopted, the designated senator has the

⁸⁰ In one case, no senator was willing to second a motion to place a bill on the Orders of the Day for second reading, so the necessary question could not be put (*Debates of the Senate*, March 3, 2009, p. 290).

⁸¹ In the case of the motion to appoint the membership of the Standing Committee on Ethics and Conflict of Interest for Senators, the *Rules of the Senate* specifically require that the Leader of the Government move the motion and that the Leader of the Opposition second it (rule 12-27(1)).

⁸² Speaker’s ruling, *Journals of the Senate*, May 17, 2007, p. 1549.

⁸³ Rule 6-1.

⁸⁴ Rule 6-11.

⁸⁵ See Appendix I of the Rules for the definitions of sponsor and critic of a bill.

⁸⁶ Rule 6-4(1).

⁸⁷ Rule 6-4(1).

⁸⁸ Rule 6-4(2).

floor until the time expires for that intervention.⁸⁹ If the motion is rejected, “the Senator who was first recognized by the Speaker shall be entitled to speak.”⁹⁰ Another motion to the same effect cannot be received until the senator who was recognized to speak has finished speaking.⁹¹

Yielding the Floor and Questions

A senator who has the floor to speak may yield it to another senator.⁹² The senator yielding the floor will not be recognized to speak again,⁹³ and the senator to whom the floor was yielded is recognized only for the balance of time that remained when the first senator yielded the floor, up to a maximum of 15 minutes.⁹⁴ The senator to whom the floor is yielded is considered to have spoken in the debate.⁹⁵

The above only applies if the floor is yielded to allow another senator to speak to an issue. If the yielding was solely to allow another senator to ask a question, the senator first recognized will be again recognized in order to respond, and the whole exchange is considered to be part of that senator’s time. The senator who asked the question is not considered to have spoken in the debate.⁹⁶

In practice, the process for questions and comments functions quite informally. At the end of a speech, it is common for another senator to ask whether the senator who spoke will accept questions. The acceptance of questions is voluntary, and can only take place if the senator who is speaking still has time left, since any questions or comments on a speech are included in the time of the senator speaking.⁹⁷

Time Limits

There are various rules governing the length of time different senators may speak. These are outlined in Appendix C. A clerk at the table records the time taken by each senator in a debate and the Speaker informs the senator when the time has expired.⁹⁸ The senator may ask for leave to extend the time for speaking.⁹⁹ Such leave, when granted, does not automatically place any limits on the extension. The Speaker has ruled, however, that limits may be placed on leave to extend time.¹⁰⁰ In recent years, extensions have almost invariably been limited to five minutes.

The sponsor and the critic of a bill have 45 minutes each, rather than the 15 usually allowed for speeches.¹⁰¹ Appendix I of the Rules defines the sponsor as:

⁸⁹ Rule 6-4(3).

⁹⁰ Rule 6-4(3).

⁹¹ Rule 6-4(3).

⁹² Rule 6-5(1). See, for example, *Debates of the Senate*, February 28, 2012, p. 1196.

⁹³ Rule 6-5(2).

⁹⁴ Rule 6-5(1).

⁹⁵ Rule 6-5(2).

⁹⁶ Rule 6-5(3).

⁹⁷ Rule 6-5(3).

⁹⁸ Rule 6-3(2).

⁹⁹ For an example of a senator requesting leave to extend their speaking time and the denial of such leave, see *Debates of the Senate*, April 30, 2013, p. 3814.

¹⁰⁰ Speaker’s rulings, *Journals of the Senate*, April 24, 2007, pp. 1361-1364; and May 11, 2000, p. 593.

¹⁰¹ Rules 6-3(1)(b) and (c).

The lead Senator speaking for a bill. In the case of a Government Bill, the sponsor will typically be a government member and will normally move the motions for second and third reading and speak first during debate. In the case of a non-Government Bill, the sponsor will introduce the bill if it originates in the Senate, guide it through the different stages, and usually appear as a witness in committee to speak in support of the bill.

The critic is:

The lead Senator responding to the sponsor of the bill. The critic is designated by the Leader or Deputy Leader of the Government (if the sponsor is not a government member) or the Leader or Deputy Leader of the Opposition (if the sponsor is a government member). While the critic is often the second Senator to speak to a bill this is not always the case.

Speaking Only Once

As a general practice, a senator may only speak once to a question or an inquiry.¹⁰² If a part of a speech was misunderstood, the senator may seek leave to speak again, for a maximum of five minutes. This additional period is provided “to explain any misunderstanding arising from the original intervention. No new matter shall be introduced while explaining the misunderstanding.”¹⁰³

Same Question Rule

A basic principle of parliamentary procedure is that a house should not consider the same matter a second time in the same session if it has already made a decision on it. This principle dates from centuries past; on April 2, 1604, the English House of Commons declared “[t]hat a Question, being once made, and carried in the Affirmative, or Negative, cannot be questioned again, but must stand as a Judgement of the House.”¹⁰⁴ Shortly thereafter, on May 31, 1610, the House of Commons applied this principle to the passage of bills, by declaring that “[n]o Bill of the same Substance ... be brought in the same Session.”¹⁰⁵

In the Senate the same question rule for motions is embodied in rule 5-12:

Except as otherwise provided, a motion shall not be moved if it is the same in substance as any question that has already been adopted or defeated during the same session, unless the decision has been previously rescinded by motion following a notice of five days.¹⁰⁶

¹⁰² Rule 6-2(1). An amendment to a motion is a new question and entitles a senator to speak again on that question. In relation to the right of reply, see later in this chapter.

¹⁰³ Rule 6-2(2).

¹⁰⁴ U.K. Commons Journals, vol. i, p. 162.

¹⁰⁵ U.K. Commons Journals, vol. i, p. 434.

¹⁰⁶ Under the Rules from 1915 to 2012, a decision of the Senate could only be rescinded on five days' notice if at least two-thirds of the Senators present voted in favour. There were no known cases of this special majority being required, with rescission occurring either by leave or without a standing vote.

For bills, rule 10-9 provides that:

When a bill originating in the Senate has been passed or defeated, no new bill with the same object shall originate in the Senate during the same session.

Various Speaker's rulings have addressed the meaning of these provisions.¹⁰⁷ Although Senate precedents are not conclusive, the same question rule has sometimes been interpreted in a narrow sense. On November 19, 1998, for example, a ruling noted that "[o]ur parliamentary jurisprudence requires that we have identical texts for rule [5-12] to apply."¹⁰⁸ Another ruling has also noted that even the passage of time may, in some cases, be sufficient to lead to the conclusion that a motion is not "the same in substance."¹⁰⁹

A certain level of flexibility therefore exists in the application of the same question rule. This is supported by reference to international practice. In the modern U.K. Parliament, "[w]hether the second motion is substantially the same as the first is finally a matter for the judgment of the Chair."¹¹⁰ Even in the early 19th century, John Hatsell, while advocating strict adherence to the same question rule, had recognized "that this rule is not to be so strictly and verbally observed, as to stop the proceedings of the House: It is rather to be kept in substance than in words; and the good sense of the House must decide, upon every question, how far it comes within the meaning of the rule."¹¹¹

The Australian Senate also has a narrow interpretation of the same question rule:

[It] is seldom applied, because it seldom occurs that a motion is exactly the same as a motion moved previously. A motion moved in a different context, for example, as part of a different "package" of proposals, is not the same motion even if identical in terms to one already moved. Even if the terms of a motion are the same as one previously determined, because of elapse of time it almost invariably has a different effect because of changed circumstances and therefore is not the same motion. There may also be different grounds for moving the same motion again.¹¹²

The same question rule does not come into play when a bill proposes to amend or repeal an act passed earlier in the same session of Parliament.¹¹³

Rule of Anticipation

Under the rule of anticipation, which is no longer strictly applied in modern parliamentary practice, "proceedings [whether motions or other] could not anticipate a matter which was standing on the Order Paper for further discussion, whether as a bill or a motion, and which was contained in a more effective

¹⁰⁷ See, for example, Speaker's rulings, *Journals of the Senate*, March 23, 2004, pp. 340-343; October 29, 2003, pp. 1265-1267; December 17, 2001, pp. 1155-1158; November 19, 1998, pp. 1078-1080; December 6, 1995, pp. 1361-1362; February 27, 1991, pp. 2265-2266; and June 18, 1985, p. 536.

¹⁰⁸ Speaker's ruling, *Journals of the Senate*, November 19, 1998, p. 1079. This ruling cited a previous ruling made in 1985 (*Journals of the Senate*, June 18, 1985, p. 536).

¹⁰⁹ Speaker's ruling, *Journals of the Senate*, December 6, 1995, pp. 1361-1362.

¹¹⁰ Erskine May, 24th ed., p. 397.

¹¹¹ Hatsell, Vol. 2, p. 132.

¹¹² Odgers, pp. 230-231.

¹¹³ See Speaker's ruling, *Journals of the Senate*, November 23, 2005, pp. 1307-1309, as well as Erskine May, 24th ed., p. 545; and the *Interpretation Act*, R.S.C., 1985, c. I-21, s. 42(2).

form of proceeding.”¹¹⁴ The phrase “effective form of proceeding” refers to “a descending scale of values for discussions, such as bills which have priority over motions, which in turn have priority over amendments.”¹¹⁵

The rule of anticipation is based on the same principle that excludes a question from being raised twice during a session. The simple fact that two similar motions or bills appear on the Notice Paper does not mean that the rule of anticipation is at play:

The rule of anticipation becomes operative only when one of two similar motions on the *Order Paper* is actually proceeded with. For example, two bills similar in substance will be allowed to stand on the *Order Paper* but only one may be moved and disposed of. If the first bill is withdrawn (by unanimous consent, often after debate has started), the second may be proceeded with. If a decision is taken on the first bill, the other may not be proceeded with. A point of order regarding anticipation may be raised when the second motion is proposed from the Chair, if the first has already been proposed to the House and has become an Order of the Day.¹¹⁶

Canadian procedural authorities note that attempts to apply the rule of anticipation have been “inconclusive.”¹¹⁷

Adjournment of Debate

In most cases, debate on an item of business, whether a motion or an inquiry, can be spread over several sittings.¹¹⁸ This is done by a senator proposing a motion to adjourn debate to the next sitting of the Senate.¹¹⁹

Practice has been to allow senators to adjourn debate on their own speech for the balance of their time, if such a request is made. A senator can do this only once in relation to an item of non-Government Business.¹²⁰ In this case, if the senator who adjourned the debate speaks next, the speech will be limited to the balance of time remaining. If, however, another senator rises to speak before the senator who had adjourned the debate, the balance reserved by that senator could be lost, since only one senator can have the floor at a time.

Non-Government Business

Items of non-Government Business stand in the name of the senator who moved the adjournment or of the senator in whose name the item was adjourned.¹²¹ The name appears on the Order Paper, in brackets at the end of the item. An item can be adjourned in a senator’s name even if that senator is not present in the chamber.¹²² Although an item of Other Business may be adjourned in a particular senator's name, this:

¹¹⁴ O’Brien and Bosc, p. 560.

¹¹⁵ Beauchesne, 6th ed., §513(2), p. 154. Also refer to O’Brien and Bosc, p. 560.

¹¹⁶ O’Brien and Bosc, p. 560.

¹¹⁷ O’Brien and Bosc, p. 560. Also see Beauchesne, 6th ed., §512(3), p. 154.

¹¹⁸ Exceptions include items to which a specific period of time has been allocated or subject to an order of the Senate prohibiting further adjournment.

¹¹⁹ Rule 6-10.

¹²⁰ Rule 4-15(3).

¹²¹ Rule 6-10(2).

¹²² Speaker’s ruling, *Journals of the Senate*, February 7, 2007, pp. 1024-1026.

... does not give that Senator alone the right to decide if that item will be proceeded with, though it has sometimes appeared that way because of the courtesy usually extended by the Senate towards the Senator who adjourned the item. ... Should the Senate decide to debate the item, the Senator who had adjourned it will usually be accorded the opportunity to speak first; otherwise any other Senator will be recognized to speak.¹²³

A senator in whose name an item stands adjourned is thus able to speak first when it is next debated, but cannot prevent another senator who is ready to speak from doing so, or prevent the Senate from making a decision on the matter.

As discussed in Chapter 4, the *Order Paper and Notice Paper* indicates the number of consecutive sittings an item of non-Government Business has been called either by the table (if the item is on the Order Paper) or the Speaker (if the item is on the Notice Paper) without being debated or formally adjourned. If the item is debated or formally adjourned without debate, this “counter” drops back to zero. If, however, the item is called for 15 consecutive sitting days with no action taking place, it will be dropped from the *Order Paper and Notice Paper* the next time it is called if it is once again not debated or adjourned.¹²⁴

Government Business

The situation is quite different for items of Government Business. They do not stand in any senator’s name,¹²⁵ and the number of consecutive sittings during which they are not debated is not tracked. They are not dropped from the Order Paper, no matter how long they are not debated.

Right of Final Reply

The final reply is the right a senator has, in certain cases, to speak a second time at the end of debate. Senators can exercise the right of final reply if they moved second reading of a bill, moved a substantive motion or initiated an inquiry. The right of final reply is also accorded to a senator who is the subject of a committee report under the *Ethics and Conflict of Interest Code for Senators*.¹²⁶ There is no right of final reply on a motion for third reading of a bill. The exercise of the right of final reply has the effect of closing debate. However, before a senator can exercise this right, the Speaker must “ensure that every Senator wishing to speak has the opportunity to do so.”¹²⁷

¹²³ Speaker’s ruling, *Journals of the Senate*, December 10, 1996, pp. 744-745. Also see Speaker’s ruling, *Journals of the Senate*, February 7, 2007, pp. 1024-1026.

¹²⁴ Rule 4-15(2). Leave may also be requested to suspend the application of this rule, which would allow the item to remain on the *Order Paper and Notice Paper* and be called for another 15 days.

¹²⁵ Rule 6-10(1).

¹²⁶ Rule 6-12.

¹²⁷ Rule 6-12(3).

Conclusion of Debate

Debate concludes when the Speaker is satisfied that all senators wishing to speak on the motion or the inquiry have had an opportunity to do so, or, if there is an order respecting the length of debate, when the time for the motion under consideration expires. In the case of a motion, the Speaker reads it and asks senators whether they wish to adopt it. In the case of an inquiry, the Speaker declares the debate concluded.

E. Only One Motion at a Time; Stacking Amendments

The Senate normally has only one motion, amendment or subamendment under debate at any time, and debate should only deal with that item. This is often found to be unduly restrictive — particularly when amendments are being dealt with at third reading, since senators may have comments that range over several amendments as well as the motion for third reading itself. A practice has therefore developed whereby the Senate sometimes gives leave to “stack amendments.” When this occurs, senators may move consecutive amendments that can then be debated together. Rather than limiting debate to a single amendment until it is decided upon, final resolution of all amendments is suspended until the conclusion of all debate related to the third reading motion and the various amendments and subamendments.

Once debate concludes, the various amendments are generally put to the Senate in the order in which they were moved.¹²⁸ If none carry, the Senate will eventually deal with the motion that the bill be read a third time. If any of the amendments were to carry, the question would then be that the bill, as amended, be read a third time. Since it is possible that some amendments overlap or contradict each other, if one amendment is adopted it might affect how or whether some of the subsequent amendments are put to the Senate.

F. Deciding on a Motion and Voting

The Senate decides on a motion once the debate is concluded, and the Speaker puts the question. A decision may be taken in a number of ways (e.g., on division, through voice votes, by standing votes) and each one follows specific rules and practices. The process for reaching a decision and voting on a motion is discussed in detail in Chapter 6.

In the case of a complicated motion (i.e. one containing two or more parts that can stand on their own), the Speaker may direct that different elements of the motion be voted on separately.¹²⁹

¹²⁸ For an example, see *Journals of the Senate*, June 26, 2013, pp. 2744-2751. Also see the Speaker’s statement dealing with stacked amendments, *Journals of the Senate*, November 9, 2006, p. 749.

¹²⁹ Speaker’s statements, *Journals of the Senate*, November 4, 2013, p. 126; and November 5, 2013, pp. 139-140. Also see O’Brien and Bosc, pp. 562-563.

3. OTHER TYPES OF DEBATE

The preceding section described the general process whereby the Senate debates and decides various types of motions. However, debate can take place on other types of business, notably:

- inquiries;
- reports of committees;
- the Address in reply to the Speech from the Throne;
- emergency debates;
- disallowance reports; and
- federal budgets.

This section describes the procedures and practices relating to these other types of debate. The particular rules and practices governing these issues are discussed in detail in Chapters 10 and 11.

Inquiries

An inquiry is a vehicle for debate allowing a senator to call the attention of the Senate to a particular issue. Unlike motions, the Senate does not take a decision or vote on an inquiry. Once debate has ended and the matter is not further adjourned, the Speaker declares the debate concluded, and the item is dropped from the Order Paper.¹³⁰

A. Notice

Inquiries require two days' notice,¹³¹ with notice given under "Government Notices of Inquiries" or "Notices of Inquiries" during Routine Proceedings.¹³² As is the case with motions, the notice cannot include a preamble,¹³³ and a signed written copy of the notice must be provided at the time oral notice is given.¹³⁴ One senator may give notice of an inquiry for another.¹³⁵ A government inquiry is placed on the Orders of the Day under the heading Government Business. A non-government inquiry is placed on the Notice Paper and, when debate begins, the inquiry will be moved to the Order Paper under the heading Other Business.

B. Debate

The general rules of debate apply to debate on inquiries. Senators are in most cases allowed a maximum of 15 minutes¹³⁶ and the senator who first initiates an inquiry has a right of final reply, which has the

¹³⁰ See definition of "inquiry" in Appendix I of the *Rules of the Senate*.

¹³¹ Rule 5-6(2).

¹³² The wording used for a notice of inquiry is "Honourable senators, I give notice that two days hence I shall draw the attention of the Senate to..."

¹³³ Rule 5-9.

¹³⁴ Rule 5-1.

¹³⁵ Rule 5-3.

¹³⁶ Rule 6-3(1). The Leaders of the Government and Opposition are provided with unlimited time in debate, and the leader of any other recognized party is provided with a maximum of 45 minutes in debate.

effect of closing debate.¹³⁷ Since an inquiry is never moved for adoption, there is no requirement for a seconder. Furthermore, since inquiries are not proposals on which the Senate is asked to make a decision, they cannot be amended, except with leave of the Senate.¹³⁸

Reports of Committees¹³⁹

The Senate distinguishes between two types of committee reports: presented and tabled.¹⁴⁰

A report is presented if it requires a decision by the Senate. They include reports on bills, committee budgets and requests for powers by committees. A presented report is read aloud by a clerk at the table, after which the Speaker asks when it will be taken into consideration.¹⁴¹ A motion is then moved that the report be placed on the Orders of the Day for consideration at a future sitting. Before the report is first debated, a motion for its adoption must be moved.

Tabled reports, on the other hand, are provided for the information of the Senate and as such do not require a decision by the Senate. They include, most notably, substantive reports on special studies. Although such reports do not require a decision by the Senate, the option of placing them on the Orders of the Day for future consideration is available.¹⁴² When called, the report can be debated without a motion for its adoption, as is the case with an inquiry. At some point during consideration — either at the outset or after consideration has begun — a senator can move the report’s adoption,¹⁴³ but there is no obligation to do so at any time.

The Rules have notice requirements for the adoption of a report — one day in the case of a standing committee and the Committee of Selection,¹⁴⁴ two days in the case of a special committee¹⁴⁵ — but the placing of a report on the Orders of the Day for consideration at a future sitting fulfils these requirements and serves as notice of a possible motion to adopt it.¹⁴⁶

¹³⁷ Rules 6-12(1) and (3).

¹³⁸ Rule 5-10(1). On occasion, inquiries have been referred to committee for study. On June 22, 2006, for example, an inquiry relating to funding for the treatment of autism was referred to the Standing Senate Committee on Social Affairs, Science and Technology for study. In this case, the motion specified the date by which the committee should report back to the Senate. Earlier cases in which either an inquiry or the subject matter of an inquiry were referred to committee exist. In at least one instance the Speaker held that notice was required to refer an inquiry to committee (*Journals of the Senate*, November 22, 1979, pp. 176-178). In another there was leave to dispense with any notice requirement (*Journals of the Senate*, June 19, 1996, pp. 465-466).

¹³⁹ Chapter 9 goes into more detail on committee reports.

¹⁴⁰ See definition of “report (of a committee)” in Appendix I of the *Rules of the Senate*.

¹⁴¹ The one exception is a report on a bill without amendment. Such reports are presented but are never considered by the Senate, since they are automatically adopted under rule 12-23(2).

¹⁴² Rule 12-22(3).

¹⁴³ If a motion to adopt a tabled report is moved after debate has started on the consideration of the report, any senator who has already spoken to the consideration may speak again, but only for five minutes (rule 12-22(6)).

¹⁴⁴ Rule 5-5(f).

¹⁴⁵ Rule 5-6(1)(e).

¹⁴⁶ See Bourinot, pp. 476-477. Also refer to rule 12-23(3), which refers to placing a report requiring approval of the Senate on the Orders of the Day for future consideration.

Address in Reply to the Speech from the Throne

At the opening of each session of Parliament, a wide-ranging debate on various aspects of the government's agenda takes place following the Speech from the Throne. Debate is on a motion in the form of an Address thanking the Governor General for the "gracious speech." Debate on the motion for an Address in reply to the Speech from the Throne is governed by the general rules of debate. Most senators are allowed a maximum of 15 minutes,¹⁴⁷ and the senator who first speaks has a right of final reply. Particular practices relating to debate on the Address are described in Chapter 3.

Emergency Debates

An emergency debate permits the Senate to adjust its regular order of business in order to discuss a matter of urgent public interest.¹⁴⁸ It allows debate on the matter while bypassing the usual procedures required to place an item on the Senate's agenda. For an emergency debate to take place, a senator must seek permission to propose a motion that the Senate adjourn for the purpose of raising a matter of urgent public interest. The Speaker must then decide whether to accept the matter for emergency debate. Such a decision is subject to appeal to the Senate. The specific steps in this process are outlined below.

A. *Presentation and Content of Written Notice*

A senator who wishes to raise a matter of urgent public interest in the Senate must first send a written notice to the Clerk of the Senate at least three hours before the Senate is scheduled to meet. If the matter is to be raised on a Friday, the notice must be received by 6 p.m. on Thursday.¹⁴⁹

The Clerk of the Senate is responsible for having the note translated and distributed to each senator's office, as well as to all senators in the chamber.¹⁵⁰ Non-receipt of the distributed notice by any senator does not affect the validity of the request for an emergency debate.¹⁵¹ In the notice, the senator must briefly outline the situation claimed to be of urgent public interest and explain why it should be considered.¹⁵²

The topic of an emergency debate must:

- relate to a genuine emergency;
- not have been debated under the emergency debate rules during the same session;
- not raise any question that can only be debated on a substantive motion under notice; and
- not raise a matter that is, in substance, a question of privilege.¹⁵³

¹⁴⁷ Rule 6-3. The Leaders of the Government and Opposition are allowed unlimited time in debate. The leader of any other recognized party is allowed a maximum of 45 minutes.

¹⁴⁸ Chapter 8 of the *Rules of the Senate* deals with the process for an emergency debate.

¹⁴⁹ Rule 8-1(2).

¹⁵⁰ Rule 8-2(2).

¹⁵¹ Rule 8-2(3).

¹⁵² Rule 8-2(1).

¹⁵³ Rule 8-2(1).

B. Consideration of Request and Decision

The consideration of a request for an emergency debate replaces Senators' Statements at the start of a sitting. However, a notice of a question of privilege or Tributes would take place before moving to the consideration of a request for an emergency debate.¹⁵⁴

The Speaker recognizes the senator who is requesting the emergency debate.¹⁵⁵ The senator, who can speak only once and for a maximum of five minutes, must explain why the Senate should adjust its regular business to hold the debate. The intervention must include information demonstrating:

- that the matter concerns the administrative responsibilities of the government or could come within the scope of departmental action; and
- that it is unlikely the Senate will have another opportunity to consider the matter within a reasonable period of time.¹⁵⁶

Other senators may also intervene once to support or oppose the request.¹⁵⁷ Senators can only speak once, and for no more than five minutes. No motion may be moved during consideration of a request for an emergency debate.¹⁵⁸ After a maximum of 15 minutes, the Speaker will decide whether the matter meets the conditions for an emergency debate.¹⁵⁹ As with other decisions of the Speaker, it is subject to appeal.¹⁶⁰

If several requests for an emergency debate on one topic are received the same day, the Senate will consider them together.¹⁶¹ In the case of more than one request for emergency debates on distinct matters, the requests will be considered one after another, based on the order in which they were received.¹⁶² Only one emergency debate may take place during a sitting.¹⁶³ Therefore, after one request for an emergency debate has been accepted, no other requests may be considered or accepted during the same sitting.

There have been few requests for emergency debates in the Senate. Permission was granted to debate the "current farm crisis" on November 3, 1999. Requests to debate Canada's blood supply and the application of section 12 of the *Canadian Charter of Rights and Freedoms* to compassionate murders were rejected on December 11, 1997. In the latter two cases, the Speaker's decisions were appealed and upheld.

C. Time of Emergency Debate

If the request for an emergency debate is accepted, the senator who made the request will move a motion to adjourn the Senate in order to hold the debate. This is done at 8 p.m. (noon on a Friday) or earlier if the

¹⁵⁴ Rules 8-3(1) and 4-4(2).

¹⁵⁵ Rule 8-3(1).

¹⁵⁶ Rule 8-3(2).

¹⁵⁷ Rule 8-3(3).

¹⁵⁸ Rule 8-3(4).

¹⁵⁹ Rules 8-3(3) and (5).

¹⁶⁰ Rule 2-5(3).

¹⁶¹ Rule 8-3(1).

¹⁶² Rule 8-3(1). On December 11, 1997, when several notices of requests for emergency debate had been received by the Clerk, of which only two requests were actually put to the Senate, the whole debate on the first request was dealt with before the subsequent request was taken up.

¹⁶³ Rule 8-5.

Senate has completed the Orders of the Day.¹⁶⁴ Rule 8-4(5) allows for a maximum of four hours of debate, which could involve the suspension of the Senate's ordinary time of adjournment.

During the emergency debate, all senators can speak only once, and for a maximum of 15 minutes each.¹⁶⁵ An emergency debate cannot be adjourned, nor can any amendment to the motion or any other motion be received, except that a senator be now heard.¹⁶⁶

If the emergency debate ends after the ordinary time of adjournment, and the Senate had completed the Orders of the Day before it began the debate, the motion to adjourn the Senate is considered adopted at the end of the debate, and the Senate therefore adjourns.¹⁶⁷ If, however, the Orders of the Day had not been completed when the debate began, the motion to adjourn is deemed withdrawn.¹⁶⁸ The Senate then resumes the Orders of the Day at the point where they were interrupted and continues sitting until the completion of the Orders of the Day, the adoption of an adjournment motion or the expiration of a period of time equivalent to that taken for the emergency debate, whichever comes first.¹⁶⁹

Disallowance Reports

The *Statutory Instruments Act* contains provisions governing how each house is to deal with a report of the Standing Joint Committee for the Scrutiny of Regulations containing a resolution that all or part of a regulation be revoked.¹⁷⁰ These provisions are not included in the *Rules of the Senate*. Such a report is deemed adopted by the Senate on the fifteenth sitting day following presentation “unless, before that time, a Minister files with the Speaker ... a motion to the effect that the resolution not be adopted.”¹⁷¹

If such a motion is “filed” with the Speaker, the act states that the Senate meets at 1 p.m. on the following Wednesday, or later if there is leave to do so. The first item of business is the consideration of the minister's motion that the resolution not be adopted.¹⁷² Consideration of the motion lasts for a maximum of one hour and cannot be interrupted. Senators are allowed a maximum of 10 minutes in debate. At the conclusion of the hour, all questions necessary to dispose of the motion are put by the Speaker without further debate.¹⁷³ Subsection 19.1(8) of the act provides that “[I]f more than one motion is made pursuant to subsection (5), the Senate ... shall consider those motions in the order in which they may be set down for consideration at the request of a Minister, as long as the motions are grouped together for debate.”

The revocation of a regulation, in whole or in part, takes place if a report of the committee containing a resolution to that effect is adopted by both houses.¹⁷⁴

¹⁶⁴ Rule 8-4(1). If a motion moved in relation to a case of privilege is to be taken up at this same time, the emergency debate is delayed until the debate on the motion concludes or is adjourned (rule 8-4(2)).

¹⁶⁵ Rule 8-4(3).

¹⁶⁶ Rule 8-4(4).

¹⁶⁷ Rule 8-4(6).

¹⁶⁸ Rule 8-4(7).

¹⁶⁹ Rule 8-4(8).

¹⁷⁰ *Statutory Instruments Act*, R.S.C., 1985, c. S-22, ss. 19 and 19.1. Such reports are commonly known as “disallowance reports.”

¹⁷¹ *Statutory Instruments Act*, R.S.C., 1985, c. S-22, s. 19.1(5).

¹⁷² *Statutory Instruments Act*, R.S.C., 1985, c. S-22, s. 19.1(6).

¹⁷³ *Statutory Instruments Act*, R.S.C., 1985, c. S-22, s. 19.1(7).

¹⁷⁴ *Statutory Instruments Act*, R.S.C., 1985, c. S-22, s. 19.1(9).

Since the act was amended in 2003 to include the provision for the revocation of regulations under this process, the Senate has dealt with two disallowance reports.¹⁷⁵ In both cases the report was adopted by the Senate — in one case with debate and in the other without. However, neither report was adopted in the House of Commons, so the disallowance did not take place.¹⁷⁶

Federal Budget

The Minister of Finance customarily presents an annual budget to the House of Commons, outlining the economic condition of the country and introducing financial initiatives of the government. The documents related to the federal budget are tabled in the Senate shortly afterwards, and an inquiry is then usually launched by the government drawing the attention of the Senate to the budget.¹⁷⁷ The general rules of debate pertaining to inquiries are followed.

4. CURTAILING DEBATE AND EXPEDITING DECISIONS

The Rules do not establish pre-set limits on the total length of debate for most items.¹⁷⁸ In many cases, debate ends naturally when no other senator rises to speak on a motion or to adjourn debate, and the Speaker puts the question.

In other cases, debate can extend over a number of sittings. This does not mean that debate on such items will go on as long as any senator is ready to seek to adjourn the debate. If senators wish to move more expeditiously on an item of business, they could try to reject a motion to adjourn debate by saying “nay” when the question is put, or, if it comes to it, by voting against it. If the motion to adjourn the debate is rejected, debate continues until a decision is reached on how to proceed with the item.¹⁷⁹ Another motion to adjourn the debate cannot be received without an intermediate proceeding (debate does not qualify as an intermediate proceeding).¹⁸⁰ If no senator is prepared to speak or if the list of speakers is rapidly exhausted this has the effect of forcing the question to a vote, or, in the case of an inquiry, concluding the debate.

There are at least three further tools that can be used to curtail debate and expedite decisions, if the Senate agrees to them: the previous question, time allocation on items of Government Business and orders respecting the disposition of specific items of business.

¹⁷⁵ See the fourth report of the committee presented to the Senate on February 13, 2007 (*Journals of the Senate*, p. 1045 and pp. 1052-1065); and the second report of the committee presented to the Senate on May 5, 2005 (*Journals of the Senate*, p. 842 and pp. 849-865).

¹⁷⁶ Both reports were referred back to the committee by the House of Commons (see *Journals of the House of Commons*, February 21, 2007, pp. 1042 and 1047; and June 8, 2005, pp. 849 and 853).

¹⁷⁷ For example, on February 11, 2014, a budget was tabled in the House of Commons. The Deputy Leader of the Government in the Senate tabled the budget documents in the Senate on February 13, 2014 (*Journals of the Senate*, p. 425), and gave notice of an inquiry the same day (*Debates of the Senate*, p. 960).

¹⁷⁸ One example of such a restriction is found in rule 13-6(4), which limits the length of debate on the motion on a case of privilege to three hours, although this debate can, in most cases, be spread over many sittings. Rule 12-30 also structures the debate on certain reports presented pursuant to the *Ethics and Conflict of Interest Code for Senators*.

¹⁷⁹ The senator whose motion to adjourn was rejected has exhausted his or her right to speak, although this is not always consistently applied (see ruling of December 14, 2009, *Journals of the Senate*, pp. 1666-1667).

¹⁸⁰ See definition of “intermediate proceeding” in Appendix I of the *Rules of the Senate*.

Previous Question

The previous question is a debatable motion “That the question be now put.”¹⁸¹ It can be moved without notice¹⁸² during debate on a motion, or on a motion as amended. The previous question cannot be moved during debate on an amendment to a motion,¹⁸³ in committee, or in a Committee of the Whole.¹⁸⁴

A senator who has already spoken to the main motion cannot move the previous question.¹⁸⁵ In addition, neither the mover of the main motion nor a senator who has been recognized on a point of order can move the previous question. Only a senator recognized in the regular course of debate can move the motion.¹⁸⁶ The senator who seconded the main motion can move the previous question,¹⁸⁷ if that senator has not already spoken. Once the previous question has been moved, the main motion cannot be amended. The motion for the previous question also cannot be amended, although nothing prevents the debate from being adjourned.¹⁸⁸ All senators who have taken part in debate on the main motion or the main motion as amended can participate in debate on the previous question.¹⁸⁹ This means that, although the previous question is often used to expedite decisions, it can sometimes serve as a tool for delay, by allowing another round of debate.

Once debate on the motion for the previous question expires, the Senate votes on the motion for the previous question. If the motion carries, the main motion is put immediately, without further debate or amendment,¹⁹⁰ and the vote cannot be deferred. If, however, the motion for the previous question is defeated, the main motion is dropped from the Orders of the Day.¹⁹¹ While it may be possible to revive a dropped item, in practice, the rejection of the previous question is understood to be a defeat of the item in question.¹⁹²

Time Allocation on Government Business

Time allocation establishes a limit on the time that can be spent to debate an item of Government Business. It is primarily used to allot time for the study of government bills, although it can also be applied to motions and other items of Government Business. Only the government can propose time allocation and only for its own business.¹⁹³ Time allocation does not end debate immediately. Rather, it

¹⁸¹ Rule 6-9(1).

¹⁸² Rule 5-7(d).

¹⁸³ Rule 6-9(2).

¹⁸⁴ Rules 6-9(3) and 12-32(3)(g).

¹⁸⁵ Rule 6-9(4).

¹⁸⁶ O’Brien and Bosc, p. 537.

¹⁸⁷ See Speaker’s ruling, *Journals of the Senate*, April 28, 2004, p. 477.

¹⁸⁸ Rule 6-9(2) and Speaker’s ruling, *Journals of the Senate*, April 28, 2004, p. 478.

¹⁸⁹ Rule 6-9(4).

¹⁹⁰ Rule 6-9(5).

¹⁹¹ Rule 6-9(6).

¹⁹² Beauchesne, 6th ed., §521(2), p. 160; O’Brien and Bosc, p. 651; Bourinot, p. 326; and Erskine May, 24th ed., p. 404. Bourinot and Beauchesne both note that “the negative of the previous question merely binds the Speaker not to put the main question at that time,” but does not actually reject the motion on which the previous question was moved. There are no known cases in the Senate of an order of the day being revived after being dropped because of the rejection of the previous question.

¹⁹³ The Speaker has noted that “[t]o allow a process that could result in the application of the Government’s time allocation powers to non-Government Business is not in keeping with the current Rules and practices.” On this basis a government motion proposing to establish how the Senate would dispose of an item of Other Business was ruled out of order (*Journals of the Senate*, October 30, 2013, pp. 102-105).

provides a means for the government to propose that a decision be taken on a particular stage of an item of its business within a certain period. Time can be allotted on an item either by a non-debatable motion, if there is an agreement with the other recognized parties, or by a debatable motion if there is no such agreement.

A. Agreement Between the Parties

Before the government can propose time allocation on an item of its business, the Leader of the Government or the Deputy Leader must first seek the agreement of the recognized parties. If an agreement is reached, the Leader or Deputy Leader of the Government informs the Senate of the agreement and, at the same time, moves a motion without notice setting forth its terms. The agreement can cover more than one stage of debate, including committee stage. When there is an agreement between the parties, debate on the item to which time will be allocated need not have been adjourned to use the process. In general, such agreements state the date and time that debate on a question will terminate, rather than specifying the number of hours to be taken for the remainder of the debate. The motion embodying the agreement reached between the leaders of the recognized parties is voted on immediately without debate or amendment.¹⁹⁴

B. Failure to Reach an Agreement

If the government and opposition fail to reach an agreement to allocate time for any stage of an item of Government Business, the Leader or Deputy Leader of the Government may announce this fact at any time during a sitting of the Senate, provided that debate on the item has already been adjourned at least once.¹⁹⁵ A notice of motion can then be immediately given, indicating the number of hours or days of debate the government proposes to allot to this particular stage of the item. The motion to allocate time is placed on the Orders of the Day for the next sitting as an item of Government Business.¹⁹⁶

The motion to allocate time without agreement can apply to only one stage of debate, with the exception of report stage and third reading, for which time can be allocated together.¹⁹⁷ The motion must be adopted by the Senate for the time allocation to have effect.

The minimum time provided for any stage of debate under time allocation varies with the nature of the item under debate:¹⁹⁸

- substantive motions: at least a further six hours of debate;
- second reading: at least a further six hours of debate;
- committee consideration of a bill or other item of business: at least one calendar day (Monday to Friday);¹⁹⁹ and

¹⁹⁴ Rule 7-1(3).

¹⁹⁵ Rule 7-2(1).

¹⁹⁶ Rules 7-2(2) and (3).

¹⁹⁷ Rules 7-2(4) and (5)(c). When time allocation is applied to an item of Government Business (for e.g. for the second or third reading of a bill), any motion already moved in relation to that motion (e.g. amendments, subamendments and other privileged motions) is considered within the time limit allocated to the main motion.

¹⁹⁸ Rule 7-2(5).

¹⁹⁹ In the absence of a report by midnight, the bill or other item is deemed reported without amendment (rule 7-2(5)(b)).

- report stage and third reading: a single period of at least six hours.²⁰⁰

In practice, these minimum periods have become the usual amount of time provided in time allocation motions.

C. Debate on Motion to Allocate Time Without Agreement

Time allocation does not take effect until the Senate adopts a motion to allocate time, which is debated during Orders of the Day under “Government Motions.” Debate on a motion to allocate time cannot be adjourned or amended, nor may any other motion be proposed except that a senator be now heard. Time for debate on the motion is limited to a maximum of two and one-half hours, after which the Speaker must put the question. If a standing vote is requested, it must be taken immediately and cannot be deferred, with the bells ringing for a maximum of one hour. During the debate on the motion to allocate time, a senator may only speak once and for a maximum of 10 minutes. The Leader of the Government and the Leader of the Opposition may each speak for a maximum of 30 minutes, and the leader of a recognized third party may speak for a maximum of 15 minutes.²⁰¹ Once a motion to allocate time has been adopted, the item subject to time allocation is referred to as a “time-allocated government order.”

D. Debate and Vote on a Time-Allocated Government Order

Once debate has begun on a time-allocated government order, it cannot be adjourned or amended, and no other motion can be proposed, except that a senator be now heard.²⁰² During the debate, the rules respecting the ordinary time of daily adjournment and the suspension of the sitting at 6 p.m. are not applied. Instead, debate continues without interruption until either it concludes or the time provided expires.²⁰³

Once the allotted time has expired, or if the debate has concluded, the Speaker puts the question to a vote immediately.²⁰⁴ If a standing vote is then requested, it takes place at 5:30 p.m. that afternoon or, if the vote is requested after this time, at 5:30 p.m. on the next sitting day.²⁰⁵ In either case, the bells will ring for 15 minutes.²⁰⁶ If the vote is requested between 5:15 p.m. and 5:30 p.m., the vote takes place immediately after a 15-minute bell. If a vote is deferred from a Thursday to a Friday, the Government Whip may further defer it to 5:30 p.m. the next day the Senate sits.²⁰⁷

²⁰⁰ For examples of time allocation motions covering both report stage and third reading of a bill, see *Journals of the Senate*, March 1, 2012, pp. 925-926; and July 12, 2010, p. 742.

²⁰¹ For the procedures relating to the debate on a motion to allocate time, see rules 7-3(1) and (2).

²⁰² Rule 7-4(1).

²⁰³ Rule 7-4(2). Certain specifics may vary in some circumstances, such as when time allocation applies to both report stage and third reading, or when amendments were before the Senate at the time the time allocation order was adopted (see, for example, comments by the Acting Speaker in the *Debates of the Senate*, March 25, 2013, p. 3576).

²⁰⁴ Rule 7-4(5).

²⁰⁵ Rules 7-4(5)(a) and (c).

²⁰⁶ Rule 9-6.

²⁰⁷ Rule 7-4(5)(d).

E. Interruptions Allowed During Debate on a Motion to Allocate Time or on a Time-Allocated Government Order

The only interruptions allowed during a debate on a motion to allocate time or a time-allocated government order are to take a deferred standing vote, to move a motion to take action on a case of privilege, to deal with an emergency debate, to deal with a question of privilege, to deal with a point of order or for events relating to Royal Assent. Once the Senate has disposed of the matter that interrupted debate, it immediately resumes consideration of the item that was interrupted for the length of time that was remaining when the interruption occurred.²⁰⁸ Debate on a motion to allocate time is interrupted at 6 p.m. for the evening suspension,²⁰⁹ but the debate on a time-allocated government order is not interrupted at this time.²¹⁰

Orders for the Disposition of Business

The Rules establish normal procedures for the Senate to deal with its business. However, the Senate can choose to vary from these procedures, except in the case of provisions established by the Constitution or by law (e.g., quorum as fixed by section 35 of the *Constitution Act, 1867*).

In most cases, the Senate can, with leave, depart from its normal procedures without this being overly controversial. Variations from the normal procedures established in the Rules can also be made by adopting a motion establishing specific procedures to be followed in particular cases. Such motions, sometimes called “disposition motions,” may be moved either with leave or after notice.²¹¹ The ability to depart from the Rules ensures that the Senate retains ultimate control of its own business and can deal with a specific item in the way it considers most appropriate.

Disposition motions are not frequently used. Unlike a government motion moved under rules 7-1 or 7-2 to allocate a specific period for the consideration of an item of Government Business, a motion dealing with the how the Senate will structure its proceedings on an item of business requires one day’s notice given in the normal way.²¹² Such motions are debatable and can be amended, in the same way as any other substantive motion. On April 28, 2004, the Speaker ruled that such motions are in order “[s]ince the Senate has complete control over the disposition of the motion, it maintain[s] its fundamental privilege to determine its own proceedings.”²¹³

An order for the disposition of business can deal with a single item of business or with a number of items of business at once.²¹⁴

²⁰⁸ Rules 7-4(3) and (4).

²⁰⁹ Rule 7-3(2).

²¹⁰ Rule 7-4(2).

²¹¹ For example, early in a session the Senate may decide that for the remainder of the session it will meet earlier on certain days than the time provided under rule 3-1(1), or that it will adjourn earlier on certain days than the time provided for in rule 3-4 (*Journals of the Senate*, February 6, 2014, p. 369).

²¹² Rule 5-5(j).

²¹³ *Journals of the Senate*, April 28, 2004, pp. 475-478. Also see the ruling of October 30, 2013, *Journals of the Senate*, p. 102.

²¹⁴ On June 21, 2007, for example, the Senate adopted a motion providing that all bills standing on the Orders of the Day for third reading on June 22 be dealt with successively, without the possibility of debate or further amendment, and limiting the ringing of the bells (*Journals of the Senate*, pp. 1815-1816). On June 22, five bills were disposed of under this order. In the case of two of the bills, a number of amendments previously moved at third reading were disposed of before the question for third reading was put.

APPENDIX A: Debatable Motions in the Senate

Refer to rules 5-8(1) and (2)

BILLS	<ul style="list-style-type: none"> ➤ Second reading — rule 5-8(1)(d) ➤ Third reading — rule 5-8(1)(h) ➤ To reconsider, while a bill is under consideration, any element of the bill already agreed to— rule 5-8(1)(k)
COMMITTEES	<ul style="list-style-type: none"> ➤ Appoint a committee — rule 5-8(1)(e) ➤ Instruction to a committee — rule 5-8(1)(g) ➤ Refer a question, other than a bill, to a committee — rule 5-8(1)(f) ➤ Adopt a report of a committee — rule 5-8(1)(c)
COMMITTEE OF THE WHOLE	<ul style="list-style-type: none"> ➤ Adopt any element of a bill in Committee of the Whole — rule 5-8(1)(j)
OTHER	<ul style="list-style-type: none"> ➤ Substantive motion — rule 5-8(1)(a) ➤ Amendment or subamendment — rule 5-8(1)(b) ➤ Suspend any rule of the Senate — rule 5-8(1)(m) ➤ Amend the Rules — rule 5-8(1)(o) ➤ Previous question — rule 5-8(1)(n) ➤ Adjournment of the Senate for the purpose of an emergency debate (pursuant to rule 8-4(1)) — rule 5-8(1)(l) ➤ For an Address to the Governor General not merely formal in character — rule 5-8(1)(i) ➤ Debate on an inquiry — rule 5-8(2) ➤ For an order of the Senate for any documents not relating to a bill or other matter appearing on the <i>Order Paper and Notice Paper</i> — rule 5-8(1)(p) ➤ A motion required for the good conduct of the Senate, the maintenance of its authority, the appointment or conduct of its officers, the management of its proceedings, and the fixing of its sitting days or the times of its meetings or adjournments — rule 5-8(1)(q)

APPENDIX B: Non-debatable Motions in the Senate

**This list is not exhaustive, but may be used as a reference
See rules 5-8 and 4-6(2)**

Note: **Any motion that is not seconded by another senator** is not properly before the Senate and consequently cannot be debated (the only exception is a motion made in a Senate committee) — rules 5-11 and 12-20(1)(b)

PROCEDURAL MOTIONS - non-debatable (see rule 4-6(2)).

A procedural motion is one that deals with a routine matter and is used to move an item of business forward. It gives a direction as to how and when to deal with a matter before the Senate. The following are some common examples:

DURING ROUTINE PROCEEDINGS	<ul style="list-style-type: none"> ➤ To place a <u>presented</u> committee report (e.g., budget, bill with amendments, etc.) on the Orders of the Day for consideration and adoption at a future date ➤ To place a <u>tabled</u> committee report on the Orders of the Day for consideration at a future date ➤ To place a bill on the Orders of the Day for second reading (consideration “two days hence”) ➤ To place a bill on the Orders of the Day for third reading (consideration “at the next sitting”)
WHENEVER A MESSAGE IS RECEIVED FROM THE HOUSE OF COMMONS WITH A BILL	<ul style="list-style-type: none"> ➤ To place a bill on the Orders of the Day for second reading (consideration “two days hence”)
DURING DEBATE (ORDERS OF THE DAY)	<ul style="list-style-type: none"> ➤ To refer a bill to a committee — see rule 5-8(1)(f)

Notes:

The introduction and first reading of a Senate bill are pro forma stages (i.e., takes place without debate or motion) — rule 10-3.

The first reading of a Commons bill takes place immediately after the Speaker reads the message from the House of Commons and is a pro forma stage (i.e., done without debate or motion) — rule 10-3.

If a **committee reports a bill without amendment**, the report is deemed adopted immediately — rule 12-23(2).

Non-debatable Motions in the Senate (cont'd)

**This list is not exhaustive, but may be used as a reference
See rules 5-8 and 4-6(2)**

DILATORY MOTIONS - non-debatable (see rule 4-6(2))

A dilatory motion is designed to delay or supersede an item of business before the Senate, either temporarily or permanently. The following are some common examples:

DURING ROUTINE PROCEEDINGS	<ul style="list-style-type: none"> ➤ For the adjournment of the Senate (except for an emergency debate pursuant to rule 8-4(1)) — rule 5-13(1) ➤ For the adjournment of a debate — rule 4-6(2) ➤ For the reading of the Orders of the Day
DURING DEBATE (ORDERS OF THE DAY)	<ul style="list-style-type: none"> ➤ For the adjournment of the Senate (except for an emergency debate pursuant to rule 8-4(1)) — rule 5-13(1) ➤ For the adjournment of a debate — rule 6-8(d) ➤ To adjourn the debate to a certain date — rule 6-8(e) ➤ To proceed to another item of business

OTHER MOTIONS

OTHER MOTIONS	<ul style="list-style-type: none"> ➤ To appeal a Speaker’s ruling — rule 2-5(3) ➤ To order the withdrawal of strangers from the Senate — rule 2-13(1) ➤ To allow another senator to speak — rule 6-4(2) ➤ For time allocation when there is agreement between the representatives of the parties — rule 7-1(3) ➤ To establish or change the membership of the Committee on Ethics and Conflict of Interest for Senators — rule 12-27(1)
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COMMITTEE OF THE WHOLE

BEFORE COMMITTEE OF THE WHOLE	<ul style="list-style-type: none"> ➤ To resolve the Senate into a Committee of the Whole — rule 5-7(o)
DURING COMMITTEE OF THE WHOLE	<ul style="list-style-type: none"> ➤ For the chair to leave the chair — rule 12-33(1) ➤ For the chair to report progress and ask leave to sit again — rule 12-33(1) ➤ To order the withdrawal of strangers from a Committee of the Whole — rules 2-13(1) and 12-32(3)

APPENDIX C: Speaking Times in the Senate

PROCEEDINGS	RULES	TIME LIMITS				
		OVERALL	LEADERS (GOVERNMENT AND OPPOSITION)	LEADER (OTHER RECOGNIZED PARTIES)	SPONSOR	OTHER SENATORS
Tributes	4-3(1),(2)	15 minutes	n.a.	n.a.	n.a.	3 minutes (senator responding has unlimited time)
Senators' Statements	4-2(2),(3),(8)(a)	15 minutes unless extended	n.a.	n.a.	n.a.	3 minutes
Emergency Debates						
a) Request	8-3(3)	15 minutes	n.a.	n.a.	5 minutes	5 minutes
b) "That the Senate do now adjourn"	8-4(3),(5)	4 hours	n.a.	n.a.	15 minutes	15 minutes
Question Period	4-7, 4-8(2),(3)	30 minutes	n.a.	n.a.	n.a.	Brief questions and answers; may speak more than once
Address in Reply	6-2(1),(2), 6-3(1), 6-5(1),(2),(3)	n.a.	Unlimited	45 minutes	15 minutes	15 minutes
Bills - 2nd reading debate	6-2(1),(2), 6-3(1), 6-5(1),(2),(3), 6-12(1)	n.a.	Unlimited	45 minutes	45 minutes ^a	45 minutes for critic; 15 minutes for other senators
Bills - 3rd reading debate	6-2(1),(2), 6-3(1), 6-5(1),(2),(3)	n.a.	Unlimited	45 minutes	45 minutes	45 minutes for critic; 15 minutes for other senators
Substantive Motions	6-2(1),(2), 6-3(1), 6-5(1),(2),(3), 6-12(1),(2)	n.a.	Unlimited	45 minutes	15 minutes ^a	15 minutes
Amendments	6-2(1),(2), 6-5(1),(2),(3)	n.a.	Unlimited	45 minutes	15 minutes	15 minutes
Inquiries	6-2(1),(2), 6-5(1),(2),(3), 6-12(1)	n.a.	Unlimited	45 minutes	15 minutes ^a	15 minutes

^a An additional 15 minutes for right of final reply (rules 6-12(1) and (2)) is permitted.

Speaking Times in the Senate (cont'd)

PROCEEDINGS	RULES	TIME LIMITS				
		OVERALL	LEADERS (GOVERNMENT AND OPPOSITION)	LEADER (OTHER RECOGNIZED PARTIES)	SPONSOR	OTHER SENATORS
Committee reports - motion to adopt	6-2(1),(2), 6-5(1),(2),(3), 6-12(1),(2), 12-22(6)	n.a.	Unlimited (but see rule 12-22(6))	45 minutes (but see rule 12-22(6))	15 min. ^b (but see rule 12-22(6))	15 minutes (but see rule 12-22(6))
Time Allocation (with agreement)						
a) Motion to allocate time	7-1(3)	Non-debatable motion	n.a.	n.a.	n.a.	n.a.
b) Time-allocated government order	6-2(1),(2), 6-3(1), 6-5(1),(2),(3)	Determined by motion to allocate time	Unlimited	45 minutes	See below ^a	See below ^a
Time Allocation (without agreement)						
a) Motion to allocate time	7-3(1)	2 hours 30 minutes	30 minutes	15 minutes	10 minutes	10 minutes
b) Time-allocated government order	7-2(5) 6-3(1), 6-4(1), 6-12(1),(2),(3)	At least 6 hours of debate at each stage	Unlimited	45 minutes	See below ^a	See below ^a
Questions of Privilege						
a) Prima facie	2-5(1)	At discretion of Speaker	n.a.	n.a.	n.a.	n.a. ^c
b) On the motion	13-6(3),(4)	3 hours	n.a.	n.a.	15 minutes	15 minutes
Points of Order	2-5(1)	At discretion of Speaker	n.a.	n.a.	n.a.	n.a. ^c
Committee of the Whole	12-32(3)(c),(d)	n.a.	n.a.	n.a.	n.a.	10 minutes ^c

^a If the time-allocated government order is a motion, all other senators, including the sponsor, may speak for 15 minutes. If the time-allocated government order is a bill at 2nd or 3rd reading stages, the sponsor and the critic may both speak for 45 minutes, while all other senators may speak for 15 minutes. The right of final reply provided for in rule 6-12 is not automatic for time-allocated government orders. However, if debate collapses prior to the time provided for in the motion to allocate, the right of final reply is permitted. In this case, the sponsor may speak for an additional 15 minutes.

^b No right of final reply is permitted on a motion to adopt a committee report, as it is not a substantive motion. Nonetheless, a senator who is the subject of a committee report made under the *Ethics and Conflict of Interest Code for Senators* does have the right of final reply for a motion to adopt such a committee report (rules 6-12(1) and (2)).

^c Senators can speak more than once.

CHAPTER 6

Voting

This chapter deals with the various ways in which the Senate reaches a decision. Section 36 of the Constitution Act, 1867 outlines the basic principles behind voting in the Senate: all decisions of the Senate are decided by way of a majority vote by its members, the Speaker has the right to vote in all cases and, in the case of a tie, the motion is rejected. The chapter examines a range of issues relating to voting practices in the Senate.



1. PUTTING THE QUESTION

The Speaker puts the question on a motion by saying the following at the end of any debate: “It was moved by the Honourable Senator [name], seconded by the Honourable Senator [name], that [text of motion]. Is it your pleasure, honourable senators, to adopt the motion?” If there is no dissenting voice expressed, the Speaker will declare the motion adopted.

On Division

If there is a desire to indicate that a decision is not made unanimously, senators may do so in three ways: with a voice vote, with a standing vote, or by calling out “on division” once the Speaker puts the question. In the latter case, the Speaker states that the motion has been adopted or negated “on division.” This is noted in the *Journals of the Senate*.¹

Voice Vote

If dissent is more substantial, the Speaker proceeds to a voice vote, which is an oral vote held without recording senators’ names or the number in favour or opposed to the motion. The Speaker starts off by saying: “All those in favour of the motion will please say Yea.” The Speaker then says: “All those opposed to the motion will please say Nay.” Based on an assessment of which seemed louder, the Speaker then declares whether the motion has been adopted or defeated.² Voice votes are always recorded in the *Journals of the Senate* as being “on division” since the decision is not unanimous. The Speaker’s decision in a voice vote is final unless there is an immediate request for a standing vote made by two or more senators rising in their places.³

¹ In French such a motion is adopted “avec dissidence” but rejected “à la majorité.”

² Rule 9-2(1).

³ Rules 9-2(2) and 9-3.

Standing Vote

As mentioned above, the Speaker's decision on a voice vote is final unless two senators immediately rise to request a standing vote. Such a request is not debatable.⁴ Once a standing vote is requested, it may either take place immediately after the sounding of the bells, or it may, in most cases, be deferred at the request of either the Government or Opposition Whip before the bells are rung.⁵ Some votes are automatically deferred (see section on Deferred Vote later in this chapter). In all cases, once the order has been given to call in the senators for a vote, no senator may speak to the motion, except with leave.⁶ Since no motions can be proposed during Senators' Statements, a standing vote is not possible during this part of the sitting.⁷

Ringling of the Bells for a Standing Vote⁸

When a standing vote has been requested for a motion, the bells to call in the senators ring for 60 minutes,⁹ unless the vote has been deferred.¹⁰ Special rules govern the timing of votes on time-allocated government orders,¹¹ on reports of the Ethics and Conflict of Interest Committee relating to the conduct of an individual senator,¹² and, in some cases, on motions moved in relation to cases of privilege.¹³ The Senate can vary from the provisions respecting the timing of votes and the ringing of bells if it so decides.

It is possible to reduce the time for ringing the bells with leave. If the Government and Opposition Whips agree to a reduced period of time they propose it to the Senate. The Speaker then ascertains whether leave is granted for the reduced time¹⁴. On several occasions, with leave, a standing vote has taken place without ringing the bells.¹⁵

When the Speaker must interrupt proceedings in order to put the question on a deferred vote or on another item, such interruption must take place no later than 15 minutes prior to the scheduled time for the vote.¹⁶ Should there be more than one deferred vote, or should any business consequential to the vote need to be disposed of, the bells only ring for the first vote.¹⁷

During the ringing of the bells, the whips ensure that as many members as possible from their respective parties are present in the Senate Chamber for the vote. Once the bells stop ringing, the whips walk in together from the bar of the Senate toward the leadership desks, stop when they reach the table, bow toward the Speaker and then bow to each other to signal that both sides are ready for the vote. They then

⁴ See Speaker's ruling, *Journals of the Senate*, October 19, 2000, p. 938.

⁵ Rule 9-10(1).

⁶ Rule 9-4.

⁷ Rule 4-2(7).

⁸ See the Appendix to this chapter: "Time Limits for the Ringing of Bells."

⁹ Rule 9-5.

¹⁰ Rule 9-6. See "Deferred vote" section later in this chapter.

¹¹ Rule 7-4(5).

¹² Rule 12-30(7).

¹³ Rule 13-6(8).

¹⁴ Rule 9-5 lays out the steps involved.

¹⁵ *Debates of the Senate*, June 26, 2013, pp. 4512 and 4539; July 6, 2005, pp. 1751-1752; June 29, 2000, p. 1911; May 12, 1999, p. 3327; and June 17, 1998, p. 1825.

¹⁶ Rules 9-6 and 9-10(7).

¹⁷ Rules 9-10(5) and (6).

take their seats. This custom is not included in the *Rules of the Senate*, but it seems to have almost always been practiced.¹⁸

2. STANDING VOTE

The rules respecting the adjournment of a sitting are suspended until a standing vote and any consequential business are concluded.¹⁹ While a standing vote is in progress, the doors to the Senate remain unlocked and senators are free to enter or leave the chamber as they wish. However, senators who are not within the bar of the Senate when the Speaker puts the question cannot vote.²⁰ Further, senators must be at their assigned seats for their votes to be counted.²¹ The doors to the public galleries are locked and no one is permitted to enter or leave the galleries during the taking of a vote.²² Points of order cannot be raised when a standing vote is under way.²³

After the bells stop ringing and the whips are at their desks, the Speaker reads the text of the motion and says: “All those in favour of the motion will please rise.” Those in favour rise in their places at the same time. Senators’ names are called one by one by a clerk at the table, starting with the Speaker, who may indicate with a nod of the head a desire to vote in the affirmative,²⁴ followed by all other senators row by row, starting with those nearest the Speaker. If the leader of a recognized party is voting in the affirmative, that senator is recognized first before other members on that side of the house. Senators’ names are called in English or in French, depending on their language of preference, and those who are Privy Councillors are identified as “P.C.” after their names. Once the yeas have been called, the Speaker then rises and says: “All those opposed to the motion will please rise.” Again, a clerk at the table calls the names of the senators standing in the same order and manner. Finally, the Speaker rises and says: “All those who wish to abstain will please rise.” A clerk at the table then calls the names of senators who abstain from voting. During the entire process, the Clerk of the Senate and other officials record the names as they are called.

Once all of the names are recorded, the Clerk of the Senate turns towards the Speaker and announces the results of the vote, in English and French, in the following order: yeas, nays and abstentions. The Speaker then declares whether the motion is adopted or defeated. The official outcome, along with the recorded names, is published in the *Journals of the Senate* and the *Debates of the Senate*. (See section on Record of Decisions later in this chapter.)

Normally, if a vote is requested on several questions to dispose of an item (e.g., an amendment to the third reading motion followed by the third reading motion itself), separate votes are held for each question.

¹⁸ For an example of a standing vote taking place without the presence of both whips, see *Debates of the Senate*, October 4, 1990, pp. 2343-2344.

¹⁹ Rule 9-9.

²⁰ Rule 9-8(1).

²¹ Rule 9-8(1)(b).

²² Rule 9-8(2).

²³ *Debates of the Senate*, April 27, 2004, p. 928; and Beauchesne, 6th ed., §320, p. 97.

²⁴ See section on Speaker’s Vote later in this chapter. Also see Bourinot, p. 379.

3. DEFERRED VOTE

Once a standing vote has been requested on a debatable motion,²⁵ either whip may request that the vote be deferred.²⁶ Votes cannot be deferred on non-debatable motions²⁷, as well as on a motion that another senator “be now heard,”²⁸ a motion to adjourn the Senate,²⁹ on an appeal of a Speaker’s ruling,³⁰ and on motions for time allocation, either with agreement³¹ or without agreement.³²

A deferred vote generally takes place at 5:30 p.m. on the next sitting day.³³ There are, however, some exceptions. First, a standing vote on a motion, other than a dilatory or procedural motion, requested during Routine Proceedings, stands automatically deferred to 5:30 p.m. the same day.³⁴ Second, a standing vote on a time-allocated government order is automatically deferred to 5:30 p.m. on the same day if debate is concluded prior to 5:15 p.m. If, however, debate concludes after 5:30 p.m., a standing vote is automatically deferred until the next sitting at 5:30 p.m. If debate ends between 5:15 and 5:30 p.m., the vote is not deferred, but held after a 15-minute bell.³⁵ Third, the same rules apply in certain situations to a vote on a motion to adopt a report on the conduct of an individual senator under the *Ethics and Conflict of Interest Code for Senators*.³⁶ Fourth, after a message has been received setting the time for a Royal Assent ceremony, if a standing vote was deferred to a time during which the ceremony will occur, or a vote is requested to take place when Royal Assent is scheduled, the vote is automatically further deferred until after the ceremony has concluded.³⁷ Finally, if debate on a motion relating to a case of privilege ends after the ordinary time of adjournment, it is automatically deferred to 5:30 p.m. on the next sitting day and cannot be further deferred.³⁸

Once a vote has been deferred, it cannot be further deferred unless the next sitting day is a Friday.³⁹ In such a situation, the Government Whip can, in most cases, further defer the vote until 5:30 p.m. on the sitting day following the Friday sitting. This can be done at any time before the taking of the vote.⁴⁰

If the Senate completes its business before 5:30 p.m. on the day a deferred vote is scheduled, it cannot adjourn until the vote and all related business have been completed. In such a case, the Speaker suspends

²⁵ Rule 5-8(1). Also see Appendices A and B in Chapter 5 for lists of debatable and non-debatable motions.

²⁶ Rule 9-10(1).

²⁷ Rules 4-6(2) and 9-10(1). Also see Speaker’s ruling, *Journals of the Senate*, June 22, 1995, p. 1122.

²⁸ Rule 6-4(2).

²⁹ Rule 5-13(4).

³⁰ Rule 2-5(3).

³¹ Rule 7-1(3).

³² Rule 7-3(1)(h).

³³ Rule 9-10(2). In addition to the cases outlined in this paragraph, which are provided for in the Rules, on one occasion the Senate was not scheduled to sit at 5:30 p.m., when a deferred vote would normally take place. The Speaker directed that the vote be held at the end of Question Period (see *Journals of the Senate*, December 4, 2014, p. 1421).

³⁴ Rule 4-6(1).

³⁵ Rule 7-4(5).

³⁶ Rules 12-30 (5) and (7).

³⁷ Rule 16-1(6).

³⁸ Rule 13-6(8).

³⁹ Rules 9-10(3) and (4).

⁴⁰ Rule 9-10(4). The Government Whip cannot further defer the vote if the deferred vote is either on a motion relating to a case of privilege on which debate ends after the ordinary time of adjournment (rule 13-6(8)), or on a report on the conduct of a senator under the *Ethics and Conflict of Interest Code for Senators*, and debate on the report ends after 5:30 p.m. (rule 12-30(7)(c)).

the sitting until 5:15 p.m., at which time the bells ring for 15 minutes.⁴¹ Conversely, if the Senate is sitting at 5:15 p.m. on a day a deferred vote is scheduled, the Speaker must interrupt the proceedings at that time in order to take the vote. The bells to call in the senators ring for 15 minutes.⁴² If there are a series of deferred votes to be taken in succession, the bells ring only for the first one.⁴³ Once a deferred vote on an item is under way, the Speaker proceeds to put any motions necessary to dispose of consequential business without further ringing the bells or further deferral.⁴⁴

4. OTHER POINTS RELATING TO VOTES

When the Voices are Equal

The Constitution and the *Rules of the Senate* state that when there is a tie vote in the Senate the decision is deemed to be in the negative.⁴⁵ Although tie votes are rare, there have been a few noteworthy examples in recent history.⁴⁶

Voting Rights of Senators

Although all senators normally have the right to vote on all questions requiring a decision, there are some circumstances under which they cannot vote. For example, when a senator has made, and not retracted, a declaration of private interest on a question before the Senate or a committee, the Speaker or the chair of the committee shall announce the senator's name before any standing vote on the question, if the senator is present. The senator's name will not be called during the vote, except to abstain.⁴⁷ In addition, a senator who is the subject of a report of the Standing Committee on Ethics and Conflict of Interest for Senators shall not vote on any motion relating to the report. The Speaker shall inform the Senate of this fact as required, and that senator's name shall not be called on any such motion.⁴⁸

Speaker's Vote

The Speaker of the Senate has the right to a deliberative vote. A "deliberative vote" allows the Speaker of the Senate to vote at the same time as all other senators. If the Speaker chooses to vote on a motion, this is done by remaining standing before the names of other senators voting the same way are called out. For this reason, the clerk at the table looks toward the Speaker first before calling the other senators' names. Such a vote must be distinguished from a "casting vote," which is the deciding vote given to the Speaker of the House of Commons in the event of a tie.

⁴¹ Rule 9-10(7).

⁴² Rule 9-6.

⁴³ Rule 9-10(6).

⁴⁴ Rule 9-10(5).

⁴⁵ *Constitution Act, 1867*, s. 36; and rule 9-1.

⁴⁶ In 1996, three successive tie votes on Bill C-28, Pearson International Airport Agreements Act, caused it to be defeated; see *Journals of the Senate*, June 19, 1996, pp. 456-459. In 1993, Bill C-93, An Act to implement certain government organization provisions of the budget tabled in the House of Commons on February 25, 1992, was defeated at third reading by a tie; see *Journals of the Senate*, June 10, 1993, pp. 2183-2184. In 1991, the motion for third reading of Bill C-43, An Act respecting abortion, was defeated after a tie vote; see *Journals of the Senate*, January 31, 1991, pp. 2238-2239.

⁴⁷ Rules 9-7(1)(a) and 12-20(2). Also see *Ethics and Conflict of Interest Code for Senators*, s. 14.

⁴⁸ Rules 9-7(1)(b) and 12-30(6). Also see subsection 51(5) of the *Ethics and Conflict of Interest Code for Senators*.

Abstentions

Along with their right to vote, senators also have the right to abstain from voting. Originally, the right to abstain was not part of the parliamentary tradition. Senators who wished to avoid voting on a particular item had to leave the chamber altogether. If a senator was present in the chamber when a vote was taken, abstention was only possible with leave of the Senate.⁴⁹ Although the practice of mandatory voting was discontinued in the British House of Commons in 1906,⁵⁰ it persisted in the Senate until June 1982, when the *Rules of the Senate* were changed to allow for abstentions.⁵¹ Abstentions are recorded in the *Journals of the Senate*, but do not count towards the outcome of a vote. The practice of pairing, which exists in other legislative bodies, is not recognized in the *Rules of the Senate*, and such arrangements are not recorded in the *Journals of the Senate*.⁵²

Changing or Withdrawing a Vote

Senators who wish to change or withdraw their vote must seek leave to do so. The request must be made immediately after the results of the standing vote have been announced.⁵³

Missing a Vote

A senator who misses a vote may choose to rise later on a point of order to briefly state how he or she would have voted, as well as to provide a reason for missing the vote. Such an action does not change the outcome of a vote, nor is it recorded in the *Journals of the Senate*. It is merely a statement made by a senator for information purposes.

Record of Decisions

All decisions of the Senate as well as the official results of all standing votes listing the names of senators voting are recorded in the *Journals of the Senate*. The division lists are also published in the *Debates of the Senate*. They are grouped by “yeas,” “nays” and “abstentions,” in alphabetical order for each category. When a decision is made unanimously, on division or by a voice vote, only the outcome is recorded in the Journals and the Debates (i.e., adopted, adopted on division, negated, or negated on division, as the case may be). In this way the results of all standing votes are available to the public.⁵⁴ As well, the public is permitted to observe all standing votes in the public galleries. However, as previously mentioned, the galleries are locked during the taking of a standing vote, and no one is permitted to enter or leave them at that time.⁵⁵

⁴⁹ Bourinot, p. 378.

⁵⁰ Erskine May, 22nd ed., p. 351.

⁵¹ This issue was first studied by the Committee on Standing Rules and Orders in 1979. However, the committee report was never adopted. In the following session, a new report was produced and adopted. Both reports may be found in *Journals of the Senate*, November 13, 1979, pp. 138-139; and June 3, 1982, pp. 2187-2188.

⁵² For a Speaker’s statement on pairing see *Debates of the Senate*, May 9, 1883, p. 458. For examples of pairing see *Debates of the Senate*, October 4, 1990, p. 2343; May 3, 1932, p. 394; and May 1, 1889, p. 715. Practices in the House of Commons concerning pairing are described in O’Brien and Bosc, pp. 579-580.

⁵³ Rule 9-7(2).

⁵⁴ Bourinot, p. 390.

⁵⁵ Rule 9-8(2).

Cancelling a Request for a Standing Vote

Once a standing vote is requested by two or more senators rising in their places, the Senate proceeds to the vote.⁵⁶ On a number of occasions, a request for a standing vote on a motion to adjourn debate was cancelled with leave. In one case, the request to cancel the taking of the vote was made and agreed to prior to the ringing of the bells. In other cases, the request was made and accepted after the bells had rung for the designated time, with the motion then being adopted unanimously.⁵⁷ In another instance, with leave, a deferred standing vote was not proceeded with and the motion was adopted “on division.”⁵⁸ On still other occasions, once the bells had rung, the motions were withdrawn, with leave, and consequently no vote was required or taken.⁵⁹

Rescinding or Correcting a Decision of the Senate

It is possible to rescind an order, resolution or other decision of the Senate by means of a motion requiring five days’ notice.⁶⁰ A motion to rescind a leave of absence or a suspension ordered by the Senate requires only one day’s notice.⁶¹

If a senator wishes to correct irregularities or mistakes in an order, resolution or other vote of the Senate, one day’s notice is required.⁶²

Research has not found any standing votes taken to either rescind a decision or to make a correction to a decision of the Senate. Most often, when these actions occurred, they were done with leave, so no vote was held.

Free Votes

According to general parliamentary traditions and conventions, free votes are normally employed when a question involves a fundamental issue of morality and conscience. In a free vote, senators are not bound by party allegiance or to the direction of their leadership. Further, it is generally expected that no sanctions will be imposed on members for voting one way or the other on the question. The decision to allow a free vote is made by each party separately.

⁵⁶ Rule 9-3.

⁵⁷ *Journals of the Senate*, December 9, 2014, p. 1447 and *Debates of the Senate*, December 9, 2014, p. 2667; *Journals of the Senate*, November 6, 2013, p. 151 and *Debates of the Senate*, November 6, 2013, p. 430; *Journals of the Senate*, June 7, 2007, p. 1639 and *Debates of the Senate*, June 7, 2007, pp. 2579-2580; *Journals of the Senate*, May 10, 1994, pp. 254-255 and *Debates of the Senate*, May 10, 1994, pp. 431-433; and *Journals of the Senate*, November 6, 2013, p. 151 and *Debates of the Senate*, November 6, 2013, p. 430.

⁵⁸ *Journals of the Senate*, December 17, 1996, pp. 794-795 and *Debates of the Senate*, December 17, 1996, pp. 1402-1403.

⁵⁹ *Journals of the Senate*, October 19, 2011, p. 251 and *Debates of the Senate*, October 19, 2011, p. 388 (in this case the vote was to be taken on the motion for the second reading of a bill, but with leave, it was decided to allow debate on the motion to continue); *Journals of the Senate*, September 27-October 2, 1990, p. 1802 and *Debates of the Senate*, September 27-October 2, 1990, pp. 2280-2281 and 2310; and *Journals of the Senate*, June 12, 1990, p. 1108 and *Debates of the Senate*, June 12, 1990, p. 1187.

⁶⁰ Rule 5-12. From 1915 to 2012, a decision of the Senate could only be rescinded on five days’ notice and if at least two-thirds of the Senators present voted in favour.

⁶¹ Rule 5-5(i).

⁶² Rule 5-5(h).

6: Voting

While the convention regarding free votes in the House of Commons may have an influence on the Senate⁶³, other factors also come into play. Any vote in the Senate can be a free vote, and, since the Senate is not a confidence chamber, the government does not fall as a consequence of losing a vote in the in that house.

⁶³ The practices in the House of Commons are described in O'Brien and Bosc, pp. 576-577.

APPENDIX: Time Limits for the Ringing of Bells

PROCEEDING	LENGTH OF BELL	RULE	DEFERRABLE
To call in the Senators: (a) For daily sitting (b) To resume at 8 p.m. (c) To resume after a suspension	(Bells ring prior to prescribed sitting time) At least 15 minutes (until quorum reached) 15 minutes Determined at time of suspension (typically 5 to 15 minutes)	3-2(2)	Not applicable
Quorum	Max. 15 minutes	3-7(2)	Not applicable
Motions (during Routine Proceedings): (a) Motions other than dilatory or procedural motions ^c (b) Dilatory or procedural motions ^c	15 minutes 60 minutes	4-6(1) 4-6(2), 9-5	Automatic – vote held at 5:30 p.m. same day ^a No
Motions (outside of Routine Proceedings): (a) Debatable ^c (b) Non-debatable ^c	60 minutes if not deferred 15 minutes if deferred 60 minutes	9-5, 9-6, 9-10(7)	Yes ^{a, b} No
Case of Privilege: Motion to take action or to refer matter to the Standing Committee on Rules, Procedures and the Rights of Parliament	15 minutes if deferred Max. 60 minutes if debate ends before ordinary time of adjournment	13-6(7), 13-6(8), 9-6, 9-10(7)	Yes ^{a, b} (if debate ends after the ordinary time of adjournment, any vote is automatically deferred to 5:30 p.m. next sitting (may not be further deferred))

^a Bells ring only once when more than one deferred vote is to be taken successively — see rule 9-10(6).

^b Votes are usually deferred until 5:30 p.m. at the next sitting, except if the vote is deferred to a Friday, in which case the Government Whip may, during a sitting, further defer the vote to 5:30 p.m. on the next sitting day — see rule 9-10(4).

^c See Appendices A and B in Chapter 5 for lists of debatable and non-debatable motions.

Note: If the bells for a vote ring at the ordinary adjournment hour, the adjournment is suspended until after the vote and any other related business is concluded, at which point the Speaker will declare the Senate adjourned — see rule 9-9.

In relation to votes on a report under the *Ethics and Conflict of Interest code for Senators* concerning an individual senator, see rules 12-30(5) and (7).

Time Limits for the Ringing of Bells (cont'd)

Time Allocation: (a) Motion with agreement	Max. 60 minutes	9-5	no
(b) Motion without agreement	Max. 60 minutes	7-3(1)(h), 9-5	no
(c) Time-allocated government order	15 minutes	7-4(5), 9-6, 9-10(7)	If vote is requested before 5:15 p.m., vote takes place at 5:30 p.m. same day; if vote is requested between 5:15 p.m. and 5:30 p.m., vote takes place 15 minutes later; if vote is requested after 5:30 p.m., vote takes place next sitting day at 5:30 p.m. ^a
Appeal of Speaker's ruling	60 minutes	2-5(3)	No
Committee of the Whole	No bell – vote taken immediately	12-32(3)(e)	No
Royal Assent	Minimum 5 minutes	16-1(5)	Not applicable
Motion “That the Senate do now adjourn”	60 minutes	5-13(3), 5-13(4), 9-5	No
Motion “That a senator be now heard”	60 minutes	6-4(2)	No

^a Bells ring only once when more than one deferred vote is to be taken successively — see rule 9-10(6).

^b Votes are usually deferred until 5:30 p.m. at the next sitting, except if the vote is deferred to a Friday, in which case the Government Whip may, during a sitting, further defer the vote to 5:30 p.m. on the next sitting day — see rule 9-10(4).

^c See Appendices A and B in Chapter 5 for lists of debatable and non-debatable motions.

Note: If the bells for a vote ring at the ordinary adjournment hour, the adjournment is suspended until after the vote and any other related business is concluded, at which point the Speaker will declare the Senate adjourned — see rule 9-9.

In relation to votes on a report under the *Ethics and Conflict of Interest code for Senators* concerning an individual senator, see rules 12-30(5) and (7).

CHAPTER 7

Public Bills

As the Upper Chamber of Parliament, one of the principal duties of the Senate is the consideration and careful review of bills. This chapter begins with a description of the basic structure of a bill. It provides a detailed explanation of the stages that a public bill must follow as it makes its way through the legislative process in the Senate. The chapter also deals with the process for money bills and specific procedures such as the pre-study of bills.



1. TYPES OF PUBLIC BILLS

Public Bills in General

Public bills relate to matters of general or broad concern and of national or regional interest within the competency of the federal jurisdiction. Such bills can initiate new law as well as amend or repeal existing law. If they contain financial implications (i.e., appropriation or taxation measures), they must be introduced in the House of Commons. All other public bills can originate in either chamber and may be introduced by a minister, or by a senator or member of the House of Commons who is not a minister.

A public bill is distinct from a private bill, which is introduced by way of a petition and confers a special benefit or an exemption from the general law on a particular person or body of persons, including corporations.¹ Private bills are never introduced by the government. Rather, they are always introduced by a senator who is not a minister or, on rare occasions, by a member of the House of Commons who is not a minister.

Government Bills

A government bill is legislation initiated by the government. While a government bill introduced in the Senate is usually in the name of the Leader of the Government in the Senate, it is the Deputy Leader of the Government who typically introduces the bill on behalf of the Leader, while another senator, known as the sponsor, usually takes the lead in speaking about the bill and moving it through the various stages. Government bills are always public and never private.

¹ The question of whether a bill is of a public or private nature has been raised on occasion. See, for example, Speaker's rulings, *Journals of the Senate*, April 2, 1998, pp. 577-582; and October 2, 1996, pp. 566-568. For more information on private bills, see Chapter 8.

Senate Public Bills and Commons Public Bills

Although government bills are always public, the term “Senate Public Bill” is used for public bills initiated by a senator who is not a minister. Similarly, non-government public bills originating in the House of Commons are referred to as “Commons Public Bills.”² In general, all public bills are subject to the same procedures in the Senate.

Numbering of Bills

Bills starting with the letter “S” (S-1, S-2, etc.) are those first introduced in the Senate, while those starting with the letter “C” (C-1, C-2, etc.) are first introduced in the House of Commons. In June 2005, a report of the Standing Committee on Rules, Procedures and the Rights of Parliament recommending a new numbering system for Senate bills (similar to the system used by the House of Commons) was adopted. This change took effect at the start of the 1st Session of the 39th Parliament in April 2006.³ S-bills are now numbered in the following way:

S-1 applies to the pro forma bill introduced at the beginning of each session;⁴

S-2 to S-200 apply to bills introduced by the government in the Senate;

S-201 to S-1000 apply to Senate public bills introduced by senators who are not ministers; and

S-1001 and above apply to private bills.

House of Commons bills are numbered in the same manner, but are preceded by the letter C.

2. STRUCTURE OF BILLS

Whether bills are first introduced in the Senate or the House of Commons, they must all conform to a certain structure since they will be part of Canada’s statutory law when given Royal Assent. Government bills are drafted by the Department of Justice’s legislative drafters, while Senate public bills (non-government bills introduced by senators) and Commons public bills (non-government bills introduced by members of the House of Commons) are drafted by the offices of the Law Clerk and Parliamentary Counsel for the Senate and for the House of Commons, respectively. Bills are published in a bilingual format and contain various elements. Beginning on the first page, each bill is identified with the session

² The House of Commons refers to these bills as “Private Members’ Bills.”

³ See *Journals of the Senate*, June 30, 2005, p. 1078. Until 1958, Senate bills were assigned letters (Bill A, Bill B, etc.). From 1958 until 2006, bills were numbered sequentially in the order in which they were presented with no indication as to whether they were government bills, Senate public bills or private bills. The lack of differentiation between the different types of bills dates back to the time when there was no procedural distinction between bills introduced by the government and those introduced by senators who were not ministers. In 1991, the *Rules of the Senate* were changed to allow for a differentiation of the consideration of Government Business and Other Business on the Order Paper. However, no changes were made to the numbering system of bills at that time.

⁴ See Chapter 3 for more information on the pro forma bill.

and Parliament number, the regnal year in which the bill is introduced,⁵ and its number. Other noteworthy elements of the bill are shown below.⁶

Long title: Every bill contains a long title which describes the purpose of the legislation and/or the statutes (if any) that it would amend. This title appears on the cover page under the bill number, and at the top of the first page.

Preamble: Some bills contain preambles which serve to state the reasons the legislation is considered desirable. A preamble appears before the enacting clause. The *Interpretation Act* (R.S.C., 1985, c. I-21, s. 13) states that “[t]he preamble of an enactment shall be read as a part of the enactment intended to assist in explaining its purport and object.” There are limitations on the amendments committees can make to the preamble of a bill, and, if there is no preamble, the committee cannot insert one.

Enacting clause: This short paragraph precedes the clauses of a bill and reads as follows: “Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:.”⁷ The enacting clause is not subject to amendment as it does not form part of the contents of the bill.

Clauses: The clauses of a bill contain the fundamental provisions of the proposed legislation. They are identified sequentially by number throughout the bill and may be divided into subclauses, paragraphs and subparagraphs. Clauses may provide for new legislative provisions, or they may amend provisions of existing legislation. Once a bill has received Royal Assent, reference is no longer made to “clauses” but to “sections” in English. In French, the term “article” is used consistently for both a bill and an act.

Parts: Highly-complex bills, such as omnibus bills,⁸ may group clauses into parts, numbered sequentially throughout the bill. Each part addresses a general subject contained within the bill.

Line numbering: Each page of a bill contains line numbering in order to facilitate the moving of amendments to clauses. The line numbering can be found to the right-hand side of the text in each language. The numbers for the English and French texts do not always coincide.

⁵ The regnal year is adjusted once a Senate bill is adopted by the Senate as well as when a bill receives Royal Assent. For example, if a bill was introduced in the 62nd year and adopted in the 63rd year, the regnal year will appear as “62-63.” The regnal year for Queen Elizabeth II changes on February 6.

⁶ The first and last pages of two separate bills containing many of the elements discussed below are reproduced in Appendix A of this chapter.

⁷ *Interpretation Act*, R.S.C., 1985, c. I-21, s. 4.

⁸ The term “omnibus bill,” although commonly used, is not precisely defined. “In general, an omnibus bill seeks to amend, repeal or enact several Acts, and is characterized by the fact that it is made up of a number of related but separate initiatives” (O’Brien and Bosc, p. 724). They have been used, for example, to implement budgetary and related measures. Omnibus bills have sometimes been questioned in both houses, but the Speaker has determined that “within the current framework of the *Rules of the Senate* and practices such bills are acceptable and can proceed through the Senate in the same way as any other bill” (*Journals of the Senate*, February 3, 2015, p. 1549); for further information on omnibus bills, refer to the entire ruling, at pp. 1545-1549 of the Journals; as well as O’Brien and Bosc, pp. 724-727).

Short title: Some bills contain a short title for the convenience of citation. If a short title exists, it is found in clause 1.⁹

Interpretation clause: This clause provides definitions for the terms employed within the bill. Not all bills contain an interpretation clause.

Purpose clause: The purpose clause states the object, purpose or application of the bill. Not all bills contain a purpose clause.

Coordinating provisions: Due to the fact that several bills may be amending the same sections of certain statutes, some bills contain clauses clarifying which provisions take effect if one bill receives Royal Assent before the other.

Coming-into-force clause: Unless a bill contains a coming-into-force clause, it takes effect on the date that Royal Assent is given.¹⁰ When a coming-into-force clause is included in a bill, it specifies when the act (or certain provisions of the act) take effect – either on a specific date or a date to be fixed by order-in-council. This is usually the last clause of a bill or of a part of a bill.

Schedules: One or more schedules may be appended to the end of the bill to provide details for certain provisions. Schedules may contain information that cannot otherwise be conveniently placed within the body of the bill (e.g., tables, diagrams, lists and maps), or the text of agreements falling within the prerogative of the Crown (e.g., treaties and conventions).

In addition, the drafters of a bill may insert headers, marginal notes,¹¹ explanatory notes and a table of provisions for ease of use. Inside the cover there is a summary of the purpose of the bill, providing “a clear, factual, non-partisan overview of the bill and its main purposes and provisions.”¹² Bills that appropriate funds also have a Royal Recommendation published in the bill above the summary.¹³

3. STAGES OF THE LEGISLATIVE PROCESS

The stages followed by a bill in the Senate begin with introduction and first reading. This is followed by second reading, committee stage, consideration of the committee’s report (if required), third reading (passage by the Senate) and, if necessary, consideration of any messages received from the House of Commons concerning amendments. As explained below, some stages can be omitted under certain conditions. In addition, a bill may be sent to committee for a pre-study of its subject matter after receiving

⁹ In some private bills, the short title can be found in the last clause.

¹⁰ *Interpretation Act*, R.S.C., 1985, c. I-21, s. 6.

¹¹ Marginal notes are short explanations in the margins of a bill. They are prepared to assist readers, but do not form part of the eventual act (See *Interpretation Act*, R.S.C., 1985, c. I-21, s. 14).

¹² *Guide to Making Federal Acts and Regulations*, p. 132.

¹³ See Appendix A of this chapter for an example of a Royal Recommendation published on the inside cover of a bill.

first reading in the House of Commons but before its introduction in the Senate. The subject matter of a bill can also be sent to committee for study prior to its adoption at second reading.

Appendix B at the end of this chapter outlines the legislative stages that a bill follows before being adopted by the Senate, together with the notice requirements and the opportunity for debate, amendments or votes at each stage.

Introduction and First Reading

Introduction and first reading occur at the same time and are purely formal in nature. A bill may be introduced in the Senate without notice, and it receives first reading without debate or vote.¹⁴

Public bills that originate in the Senate are introduced by a senator during Routine Proceedings under either the heading “Introduction and First Reading of Government Bills” or “Introduction and First Reading of Senate Public Bills” if the bill is not from the government.

Bills received from the House of Commons are introduced by way of a message read by the Speaker during Routine Proceedings under the appropriate rubric (i.e., “Introduction and First Reading of Government Bills” or “First Reading of Commons Public Bills”).¹⁵ If the message is received after Routine Proceedings, the Speaker will read it to the Senate at the earliest convenient moment during the sitting.¹⁶ Usually the member of the House of Commons who is sponsoring the bill will ask a senator to act as the Senate sponsor of the bill as it makes its way through the Senate.

Second Reading

After a bill has been read the first time, two days’ notice is required before debate at second reading can begin.¹⁷ The sponsor of the bill is responsible for moving the motion for second reading and usually initiates the debate. In the case of Senate government bills, although the name on the cover of the bill is that of the Leader of the Government or another minister in the Senate,¹⁸ for practical purposes it is common for a senator from the government side who is not a minister to lead the debate on the bill as it proceeds through the Senate. The second speaker on a government bill is usually the critic from the opposition side.

Debate at second reading focuses on the principle or merits of the bill.¹⁹ This debate is intended to address questions such as: “Is the bill good policy?,” “Is it worth pursuing further?” and “Will it be a good law?” The general issues raised in the bill, and not the specific content of its parts and clauses, are the main

¹⁴ Rules 5-7(j), 10-2 and 10-3.

¹⁵ On occasion the Senate receives an imperfect version of a bill from the Commons. In such situations practice has been to declare proceedings on the bill up until the time the error is discovered null and void, and to then introduce a corrected version of the bill by way of a new message from the Commons. The motion to declare proceedings null and void has sometimes been adopted with leave, and sometimes on notice (if the bill has not been adopted at second reading, one day’s notice is required, but if second reading has taken place, five days’ notice is required to rescind proceedings). See examples of November 6, 2014 (*Journals of the Senate*, p. 1334); September 25, 2014 (*Journals of the Senate*, p. 1196); November 21, 2001 (*Journals of the Senate*, pp. 995-996); June 13, 2000 (*Journals of the Senate*, p. 699); and May 11, 2000 (*Journals of the Senate*, p. 594).

¹⁶ Rule 16-2(2).

¹⁷ Rule 5-6(1)(f).

¹⁸ For example, during the 1st Session of the 32nd Parliament, Bill S-6, An Act to amend the Two-Price Wheat Act, was sponsored by the Minister of State (Canadian Wheat Board). This minister was not the Leader of the Government in the Senate.

¹⁹ Rule 10-4.

object of debate. In the case of an amending bill, only the principle of the amending bill may be considered; debate on the principle of the original act is beyond the scope of the bill.²⁰ Since debate at second reading is limited to the principle of a bill, specific or technical amendments to its clauses cannot be proposed at this stage.²¹ Adoption at second reading means that there is “agreement in principle” to the bill. However, the Senate can still subsequently reject a bill at either the report or third reading stages.

The *Rules of the Senate* do not limit the length of time that a bill may be debated at second reading. The sponsor and the critic of a bill are allowed to debate the bill for a maximum of 45 minutes each. All other senators are allowed a maximum of 15 minutes, except for the Leaders of the Government and the Opposition, who are allowed unlimited time, and the leader of any other recognized party, who is allowed a maximum of 45 minutes.²² The senator who moved second reading of a bill has the right of final reply at this stage.²³ The government can opt to use time allocation to curtail debate on government legislation. On occasion senators have successfully used disposition motions to curtail debate on non-Government Business.²⁴

Amendments at Second Reading

Although specific or technical amendments to the clauses of a bill are not permitted during second reading debate, three types of amendments are permitted: the hoist amendment, the reasoned amendment and the referral of the subject matter of a bill to committee.

- **Hoist amendment.** This amendment purports to delay second (or third) reading for a specified period of time – usually six months.²⁵ The normal motion for second or third reading is “[t]hat the bill be read the second/third time.” The form of the amendment is to replace the normal motion with the following:

That Bill (number and title) be not now read the second/third time but that it be read a second/third time this day six months hence.²⁶

Originally, in British practice, sessions followed an annual cycle, and the intent of the hoist was to postpone debate on the bill to a date after the end of the session. Although sessions in Canada have never followed a fixed annual cycle, the Senate still recognizes that the effect of the hoist amendment is to defeat the bill, even though a session may extend past the specified date. Another effect of the amendment is to prolong debate by allowing senators to speak again, this time on the motion in amendment, even if they have already spoken to the main question. Bills defeated by a hoist amendment are removed from the Order Paper and are not restored on the date specified in the motion.²⁷ In addition, a bill that has been dropped from the Order Paper on this basis cannot be

²⁰ Beauchesne, 6th ed., §665, pp. 199-200.

²¹ See the *Companion to the Rules of the Senate*, 2nd ed., rule 10-4, pp. 208-215. Also see *Debates of the Senate*, December 14, 2001, pp. 2074-2077.

²² Rule 6-3(1).

²³ Rule 6-12.

²⁴ See Chapter 5 for additional information on the curtailment of debate.

²⁵ A three month hoist is also possible, and has the same effect as a six month hoist.

²⁶ For an example of a hoist amendment, see *Journals of the Senate*, March 20, 2013, p. 2024.

²⁷ Erskine May, 22nd ed., p. 504; 23rd ed., pp. 544 and 583 (footnote 7); and 24th ed., p. 548 (footnote 108).

reintroduced in the same session, even if the date specified in the amendment has passed. To reintroduce such a bill would be contrary to the decision of the chamber and a violation of the same question rule.²⁸

On at least one occasion, an attempt to amend a hoist amendment resulted in a Speaker's ruling.²⁹ The proposed amendment to the hoist motion was:

That the motion in amendment be amended by adding after the word "hence" the following words: "when a new government and a new prime minister and a new approach are in position."

The Speaker ruled that a hoist amendment cannot be amended.

- **Reasoned amendment.** This amendment allows a senator to state the reasons for opposing second (or third) reading of a bill by introducing another relevant proposal that replaces the original question. In other words, it provides a means to put on the record a statement or explanation as to why a bill should not receive second reading.³⁰ If the reasoned amendment is adopted, the bill is dropped from the Order Paper. A reasoned amendment always supersedes second (or third) reading. If, on the other hand, the reasoned amendment is rejected, the Senate may continue debate on the motion for second (or third) reading of the bill. While it is also possible to propose a reasoned amendment at third reading, such an amendment must deal directly with the bill and not be opposed to the principle of the bill, which was adopted at second reading.³¹

There have been at least four Speaker's rulings on the use of reasoned amendments. One ruling dealt with the admissibility of a reasoned amendment because references to judges and courts of justice in the form of a personal attack are unparliamentary.³² Another ruling declared that an amendment to a reasoned amendment is in order provided that it seeks to add to the reasons already proposed in the original amendment.³³ On two other occasions, the Speaker has ruled proposed reasoned amendments out of order because they did not provide any reasons for not agreeing to second reading of the bills. Rather, they sought to delete certain clauses from the bills and were concerned primarily with specific provisions of the bills.³⁴

- **Referral of the subject matter of a bill to a committee before second reading.** It is possible to refer the subject matter of a bill under consideration at second reading to committee by way of an amendment to the motion for second reading. The motion in amendment is usually in the following form:

That Bill (number and title), be not now read a second time, but that the subject matter thereof be referred to the (committee name); and

²⁸ Rules 5-12 and 10-9. Also see O'Brien and Bosc, pp. 747-748.

²⁹ Speaker's ruling, *Journals of the Senate*, October 20, 2003, pp. 1165-1166.

³⁰ Speaker's ruling, *Journals of the Senate*, December 14, 1999, p. 285.

³¹ O'Brien and Bosc, pp. 788-789. There are no known precedents of a reasoned amendment at third reading in the Senate.

³² Speaker's ruling, *Journals of the Senate*, December 2, 1997, pp. 260-261.

³³ Speaker's ruling, *Journals of the Senate*, December 10, 1997, p. 336. This is the only known case of an amendment to a reasoned amendment in the Senate.

³⁴ Speaker's ruling, *Journals of the Senate*, July 7, 1981, pp. 1374-1375. Also see *Debates of the Senate*, May 8, 1946, pp. 188-189.

That the order to resume debate on the motion for the second reading of the bill remain on the *Order Paper and Notice Paper*.

If such an amendment is adopted, the committee can study the subject matter of the bill, but cannot make technical or specific amendments to the clauses. The inclusion of the second paragraph of the motion cited above allows the bill to remain on the Order Paper and to be debated in the chamber at second reading while its subject matter is studied by a committee.³⁵ Nonetheless, in most cases, debate will not resume until the committee tables its report on the bill's subject matter.³⁶ Without the second paragraph the bill might be dropped from the Order Paper and, should there be a desire to proceed with the bill after the committee has made its report on the subject matter, the bill would have to be restored to the Order Paper.

Conclusion of Second Reading Stage

After the Senate completes debate at second reading, the Speaker puts the question, and, if necessary, a vote takes place. Once the motion for second reading of a bill is adopted, the Speaker immediately asks the house: "When shall this bill be read a third time?" It is at this point that a procedural motion may be proposed to refer the bill to a standing or special committee, or to a Committee of the Whole.³⁷ Alternatively, a procedural motion may be proposed to place the bill on the Order Paper for third reading at the next sitting. Although the committee stage is not obligatory in the Senate, bills are almost always referred to committee for study.³⁸ Appropriation bills are usually an exception to this practice (see section on Money Bills later in this chapter).

If a bill is referred to a committee the Senate can give instructions as to how the committee is to proceed (e.g., to divide a bill).³⁹ Such an instruction is done by way of a separate motion and requires one day's notice.⁴⁰

³⁵ Past practice has varied with respect to keeping a bill on the Order Paper while its subject matter was studied by a committee. For example, see *Journals of the Senate*, February 28, 2013, p. 1964; June 17, 2009, p. 1140; as well as Speaker's rulings, *Journals of the Senate*, October 25, 2006, p. 550; May 24, 1995, pp. 969-971; May 27, 1986, p. 1375; and May 8, 1985, pp. 430-431. Also see *Debates of the Senate*, May 28, 1986, pp. 2510-2514; and November 16, 1982, pp. 4990-4991.

³⁶ The provisions of rule 4-15(2) continue to apply to non-government bills on the Order Paper while a committee studies its subject matter. On at least one occasion, a motion was adopted to the effect that a bill whose subject matter had been referred to committee before second reading not appear on the Order Paper until the committee tabled its related report (*Journals of the Senate*, February 28, 2013, p. 1964). On at least one other occasion, a special order was adopted to suspend this rule until the subject matter of a bill was reported by committee (*Journals of the Senate*, December 13, 2007, p. 437).

³⁷ This motion is neither debatable nor amendable (rules 5-8(1)(f) and 5-8(3)). Also see Speaker's ruling, *Journals of the Senate*, December 16, 1996, p. 790. For examples of cases in which the Senate did not accept the initial motion to refer a bill to a committee, instead adopting a later motion referring it to another committee, see *Journals of the Senate*, November 29, 2007, p. 210; and October 27, 2003, pp. 1223-1224. On at least one occasion, a bill was sent to two different committees (one after the other) (*Journals of the Senate*, November 24, 1999, p. 150).

³⁸ This is different from practice in the House of Commons, where a motion for second reading always includes an additional provision to refer the bill to a specific committee for consideration.

³⁹ For example, see *Journals of the Senate*, November 20, 2002, pp. 191-192; and December 6, 1999, pp. 204-205. Also see Speaker's ruling, *Journals of the Senate*, May 2, 2000, pp. 549-551, and Erskine May, 24th ed., pp. 558-563 and 603-604.

⁴⁰ Rule 5-5(e). Also see Speaker's ruling, *Journals of the Senate*, November 30, 1995, pp. 1330-1332. For further information on motions of instruction, see Chapter 9 on the powers of committees.

The sponsor of the bill normally moves the motion to refer the bill to a committee after second reading. However, if the sponsor is absent, another senator may move the motion.

If the motion for second reading is defeated, the bill dies and cannot be reintroduced in the same session, since reintroduction would be contrary to the decision of the chamber and a violation of the same question rule.⁴¹

Committee Stage

Once a motion to refer a public bill to a committee is adopted, the committee can begin examining it immediately.⁴² The order of reference for the committee is the bill itself.

Testimony and Evidence

A committee normally begins its consideration of a government bill by hearing from the minister responsible for the bill, who may be assisted by departmental officials. The minister explains the policy underlying the bill, whereas departmental officials explain technical aspects. In the case of a non-government bill, the parliamentarian who initially introduced it will usually be the first witness. Other interested individuals or groups may also be invited to appear at the discretion of the committee. Individuals may also provide written submissions.⁴³

Clause-by-clause Consideration of Bills

As a general practice, clause-by-clause consideration of a bill does not take place at a meeting during which witnesses on the bill are heard. Although some committees do proceed directly from hearing witnesses to clause-by-clause consideration, committees tend to avoid this practice, ensuring that senators have adequate opportunity to reflect on the testimony of witnesses and to prepare amendments if they so wish.

In addition, a committee generally does not proceed to clause-by-clause consideration without having issued a public notice to that effect. This gives all senators – be they members of the committee or not – the chance to be informed of this activity. It also allows other interested parties to be aware of what is taking place. The Standing Committee on Rules, Procedures and the Rights of Parliament has “note[d] the practice of Senate Committees whereby appropriate notice is given to the members of a committee before commencing clause-by-clause consideration of a bill.”⁴⁴

The actual process of clause-by-clause consideration generally begins with a motion to the effect that “the committee proceed to clause-by-clause consideration of Bill...,” or with the chair asking a similar question.⁴⁵

⁴¹ Rules 5-12 and 10-9. Also see Erskine May, 24th ed., pp. 548 and 601-602.

⁴² The rules in this case are different for private bills. See Chapter 8.

⁴³ For more information on witnesses, see Chapter 9.

⁴⁴ Fourth report of the Standing Committee on Rules, Procedures and the Rights of Parliament presented on June 9, 2005 (*Journals of the Senate*, p. 981), and adopted by the Senate on June 14, 2005 (*Journals of the Senate*, p. 999).

⁴⁵ House of Commons committees proceed in a manner somewhat different to Senate committees. In Senate committees, witnesses on a bill are heard without any part of the bill having been called. After receiving evidence, the committee normally proceeds to clause-by-clause consideration, although some witnesses (particularly departmental officials) may be asked to appear again in order to provide additional clarification. The hearing of witnesses and the clause-by-clause process are, therefore, two distinct processes, although the one follows naturally from the other. In the House of Commons, by

Senate committees do not generally have departmental officials sitting at the table during clause-by-clause consideration, although this has happened on occasion.⁴⁶ From time to time, specific individuals are invited to the table as witnesses to provide clarification on particular points. While officials and other interested groups may be available in the committee room, they only come to the table when invited.

Before beginning the consideration of a bill, Senate committees sometimes pass some variant of the following motion:⁴⁷

That any consideration or votes on any motions dealing with the disposition in committee of Bill (number and name) be held no earlier than at the completion of hearing all witnesses.

This motion indicates to senators that clause-by-clause consideration will not begin unexpectedly while witnesses are still scheduled, unless the committee specifically decides to do so. This can add a level of certainty to committee hearings, particularly in dealing with a controversial bill.

While the clause-by-clause consideration of bills in Senate committees is usually completed during a single meeting, this does not have to be the case. If the committee were to adjourn during clause-by-clause consideration, it would resume at the point that it adjourned the next time the bill is on its agenda.⁴⁸ The committee can also choose to suspend clause-by-clause consideration of the bill to hear additional witnesses, and then resume it at the point where it left off.⁴⁹

A. Obligation to Consider a Bill Clause-by-Clause

Rule 12-20(3) provides that “[e]xcept with leave of its members present, a committee shall not dispense with clause-by-clause consideration of a bill.” The report of the Standing Committee on Rules, Procedures and the Rights of Parliament, which recommended this provision,⁵⁰ explained that:

It is the right of any Senator to propose amendments to individual clauses, or to insist on the formal procedure whereby each clause of the bill is considered separately. There are times when for legitimate reasons the members of the committee are prepared to modify this procedure, but it can only be done with the agreement and consent of all members of the committee who are present.

contrast, the practice is that “the Chair of the committee calls Clause 1 for debate (or Clause 2, if Clause 1 contains the short title) to permit general discussion of the bill and questioning of witnesses, if any are appearing” (O’Brien and Bosc, p. 760). This practice reflects the provisions of House of Commons Standing Order 75(1).

⁴⁶ For example, see the proceedings of the Standing Senate Committee on Legal and Constitutional Affairs of October 24 and 25, 2006.

⁴⁷ See, for example, the proceedings of the Standing Senate Committee on Legal and Constitutional Affairs of September 20, 2000; June 26, 1996; and September 18, 1995.

⁴⁸ See, for example, the clause-by-clause consideration of Bill C-2, Federal Accountability Act, by the Standing Senate Committee on Legal and Constitutional Affairs on October 24 and 25, 2006.

⁴⁹ See, for example, the study of Bill S-8, An Act to amend the Broadcasting Act, by the Standing Senate Committee on Transport and Communications in late 2002 and early 2003.

⁵⁰ The committee’s fourth report was presented on June 9, 2005, and adopted on June 14, 2005.

Accordingly, if any member of the committee present insists on proceeding through each clause of a bill separately, the committee is obliged to do so.

If a committee decides to recommend against a bill, it does not go through the clause-by-clause process.⁵¹

B. Order for Considering Different Elements of a Bill

During clause-by-clause consideration, the different elements of a bill are dealt with in the following order, unless the committee decides otherwise.⁵²

- suspend consideration of the long title, preamble (if any) and short title (if any);
- clauses;⁵³
- schedules (if any);⁵⁴
- short title (if any);
- preamble (if any); and
- long title.

The normal practice is for the chair to ask whether the long title, the preamble (if any) and the short title (if any) are to be postponed before the clauses are dealt with. Committees have, on a number of occasions, nevertheless agreed to examine elements of a bill in an order differing from that outlined above.⁵⁵ Such variations can have effects on the amendments that can be moved to the titles and preamble.⁵⁶

Committees sometimes consider bills in a much less formal fashion, grouping large numbers of clauses and schedules, or the entire bill, into one motion, with leave.⁵⁷

The only elements of the published version of a bill that are dealt with in committee are the long title, the preamble, the short title, the clauses and the schedules. Other elements appearing on the published version of the bill (including the number, the Royal Recommendation, the summary, the Table of Provisions and the enacting clause) are not dealt with by the committee because they are not part of the contents of the

⁵¹ For more information, see section on “Committee Deciding Against a Bill” later in this chapter.

⁵² See notably Beauchesne, 6th ed., §690, p. 205. Also refer to O’Brien and Bosc, p. 761.

⁵³ Beauchesne, 6th ed., §690, p. 205, indicates that new clauses should be taken into consideration after existing clauses. However, later on (see §691(2)) it is noted that “this practice is not rigorously followed as the committee is generally guided by what is most convenient in each particular case.” O’Brien and Bosc states that it is now normal practice in the House of Commons to deal with new clauses “in the order in which they would appear in the bill.” (p. 761) Senate committees are flexible on this point depending on the requirements of a specific situation.

⁵⁴ The above comments relating to new clauses also apply to new schedules.

⁵⁵ See, for example, the June 19, 2000, evening proceedings of the Special Senate Committee on Bill C-20, An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference, or the September 1, 1999, proceedings of the Standing Senate Committee on Energy, the Environment and Natural Resources.

⁵⁶ As noted in points 16 and 17 of section H (below), during the discussion of the receivability of amendments, the procedural authorities indicate that amendments should be made to the preamble and long title of a bill only in limited situations: as a result of amendments to the bill, to increase its clarity, or to ensure uniformity between the English and French versions.

⁵⁷ Leave is explicitly required under rule 12-20(3).

bill and are not liable to amendment. Finally, the procedural authorities suggest that the marginal notes and headings are normally not amended in committee, although this does sometimes occur.

It is a common practice during clause-by-clause consideration for the chair to simply ask whether a particular part of the bill carries, without a formal motion being moved. Alternatively, a member of the committee may move the necessary motions. Unlike the situation in the Senate, a seconder is not required.⁵⁸

Once all elements of the bill have been adopted, two final questions remain to be decided. First, the chair asks whether the bill (as amended, if there have been any changes) shall carry, or a motion with a similar effect is moved. This gives the committee a final opportunity to approve the bill as a whole.⁵⁹ Second, the chair asks whether to report the bill (as amended, if necessary) to the Senate. If a member wishes to propose that observations be appended to the report, these can be considered at this point.⁶⁰

*C. Standing Clauses*⁶¹

During its review of the clauses of a bill, a committee may wish to stand (postpone) a clause. If an amendment has not yet been moved to the clause, it may be stood until later in the clause-by-clause process by way of a motion. If an amendment is under consideration, the clause should not be stood unless the amendment is, with leave, withdrawn at the request of the mover.

However, committees often, with leave, postpone consideration of a clause even if an amendment is under consideration. Normally, clauses that have been stood are taken into consideration after all other clauses have been dealt with.

D. Reconsideration of Clauses Already Dealt With

Rule 10-5 provides that “[a]t any time before a bill is passed, a Senator may move for the reconsideration of any clause already carried.” In addition, rule 5-8(1)(k) states that while a bill is under consideration, any element of the bill already agreed to can be reconsidered by way of a debatable motion. Based on this, even if a committee has already carried a clause, it can decide to reconsider it.⁶²

E. Committee Deciding Against a Bill

Rule 12-23(5) provides that “[w]hen a committee report recommends that the Senate not proceed further with a bill, the report must state the reasons for this. If the report is adopted, the Senate shall not proceed further with the bill.”

⁵⁸ Rule 12-20(1)(b).

⁵⁹ On at least one occasion, a committee adopted all clauses in a bill, but negatived the question “Shall the Bill carry?” The committee was not deciding against the bill itself, and it then decided to suspend clause-by-clause consideration to hear additional witnesses. The committee resumed clause-by-clause consideration several months later. See the proceedings of the Standing Senate Committee on Transport and Communications for February 27, 2003, where the chair provided a summary of this situation and the different ways to deal with it.

⁶⁰ While draft observations can be considered in camera (rule 12-16(1)(d)), the hearing of witnesses and the clause-by-clause study consideration must take place in public (rule 12-15(2)).

⁶¹ See Beauchesne, 6th ed., §700, p. 208; and O’Brien and Bosc, pp. 762-763.

⁶² See, for example, the February 27, 2003, meeting of the Standing Senate Committee on Transport and Communications.

There have been a number of occasions of committees deciding to report against bills.⁶³ If a committee decides to do so, a motion along the following lines is adopted: “that the committee report Bill (number and name) to the Senate with the recommendation that the bill should not be proceeded with further in the Senate.” This motion is normally moved without the committee having gone through the bill clause-by-clause.⁶⁴ Typically, the reasons for a committee deciding against a bill have been outlined within a few paragraphs.

F. Amendments

A member of the committee can move an amendment to a clause or other question before the committee. The types of amendments that can be moved during clause-by-clause consideration are subject to various rules of admissibility outlined below. An amendment takes precedence over the original motion and must be disposed of before consideration of the original motion can resume. Two amendments cannot, as a normal practice, be simultaneously before the committee.⁶⁵ Each amendment is normally disposed of before another amendment can be moved. If a subamendment is moved, it must be disposed of before consideration of the amendment can resume. A new subamendment could then be moved. Whether an amendment is adopted or defeated, a decision must still be made on the original motion (as amended, if appropriate). The decision on an amendment does not automatically entail the adoption of the clause.

There is no need to give notice prior to moving an amendment in committee during clause-by-clause consideration.⁶⁶ If, however, the chair is advised beforehand that a senator wishes to move an amendment, that senator can be recognized at the appropriate time.⁶⁷

Once an amendment is moved, it cannot be withdrawn except at the request of the mover and with leave of the committee.⁶⁸

G. Order for Considering Amendments

While clauses are dealt with in sequence, multiple amendments to a single clause should normally be considered in the following order:

⁶³ For examples, see *Journals of the Senate*, April 21, 2015, pp. 1743-1744; April 1, 2015, pp. 1723-1724; June 20, 2013, pp. 2712-2713; April 30, 2013, pp. 2195-2196; November 22, 2012, pp. 1740-1741; February 3, 2011, pp. 1181-1182; November 25, 2010, pp. 1016-1017; and June 10, 1998, pp. 794 and 799-808.

⁶⁴ A Speaker’s ruling on December 1, 2010, states that “According to the available records, committees have always made the decision to report against a bill without starting clause-by-clause study. That is to say, the basic issue of whether a committee considers that a bill should be proceeded with is decided, either explicitly or, most often, implicitly, before clause-by-clause. If the committee decides to make a recommendation under rule [12-23(5)], it does not ever reach the clause-by-clause stage ... To oblige that a committee go through a bill clause-by-clause when it has already decided to report against the bill would be contradictory and inconsistent.” (*Journals of the Senate*, p. 1034)

⁶⁵ However, as discussed in Chapter 5, the Senate does have a practice of allowing amendments to be “stacked” with leave (i.e., several amendments are under debate simultaneously and voted on *seriatim* at the end of debate). This process has also been applied in committee (see, for example, the June 11, 2008 proceedings of the Standing Senate Committee on Legal and Constitutional Affairs).

⁶⁶ Rules 5-7(a) and 12-20(1)(d).

⁶⁷ O’Brien and Bosc, p. 764.

⁶⁸ Beauchesne, 6th ed., §696, p. 206; and O’Brien and Bosc, p. 763.

- In the place in which they would appear in the clause. “If the latter part of a clause is amended, it is not competent for a Member to move to amend an earlier or antecedent part of the same clause. If an amendment to the latter part of a clause is negatived or withdrawn, it is competent to propose one to an earlier part.”⁶⁹
- If proposed at the same place in a clause, amendments to remove certain words and replace them by others take precedence over amendments to simply leave out words or insert new words.⁷⁰

Nevertheless, in practice, departures from this order are often accepted.

H. Admissibility of Amendments

There are certain rules of admissibility relating to amendments in committee.⁷¹ If a point of order is raised, the chair is responsible for ruling on the admissibility of amendments, and the decision can be appealed to the committee.⁷² Unless otherwise indicated, these rules apply to the titles, the preamble, the clauses and the schedules of a bill. If it is determined that an amendment is out of order after debate on an amendment has begun, the chair will advise the committee and end the debate on the amendment.⁷³ If the chair does not draw the committee's attention to this fact, a member could do so on a point of order. In general, the practice in committees is for the chair to allow debate unless a point of order on an amendment is raised, which is rare. If a point of order relating to an amendment is raised, the chair normally allows debate to continue, unless the amendment is obviously out of order, thereby allowing the committee to make the final decision on the amendment.

Amendments are generally prepared by legislative drafters, either in the Senate Law Clerk's office or in the Department of Justice,⁷⁴ following their clients' instructions. The fact that an amendment is drafted in proper legal terms does not necessarily guarantee that it is procedurally in order. The following summarizes some of the rules and practices that may be taken into account when evaluating the receivability of amendments moved in committee.

1. Elements of the bill not subject to amendment include the bill's number, the Royal Recommendation, the Summary, the Table of Provisions, the enacting clause, the marginal notes and the headings. On the other hand, elements subject to amendment include the titles, preamble, clauses and schedules, with certain restrictions.
2. An amendment in committee should only relate to one clause of the bill and not to two or more clauses. However, for the sake of convenience, debate will frequently be more far-ranging than the strict application of this principle might imply. Discussion may cover several interconnected amendments to different clauses.⁷⁵

⁶⁹ Beauchesne, 6th ed., §697(2), pp. 206-207. Also see O'Brien and Bosc, p. 765.

⁷⁰ O'Brien and Bosc, p. 765.

⁷¹ Generally, see Beauchesne, 6th ed., §698, pp. 207-208; O'Brien and Bosc, pp. 765-771; and Erskine May, 24th ed., pp. 575-577.

⁷² See O'Brien and Bosc, p. 765. The chair can also act without a point of order being raised (see rules 2-1(1) and 2-6(1)), although this is rare.

⁷³ Beauchesne, 6th ed., §699, p. 208; O'Brien and Bosc, p. 766.

⁷⁴ The Law Clerk's Office generally drafts amendments that do not originate from the government, while the Department of Justice typically drafts those for the government.

⁷⁵ Beauchesne, 6th ed., §§697(3) and (4), p. 207; and O'Brien and Bosc, p. 763.

3. An amendment must respect the principle and scope of the bill, and must be relevant to it.⁷⁶ It is a fundamental principle that “[a] committee is bound by the decision of the House, given on second reading, in favour of the principle of the bill, and should not, therefore, amend the bill in a manner destructive of this principle.”⁷⁷ A ruling of December 9, 2009, noted that:

It may generally be helpful to view the principle as the intention underlying a bill. The scope of the bill would then be related to the parameters the bill sets in reaching any goals or objectives that it contains, or the general mechanisms it envisions to fulfil its intentions. Finally, relevancy takes into account how an amendment relates to the scope or principle of the bill under examination.⁷⁸

Amendments must, therefore, be in some way related to the bill before the committee, and cannot introduce elements or factors alien to the proposed legislation or destructive to its original goals. In addition, amendments must respect the objectives of the bill.⁷⁹ In dealing with these issues, it may be necessary to perform the delicate task of trying to identify the fundamental policy and goals behind the bill.⁸⁰ In so doing, factors such as the long title of the bill, its content and debate at second reading may be taken into account.⁸¹

Notwithstanding the above, it is possible for a bill to undergo significant amendment in committee, provided that the text reported back to the Senate continues to respect the decision of the Senate at second reading (i.e., that the amendments do not violate the principle or scope of the bill and are relevant to it). Beauchesne notes that “[t]he committee may so change the provisions of the bill that when it is reported to the House it is in substance a bill other than that which was referred. A committee may negative every clause and substitute new clauses, if relevant to the bill as read a second time.”⁸²

4. In addition to being relevant to the bill as a whole, an amendment to a clause must be relevant to that clause, and a subamendment must be relevant to the amendment under consideration.
5. Amendments cannot be contradictory to or inconsistent with the bill as agreed to thus far by the committee.⁸³

⁷⁶ Beauchesne, 6th ed., §698(1), p. 207; and O’Brien and Bosc, pp. 766-767. Also see Speaker’s ruling of June 3, 1999 (*Journals of the Senate*, pp. 1671-1674).

⁷⁷ Beauchesne, 6th ed., §689(1), p. 205.

⁷⁸ *Journals of the Senate*, December 9, 2009, p. 1589.

⁷⁹ See, for example, Beauchesne, 6th ed., §689, p. 205.

⁸⁰ A Speaker’s ruling noted that “the principle of the bill can be difficult to identify precisely.” It continued by stating “that the identification of the principle of a bill can encompass the understanding reflected by senators during debate at second reading as well as its title and content” (see *Journals of the Senate*, June 3, 1999, p. 1674).

⁸¹ “Reliance on the terms of the long title of the bill as a guide to assess the procedural acceptability of amendments to a bill is derived from British practice. In the United Kingdom, the legislative drafting conventions... provide for titles that are more fully descriptive of the bill’s contents. In Canada, however, the long title of bills is rarely as descriptive. More often, the title simply suggests its subject matter. Indeed, with respect to amending bills, the title usually indicates only what Acts are being amended. Frequently, there is little substantive difference between the long and the short titles of the bill whether they are creating original Acts or amending parent Acts ... Consequently, the long title cannot always be used as a reliable guide in assessing the procedural merits of any amendments” (Speaker’s ruling, *Journals of the Senate*, June 3, 1999, p. 1673).

⁸² Beauchesne, 6th ed., §689(2), p. 205.

⁸³ See Beauchesne, 6th ed., §698(2), p. 207; and O’Brien and Bosc, p. 767.

6. “An amendment is out of order if it is offered at the wrong place in the bill, if it is tendered to the committee in a spirit of mockery or if it is vague or trifling.”⁸⁴ When an amendment is proposed the chair may decide that it has been moved in the wrong place or that it should be moved as a new clause.⁸⁵
7. Amendments that would make the clause ungrammatical or unintelligible are not admissible.⁸⁶
8. Since the committee's decisions concerning a bill must be consistent, an amendment that is dependent upon an amendment or clause already negated is not in order.⁸⁷
9. In committee, it is inadmissible to propose an amendment to delete an entire clause. In such a case, the proper procedure is to vote against the clause.
10. The Senate respects the constitutional provisions relating to the initiation of financial legislation (i.e., that financial legislation must originate in the House of Commons).⁸⁸ Senate committees in turn respect the Senate’s interpretation of these provisions. In keeping with the Senate's asserted powers in this field, a committee may amend financial legislation, provided that it does not increase the amount of the appropriation or tax.⁸⁹
11. As a general rule, an amendment is inadmissible if it proposes to amend an act not being amended by the bill under consideration. Furthermore, according to the authorities, only those sections of the parent act that are being amended by the bill may be subject to amendment by the committee.⁹⁰ However, there can be some cases in which an exception to this general rule may be justified. As noted in a ruling of December 9, 2009:

Although the issue only comes up very rarely, practice [in the Senate] has tended to be that a proposed amendment to a bill amending an existing Act may deal with sections of the original Act that are not amended by the bill, provided that there is a strong and direct link between an existing clause of the bill and the change to the original Act that the proposed amendment seeks to affect.⁹¹
12. “An amendment to include in a bill a statute which has already ceased to have effect is out of order, but an amendment may be moved to continue the Act which is still in force but would cease to have effect if steps were not taken to continue its existence.”⁹²

⁸⁴ Beauchesne, 6th ed., §698(3), p. 207.

⁸⁵ Beauchesne, 6th ed., §697(1), p. 206.

⁸⁶ Beauchesne, 6th ed., §698(4)(b), p. 207.

⁸⁷ O’Brien and Bosc, p. 767.

⁸⁸ *Constitution Act, 1867*, s. 53.

⁸⁹ See section on Money Bills in this chapter.

⁹⁰ Beauchesne, 6th ed., §698(8), p. 207; and O’Brien and Bosc, pp. 766-767. Also see Speaker’s ruling, *Journals of the Senate*, December 9, 2009, pp. 1588-1589.

⁹¹ *Journals of the Senate*, December 9, 2009, p. 1589.

⁹² Beauchesne, 6th ed., §698(11), p. 208.

13. “A committee has the power to divide a clause or to decide that the first part of a clause shall be considered as an entire clause. A motion to divide a clause must be taken before the clause is adopted.”⁹³
14. Schedules are generally dealt with in the same way as clauses. If, however, the schedule contains the text of an agreement that is of independent origin (such as a treaty or convention), it cannot be directly amended. It is, however, possible to make amendments to clauses of the bill that may have the effect of modifying or qualifying the schedule, or even of withholding legislative effect from a part of the agreement or the entire agreement.⁹⁴
15. If a bill does not contain a preamble, the committee does not normally introduce one.⁹⁵
16. A substantive amendment to the preamble is normally only moved if required by amendments to the bill, to increase its clarity, or to ensure uniformity between the English and French texts.⁹⁶
17. The title of a bill should only be amended if amendments in the body of the bill make a change necessary.⁹⁷

I. Form and Language of Amendments

While a committee may insist that amendments be provided in writing and in both official languages, amendments are sometimes proposed verbally in one language. The committee may be willing to accept the interpreters' version of the amendment, or it may choose to suspend the meeting in order to allow for the translation of the unilingual amendment. A Speaker's statement on May 11, 1999, noted that:

... the practice in committees is to ensure that both language versions of any amendments to bills are available to Senators before a decision is taken. This suggests that whatever the requirements stipulated in the rules or authorities, the Senate recognizes the importance to have motions, inquiries and amendments in both languages. When this has not been done, it would appear that the Senate has been disposed to postpone any decision until the debated question, having been moved, is available in both languages. It seems... that this is the proper way of proceeding.⁹⁸

Ensuring that amendments are available in writing in both official languages avoids any concerns or delays.

J. Subamendments

A subamendment - an amendment to an amendment - can only be moved once consideration of the amendment has begun. When a subamendment is moved, it takes precedence over the original amendment and must be disposed of before consideration of the amendment can resume. After a

⁹³ Beauchesne, 6th ed., §701, p. 208.

⁹⁴ Beauchesne, 6th ed., §§702-704, p. 209; and O'Brien and Bosc, p. 770.

⁹⁵ Beauchesne, 6th ed., §705(3), p. 209; and O'Brien and Bosc, p. 770.

⁹⁶ Beauchesne, 6th ed., §§705(2) and (3), p. 209; and O'Brien and Bosc, p. 770.

⁹⁷ Beauchesne, 6th ed., §706(1), p. 209; and O'Brien and Bosc, pp. 770-771.

⁹⁸ *Journals of the Senate*, May 11, 1999, p. 1585.

subamendment has been disposed of, the committee resumes consideration of the original amendment (as amended, if the subamendment was adopted). Another subamendment can then be moved. An amendment cannot be moved to a subamendment. Whether a subamendment is adopted or rejected, the motion for the original amendment (as amended, if that is the case) must still be decided upon. The adoption of a subamendment does not dispose of the amendment.

The rules governing amendments generally apply to subamendments. In particular, a subamendment “must be strictly relevant to (and not at variance with the sense of) the corresponding amendment and must seek to modify the amendment, and not the original question; it cannot enlarge upon the amendment, introduce new matters foreign to it or differ in substance from the amendment.”⁹⁹

Preparation of Report

After completing clause-by-clause consideration of a bill, the committee prepares a report to the Senate, including any amendments recommended by the committee. A report on a bill may have observations relating to the bill appended to it after the chair’s signature. For further information, see section on the report stage below.

Time Allocation

Government legislation that is before a committee may be the object of a time allocation motion pursuant to rule 7-1(1) or 7-2.¹⁰⁰ If such a motion is adopted by the Senate and the committee fails to report the bill on time, the bill is deemed to have been reported without amendment.¹⁰¹

Consideration of a Bill by a Committee of the Whole

Any bill may be referred to Committee of the Whole. In general, however, only those bills which are considered urgent (e.g., back-to-work legislation) are considered in Committee of the Whole. All senators can participate in the work of a Committee of the Whole, which takes place in the Senate Chamber. Its proceedings are less formal than those of the Senate. Since the Senate can resolve itself into Committee of the Whole at any time without notice,¹⁰² it can proceed more quickly on a matter than a standing or special committee.

The procedures and practices of a Committee of the Whole combine elements of both the chamber and committees.¹⁰³ If witnesses are heard during Committee of the Whole, the number tends to be more limited than those heard by standing or special committees. In the case of legislation, the witnesses may include the minister sponsoring the legislation,¹⁰⁴ departmental officials or a parliamentary secretary, as well as other interested parties (such as union or company officials when back-to-work legislation is being considered).¹⁰⁵ Witnesses generally make an opening statement that is followed by a period of

⁹⁹ O’Brien and Bosc, p. 534.

¹⁰⁰ Since the provisions for time allocation were added to the *Rules of the Senate* in 1991, they have never been used with respect to legislation before a committee.

¹⁰¹ Rule 7-2(5)(b). See Chapter 5 for more information on time allocation.

¹⁰² Rules 5-7(o) and 12-32(1).

¹⁰³ Rule 12-32(3).

¹⁰⁴ Rule 12-32(4).

¹⁰⁵ Rule 12-32(5).

questions by senators. After all witnesses have been heard, the committee may begin clause-by-clause consideration of the bill followed by the proposal of a motion authorizing the chair to report the bill to the Senate. It is possible for a Committee of the Whole to consider more than one bill.¹⁰⁶ In such cases, the committee considers and votes on the bills in the order in which they were referred. Once a Committee of the Whole has completed its work, it ceases to exist. A Committee of the Whole cannot be adjourned, but may adopt a motion to rise and have the chair seek leave of the Senate to sit again.¹⁰⁷ Unlike other committees, a report of a Committee of the Whole on a bill is usually only made orally.¹⁰⁸

Report Stage

Once a committee completes its study of a bill, it must present a report to the Senate with its recommendations.¹⁰⁹ Reports from standing or special committees and the Committee of Selection are presented during Routine Proceedings. A report from a Committee of the Whole is normally presented to the Senate immediately after the committee rises.¹¹⁰ If a committee recommends amendments to a bill, the chair must sign or initial a printed copy of the bill on which the amendments have been clearly written. The chair must also sign or initial the amendments made and clauses added.¹¹¹ Whether the committee has proposed amendments or not, a copy of the bill is attached to the committee's report for presentation in the chamber.

There are several ways in which a committee can report a bill. It can:

- Report the bill without amendment: This report is deemed adopted by the Senate upon its presentation without any debate or vote. The Speaker will ask: "When shall this bill be read a third time?" It is normally the senator sponsoring the bill who moves that it be read a third time at the next sitting.¹¹² Such a report may have observations on the bill appended to it.
- Report the bill with amendments: This report, which includes the proposed amendments, must be considered by the Senate at a future date.¹¹³ The Speaker will ask: "When shall this report be taken into consideration?" The chair of the committee, or a delegate, will move that the report be considered either at the next sitting, if it is a standing committee reporting the bill, or two days hence, in the case of a special committee.¹¹⁴ Such a report may have observations on the bill appended to it.
- Recommend that the bill not be proceeded with:¹¹⁵ The committee must include the reasons for such a recommendation in its report, which must subsequently be considered by the

¹⁰⁶ *Journals of the Senate*, June 20, 1991, pp. 200-202; and July 2, 1986, pp. 1573-1575.

¹⁰⁷ Rules 12-32(3)(g) and 12-33.

¹⁰⁸ See Chapter 9 for more information on Committee of the Whole.

¹⁰⁹ Rule 12-23(1).

¹¹⁰ If a written report of a Committee of the Whole must be prepared, it can be presented at the next sitting, during Routine Proceedings. See, for example, *Journals of the Senate*, June 13, 2012, p. 1393.

¹¹¹ Rule 12-23(6).

¹¹² Rules 5-5(b) and 12-32(2). Also see Speaker's ruling, *Journals of the Senate*, March 28, 2001, pp. 254-256. With respect to clerical or editorial changes made to a bill that are not considered to be formal amendments, see Speaker's ruling, *Journals of the Senate*, June 19, 2003, pp. 991-993.

¹¹³ Rules 12-23(1) and (3).

¹¹⁴ Rules 5-5(f) and 5-6(1)(e).

¹¹⁵ Rule 12-23(5).

Senate.¹¹⁶ The Speaker will ask: “When shall this report be taken into consideration?” The chair of the committee, or a delegate, will move that the report be considered either at the next sitting, if a standing committee reported the bill, or two days hence, in the case of a special committee.¹¹⁷ If the Senate adopts the report, the bill dies and is removed from the Order Paper. However, if the Senate rejects the report, the bill may proceed to third reading.¹¹⁸

The purpose of the report stage is to allow the Senate to consider and vote on the committee’s recommendations.¹¹⁹ The Senate must confirm all recommendations made by the committee; amendments are not automatically incorporated into a bill once it is reported by the committee. During the debate, the chair of the committee, or a delegate, moves the adoption of the report and explains its content, and the basis and effect of any proposed amendments.¹²⁰ The Senate must then make a decision on the report by adopting, rejecting¹²¹ or amending¹²² it. It may also decide to send the bill back to the original committee or to another committee for further study.¹²³ Although possible, in practice the Senate does not usually amend a committee report on a bill, opting instead to either adopt or reject the report and then make any necessary amendments at third reading.

The motion to adopt a committee report on a bill is not a substantive motion since it relates to an order of the day already before the Senate.¹²⁴ As a result, no right of reply is given to the mover.¹²⁵

At report stage, government legislation may be the object of time allocation under rule 7-1 or 7-2.¹²⁶

If the Senate adopts a report recommending amendments to a bill, the Speaker asks: “When shall the bill, as amended, be read a third time?” The sponsor, or another senator, then moves that the bill, as amended,

¹¹⁶ See, for example, *Journals of the Senate*, April 21, 2015, pp. 1743-1744; April 1, 2015, pp. 1723-1724; June 20, 2013, pp. 2712-2713; April 30, 2013, pp. 2195-2196; November 22, 2012, pp. 1740-1741; February 3, 2011, pp. 1181-1182; November 25, 2010, pp. 1016-1017; and June 10, 1998, pp. 794 and 799-808. A variation of this recommendation was contained in the 13th report of the Standing Senate Committee on Legal and Constitutional Affairs on Bill S-4, An Act to amend the Constitution Act 1867 (Senate tenure), presented in June 2007. The recommendation, which was adopted by the Senate, stated that the bill be not proceeded with at third reading until such time as the Supreme Court of Canada has ruled with respect to its constitutionality (*Journals of the Senate*, June 12, 2007, pp. 1645 and 1654-1720 (report); and June 19, 2007, p. 1769 (report adopted)). Also see Speaker’s ruling, *Journals of the Senate*, December 1, 2010, pp. 1033-1034).

¹¹⁷ Rules 5-5(f) and 5-6(1)(e).

¹¹⁸ See Speaker’s ruling, *Journals of the Senate*, January 31, 1991, pp. 2239-2240.

¹¹⁹ The Speaker has ruled on the acceptability of amendments contained in a committee report (*Journals of the Senate*, June 3, 1999, pp. 1671-1674; October 29, 1998, pp. 1018-1021; and June 13, 1996, pp. 378-381).

¹²⁰ Rule 12-23(4). Also see Speaker’s ruling, *Journals of the Senate*, November 21, 2001, pp. 996-998.

¹²¹ If the Senate rejects a report on a bill containing proposed amendments, the amendments are defeated and the bill without amendment may proceed to third reading. Speaker’s ruling, *Journals of the Senate*, January 31, 1991, pp. 2239-2240.

¹²² With respect to amending a committee report, see Speaker’s rulings, *Journals of the Senate*, October 19, 2000, pp. 936-937; and May 9, 1995, p. 938. For examples of a committee report being amended, see *Journals of the Senate*, June 12, 2007, pp. 1646-1647; May 30, 2007, p. 1574; November 6, 2006, pp. 711-712; and April 13, 2005, pp. 718-719.

¹²³ For examples of motions to refer a report back to committee, see *Journals of the Senate*, May 21, 2013, pp. 2536-2537; June 13, 2002, p. 1753; June 7, 1999, pp. 1680-1681; and June 18, 1998, p. 899. Some motions to refer a report back to committee simply state that it is “for further study,” sometimes the term “consideration” is used, while other motions include an instruction.

¹²⁴ See definition of “substantive motion” under “motion” in Appendix I of the *Rules of the Senate*. When a committee report is presented to the Senate, it becomes a proceeding before the Senate. The report is then set down on the Orders of the Day for future consideration.

¹²⁵ See rule 6-12(1), which only provides a right of reply for second reading, a substantive motion, an inquiry, and a senator who is the subject of a report made under the *Ethics and Conflict of Interest Code for Senators*.

¹²⁶ See Chapter 5 for more information on the rules of debate and time allocation at report stage.

be placed on the Orders of the Day for third reading at the next sitting.¹²⁷ If the Senate rejects a report recommending amendments, the Speaker asks: “When shall this bill be read a third time?” In this case, the bill set down on the Orders of the Day for third reading will be the same version as that adopted at second reading.

Observations

Whether a committee reports a bill with or without amendments, it may also make observations on the bill. Committees have used observations as a way of providing commentary on a wider range of issues surrounding the bill. This practice is in keeping with the Senate’s traditional role as a revising chamber. Observations can serve many purposes, such as allowing a committee to note testimony received without proposing related amendments. They can also be used to highlight important issues that the committee wishes to draw to the attention of the government. Observations do not have any procedural significance. Consequently they are not voted on by the Senate.¹²⁸ Observations are appended to a report after the chair’s signature and are published in the *Journals of the Senate*. Senators can refer to observations during debate at report stage or at third reading. If a bill is reported without amendment but with observations, the report is deemed adopted immediately without debate or vote.¹²⁹

Observations included in a report generally express the opinions held by a majority on the committee, since Senate rules do not allow for minority reports.¹³⁰ Dissenting opinions are infrequent in Senate reports, although not unknown.¹³¹ There have been times when a committee has incorporated different views on a bill within a single set of observations appended to a report. In other cases, divergent opinions may be accommodated by appending more than one set of observations to a report with the agreement of the committee.¹³² There is no automatic right to append to do so.

Third Reading

Third reading allows one final opportunity for the Senate to consider, debate and make further amendments to a bill. One day’s notice is required before third reading of a bill can begin.¹³³ Since the principle of the bill was approved at second reading, third reading debate tends to focus more on technical aspects of the bill as well as any issues that may have arisen during committee consideration. At the conclusion of the debate, the Senate decides whether to give its final approval to the bill.

¹²⁷ Rule 5-5(b).

¹²⁸ *Journals of the Senate*, October 30, 2006, pp. 669-670; and December 11, 2002, pp. 412-413. Observations are not normally communicated to the House of Commons; however, it has happened that observations to a bill have been included in a separate message to the Commons (*Journals of the Senate*, March 30, 1988, p. 2187).

¹²⁹ Rule 12-23(2).

¹³⁰ Rule 12-22(1).

¹³¹ On at least one occasion, during debate at the third reading stage, the opposition sought leave to table and append its dissenting observations to a committee report (*Journals of the Senate*, January 26, 1993, pp. 1699 and 1701-1704). On another occasion, leave was granted to the opposition to table a minority report (*Journals of the Senate*, May 26, 1998, pp. 711-712 and 718-723). Finally, on at least one occasion, during debate at the third reading stage, a senator was given leave to table his dissenting observations to a bill (*Journals of the Senate* May 12, 2005, p. 899).

¹³² See Speaker’s ruling, *Journals of the Senate*, December 11, 2002, pp. 412-413. Also see *Journals of the Senate*, October 7, 2003, pp. 1124-1125; December 14, 2001, pp. 1145-1147; December 10, 2001, pp. 1095 and 1103-1105; May 31, 2001, pp. 619 and 626-628; September 9, 1999, pp. 1835 and 1843-1856; and December 3, 1998, pp. 1135 and 1154-1155.

¹³³ Rule 5-5(b).

The *Rules of the Senate* do not limit the length of time that a bill may be debated at third reading. The sponsor and the critic of a bill are allowed to debate the bill for a maximum of 45 minutes each. All other senators are allowed a maximum of 15 minutes each, except for the Leaders of the Government and the Opposition, who are allowed unlimited time, and the leader of another recognized party, who is allowed a maximum of 45 minutes.¹³⁴ Unlike at second reading, the sponsor does not have the right of final reply. Government bills can be the object of a time allocation motion pursuant to either rule 7-1 or 7-2.¹³⁵

Amendments at Third Reading

Several types of amendments are permitted at third reading stage, including the “hoist” and “reasoned” amendments that were explained in the section on amendments at second reading. In addition, amendments rejected during either committee or report stages can be proposed again at third reading.¹³⁶ The following can also be proposed at third reading:

- Referral of bill back to committee: This amendment is essentially identical to the motion referring a bill to committee after second reading.¹³⁷ The bill may be returned to the committee that studied it, or it may be sent to a different committee.¹³⁸ It is also possible to give a committee specific instructions as to how it should proceed with the bill.¹³⁹ (For further information on motions of instruction, see section on “Conclusion of second reading stage.”)
- Substantive amendments: These amendments can be made to a bill’s clauses, title or preamble. These amendments can be moved at the third reading stage without the need to refer the bill back to committee with instructions to amend it.¹⁴⁰

Amendments at third reading may be proposed without notice¹⁴¹ and should be made available in both official languages at the time they are moved.¹⁴²

As noted in chapter 5, the Senate can, with leave, consider multiple amendments simultaneously at third reading by agreeing to “stack” them. They are then all debated together. Once debate concludes, any amendments are put to the Senate, generally in the order in which they were moved. If none carry, the Senate will eventually deal with the motion that the bill be read a third time. If any of the amendments carry, the question would then be that the bill, as amended, be read a third time. Since it is possible that some amendments overlap or contradict each other, if one amendment is adopted it might affect how or whether some of the subsequent amendments are put to the Senate.¹⁴³

¹³⁴ Rule 6-3(1).

¹³⁵ See Chapter 5 for additional information on time allocation.

¹³⁶ Rule 10-5. Also see Speaker’s ruling, *Journals of the Senate*, July 2, 1986, pp. 1576-1577.

¹³⁷ See Speaker’s ruling, *Journals of the Senate*, June 19, 2003, p. 987.

¹³⁸ For examples of motions referring a bill back to committee see *Journals of the Senate*, September 25, 2003, p. 1059; March 7, 2002, p. 1270; October 23, 2001, p. 864; May 6, 1999, p. 1572; and May 2, 1996, p. 173.

¹³⁹ For examples of motions referring a bill back to committee with instructions, see *Journals of the Senate*, April 27, 2004, p. 461; June 13, 2002, p. 1755; June 16, 1999, p. 1772; and June 16, 1998, p. 843.

¹⁴⁰ Rule 10-5.

¹⁴¹ Rules 5-7(a) and 10-5.

¹⁴² Speaker’s ruling, *Journals of the Senate*, May 11, 1999, pp. 1584-1586.

¹⁴³ See Speaker’s statement dealing with stacked amendments, *Journals of the Senate*, November 9, 2006, p. 749.

Once a bill has been adopted at third reading, it is deemed to have been passed by the Senate, and no further debate or amendment is permitted.¹⁴⁴

4. MESSAGES BETWEEN THE CHAMBERS

The two houses use messages as the vehicle for official communications concerning a bill.¹⁴⁵ It is the responsibility of the Clerk of the Senate to arrange for the transmission of messages to the House of Commons as well as to receive messages sent to the Senate by the Commons.¹⁴⁶ There is no limit to the number of messages the chambers can exchange on a particular bill.¹⁴⁷ The Clerk of the Senate endorses all messages, including engrossed amendments, sent to the House of Commons. Messages received from the Commons are read aloud in the chamber by the Speaker at the earliest opportunity¹⁴⁸ and published in the *Journals of the Senate*.

Bills Passed by the Senate

When the Senate passes a Senate bill, the last page is endorsed by the Clerk of the Senate with the date of its adoption. A message requesting the concurrence of the House of Commons to the bill is printed immediately below the endorsement signature. This message is also signed by the Clerk of the Senate. Any amendments made by the Senate are integrated into the text of the bill sent to the Commons.

When the Senate passes a Commons bill without amendment, the last page is endorsed by the Clerk of the Senate with the date of adoption. A separate message is sent to the House of Commons to inform it that the Senate has passed the bill without amendment.¹⁴⁹

Commons Bills Amended by the Senate

When the Senate amends a Commons bill, it must be returned to the House of Commons for its consideration and approval of the amendments before receiving Royal Assent. In this case, the last page of the bill is endorsed by the Clerk of the Senate with the date of its adoption along with the number of amendments and a message requesting that the House of Commons concur in them. The amendments are also signed by the Clerk of the Senate and are attached to the front cover of the bill. This copy of the amendments is referred to as the engrossed amendments.

¹⁴⁴ Rule 10-6.

¹⁴⁵ From time to time technical errors, amounting to no more than “an obvious typographical error or slip of the... pen” arise in bills. By practice these errors may be corrected by the Law Clerks of the two houses (if the bill has been sent from one house to the other). Refer to the memo from the Law Clerk of the Senate to the Clerk of the Senate, printed in the *Debates of the Senate*, May 19, 1988, pp. 3448-3449.

¹⁴⁶ Rule 16-2(1).

¹⁴⁷ See Speaker’s ruling, *Journals of the Senate*, October 1, 2003, pp. 1106-1107. Some recent examples of bills that had numerous messages between the chambers include Bill C-2, Federal Accountability Act (39th Parliament, 1st Session); Bill C-10, An Act to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act (37th Parliament, 2nd Session); and Bill C-22, An Act to amend the Patent Act and to provide for certain matters in relation thereto (33rd Parliament, 2nd Session).

¹⁴⁸ Rule 16-2(2).

¹⁴⁹ For information with respect to messages on appropriation bills, please refer to the section on Money Bills.

The House of Commons can agree to, disagree with or further amend the Senate amendments. If the House of Commons agrees to them, a message to that effect is sent to the Senate, and the bill can proceed to Royal Assent. If the House of Commons disagrees with them, the Senate can either insist or not insist on its amendments. If the House of Commons further amends the Senate amendments, the Senate can either agree or disagree with the further amendments. Once the Senate has reached a final decision, a message to that effect is sent to the House of Commons. The last page of the bill is endorsed by the Clerk of the Senate with the date of the decision and an indication of the amendments on which the Senate is insisting, those on which it is not insisting, those it is further amending, etc. If the Senate insists on amendments to which the House of Commons has disagreed, a separate message is sent with the bill outlining the reasons for the insistence.¹⁵⁰

Senate Bills Amended by the House of Commons

When the Senate receives a message from the House of Commons with proposed amendments to one of its bills, the Senate may consider the amendments either immediately or at a future time.¹⁵¹ In the process of considering such a message, the Senate may decide to send the message containing the amendments along with the bill to a committee for study and report.

The Senate has three main options for dealing with the proposed amendments. It can agree to the amendments, disagree with them or further amend them. It can also give a combined response by agreeing to certain amendments, disagreeing with others and further amending others. Once the Senate has reached a final decision, a message to that effect is sent to the House of Commons. The last page of the bill is endorsed by the Clerk of the Senate with the date of the decision along with an indication of the amendments on which the Senate is insisting, those on which it is not insisting, those it is further amending, etc. If the Senate disagrees with the amendments made by the House of Commons to a Senate bill, a separate message is also sent with the bill outlining the Senate's reasons for disagreeing.¹⁵² If further amendments to the House of Commons amendments are proposed, the Clerk of the Senate signs them and they are attached to the front cover of the bill.

5. FREE CONFERENCES

In the event of an impasse between the two chambers, the *Rules of the Senate* provide for the possibility of a free conference as an alternative dispute resolution mechanism to messages. Although a free conference may be used for a variety of reasons, in Canadian practice it has always served as a means of negotiating an agreement over amendments made to a bill by one house that have not been accepted by the other.¹⁵³

Since 1867, the *Rules of the Senate* have contained a provision for conferences between the chambers. However, the awkward nature of these meetings led very quickly to their disuse.¹⁵⁴ In 1903, the first free conference was held, and in 1906, both houses adopted resolutions to allow any conference between the

¹⁵⁰ Under rule 16-3(3), “[t]he Senate shall charge a committee with the task of drawing up the reasons required in a message under this rule.”

¹⁵¹ Rule 5-7(h).

¹⁵² Rule 16-3(2). Rule 16-3(3) indicates that a committee will provide the reasons for disagreement.

¹⁵³ For a list of other matters on which a conference may be desirable, see Bourinot, pp. 274-275.

¹⁵⁴ There were only two conferences in Canadian history, both of which were in 1903. Since then, all conferences have been free conferences. For further information on the distinction between conferences and free conferences, consult Bourinot, pp. 274-280.

chambers to be a free conference.¹⁵⁵ At a free conference, managers (i.e., Senate and House of Commons representatives) “are at liberty to urge arguments, to offer and combat objections, and, in short, to attempt by personal persuasion and argument to effect an agreement between the two houses.”¹⁵⁶ In essence, the managers are free to discuss their positions without restriction, except for general directions given to them by their respective chambers.

There were 14 free conferences between 1903 and 1947. None have been convened since then.¹⁵⁷ In almost all cases, free conferences were held at the end of a session, because this mechanism provided a way to resolve disputes on time-sensitive matters.¹⁵⁸

6. ROYAL ASSENT

Once the two houses have agreed to an identical version of a bill, it can receive Royal Assent, which is granted by the Governor General, or a deputy, either in a ceremony in the Senate Chamber or by written declaration.¹⁵⁹

A bill becomes a law at Royal Assent. It comes into force on the day of Royal Assent unless there is a provision stating that the act or a portion of the act comes into force on a specific day or on a day fixed by an order of the Governor-in-Council.¹⁶⁰

After a bill has received Royal Assent, the Chamber Operations and Procedure Office assigns a chapter number to the act and sends the bill parchment to the Senate Law Clerk, who forwards it to the Governor General’s residence for signature. The Governor General signs all bills even if a deputy of the Governor General signified Royal Assent. Once a bill has been signed, it is returned to the Clerk of the Senate who, as Clerk of the Parliaments, has it deposited in the archives. A letter is also sent by the Clerk to the *Canada Gazette* indicating that Royal Assent has been given to certain bills. The letter, along with the list of bills assented to, is then published in the next issue of the *Canada Gazette*. Part III of the *Canada Gazette* contains a collection of statutes passed by Parliament in a calendar year arranged by chapter number. The annual statutes are published by the Department of Justice and are also available online.

7. PRE-STUDY OF BILLS

During the 1970s, the Senate made an important contribution to the legislative process through the “pre-study” of bills while they were still before the House of Commons. Pre-study allows the subject matter of a bill to be referred to a Senate committee for a general review.¹⁶¹ This procedure is sometimes referred to

¹⁵⁵ See rules 16-3(4), (5) and (6).

¹⁵⁶ Bourinot, p. 279.

¹⁵⁷ The last free conference was held on July 14, 1947. In 1987, a motion was moved, but not adopted, asking the Leader of the Government in the Senate to ascertain whether his cabinet colleagues would consent to a conference on Bill C-22, An Act to amend the Patent Act and to provide for certain matters in relation thereto. In 1990, a motion in amendment requesting a conference was moved in relation to Bill C-21, An Act to amend the Unemployment Insurance Act and the Employment and Immigration Department and Commission Act. The motions were not adopted (*Journals of the Senate*, November 18, 1987, p. 1570 and May 22, 1990, p. 991).

¹⁵⁸ For further information on free conferences, see Armitage, “Parliamentary Conferences,” pp. 29-30.

¹⁵⁹ The procedure for Royal Assent is explained in Chapter 3.

¹⁶⁰ *Interpretation Act*, R.S.C., 1985, c. I-21, s. 5.

¹⁶¹ Rule 10-11.

as the “Hayden Formula” because Senator Salter Hayden was the driving force behind it.¹⁶² During the process of pre-study, the Senate can suggest changes to the minister responsible for the bill who, in turn, can propose amendments in the House of Commons.¹⁶³ By the time such a bill reaches the Senate, the need for detailed study or further amendments is either significantly reduced or eliminated, thus allowing the bill to be adopted in a shorter period of time.¹⁶⁴ This practice allows the Senate to consider legislation more thoroughly and to study several bills in a short timeframe.

From October 1970 to October 1988, 143 bills were the subject of pre-studies by the Senate. The use of pre-studies then declined because it was widely felt that “the Senate is a legislative body, not an advisory one, and should act consecutively with the Commons, not in conjunction with it.”¹⁶⁵ This practice resumed briefly between 1991 and 1993 when nine bills were the object of pre-studies, and has been used more frequently again in the past few years.¹⁶⁶

In recent years the Senate has adopted a practice whereby, in the case of complex bills, different committees may be authorized to pre-study specific parts of the bill, in addition to one committee being authorized to study the entire bill. This practice has been applied to budget implementation bills. In this way, committees can deal with specific parts of the bill relevant to their mandates, while one committee (until now the National Finance Committee) retains a comprehensive view of the entire bill.¹⁶⁷

8. MONEY BILLS

The term “money bill” generally refers to legislative initiatives which contain either appropriation or taxation measures. The Constitution states that such bills “shall originate in the House of Commons,”¹⁶⁸ and that house may not adopt any money bill “that has not been first recommended to that House by Message of the Governor General.”¹⁶⁹ Despite these restrictions, the Senate still has an important role to play in the examination of bills that appropriate or tax.

¹⁶² Senator Hayden was appointed to the Senate in 1940 and resigned in 1983. He was the chair of the Standing Senate Committee on Banking, Trade and Commerce for 30 years.

¹⁶³ Occasionally, a bill was withdrawn in the House of Commons and replaced by another bill altogether. For more details on the pre-study of bills, see Thomas, pp. 203-204.

¹⁶⁴ For an example of a bill read a second time on the same day it was introduced in the Senate based in part on a pre-study, see Bill C-55, An Act to amend the Criminal Code, in *Debates of the Senate*, March 21, 2013, p. 3532. For an example of a bill reported without amendment because it had already been pre-studied, see the Banking, Trade and Commerce Committee’s report on Bill C-132, An Act to provide for the review and assessment of acquisitions of control of Canadian business enterprises by certain persons and of the establishment of new businesses in Canada by certain persons (*Journals of the Senate*, December 12, 1973, pp. 450-451).

¹⁶⁵ Franks, pp. 124-125.

¹⁶⁶ See “Pre-Study of House of Commons Bills by the Senate: 1970 to date,” prepared by the Library of Parliament: <http://www.parl.gc.ca/Parlinfo/compilations/HouseOfCommons/Legislation/PreStudyBySenate.aspx?Language=E> (consulted on February 9, 2015).

¹⁶⁷ See, for example, *Journals of the Senate*, October 30, 2014, pp. 1304-1307; April 9, 2014, pp. 751-752; November 5, 2013, pp. 136-137; October 30, 2012, p. 1672; and May 3, 2012, pp. 1227-1228. In a number of these cases the reports of the committees studying the subject matter of parts of the bills were automatically referred to the National Finance Committee so that it could take them into account during its consideration of the subject matter of the entire bill.

¹⁶⁸ *Constitution Act, 1867*, s. 53.

¹⁶⁹ *Constitution Act, 1867*, s. 54.

While the Senate is not authorized to increase appropriations or taxes, the situation is different in relation to reductions.¹⁷⁰ The opinions of the Senate and the House of Commons have, however, been at odds with each other on this question.¹⁷¹ In 1918, a special committee of the Senate was formed to consider “the question of determining what are the rights of the Senate in matters of financial legislation, and whether under the provisions of the *British North America Act, 1867*, it is permissible, and to what extent, or forbidden, for the Senate to amend a Bill embodying financial clauses (Money Bill).”¹⁷² The committee’s report,¹⁷³ often referred to as the “Ross report,” was adopted in May 1918. A main conclusion of the report was that the Senate has the power to amend money bills that appropriate any part of the revenue or impose a tax by reducing the amounts therein, but that it does not possess the right to increase the same without the consent of the Crown. The memorandum contained in the Ross report further explains that sections 53 and 54 of the *Constitution Act, 1867*, together with the sections defining the executive power, are the only limitations put on the Senate with regard to money bills. It goes on to say that “[i]n all other respects the Act leaves with [the Senate] co-ordinate powers with the House of Commons to amend or reject such Bills.”¹⁷⁴ The memorandum did not accept the argument that the Senate should follow the practice of the House of Lords and not amend a money bill.¹⁷⁵

This section describes issues relating to the Royal Recommendation, and then discusses appropriation bills and budget implementation bills.

Bills Requiring a Royal Recommendation

The Constitution requires that all bills appropriating any public money be accompanied by a Royal Recommendation; a requirement that is also reflected in the *Rules of the Senate*.¹⁷⁶ A Royal Recommendation is a message from the Governor General to the House of Commons¹⁷⁷ that can only be obtained by a minister. The message is required for any vote, resolution, address or bill that authorizes the expenditure of public revenue.

Under the Canadian system of government, the Crown alone initiates all public expenditure and Parliament may only authorize spending which has been recommended by the Governor General. This prerogative, referred to as the “financial initiative of the Crown,” is the basis essential to the system of responsible government and is signified by way of the “Royal Recommendation.” With this prerogative, the government is assigned the responsibility for preparing a comprehensive budget, proposing how funds shall be spent, and actually handling the use of funds.¹⁷⁸

¹⁷⁰ The Senate has, on several occasions, amended taxation bills. See, for example, *Journals of the Senate*, March 13, 1997, p. 1119; June 14, 1990, p. 1136; June 14, 1961, pp. 504-505; and July 14, 1960, p. 648.

¹⁷¹ O’Brien and Bosc, pp. 837-839.

¹⁷² *Journals of the Senate*, May 15, 1918, p. 193.

¹⁷³ *Journals of the Senate*, May 15, 1918, pp. 193-204.

¹⁷⁴ *Journals of the Senate*, May 15, 1918, p. 198.

¹⁷⁵ *Journals of the Senate*, May 15, 1918, p. 198. For a more detailed discussion of the Senate’s position regarding appropriation bills and taxation bills, see Hopkins, pp. 320-325. For an analysis and critique of the Senate’s position, see Driedger, pp. 25-46.

¹⁷⁶ *Constitution Act, 1867*, s. 54; and rule 10-7.

¹⁷⁷ The text of the Royal Recommendation is published in the inside cover of the bill, above the summary. See Appendix A to this chapter for an example of this.

¹⁷⁸ O’Brien and Bosc, p. 831.

The question of whether a Senate public bill or a Senate amendment proposed to a government bill requires a Royal Recommendation has been raised in the Senate from time to time, and Speakers have provided rulings on the matter.¹⁷⁹ A Speaker's ruling given on February 24, 2009, explains that:

... a number of criteria must be considered when seeking to ascertain whether a bill requires a Royal Recommendation. First, a basic question is whether the bill contains a clause that directly appropriates money. Second, a provision allowing a novel expenditure not already authorized in law would typically require a Royal Recommendation. A third and similar criterion is that a bill to broaden the purpose of an expenditure already authorized will in most cases need a Royal Recommendation. Finally, a measure extending benefits or relaxing qualifying conditions to receive a benefit would usually bring the Royal Recommendation into play.

On the other hand, a bill simply structuring how a department or agency will perform functions already authorized under law, without adding new duties, would most likely not require a Recommendation. In the same way, a bill that would only impose minor administrative expenses on a department or agency would probably not trigger this requirement.

The list of factors enumerated... is not exhaustive, and each bill must be evaluated in light of these points and any others at play. It certainly is not the case that every bill having any monetary implication whatsoever automatically requires a Royal Recommendation. When dealing with such issues, the Speaker's role is to examine the text of the bill itself, sometimes within the context of its parent act.

...

In situations where the analysis is ambiguous, several Senate Speakers have expressed a preference for presuming a matter to be in order, unless and until the contrary position is established. This bias in favour of allowing debate, except where a matter is clearly out of order, is fundamental to maintaining the Senate's role as a chamber of discussion and reflection.

To be clear, however, a bill appropriating public money cannot be initiated in the Senate... rule [10-7] establishes that "The Senate shall not proceed [with]" such a bill. Thus, once it is determined that a Senate bill does infringe rule [10-7], it is not possible to make amendments that could correct the situation, since the bill cannot be dealt with further. The Royal Recommendation is, therefore, quite different from the Royal Consent, which relates to the requirement for the Governor General to signal agreement to Parliament considering a bill that would affect the prerogative powers of the Crown.¹⁸⁰

¹⁷⁹ For recent rulings on the admissibility of bills, see *Journals of the Senate*, March 10, 2011, pp. 1296-1297; December 1, 2009, pp. 1516-1517; May 5, 2009, pp. 562-564; February 24, 2009, pp. 124-130; May 27, 2008, pp. 1086-1089; February 20, 2007, pp. 1095-1098; May 11, 2006, pp. 144-146; June 14, 2005, pp. 996-998; October 22, 2003, pp. 1184-1186; and September 18, 2003, p. 1033. For recent rulings on the acceptability of amendments to bills see: *Journals of the Senate*, June 13, 2003, pp. 946-947; October 29, 1998, pp. 1018-1021; May 31, 1990, pp. 1069-1071; and February 20, 1990, pp. 710-711.

¹⁸⁰ *Journals of the Senate*, February 24, 2009, pp. 125-126. A similar point was made in another Speaker's ruling, *Journals of the Senate*, April 16, 2013, pp. 2075-2076.

In addition to the factors outlined in the above quotation, rulings have noted that a bill that would otherwise require the Royal Recommendation can proceed if it clearly provides that it does not come into effect until funds have been separately appropriated by Parliament.¹⁸¹ A bill that would impose merely minor administrative expenses or inconvenience, particularly if they are closely linked to an existing statute's purpose, may not require a Royal Recommendation.¹⁸² A bill that would reduce government revenues or a tax does not require a Royal Recommendation.¹⁸³ A bill that would increase the Crown's liabilities or contingent liabilities may require a Royal Recommendation.¹⁸⁴

The Standing Senate Committee on National Finance studied and reported on the matter of Royal Recommendations in 1991.¹⁸⁵ The committee found that the Royal Recommendation has become ill-defined and arbitrarily employed, without clear guidelines for its use. Current practice is to use a generic formula without specifying which clauses of a bill appropriate public funds.¹⁸⁶

Appropriation Bills

An appropriation bill, also referred to as a supply bill, is based on the main or supplementary estimates,¹⁸⁷ or provides interim supply.¹⁸⁸ It authorizes the withdrawal of public monies from the Consolidated Revenue Fund based on the estimates for the operations of the government. Section 2 of the *Financial Administration Act* defines appropriation as "any authority of Parliament to pay money out of the Consolidated Revenue Fund." The Consolidated Revenue Fund is defined in the same section as "the aggregate of all public moneys that are on deposit at the credit of the Receiver General."

Appropriation bills can only be introduced by a minister in the House of Commons. Although the Constitution does not allow appropriation bills or tax bills to be introduced in the Senate,¹⁸⁹ all such bills must be considered and passed by both chambers.

¹⁸¹ See Speaker's rulings, *Journals of the Senate*, May 5, 2009, p. 564; and May 27, 2008, pp. 1086-1088. Also see Beauchesne, 6th ed., §611, p. 185. In the past the Senate has also used a process whereby a bill requiring an appropriation would be introduced in the Senate with the provisions appropriating monies printed in italics or red. These provisions were understood not to form part of the bill, and would not be studied in committee. The Commons would then restore them to the bill as an amendment, with a Royal Recommendation, that the Senate would subsequently accept. On this matter, see, for example, Bourinot, p. 493; and Kuntz, pp. 203-204. A bill using this process was last introduced in the Senate in 1990, but did not pass the House of Commons.

¹⁸² See Speaker's rulings, *Journals of the Senate*, December 1, 2009, pp. 1516-1517; and February 24, 2009, pp. 128-219. Also refer to Erskine May, 24th ed., p. 752.

¹⁸³ See, for example, Speaker's ruling, *Journals of the Senate*, February 24, 2009, pp. 128-129. Also refer to O'Brien and Bosc, p. 834; Beauchesne, 6th ed., §603, pp. 184-185; and Erskine May, 24th ed., p. 767-768.

¹⁸⁴ See Speaker's ruling, *Journals of the Senate*, May 5, 2009, pp. 562-563.

¹⁸⁵ See *Journals of the Senate*, February 13, 1990, pp. 568-579. The committee's report was adopted on May 29, 1990 (see *Journals of the Senate*, p. 1029).

¹⁸⁶ The formula currently used is: "His Excellency the Governor General recommends to the House of Commons the appropriation of public revenue under the circumstances, in the manner and for the purposes set out in a measure entitled [title of bill]." (O'Brien and Bosc, p. 734, n. 126)

¹⁸⁷ "The estimates are the expenditure plans of all government departments, consisting of main estimates, tabled annually, and supplementary estimates, tabled as required" (O'Brien and Bosc, p. 914, n. 4.).

¹⁸⁸ Interim supply provides the funds required to cover government expenditures between the beginning of the fiscal year (April 1) and the adoption of the supply bill for that fiscal year, which typically takes place in June.

¹⁸⁹ *Constitution Act, 1867*, s. 53.

Consideration of Appropriation Bills by the Senate

Appropriations bills are usually only considered at second and third reading stages in the Senate and have on occasion passed in one sitting, with leave.¹⁹⁰ They are not customarily sent to committee for review, although they can be.¹⁹¹ The main reason supply bills do not normally go to committee is that the Standing Senate Committee on National Finance usually, but not always,¹⁹² conducts an in-depth study and review of the expenditures set out in the federal estimates.¹⁹³ After hearing from the President of the Treasury Board and other departmental officials, the committee usually prepares several interim reports on specific issues relating to the estimates, as well as a final report. At least one of these reports is typically debated and adopted by the Senate prior to the appropriation bill being adopted by the Senate. The Speaker has explained that the committee and the Senate do not adopt the estimates themselves; the expenditures set out in the estimates are studied by the committee, and the Senate may consider the committee's reports on this subject.¹⁹⁴ In addition, the Senate can adopt an appropriation bill without having first adopted the committee report on the expenditures set out in the estimates.¹⁹⁵

In relation to appropriation bills, rule 10-8 states that “[a] bill of aid or supply shall not be amended to include any clause that is foreign to or different from the matter of the bill.” This rule, in effect since 1867, prevents matters not relevant to the object and scope of the bill from being appended to it.¹⁹⁶ There are no known cases of this rule being invoked.

Once the Senate has adopted an appropriation bill, a message is sent to the House of Commons. However, unlike all other bills passed by the Senate, the message to the House of Commons for appropriation bills usually does not contain a reference to the fact that the Senate has passed the bill without amendment. The message simply states that the Senate has passed the bill. This is due to the long-standing practice that the Senate rarely amends appropriation bills.¹⁹⁷

¹⁹⁰ See some examples of this in the *Journals of the Senate*, December 15, 2009, pp. 1678 and 1681; and March 13, 2008, pp. 709-710.

¹⁹¹ See, for example, *Journals of the Senate*, March 25, 2004, p. 373; March 25, 1993, p. 1846; and March 26, 1987, p. 415.

¹⁹² For example, there was no report on the expenditures set out in the estimates relating to Bill C-45, Appropriation Act No. 2, 1998-99, nor on those relating to Bills C-22, Appropriation Act No. 1, 1996-97, and C-56, Appropriation Act No. 2, 1996-97.

¹⁹³ It must be noted that the estimates themselves are not referred to committee. The committee is only authorized to study the expenditures set out in the estimates, and at no point does the committee or the Senate adopt the estimates. See Speaker's ruling, *Journals of the Senate*, December 16, 2011, pp. 794-796.

¹⁹⁴ Speaker's rulings, *Journals of the Senate*, December 16, 2011, pp. 794-796; and December 9, 2002, pp. 370-371. The 2011 ruling indicated that it would be in keeping with the Rules for the report to be tabled (see Chapter 9 for the distinction between presented and tabled reports).

¹⁹⁵ See, for example, Bill C-9, Appropriation Act No. 2, 2011-12, which was passed before the corresponding committee report was presented in the Senate (see *Journals of the Senate*, June 26, 2011, p. 157). Also see Bills C-49, Appropriation Act No. 4, 2006-2007, and C-50, Appropriation Act No. 1, 2007-2008, which were voted on at second reading stage before their corresponding reports were adopted (see *Journals of the Senate*, March 27, 2007, pp. 1212-1213). This situation has also arisen on a number of occasions in the past. For example, during the 1995-1996, 1996-1997 and 1997-1998 fiscal years, the Senate did not adopt any report of the committee dealing with the expenditures set out in the Main Estimates. Before that, a number of interim supply bills were adopted without the Senate having adopted a report of the National Finance Committee on the related expenditures set out in the estimates.

¹⁹⁶ Bourinot, p. 290.

¹⁹⁷ In 1989, the Senate proposed an amendment to Bill C-14, Appropriation Act No. 1, 1989-90. However, since the House of Commons disagreed with the amendment, the Senate did not insist on its position, and the bill without amendment received Royal Assent (*Journals of the Senate*, May 11, 1989, pp. 92-93; and May 17, 1989, pp. 107-108).

Budget Implementation Bills

The budgetary process is always initiated by the government in the House of Commons. There are two main parts to the budgetary process in Parliament. The first is the presentation of the government's fiscal, economic and social policies through the budget speech. The second consists of the introduction of ways and means motions¹⁹⁸ in the House of Commons and related budget implementation bills.

After pre-budgetary consultations and preparation, the Minister of Finance delivers the budget speech in the House of Commons. Senators can attend this presentation in the House of Commons' Senate gallery. This speech usually takes place once a year. It outlines the financial situation of the government and the economic condition of the country. It also announces policy priorities and strategic initiatives for upcoming years.

Once a motion to approve the budgetary policy of the government has been adopted in principle by the House of Commons, it is usually followed by one or more budget implementation bills. These bills establish or modify structures, programs, services and other measures announced in the budget. If new tax measures or changes in taxation are required, a budget implementation bill will be preceded by one or several ways and means motions in the House of Commons. A budget implementation bill must be distinguished from an appropriation bill. The former implements the measures contained in the budget, while the latter is related to the statutory and non-statutory spending required for the proper functioning of the government, providing provides funds to existing structures, programs and services.

The Senate does not vote on the budget speech, nor does it vote on any ways and means motions. However, it is customary – though not obligatory – for the government to table the budget documents (such as the budget speech and related briefing notes) in the Senate, after the budget speech is delivered in the House of Commons.¹⁹⁹ It is also customary to launch an inquiry drawing the attention of the Senate to the budget.²⁰⁰ This inquiry provides an opportunity for senators to debate the merits and weaknesses of the budget. As with all other inquiries, there is never a vote at the conclusion of debate on a budget inquiry.

There are no special rules or practices governing the consideration of a budget implementation bill in the Senate other than those that apply to all public bills. Since the confidence convention never applies to the Senate, it follows that any defeat of a budget implementation bill in the Senate cannot cause the government to fall. When the Senate receives a budget implementation bill from the House of Commons, it is debated and referred to committee for detailed study after second reading.²⁰¹ Amendments have been

¹⁹⁸ A ways and means motion is “A motion proposing to introduce a new tax, to increase an existing tax, to continue an expiring tax or to extend the application of a tax. If adopted, it becomes an order that a bill or bills based on its provisions be brought in.” (House of Commons' *Glossary of Parliamentary Procedure*, available at parl.gc.ca/About/House/Glossary/glossary-e.html#m, consulted on February 9, 2015).

¹⁹⁹ See, for example, the tabling of documents relating to the February 11, 2014 budget, *Journals of the Senate*, February 13, 2014, p. 425.

²⁰⁰ See, for example, the notice of inquiry relating to the February 11, 2014 budget, *Debates of the Senate*, February 13, 2014, p. 960.

²⁰¹ Budget implementation bills are typically referred to the Standing Senate Committee on National Finance. The subject matter of the bill is often studied by the National Finance Committee prior to the bill being introduced in the Senate, thus allowing a speedy passage once the bill arrives from the House of Commons. Other committees may be tasked with studying certain parts of the bill, and their subsequent reports to the Senate have in certain cases been referred to the National Finance committee (see, as an example, *Journals of the Senate*, October 30, 2012, p. 1672).

proposed to budget implementation bills in the Senate.²⁰² On at least one occasion, the Senate has defeated a budget implementation bill.²⁰³

9. ROYAL CONSENT

Royal Consent is the agreement of the Crown to Parliament considering a bill affecting the prerogative, hereditary revenues, personal property or interest of the Sovereign. Bills that require Royal Consent cannot be adopted if it is not provided prior to the vote on third reading.

There have been a number of Speaker's rulings on whether a bill requires Royal Consent.²⁰⁴ In March 2011, the Speaker gave a ruling on the question of Royal Consent²⁰⁵ stating that:

... an essential criterion by which it is possible to determine whether Royal Consent is needed in a particular case [is] namely whether the prerogative in question exists through common law or through statute law. Where the power is related to common law, Royal Consent may be necessary; when related to an exercise of authority under the statute law, Royal Consent is not required.

This ruling also explained the difference between Royal Consent, Royal Recommendation and Royal Assent:

A Royal Recommendation signals an authorization for the expenditure of public funds. It is provided by a minister in the House of Commons as a message of the Governor General approving the spending of public monies as proposed in a bill. Royal Assent, on the other hand, is the final stage in the legislative process when a bill passed by both Houses of Parliament is enacted into law by the approval of the Governor General or a deputy, either here in person in the Senate or through a written declaration. Royal Consent is neither of these. It is instead a procedural requirement whenever a bill is considered by Parliament that touches the interests of the Sovereign, either the Queen herself or the Governor General acting on her behalf. According to *House of Commons Procedure and Practice*, the precedents in Canada indicate that Royal Consent is needed "when the property rights of the Crown are postponed, compromised or abandoned, or for any waiver of a prerogative of the Crown.

The Speaker has ruled that even though a bill may require Royal Consent, the Senate may continue to consider and debate the bill at second reading, committee and report stages, as well as at third reading. In other words, Royal Consent may be signified at any time during the proceedings on a bill up until the question is put at third reading. If Royal Consent is not signified prior to the end of proceedings at third reading, the Speaker cannot put the question.²⁰⁶

²⁰² See, for example, *Journals of the Senate*, July 8, 2010, p. 733; December 8, 2009, pp. 1550-1551; and June 21, 2007, pp. 1817-1819.

²⁰³ See *Journals of the Senate*, June 10, 1993, pp. 2183-2184.

²⁰⁴ See, for example, Speaker's rulings, *Journals of the Senate*, March 21, 2011, pp. 1336-1341; February 26, 2008, pp. 579-580; March 8, 2005, pp. 544-547; November 17, 2004, pp. 176-178; September 24, 2003, pp. 1048-1050; May 7, 2002, pp. 1586-1587; October 25, 2001, pp. 887-891; and June 14, 2001, pp. 734-735.

²⁰⁵ *Journals of the Senate*, March 21, 2011, pp. 1336-1341. Also see Speaker's ruling, *Journals of the Senate*, October 25, 2001, pp. 887-891.

²⁰⁶ See *Journals of the Senate*, March 21, 2011, p. 1337; and November 17, 2004, pp. 176-178.

Royal Consent may be signified in either chamber. In Canadian practice, it has almost always been signified by a minister in the House of Commons. There have been, however, at least two occasions when it has been signified by the Leader of the Government in the Senate.²⁰⁷

10. NEW BILL WITH THE SAME OBJECT DURING THE SAME SESSION

The *Rules of the Senate* explain that when a Senate bill has been adopted or rejected, it is not permissible to introduce a new bill with the same object in the Senate during the same session.²⁰⁸ This rule applies only to bills originating in the Senate, not to those initiated in the House of Commons.²⁰⁹ For this reason, rule 10-9 has rarely been invoked. More often, rule 5-12 (same question during the same session) is invoked in these circumstances. When pertaining to bills, it is not always clear when the same question rule applies, especially when identical clauses are in question. Several Speaker's rulings have attempted to make clarifications. In one case, the bill was ordered withdrawn.²¹⁰ In other cases, the bill was allowed to proceed on the grounds that practices have evolved over the years to account for longer sessions. As a result, the conditions for applying the same question rule now usually require a considerable degree of similarity between two items before the latter question can be ruled out of order.²¹¹ On at least one occasion, the Senate decided, with leave, to withdraw a Senate public bill in order to permit the introduction of a similar Senate government bill by the Leader of the Government.²¹²

Section 42 of the *Interpretation Act*²¹³ states that: "An Act may be amended or repealed by an Act passed in the same session of Parliament." Such an amending or repealing act could therefore be proceeded with in the same session, notwithstanding rules 5-12 and 10-9.

²⁰⁷ See *Journals of the Senate*, October 4, 2001, pp. 824-825; and June 29, 2000, p. 819.

²⁰⁸ Rule 10-9.

²⁰⁹ See Speaker's ruling, *Journals of the Senate*, March 23, 2004, pp. 340-343.

²¹⁰ *Journals of the Senate*, February 27, 1991, pp. 2265-2266; and February 28, 1991, p. 2277. See Chapter 5 for more information on the same question rule.

²¹¹ *Journals of the Senate*, November 23, 2005, pp. 1307-1309; and October 29, 2003, pp. 1265-1267.

²¹² *Journals of the Senate*, October 2, 2001, p. 801.

²¹³ R.S.C., 1985, c. I-21.

APPENDIX A: Key Elements of a Bill

Many of the elements of a bill described in section 2 of this chapter (Structure of Bills) are highlighted in the following excerpts from separate bills. The first example is the first page of Bill S-8, An Act respecting the safety of drinking water on First Nation lands, which was introduced in the 1st session of the 41st Parliament. The second example is the last page of Bill S-202, An Act to establish and maintain a national registry of medical devices, which was introduced in the same session. The final example, with a Royal Recommendation and a summary, is from Bill C-14, again from the same session.

<p>1st Session, 41st Parliament, 60-61 Elizabeth II, 2011-2012</p> <p>Regnal year →</p> <p>SENATE OF CANADA</p>	<p>1^{re} session, 41^e législature, 60-61 Elizabeth II, 2011-2012</p> <p>← Sessional year</p> <p>SÉNAT DU CANADA</p>
BILL S-8	PROJET DE LOI S-8
<p>Long title →</p> <p>An Act respecting the safety of drinking water on First Nation lands</p>	<p>Loi concernant la salubrité de l'eau potable sur les terres des Premières Nations</p>
<p>Marginal note</p> <p>↓</p> <p>Preamble</p>	<p>Attendu :</p> <p>qu'il est important que les personnes résidant sur les terres d'une première nation aient accès à de l'eau potable salubre;</p> <p>5 que des cadres réglementaires efficaces sont nécessaires pour assurer un tel accès;</p> <p>que le gouvernement du Canada s'engage à améliorer la santé et la sécurité des résidents des terres des Premières Nations;</p> <p>que le ministre des Affaires indiennes et du Nord canadien et le ministre de la Santé se sont engagés à travailler avec les Premières Nations afin d'élaborer des propositions en vue de la prise de règlements en vertu de la présente loi, 15</p> <p>Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :</p>
<p>Preamble →</p> <p>Whereas effective regulatory regimes are required to ensure such access;</p> <p>Whereas the Government of Canada is committed to improving the health and safety of residents of First Nation lands;</p> <p>And whereas the Minister of Indian Affairs and Northern Development and the Minister of Health have committed to working with First Nations to develop proposals for regulations to be made under this Act;</p> <p style="text-align: center;">Enactment clause</p> <p>↓</p> <p>Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:</p>	<p>Preamble</p> <p>qu'il est important que les personnes résidant sur les terres d'une première nation aient accès à de l'eau potable salubre;</p> <p>5 que des cadres réglementaires efficaces sont nécessaires pour assurer un tel accès;</p> <p>que le gouvernement du Canada s'engage à améliorer la santé et la sécurité des résidents des terres des Premières Nations;</p> <p>que le ministre des Affaires indiennes et du Nord canadien et le ministre de la Santé se sont engagés à travailler avec les Premières Nations afin d'élaborer des propositions en vue de la prise de règlements en vertu de la présente loi, 15</p> <p>Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :</p>
<p>Short title</p> <p>↓</p> <p>Short title</p> <p>1. This Act may be cited as the <i>Safe Drinking Water for First Nations Act</i>.</p>	<p>TITRE ABRÉGÉ</p> <p>1. <i>Loi sur la salubrité de l'eau potable des Premières Nations.</i> 20</p> <p>TITRE ABRÉGÉ</p> <p>1. <i>Loi sur la salubrité de l'eau potable des Premières Nations.</i> 20</p>
<p>Interpretation clause</p> <p>↓</p> <p>Definitions</p> <p>2. (1) The following definitions apply in this Act.</p> <p>"drinking water" "eau potable"</p> <p>"drinking water" means water intended for use by humans for drinking, bathing or food preparation.</p>	<p>DÉFINITIONS ET INTERPRÉTATION</p> <p>2. (1) Les définitions qui suivent s'appliquent à la présente loi.</p> <p>« eau potable » Eau destinée à être utilisée par les humains pour boire, se laver ou préparer les aliments. 25</p> <p>« eau potable » "drinking water"</p>
<p>90644</p>	<p>Line numbering</p> <p>↑</p> <p>20</p> <p>25</p>

(a) for the purposes of the definition “home-use medical device”, prescribing any kind of medical device intended to be used by a person in a home environment for purposes related to their health care; 5

(b) prescribing information to be contained in the Registry for the purposes of paragraph 4(1)(c);

(c) respecting the destruction of information kept in the Registry for the purposes of 10 subsection 4(3);

(d) respecting information to be submitted by a medical practitioner for the purposes of subsection 5(1);

(e) respecting information to be provided by 15 manufacturers, importers and distributors for the purposes of section 7; and

(f) exempting any medical device, or type of medical device, from the application of this Act if the Minister is of the opinion that the 20 exemption is in the public interest and consistent with public health and safety.

a) pour l’application de la définition de « instrument médical pour usage à domicile », prescrire les types d’instruments médicaux destinés à un usage à domicile à des fins liées aux soins de santé; 5

b) prévoir les renseignements qui doivent être contenus dans le Registre pour l’application de l’alinéa 4(1)c);

c) régir la destruction des renseignements contenus dans le Registre pour l’application 10 du paragraphe 4(3);

d) régir les renseignements que les médecins doivent communiquer pour l’application du paragraphe 5(1);

e) régir les renseignements que les fabri- 15 cants, les importateurs et les distributeurs doivent fournir pour l’application de l’article 7;

f) exempter de l’application de la présente loi tout instrument médical ou type d’instrument 20 médical, si le ministre estime que cette exemption est dans l’intérêt public et tient compte de la santé et de la sécurité publiques.

Level 1 heading

Level 2 heading

R.S., c. A-1

CONSEQUENTIAL AMENDMENT
ACCESS TO INFORMATION ACT

13. Schedule II to the *Access to Information Act* is amended by adding, in alphabetical order, a reference to

Medical Devices Registry Act
Loi sur le Registre des instruments médicaux

and a corresponding reference to “section 11”.

COMING INTO FORCE

14. This Act comes into force on a day, not 30 later than two years after the day on which it receives royal assent, to be fixed by order of the Governor in Council.

Coming into force

New text or changed text indicator (sideline or underline)

MODIFICATION CORRÉLATIVE

LOI SUR L’ACCÈS À L’INFORMATION L.R., ch. A-1

13. L’annexe II de la *Loi sur l’accès à l’information* est modifiée par adjonction, 25 selon l’ordre alphabétique, de ce qui suit:

Loi sur le Registre des instruments médicaux
Medical Devices Registry Act

ainsi que de la mention « article 11 » en regard de ce titre de loi. 30

ENTRÉE EN VIGUEUR

14. La présente loi entre en vigueur à la date fixée par décret, mais au plus tard deux ans après la date de sa sanction.

Entrée en vigueur

“Coming into force” clause

Consequential amendment clause

Royal Recommendation



RECOMMENDATION

His Excellency the Governor General recommends to the House of Commons the appropriation of public revenue under the circumstances, in the manner and for the purposes set out in a measure entitled "*An Act to amend the Agreement on Internal Trade Implementation Act and the Crown Liability and Proceedings Act*".

RECOMMANDATION

Son Excellence le gouverneur général recommande à la Chambre des communes l'affectation de deniers publics dans les circonstances, de la manière et aux fins prévues dans une mesure intitulée «*Loi modifiant la Loi de mise en oeuvre de l'Accord sur le commerce intérieur et la Loi sur la responsabilité civile de l'État et le contentieux administratif*».

SUMMARY

This enactment amends the *Agreement on Internal Trade Implementation Act* to reflect changes made to Chapter 17 of the Agreement on Internal Trade. It provides primarily for the enforceability of orders to pay tariff costs and monetary penalties made under Chapter 17 of the Agreement against the Government of Canada. It also repeals subsection 28(3) of the *Crown Liability and Proceedings Act*.

SOMMAIRE

Le texte modifie la *Loi de mise en oeuvre de l'Accord sur le commerce intérieur* afin qu'elle tienne compte des changements apportés au chapitre 17 de l'Accord sur le commerce intérieur. Il prévoit notamment un mécanisme pour rendre exécutoires les ordonnances sur les dépens et les ordonnances relatives à une sanction pécuniaire rendues sous le régime du chapitre 17 et visant le gouvernement du Canada. Enfin, il abroge le paragraphe 28(3) de la *Loi sur la responsabilité civile de l'État et le contentieux administratif*.



Summary of bill contents and purpose

Also available on the Parliament of Canada Web Site at the following address:
<http://www.parl.gc.ca>

Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante:
<http://www.parl.gc.ca>

APPENDIX B: Legislative Process in the Senate

STAGE	NOTICE REQUIREMENT	DEBATABLE	AMENDMENTS	VOTE
INTRODUCTION AND FIRST READING	No notice required (rule 5-7(j))	No	None permitted	No
SECOND READING	Two days (rule 5-6(1)(f))	Debate on principle and merits of bill only	1) Hoist 2) Reasoned 3) Referral of subject matter to committee	Yes
COMMITTEE	No notice required for referral to committee ^a	Debatable in committee	To the bill's clauses	Yes (only committee members may vote)
REPORT WITHOUT AMENDMENT	No notice required	No	None permitted	Report is deemed adopted without a vote (rule 12-23(2))
REPORT WITH AMENDMENTS	One day for the adoption of a report of a standing committee or the Committee of Selection (rule 5-5(f)) Two days for the adoption of a report of a special committee (rule 5-6(1)(e))	Yes	Report can be amended, rejected or referred back to a committee by the Senate	Yes
THIRD READING	One day (rule 5-5(b))	Debate generally focuses on technical aspects of the bill and issues raised at committee stage, although the principle may also be considered	1) To the bill's clauses 2) Hoist 3) Reasoned 4) Referral back to committee	Yes
CONSIDERATION OF MESSAGE FROM COMMONS WITH AMENDMENTS TO A BILL	No notice required for public bills ^b (rule 5-7(h))	Yes	1) Agree/disagree 2) Insist/not insist 3) Propose further amendments to the amendments in message	Yes

^a **It is optional to refer a public bill to committee.** A committee may begin studying a public bill immediately after it has been referred. **Private bills must be referred to a committee after second reading** (rule 11-8). Furthermore, the committee to which the private bill has been referred must wait one week before considering the bill if it originated in the Senate, and 24 hours if it originated in the House of Commons (rule 11-10).

^b **Private bills** returned from the House of Commons with amendments must be referred to a Committee of the Whole or to the committee which originally studied the bill before the Senate can consider the House of Commons' amendments (rule 11-17).

CHAPTER 8

Private Bills

Unlike a public bill, which applies to the general community and deals with matters of public policy, a private bill confers particular powers, benefits or exemptions upon a specific person or group of persons. At one point, private bills were used mainly to grant divorces, incorporate private companies or amend existing acts of incorporation. Their use in divorce cases ended with the adoption of a Canada-wide divorce act in 1969. This chapter describes the legislative process for private bills, including sponsorship by a senator, drafting of the petition, publication of the notice, payment of fees and Royal Assent.



1. HISTORY

As noted in chapter 7, a private bill confers a special benefit or an exemption from the general law on a particular person or body of persons, including corporations. A private bill is introduced by way of a petition from the affected parties and is never introduced by a minister.¹

Decline in Frequency of Private Bills since Confederation

During the decades immediately following Confederation, private bills represented a considerable portion of the legislative activity in Parliament. Since the middle of the 20th century, however, there has been a substantial decline.² Various factors explain this decline, but it is in large part due to changes in the general law, notably provisions relating to marriage and divorce, and administrative mechanisms such as the *Canada Business Corporations Act*, the *Canada Corporations Act*, and the *Bank Act*.³

¹ The question of whether a bill is of a public or private nature has been raised on occasion. See, for example, Speaker's rulings, *Journals of the Senate*, April 2, 1998, pp. 577-582; and October 2, 1996, pp. 566-568. For more information on public bills, see Chapter 7.

² As an illustrative example, during the 3rd Session of the 11th Parliament (November 17, 1910 to July 29, 1911), a combined total of 205 bills (excluding divorce bills) were introduced in the two houses, of which 128 received Royal Assent. Of the bills introduced, 112 (54.6%) were private bills. Of the bills that received Royal Assent, 101 (78.9%) were private bills. These proportions were not atypical for that period. In contrast, during the whole of the 40th Parliament (November 18, 2008 to March 26, 2011), only one private bill was introduced, out of 1029 bills introduced in both houses.

³ O'Brien and Bosc, pp. 1179-1180.

8. Private Bills

The Senate played a leading role in dealing with private bills, notably listening to the evidence on applications for divorce. Until the 1960s in Quebec and in Newfoundland and Labrador, a divorce could only be obtained by an act of Parliament after petition. The same had also been true in other parts of the country at various times.⁴ Bills on divorce became more numerous, increasing from a few dozen approved during the entire part of the 19th century following Confederation to 3,320 from 1951 to 1959.⁵ This placed significant demands on the Senate and, in particular, its Committee on Divorce. The committee was often recognized for its conscientiousness.⁶ This system of granting divorce by act of Parliament passed by both houses functioned for almost a century.

In 1963, the *Dissolution and Annulment of Marriages Act*⁷ established a new procedure. The Senate was authorized to dissolve or annul marriages by resolution, but only after the petition requesting annulment or dissolution had been referred to an officer designated by the Speaker. This officer, called the Commissioner, could hear evidence and, provided that the conditions of English divorce law in 1870 or the Canadian *Marriage and Divorce Act*⁸ were met, could recommend that a dissolution or annulment be granted.⁹ The recommendation of the Commissioner was reported to the Senate by the Committee on Divorce. After the committee's report was adopted, a resolution annulling or dissolving the marriage in question would be presented to the Senate for adoption.¹⁰ Some 3,740 marriages were dissolved or annulled under this process from 1964 to 1969. The last resolution was adopted on November 26, 1969. By that time, the *Divorce Act*¹¹ had been adopted, establishing a Canada-wide law of divorce in a single statute and making judicial mechanisms for divorce available to all Canadians.

Current Situation

Since the beginning of the 1st Session of the 39th Parliament in 2006, private bills originating in the Senate are numbered sequentially starting at S-1001.¹² Private bills originating in the House of Commons would be numbered starting at C-1001.¹³

⁴ Divorce through judicial processes was established in Ontario by an act of Parliament in 1930. The other provinces either inherited pre-Confederation processes for dealing with divorce (Nova Scotia, New Brunswick and Prince Edward Island – although the pre-Confederation Divorce Court in PEI was only resurrected in the mid-1940's, forcing residents of that province to rely on acts of Parliament before that time) or were able to establish judicial processes for divorce after court decisions had established that they had inherited the provisions of English law relating to divorce (British Columbia, Alberta, Saskatchewan, Manitoba and the territories). For further details, see Beck, p. 298; and Abernathy and Arcus, as well as a report of the Senate Law Clerk and Parliamentary Counsel summarizing the evolution of divorce in the different provinces and the applicable laws in the *Journals of the Senate*, June 16, 1948, pp. 419-422.

⁵ MacKay, p. 76.

⁶ Beck, p. 307; and MacKay, p. 77.

⁷ *Dissolution and Annulment of Marriages Act*, S.C., 1963, c. 10.

⁸ *Marriage and Divorce Act*, R.S.C., 1952, c. 176.

⁹ *Dissolution and Annulment of Marriages Act*, S.C., 1963, s. 3.

¹⁰ The detailed processes followed under this system are set out in Part IV of the 1964 version of the *Rules of the Senate*.

¹¹ *Divorce Act*, S.C. 1967-68, c. 24.

¹² Previously, all bills originating in the Senate – whether private or public, and whether originating with the government or not – had been numbered in the sequence in which they were introduced, starting with S-2.

¹³ The last private bill to originate in the House of Commons was during the 3rd Session of the 30th Parliament, in 1978. Between the start of the 4th Session of that Parliament (October 11, 1978) and the end of the 1st Session of the 41st Parliament (September 13, 2013), 81 private bills were introduced in the Senate, of which 71 became law.

8. Private Bills

As the following table indicates, private bills represent a small, but not insignificant, portion of non-governmental legislative work originating in the Senate. However, they constitute an important portion of the non-government Senate bills that receive Royal Assent. Between September 22, 1997 (the beginning of the 36th Parliament), and September 13, 2013 (the end of the 1st Session of the 41st Parliament), 19 private bills were introduced in Parliament (all in the Senate), and 14 received Royal Assent, representing 46.7% of all non-government bills introduced in the Senate that reached Royal Assent.

Statistics on Private Bills 1st Session, 36th Parliament to 1st Session, 41st Parliament (1997–2013)

Session	Non-Government S-Bills	Private Bills Introduced	Private Bills as % of Non-Government S-Bills	Non-Government S-Bills Assented to	Private Bills Assented to	Private Bills as % of Non-Gov. S-Bills Assented to
1 st Session, 41 st Parliament (2011-2013)	25	3	12	7	3	42.9
1 st , 2 nd and 3 rd Sessions, 40 th Parliament (2008-2011)	92	1	1.1	2	0	0
1 st and 2 nd Sessions, 39 th Parliament (2006-2008)	73	1	1.4	5	1	20
1 st Session, 38 th Parliament (2004-2005)	36	2	5.6	3	1	33.3
1 st , 2 nd and 3 rd Sessions, 37 th Parliament (2001-2004)	67	6	9.0	9	5	55.5
1 st and 2 nd Sessions, 36 th Parliament (1997 – 2000)	43	6	14.0	4	4	100.0
TOTAL	336	19	5.7	30	14	46.7

-“Non-Government S-Bills” include both private and public bills.

-Over this period no private bills originated in the House of Commons.

Chapter 11 of the *Rules of the Senate* governs the procedures for private bills. While such bills are passed by Parliament in a manner broadly similar to that used for public bills,¹⁴ the procedure governing their introduction is quite different.

¹⁴ Except as outlined in this chapter, the processes for considering private bills are essentially the same as those for public bills, which are described in Chapter 7 (rule 11-7).

2. PROCESS FOR DEALING WITH PRIVATE BILLS

Private bills originate by way of a petition from individuals or organizations who wish to obtain an act of Parliament for a specific purpose.

In order for a private bill to be introduced in the Senate, the petitioner must find a senator to sponsor the bill. Generally, the subject matter of the bill is one that is of interest to the sponsor or the sponsor is from the same province as the petitioner. Because a private bill is sent to the House of Commons after it has been passed by the Senate, the petitioner must also secure a member of the House of Commons to act as sponsor of the bill there. It is a well-established parliamentary practice that cabinet ministers do not act as sponsors of private legislation.¹⁵

An organization or individual wishing to have a private bill adopted will usually contact the Office of the Senate Law Clerk and Parliamentary Counsel very early in the process. That office helps coordinate the various steps necessary to introduce the bill.¹⁶

Notice

Every request to Parliament for a private bill must be preceded by a notice in the *Canada Gazette* in both official languages, clearly stating the nature and objects of the proposed bill.¹⁷ The notice must also be published in a leading local newspaper with substantial circulation and in the official gazette of any provinces or territories concerned.¹⁸ The notice must be signed by either the applicant or an agent acting on behalf of the applicant.¹⁹ The purpose of the notice is to bring the proposed bill to the attention of any person or group having an interest in it. The notice must be published at least once a week for a period of four weeks and must be in both official languages, when reasonably required by the linguistic composition of the population in the area concerned.²⁰ The applicant must prove compliance with these notice requirements by filing with the Clerk of the Senate a statutory declaration.²¹

As with any bill, a private bill that has not received Royal Assent dies on the Order Paper with prorogation or dissolution. If it is reintroduced within the next two sessions, a new notice would not normally be required, since current practice is that the text of the notice indicates that the petitioner will table the petition in Parliament “at the present or at either of the two following sessions.” However, should three sessions have elapsed, publication of a notice would be required again.

¹⁵ O’Brien and Bosc, p. 1183.

¹⁶ See section on the role of the Law Clerk and Parliamentary Counsel later in this chapter.

¹⁷ Rules 11-5(1) and (2).

¹⁸ Rule 11-5(4).

¹⁹ Rule 11-5(2)(b). Standing Order 146 of the House of Commons requires that an agent be registered as a parliamentary agent. The registration fee for a parliamentary agent is \$25.00 per session.

²⁰ Rule 11-5(5).

²¹ Rule 11-5(7).

Fees

One of the basic principles of practice relating to private bills is that the financial burden of considering a bill for the benefit of private interests should not be borne solely by the public treasury.²² Consequently, a fee for private bills is imposed on the promoter and must be paid before the study of the bill can proceed. The fee for initiating a private bill in the Senate is \$200, plus the cost of translating and printing the bill, and the cost of printing the act in the *Statutes of Canada*.²³ A deposit of \$500 is required prior to the tabling of the petition to cover these costs.

Drafting of the Petition

Petitions for private bills are, in modern practice, one of two types of petitions that can be tabled in Parliament. Public petitions – formal requests made to Parliament by Canadian residents for redress of a grievance – are the other type.

Written in either official language, a petition for a private bill must state its broad purposes and object. The petition must be clearly written and signed by the petitioner. Although there is no set format, the following elements should be kept in mind when drafting a petition:

- The words “To the Senate of Canada” or “To the Senate of Canada in Parliament Assembled” must appear at the beginning of the petition. Petitions to the Government of Canada or individual senators are not acceptable.
- The petition must be in respectful and temperate language.
- The text of the petition must not be altered either by erasing, crossing out or by adding words.
- No other matter is to be attached or appended to or written on the petition, whether in the form of additional documents, maps, pictures, news articles, explanatory or supporting statements, or requests for support.
- The petition must end with the words “WHEREFORE your petitioner prays that the Honourable Senate may be pleased to pass an Act for the purposes above-mentioned” and “AND as in duty bound, your petitioner will ever pray,” or variations thereof.
- The petition must concern a subject matter within the authority of the Parliament of Canada. The petition must not deal with a purely provincial or municipal matter or any matter that should be brought before a court or tribunal.
- The petition must contain a description of the petitioner (including, as appropriate, background information on the petitioner, history, current postal address and other contact information).
- The petition must contain a request, called a “prayer,” for the Senate to enact an act of Parliament. The prayer should be clear and brief, setting out the reasons for the request.
- The petition must be signed by the petitioner.²⁴

²² O’Brien and Bosc, p. 1182.

²³ Rule 11-6. The fee for introducing a private bill in the House of Commons is \$500. This difference in fees was established in 1934 as a deliberate measure to encourage the introduction of private bills in the Senate, rather than the House of Commons. Since then, the vast majority of private bills have originated in the Senate. See O’Brien and Bosc, p. 1178.

²⁴ Rule 11-1(1).

8. Private Bills

- Where the petitioner is a group of individuals (e.g., an organization) or a corporation, the petition may be signed by an executive member of the organization or an officer of the corporation.
- If the petitioner is a corporation, the petition must be under the seal of the corporation and must be duly authenticated in accordance with the by-laws of the corporation.
- The petition must be dated and the location (city, province) of the petitioner provided.

Documents

The petitioner must deposit with the Senate's Examiner of Petitions for Private Bills²⁵ documents such as a copy of the petition, a certificate of authentication²⁶ and affidavits of publication. Copies must also be submitted to the House of Commons. These documents are reviewed by the Office of the Law Clerk and Parliamentary Counsel before being sent to the Examiner of Petitions for Private Bills.

The Role of the Senate Law Clerk and Parliamentary Counsel

The Office of the Law Clerk and Parliamentary Counsel assists the petitioner and sponsor during the process of initiating a private bill in the Senate. Upon request, the office will advise the sponsor on the constitutional and legislative acceptability of a private bill. The office is also prepared to advise and assist the petitioner and outside counsel with respect to the drafting of the required documents and their tabling in Parliament. The notice (before it is published), the petition (before it is signed), and the bill (before it is introduced in the Senate) should therefore be submitted to the Office of the Law Clerk and Parliamentary Counsel for review. The office can also provide samples of these documents. Translation services will, if required, be provided by or requested through the office.

Once all documents are in order, the petitioner submits the petition, the notice, the bill, the certificate of authentication, the affidavit of publication and a cheque payable to the Receiver General of Canada to the Office of the Law Clerk and Parliamentary Counsel. After verification, the Law Clerk forwards the material to the Examiner of Petitions for Private Bills, who in turn communicates with the sponsoring senator to arrange the timing of the tabling of the petition in the Senate.

Introduction of a Private Bill in the Senate

The steps to introduce a private bill in the Senate are as follows:

1. **Tabling of the Petition:** When the Speaker calls "Tabling of Petitions" during Routine Proceedings, the senator sponsoring the bill tables the petition for the private bill.²⁷ The senator would typically say "Honourable senators, I have the honour to table a petition from (name of petitioner) praying for the passage of an act (the text of the petition is inserted here)." The petition is then forwarded to the Examiner of Petitions. As already noted, the Principal Clerk of Committees usually serves as examiner.
2. **Examination of the Petition:** The examiner reviews the petition to ensure that the petition is without defect and that all requirements (publication of the notice, etc.) have been respected. Since the

²⁵ Rule 11-3(1) establishes that "The Principal Clerk of Committees, or another official designated by the Clerk of the Senate, shall be the Examiner of Petitions for Private Bills."

²⁶ In the case of a private bill not related to natural persons.

²⁷ See, for example, *Journals of the Senate*, March 28, 2012, p. 995.

8. Private Bills

practice is for the examiner to unofficially review the petition and other documents prior to the tabling of the petition, this step is usually accomplished in an expeditious manner, allowing the petition to be reported at the next sitting.

3. Report on the Petition: If the petition is without defect, the examiner's report is tabled in the Senate under "Reading of Petitions for Private Bills" during Routine Proceedings. Nothing is actually said or done in the chamber to reflect this tabling, but the report is published in the *Journals of the Senate* for that day.²⁸
4. Reading of the Petition: After the examiner's report is tabled in the Senate, the text of the petition is read by a clerk at the table when the Speaker calls "Reading of Petitions for Private Bills" during Routine Proceedings.
5. Introduction of the Bill: After the petition for the private bill has been favourably reported and read, the bill is then introduced²⁹ when the Speaker calls "Introduction and First Reading of Private Bills."

If the petition were found to be defective, the examiner would, instead of tabling a report in the Senate, report the matter to the Standing Committee on Rules, Procedures and the Rights of Parliament, specifying the nature of any defects. This committee would then study the examiner's findings and report to the Senate, recommending the course of action that should be taken.³⁰

The Senate does not have a rule limiting the time for receiving petitions, so they may be received by the Senate at any time during the session. The House of Commons, on the other hand, does have a time limit for receiving petitions for private bills that originate in that house.³¹

First Reading

After the petition is reported favourably and read, the bill is introduced during Routine Proceedings under the heading "Introduction and First Reading of Private Bills." As with all bills, a senator rises and says: "Honourable senators, I have the honour to introduce a bill intituled [long title of bill]." A clerk at the table then announces the first reading of the bill, and the sponsor then moves that the bill be placed on the Orders of the Day for second reading two days hence. From this point, the bill is posted on the parliamentary website.

Under rule 11-11, a private bill may, upon the request of two senators, be referred to the Standing Senate Committee on Legal and Constitutional Affairs after first reading to "evaluate and report on whether the bill comes within exclusive provincial jurisdiction."

At any time before a private bill is passed, the Senate may decide to refer the bill to the Supreme Court for examination on any point on which the Senate desires information.³²

²⁸ See, for example, *Journals of the Senate*, April 2, 2012, p. 1067.

²⁹ Rule 11-2(1). See, for example, *Journals of the Senate*, November 23, 2011, pp. 657-658.

³⁰ Rule 11-3(4).

³¹ See House of Commons Standing Order 134.

³² See rule 11-18. Under section 54 of the *Supreme Court Act*, R.S.C., 1985, c. S-26, the examination and report may be by the court or by any two of its judges.

Second Reading and Reference to Committee

As with all items on the Order Paper, the order for second reading (and later for third reading) of a private bill is called each day that it is on the Order Paper. Senators debate the principle of a private bill at second reading. Once the bill is adopted at second reading, it is “referred to a committee and representations made in the Senate for or against the bill shall also be referred to the committee.”³³

Consideration in Committee

Since private bills confer specific rights or benefits that are not of general applicability, the *Rules of the Senate* require a delay between the referral of a bill to committee and the start of committee hearings on the bill. The delay is one week from the date of the referral if the bill originated in the Senate, and 24 hours if the bill originated in the House of Commons.³⁴

Senate rule 11-15 provides as follows:

A person whose interests may be affected by a private bill:

- (a) may ask to appear before a committee examining the bill or submit a written brief to the committee; and
- (b) shall appear before the committee examining the bill if required to do so by the committee.

It is the responsibility of interested parties to make themselves known to the committee and to contact it should they wish to appear or make comments in writing. This is the rationale for the one-week delay between the referral to committee and the actual start of the committee proceedings, as well as the notice requirement before the start of any proceedings leading to the introduction of a private bill.³⁵

At the end of hearings, the committee reviews the bill clause-by-clause, as is the case with all bills. Committee members can propose amendments to the bill at this time.

Committee’s Report to the Senate

As is the case with all other bills, the committee may report it with or without amendment, and in either case observations may be attached to the report. If the committee considers that the bill should not be proceeded with, it can so report to the Senate with reasons. If such a report is adopted, the bill will no longer appear on the Order Paper.³⁶ The committee is required by the Rules to report the bill back to the Senate, but there is no set time within which this must occur.³⁷ The chair of the committee, or a senator designated by the chair, presents the committee’s report to the Senate.³⁸

³³ Rule 11-8.

³⁴ Rule 11-10.

³⁵ See this chapter’s section on notice.

³⁶ Rule 12-23(5).

³⁷ Rule 12-23(1).

³⁸ Rule 12-22(5).

8. Private Bills

If the bill is reported without amendment, the report is automatically adopted, and the sponsor then moves that it be placed on the Orders of the Day for third reading at the next sitting.³⁹ If amendments are proposed, the report must be adopted or rejected before third reading can begin. When a report is taken into consideration “[t]he Senator presenting a committee report recommending amendments to a bill shall explain the purpose and effect of each amendment.”⁴⁰ If the report is adopted, the sponsor moves that the bill, as amended, be placed on the Orders of the Day for third reading at the next sitting. If the report is rejected, the next motion is that the bill, as passed at second reading, be read a third time at the next sitting.

Third Reading

Amendments may be moved to a private bill at third reading. Rule 11-16 provides that: “One day’s notice is required for any substantive amendment proposed to a private bill in Committee of the Whole or on motion for third reading.” Immediately following third reading, the Speaker orders that a message be sent to the House of Commons to inform it that the Senate has passed the bill and requests its concurrence.

Senate Private Bills in the House of Commons

A private bill originating in the Senate follows a series of stages in the House of Commons, as provided in its Standing Orders.⁴¹ To become law, the House of Commons and the Senate must adopt a bill in identical form. If the House of Commons adopts the private bill with amendments, it must be sent back to the Senate so that it can consider the amendments. When a private bill is returned from the House of Commons with substantial amendments, these must be referred to a Committee of the Whole or to the committee to which the bill was originally referred before being considered by the Senate.⁴²

If disagreements on the content of a private bill arise between the two houses, messages may be sent between them to reach an agreement as to the bill’s final form.⁴³

Royal Assent

After receiving approval by both houses in identical form, the bill is ready for Royal Assent, which makes it an act of Parliament.

Unlike other bills, a private bill is not assigned a chapter number for the annual *Statutes of Canada* until the end of the calendar year in which it is adopted. The chapter numbers assigned to private bills follow the chapter number of the last public bill adopted in that calendar year.

³⁹ Rule 12-23(2). One day’s notice is required for the third reading of a bill (rule 5-5(b)).

⁴⁰ Rule 12-23(4).

⁴¹ See O’Brien and Bosc, chapter 23, for details on the process in the House of Commons.

⁴² Rule 11-17.

⁴³ See rule 16-3 regarding disagreements on amendments between the two houses.

CHAPTER 9

Committees

An important part of the Senate's work is done in committee. The resulting reports are welcomed by a variety of audiences including government departments, academics, professional organizations, special interest groups, corporations and members of the public. This chapter looks at the various committees and their membership, powers, mandates and procedural rules. It also provides an overview of committee reporting, and the staff and resources allocated to ensure committees can carry out their work.



1. HISTORICAL BACKGROUND OF COMMITTEES

Committees have been an integral part of parliamentary work since long before Confederation. Committees first emerged during the early 15th century in the English House of Commons.¹

The Senate established its first committee on the second day of the first Parliament in 1867, when a committee was struck “to consider of the Orders and Customs of this House, and Privileges of Parliament.”² The first *Rules of the Senate* contained two sections devoted to committees. They had limited powers and no fixed quorum.

In 1894, the Senate revised its Rules to establish 10 standing committees (those established on an on-going basis under the Rules). Two were joint committees with the House of Commons. Each committee was established with a fixed number of members. For the next 74 years, committees continued under this arrangement with only minor changes.

In 1968, a major restructuring of committees occurred. Certain committees were renamed, new ones created and general areas of jurisdiction defined. After this reorganization, there were eight Senate standing committees and three standing joint committees, with the numbers gradually increasing during the following years. In 1983, the size of most standing committees was reduced from 20 to 12 members, with a corresponding reduction in quorums. Since then, there have been various changes, resulting in the number of standing committees reaching 16, in addition to two joint committees and the Committee of Selection,³ which is neither a standing nor a special committee.⁴

¹ For a history of the evolution of committees in the British Parliament, see Redlich, Volume 2, pp. 203-214. For a description of committees before Confederation, see O'Brien “Pre-Confederation Parliamentary Procedure....”

² *Journals of the Senate*, November 7, 1867, p. 60.

³ See text related to rules 12-3 and 12-7 in the *Companion to the Rules of the Senate*, 2nd ed., for further information on the evolution of the structure of committees in the Senate.

⁴ Rule 12-2(5).

2. RULES

Chapter 12 of the *Rules of the Senate* deals with committees. Situations not provided for in Chapter 12 may be addressed by reference to other parts of the Rules, with appropriate adjustments.⁵ When the Rules are silent on a specific matter, rule 1-1(2) provides that “the practices of the Senate, its committees and the House of Commons shall be followed, with such modifications as the circumstances require. The practices of other equivalent bodies may also be followed as necessary.”

Although the rules and practices of the Senate broadly apply to committees, it must be noted that there is often considerable flexibility. “Proceedings in committees are more relaxed in nature than those in the [Senate] as the requirements which must be observed in the Chamber are not so strictly enforced when Members sit as committees.”⁶

3. COMMITTEE MEMBERSHIP

Appointment of Members

At the beginning of each session of Parliament, a Committee of Selection is formed to nominate a Speaker *pro tempore* and to name senators to serve on committees.⁷ The motion to appoint the committee is normally moved after the Speaker reports the Speech from the Throne. This motion can be debated, amended and adjourned. In many cases, the motion is moved and adopted during the same sitting. The Committee of Selection must report to the Senate within five sitting days regarding the nomination of the Speaker *pro tempore*,⁸ but it often reports on both matters on the same day. The recommendations of the Committee of Selection take effect when its reports are adopted by the Senate.

In practice, senators generally indicate their preferences to sit on a particular committee to the leadership of their party in the Senate prior to the first meeting of the Committee of Selection. These preferences may be taken into consideration when establishing the membership of the various committees. New senators who are appointed to the Senate mid-session may also express their interest in serving on a specific committee.

The membership of the Standing Committee on Ethics and Conflict of Interest for Senators is appointed in a manner totally different from that of other committees. The government and opposition caucuses each elect, by secret ballot, two senators to sit on the committee. These four senators together elect a fifth senator.⁹ Once all five members have been chosen, the Leader of the Government moves a motion in the Senate, seconded by the Leader of the Opposition, to appoint the members of the committee. This motion is deemed adopted without debate or a vote.¹⁰ A similar motion is moved for any substitutions in the membership of the committee. If a vacancy occurs in the membership of the committee, the replacement member is elected by the same method as the former member being replaced.¹¹

⁵ Rules 1-1(2) and 12-20(4).

⁶ Beauchesne, 6th ed., §762, p. 223.

⁷ Rules 12-1 and 12-2.

⁸ Rule 12-2(1)(a).

⁹ *Ethics and Conflict of Interest Code for Senators*, s. 35(4).

¹⁰ Rule 12-27(1) and s. 35(5) of the *Ethics and Conflict of Interest Code for Senators*.

¹¹ *Ethics and Conflict of Interest Code for Senators*, s. 35(8).

Membership Changes

Once senators are appointed to committees, rule 12-2(3) provides that their membership continues for the duration of the session. Notwithstanding this, membership changes can be made during the course of a session, except in the case of the Ethics and Conflict of Interest Committee,¹² by the Senate leader of the party to which the senator belongs, or a delegate – usually the party whip.¹³ The Clerk of the Senate must receive written notification of any committee membership changes, signed by the leader or a designate of the appropriate party. In practice, the Committees Directorate, acting on behalf of the Clerk of the Senate, receives membership changes directly from the party whips. These changes are recorded in the *Journals of the Senate*. Copies of membership changes are also forwarded to the appropriate committee clerk for inclusion in the committee’s published records.

Membership changes are not time-limited. They result in the permanent removal and replacement of a senator from the membership of a committee. The senator removed in this way is no longer a member of the committee unless another notice is submitted reinstating the senator’s membership on the committee. Once replaced, the senator loses all privileges of membership, including the right to vote, to move a motion in committee and to be counted as part of quorum.

The chair and deputy chair of a committee are normally not replaced. As noted in a report of the Standing Committee on Rules, Procedures and the Rights of Parliament:

Upon being replaced, the chair is no longer a member of the committee and cannot, therefore, be its chair. It ensues that the committee is no longer properly constituted because it does not have a chair. The deputy chair cannot act for the chair since he or she may only replace the chair in his or her absence, but may not replace him or her if the chair position is vacant. Therefore, should the chair of a committee be replaced, the first item of business should be the election of a new chair. Such an election is presided over by the clerk of the committee. Should the former chair of the committee be re-appointed to the committee, he or she would have to be elected anew as chair of the committee before resuming his or her functions.

The replacement of a deputy chair can also be problematic. While a committee remains properly constituted when its deputy chair is replaced, the business of the committee may be stalled should he or she not be replaced. For example, steering committees, which are usually composed of three members: the chair, the deputy chair and another senator, would not be able to meet should the deputy chair be replaced on the committee and no senator elected in his or her place as deputy chair.¹⁴

A membership change can indicate that the name of the replacement will follow. The committee can continue to function, as long as it has quorum.¹⁵

¹² Rules 12-5 and 12-27(1). Under s. 35(7) of the *Ethics and Conflict of Interest Code for Senators*, a senator ceases to be a member of the Ethics and Conflict of Interest Committee either if the Senate Ethics Officer informs the committee that a request for an inquiry made by the senator is warranted or if the senator is the object of an inquiry under the Code. When a vacancy arises in the membership, the place is filled in the same manner in which the senator who ceased to be a member was appointed (s. 35(8) of the Code).

¹³ Rule 12-5.

¹⁴ Sixth report of the committee, tabled in the Senate on October 8, 2009.

¹⁵ See Speaker’s ruling, *Journals of the Senate*, May 9, 2007, p. 1511.

Senators Who Do Not Belong to a Recognized Party

Senators who do not sit as members of a recognized party in the Senate can be appointed to committees. They may voluntarily choose to be under the responsibility of the whip of one of the parties for the purpose of membership changes by indicating this in writing to the Speaker.¹⁶ If they do not do so, their membership on a committee can only be changed by the Senate itself, usually by the adoption of a report of the Committee of Selection recommending the change.¹⁷

Ex Officio Members

The Leaders of the Government and the Opposition in the Senate or, in their absence, their respective Deputy Leaders, are ex officio members of the Committee of Selection and all standing and special committees, except the Standing Committee on Ethics and Conflict of Interest for Senators and joint committees.¹⁸ As such, they can count towards quorum, move motions and vote. There is, however, a practice that a senator sitting as an ex officio member will normally abstain from voting unless an ex officio member from the other party is also present. The leaders or deputy leaders of the parties can also sit as “regular” (non-ex officio) members, either by being recommended as a member in a report of the Committee of Selection or by replacing another member on the committee, in which case they vote like any other member.

Non-Members

Even if senators are not members of a committee, they can attend and participate in the meetings of most committees, whether they are held in public or in camera.¹⁹ One exception is the Standing Committee on Ethics and Conflict of Interest for Senators: only the members of the committee or, if it agrees, a senator who is the subject of an inquiry report from the Senate Ethics Officer being considered by the committee can attend and participate when it meets in camera.²⁰

While they can attend and participate in committee deliberations, non-members are not allowed to vote or to count towards quorum.²¹ They also cannot move motions or raise points of order.²² Non-members may withdraw when a committee considers a draft report in camera.²³

¹⁶ A Speaker’s ruling on May 9, 2007, noted that “... independent senators can indicate, in writing, that they agree to accept the authority of either the government or the opposition whip for the purposes of membership changes. This arrangement is entirely voluntary. If an independent senator does not write such a letter, or withdraws it, the rule respecting changes does not apply. Similarly, if a senator withdraws from a caucus, rule [12-5] would cease to apply. In the latter case, that senator would retain any then current committee memberships unless removed, either through a report of the Committee of Selection or a substantive motion, adopted by the Senate” (*Journals of the Senate*, p. 1510).

¹⁷ See, for example, *Journals of the Senate*, May 28, 2013, pp. 2562-2563; May 21, 2013, p. 2532; and October 4, 2006, p. 491.

¹⁸ Rule 12-3(3).

¹⁹ Rule 12-14. The situation is slightly different with regards to subcommittees.

²⁰ Rule 12-28(2). As discussed later in this chapter, the right of non-members to participate in the work of subcommittees during in camera meetings is also more limited.

²¹ Rules 12-6 and 12-14.

²² See Beauchesne, 6th ed., §766, pp. 223-224; O’Brien and Bosc, p. 763; Marleau and Montpetit, pp. 857-858; and Speaker’s ruling, *Journals of the Senate*, June 7, 1999, pp. 1682-1684, which noted that “Non-members are prohibited from voting and they cannot move motions or be part of the committee’s quorum.”

²³ See Beauchesne, 6th ed., §766(2), p. 224.

The right of access to and participation in subcommittees is somewhat more restrictive. A Speaker's ruling on June 7, 1999, sustained on appeal, stated that:

... Senators retain the right to attend and participate in meetings of subcommittees whenever they are meeting publicly. It is less clear that senators have that right when subcommittees are meeting *in camera* for the purpose of considering issues that are subsequently reviewed and endorsed by the committee... The opportunity for them to comment on the recommendations that are developed by subcommittees will come when they are considered by the committee.²⁴

Quorum

A quorum is the minimum number of senators needed to transact business. In most cases, quorum is four members.²⁵ A committee may sit, hear witnesses and permit the publishing of evidence when it does not have quorum, but only if this was authorized by the committee when quorum was present. A committee cannot make any decisions without quorum.²⁶ In practice, blanket permission to hold meetings when a quorum is absent is normally granted to the chair at the committee's organization meeting, usually requiring that at least one member from both the government and opposition be present.

The Rules do not set the quorums of the joint committees. Instead, such a committee reports to the two houses recommending what its quorum should be. This quorum takes effect when the relevant report has been adopted by both houses. Until that time, a joint committee must have a majority of its members from each house in order to conduct business.²⁷

4. TYPES OF COMMITTEES

Standing Committees

Standing committees are established by the *Rules of the Senate* and exist for the duration of each session of Parliament. They cease to operate upon prorogation or dissolution, except for the Standing Committee on Internal Economy, Budgets and Administration, which continues to function until its successor is appointed in the new session or the new Parliament.²⁸ In addition, the *Ethics and Conflict of Interest Code for Senators* provides that the members of the Standing Committee on Ethics and Conflict of Interest for Senators form an Intersessional Authority on Ethics and Conflict of Interest for Senators during any periods of prorogation or dissolution. The authority can provide general direction to the Senate Ethics Officer and carry out other functions that the committee delegated to it by resolution before prorogation or dissolution.²⁹

²⁴ *Journals of the Senate*, June 7, 1999, p. 1684.

²⁵ Under rule 12-6, exceptions are the joint committees, the Committee of Selection (quorum of six under rule 12-2(6)) and the Ethics and Conflict of Interest for Senators Committee (quorum of three under rule 12-27(2)).

²⁶ Rule 12-17.

²⁷ Beauchesne, 6th ed., §809(2), p. 230.

²⁸ *Parliament of Canada Act*, R.S.C., 1985, c. P-1, s. 19.1(2). The committee's membership can be modified during an intersessional period (s. 19.1(3)).

²⁹ Sections 38 and 39 of the *Ethics and Conflict of Interest Code for Senators*.

The 16 standing committees and two joint committees are as follows:

- Aboriginal Peoples;
- Agriculture and Forestry;
- Banking, Trade and Commerce;
- Ethics and Conflict of Interest for Senators;
- Energy, the Environment and Natural Resources;
- Fisheries and Oceans;
- Foreign Affairs and International Trade;
- Human Rights;
- Internal Economy, Budgets and Administration;
- Legal and Constitutional Affairs;
- Library of Parliament (joint);
- National Finance;
- National Security and Defence;
- Official Languages;
- Rules, Procedures and the Rights of Parliament;
- Scrutiny of Regulations (joint);
- Social Affairs, Science and Technology; and
- Transport and Communications.

The size of the membership of these committees, the number of members required for quorum and the general areas of study of each committee are outlined in rules 12-3, 12-4, 12-6 and 12-7.

Committee of Selection

The Committee of Selection is appointed when a motion to that effect is adopted by the Senate at the beginning of each session. Its main purposes are to nominate a senator to serve as Speaker *pro tempore* and to nominate members for the standing and joint committees.³⁰ The report respecting the nomination of the Speaker *pro tempore* must be presented within the first five sitting days of a new session.³¹ The Committee of Selection is neither a standing nor a special committee.³²

Special and Legislative Committees

Following the adoption of a motion, a special committee can be established to examine a specific piece of legislation or to study a particular issue. Recent examples of special committees are the Special Committee on Senate Reform (1st Session, 39th Parliament), the Special Committee on Aging (1st and 2nd Sessions, 39th Parliament; and 2nd Session, 40th Parliament) and the various special committees dealing with anti-terrorism since the 1st Session of the 36th Parliament. Unlike standing committees, a special committee ceases to exist once it submits its final report to the Senate. If a session were to end prior to the date that a special committee were to report, a new motion establishing the committee would have to be adopted again in the new session, if the Senate wishes the committee to complete its work.

³⁰ Rules 12-1 and 12-2.

³¹ Rule 12-2(1)(a).

³² Rule 12-2(5). Also see *Journals of the Senate*, May 28, 2013, pp. 2567-2568.

A motion to establish a special committee requires two days' notice³³ and sets out the parameters of the committee's study. The motion normally establishes the date by which the committee must submit its final report and sometimes includes other provisions, such as the power to travel and contract professional services. The membership of a special committee may be either set out in the motion establishing the committee or recommended to the Senate by the Committee of Selection. Subsequently, membership changes for special committees are made in the normal manner.

While the Rules also provide for legislative committees,³⁴ there are no known cases of such a committee ever being formed. Instead, special committees have been set up to study bills when necessary.³⁵ Under the Rules, a legislative committee is composed of no more than 12 members.³⁶

Joint Committees

Joint committees are composed of both senators and members of the House of Commons. Membership typically reflects the relative size of the two houses. Such committees exist under the rules of each house (a standing joint committee) or are formed by a motion adopted by each house (a special joint committee). Joint committees typically deal with issues of a non-legislative nature of interest to both houses. Once senators have been appointed to serve on a joint committee, a message is sent to the House of Commons indicating the Senate members. Similarly, once the House of Commons membership is determined, a message should be sent from the House of Commons to the Senate.³⁷ Joint committees have joint chairs from both the Senate and the House of Commons. The joint chairs may preside over a meeting together or alternately. The practices governing joint committees are a mixture of those of the two houses.

Subcommittees

A subcommittee is a smaller body formally established by a committee from among its membership to perform tasks or functions delegated to it by the full committee. The most common example is the Subcommittee on Agenda and Procedure, typically referred to as the "steering committee," which is established by most committees.³⁸ Committees can establish subcommittees to deal with other business, including bills or special studies. When conducting such studies, a subcommittee hears witnesses and receives evidence much like a regular committee. To do so the parent committee usually delegates many of the powers it has received from the Senate to a subcommittee (e.g., the power to hire, publish evidence, broadcast, etc.). A subcommittee cannot, however, report to the Senate directly. Any report it adopts must

³³ Rule 5-6(1)(d).

³⁴ See definition of "legislative committee" under "committee" in Appendix I of the *Rules of the Senate*, and rule 12-11.

³⁵ Recent examples of special committees that have studied legislation are the Special Senate Committee on Bill C-36, the Anti-terrorism Act, in 2001; and the Special Senate Committee on Bill C-20, An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference (also known as the Clarity Act), in 2000. The subject matter of Bill S-4, An Act to amend the Constitution Act 1867 (Senate tenure), was studied by the Special Senate Committee on Senate Reform in 2006.

³⁶ Rule 12-11.

³⁷ The House of Commons renews the membership of its committees after a summer break, and new elections are held for office holders (chair and deputy chair). These renewals apply to the members of joint committees representing the House of Commons. See O'Brien and Bosc, pp. 1022 and 1036.

³⁸ See section on organization meetings later in this chapter for details about the role of subcommittees on agenda and procedure.

first be adopted by the parent committee, which then reports it to the Senate.³⁹ In addition, the budget of a subcommittee is the responsibility of its parent committee.⁴⁰

Practice is that the chair of the committee is also chair of the Subcommittee on Agenda and Procedure (steering committee). The deputy chair is also normally a member of a steering committee, as well as one other senator from the largest party in the Senate.

Other subcommittees typically have a formal organization meeting, similar to that for a full committee.⁴¹ The chair and deputy chair are normally elected at this meeting, although they can be designated by the parent committee.

The size of any subcommittee is limited to no more than half the number of members of the parent committee, three of whom constitute a quorum.⁴² Procedure in subcommittees generally follows that of committees. One notable distinction is that while a full committee can in most cases only meet in camera in very restricted circumstances,⁴³ subcommittees can do so at any time, except when conducting clause-by-clause consideration of a bill.⁴⁴ In practice, however, subcommittees always hear from witnesses in public.⁴⁵

Committee of the Whole

A Committee of the Whole is a committee composed of all senators. A Committee of the Whole meets in the Senate Chamber, most often to deal with a bill or other matter when expediency is sought. Proceedings in a Committee of the Whole are less formal than other proceedings in the chamber, and combine elements of procedures followed in the chamber and in committees.

A Committee of the Whole exists only for the duration of the mandate given to it by the Senate, usually a matter of hours. Although no notice is required for a motion to resolve the Senate into a Committee of the Whole,⁴⁶ the decision is usually made in advance, allowing for the necessary planning.⁴⁷ Proceedings of a Committee of the Whole are recorded in the *Journals of the Senate*⁴⁸ and published in the *Debates of the Senate*. The Senate often agrees to allow television cameras into the chamber during a Committee of the Whole, but this decision must be made by the Senate itself before it resolves into the committee.

When the Senate begins proceedings in a Committee of the Whole, the mace is removed from the table and placed beneath it to highlight the fact that the Senate is sitting as a committee.

³⁹ Rule 12-12(6) states that “[a] subcommittee shall report to the committee that appointed it.”

⁴⁰ *Senate Administrative Rules*, Chapter 3:06, section 6.

⁴¹ See section on organization meetings later in this chapter for more details.

⁴² Rules 12-12(2) and (3).

⁴³ See rule 12-16 and section on in camera meetings later in this chapter.

⁴⁴ See rule 12-12(5).

⁴⁵ See *Journals of the Senate*, June 7, 1999, pp. 682-684.

⁴⁶ Rules 5-7(o) and 12-32(1).

⁴⁷ See, for example, *Journals of the Senate*, June 17, 2009, p. 1139; May 13, 2009, p. 679; March 24, 2009, p. 374; and December 11, 2006, p. 937.

⁴⁸ Rule 12-32(2).

The Speaker of the Senate does not preside over the Committee of the Whole. Instead, another senator, usually the Speaker *pro tempore*, presides as the chair of the committee, sitting at the head of the table instead of in the Speaker's chair.⁴⁹ A minister who is not a member of the Senate may be invited to take part in proceedings when the Committee of the Whole is considering a bill or any other matter that is the responsibility of that minister's department.⁵⁰ Witnesses may also be invited to appear before the committee.⁵¹ While a minister sits at one of the senators' desks near the government leader's place, all other witnesses sit at a convenient location in the central aisle.

The *Rules of the Senate* apply in a Committee of the Whole with the following exceptions:⁵²

- senators address the chair if they wish to speak;
- senators are not obliged to stand or to speak from their designated places;
- senators may speak any number of times;
- each intervention by a senator is limited to 10 minutes;
- any standing vote is taken immediately, without bells to call in the senators;
- there can be no arguments against the principle of a bill;
- there can be no motions for the previous question⁵³ or for an adjournment; and
- except for substantive amendments to private bills,⁵⁴ notice is not required for a motion or an amendment.

At any time a senator may move either "that the chair do now leave the chair" or "that the chair do now report progress and ask leave to sit again." These motions are decided without debate or amendment.⁵⁵ If the first motion is adopted, the chair leaves the chair and does not make a report to the Senate. The bill or subject under consideration by the Committee of the Whole is dropped from the Order Paper.⁵⁶ If the second motion is adopted, the chair reports progress and then requests authority to sit again. If this authority is granted, the committee will sit again either that day or on a later day.⁵⁷ Once a Committee of the Whole has completed its work, the chair reports to the Senate and may ask for permission to sit again. If permission is not sought or not granted, the committee will not sit again on the matter, and the item will be dropped from the Order Paper.

If business arises requiring the attention of the Senate (notably Royal Assent), the Speaker takes the chair immediately, without awaiting a report, and the committee would then continue after the business has been disposed of.⁵⁸ A message from the House of Commons does not interrupt a Committee of the Whole. It is read when the Senate resumes.⁵⁹

⁴⁹ Bourinot states that: "There is no chairman of committees in the Senate, regularly appointed at the commencement of every session, as in the House of Lords; but the speaker will call a member to the chair" (p. 393). For an example of a senator other than the Speaker *pro tempore* presiding as the chair of a Committee of the Whole, see *Journals of the Senate*, June 12, 2012, p. 1384.

⁵⁰ Rule 12-32(4).

⁵¹ Rule 12-32(5).

⁵² Rule 12-32(3).

⁵³ See Chapter 5 for more details on the motion for the previous question.

⁵⁴ Rule 11-16.

⁵⁵ Rule 12-33(1).

⁵⁶ Rule 12-33(2).

⁵⁷ See O'Brien and Bosc, p. 930. Bourinot (p. 399), notes that if a Committee of the Whole reports progress and seeks authority to sit again, the Speaker will then ask "When shall the committee have leave to sit again?" A time will then be appointed for the future sitting of the committee." This could be later that day or at a future date.

⁵⁸ See O'Brien and Bosc, pp. 930-931.

⁵⁹ O'Brien and Bosc, pp. 930-931.

If a Committee of the Whole is still sitting at 6 p.m., its proceedings are interrupted, to resume at 8 p.m.⁶⁰ An exception to this provision would have to be granted by the Senate itself, not by the Committee of the Whole.

5. ORGANIZATION MEETING

Under rule 12-13, once a committee has been appointed, “the Clerk of the Senate shall, as soon as practicable, call an organization meeting of the committee.” The committee clerk organizes this first meeting, and the notice is issued in the name of the Clerk of the Senate. The term “as soon as practicable” has been understood to mean that both whips have indicated their agreement to the organization meeting being called.

When a quorum is present, the committee clerk calls the meeting to order and presides over the election of the chair. To be elected chair, a senator must be a member of the committee, but does not have to be present at the organization meeting.⁶¹ The committee clerk calls for nominations, which are made by motion. There is no debate on a motion of nomination. Once there are no more nominations forthcoming, the committee clerk puts the question on each, in the order in which they were received, until a senator is elected.⁶² Once elected, the new chair presides over the remainder of the meeting. If the senator chosen as chair is absent, the committee clerk immediately conducts the election of an acting chair to preside over the rest of the meeting. If a committee is unable to elect a chair, it cannot proceed to other business and will disperse.⁶³ Without an elected chair, the committee is not properly constituted and cannot function.⁶⁴ Committee clerks have no authority to preside over any element of committee business other than the election of the chair, so they cannot recognize any senators for the purpose of debate, nor may they hear nor rule on a point of order.

The election of a deputy chair is usually the second item of business at an organization meeting and the first action for the new chair. Since the committee now has a chair and is properly constituted, there can be debate on this item of business. While not mandated in the Rules, there is a long-standing practice that if the chair is from the government, the deputy chair is from the opposition, and vice versa.

After the election of the chair and deputy chair, the committee typically proceeds with a series of motions to facilitate its subsequent operations. One of these is the creation of the Subcommittee on Agenda and Procedure, or “steering committee.” The steering committee normally consists of the chair, the deputy chair and one other member “designated after the usual consultations.”⁶⁵ The steering committee is usually empowered to make decisions with respect to the committee’s agenda, to invite witnesses and to

⁶⁰ Rule 3-3(1).

⁶¹ This process is also followed if the position of chair becomes vacant at some point after the committee has organized.

⁶² In the case of the Standing Committee on Ethics and Conflict of Interest for Senators, the chair must be elected by at least four of the five members (s. 35(6) of the *Ethics and Conflict of Interest Code for Senators*).

⁶³ In this case, another meeting must be convened, where the election of a chair will be the first order of business (O’Brien and Bosc, p. 1038).

⁶⁴ O’Brien and Bosc, p. 1041.

⁶⁵ The third member of the steering committee is normally a member of the largest party in the Senate, selected by that party’s whip in consultation with the member from that party who is chair or deputy chair. Committees are usually non-specific in the designation of this third member to allow a degree of flexibility, so that if the third member is unavailable, the steering committee can continue to operate with the presence of a different senator. A committee can, however, name a specific senator to be the third member. In this case, only the committee itself can change the membership. Steering committees of more than three members have been appointed on occasion, but never more than half the committee’s total membership under rule 12-12(2).

schedule meetings. The parent committee can overrule or modify a decision of the steering committee by a majority vote.

Various other motions are also considered at an organization meeting. Typical motions include the following:

- a motion to publish committee proceedings;⁶⁶
- a motion authorizing the holding of meetings and the publishing of evidence when quorum is not present;⁶⁷
- a motion to ask the Library of Parliament to assign research personnel to the committee;
- a motion to adopt the report of expenses and activities from the previous session;⁶⁸
- a motion concerning the authority to commit funds and certify accounts, pursuant to the *Senate Administrative Rules* (usually conferred individually on the chair, the deputy chair and the committee clerk);
- a motion empowering the steering committee to designate members and staff to travel on assignment on behalf of the committee;
- a motion to authorize the steering committee to designate members as travelling on committee business for the purposes of the Senators Attendance Policy;⁶⁹ and
- a motion to reimburse the travel expenses of witnesses.

Once all the items on the agenda for the organization meeting have been dealt with, the committee may continue with the consideration of other business, including its work plans, or it may adjourn.

6. MANDATE — ORDERS OF REFERENCE

An order of reference is an authorization from the Senate for a committee to undertake a study. It establishes the scope of the study and may confer other powers the committee needs to conduct the study.

While the Rules establish general mandates for committees, these serve only as guidelines regarding the type of matters that may be referred to each committee. They do not, in most cases, actually provide the authority to conduct work without a distinct order of reference from the Senate. Normally, the Senate only refers to a committee matters that fall within its general mandate as set out in the Rules. Unlike House of Commons committees, the mandates of Senate committees are not structured to focus on one government department. As such, a particular issue may fall within the general mandate of more than one committee. In these cases, the Senate will decide which committee should conduct the study. Despite a committee's general mandate, the Senate can decide to refer any matter to any committee.⁷⁰

⁶⁶ Rule 12-9(2)(b).

⁶⁷ Allowed under rule 12-17. A provision requiring that a member from both the government and the opposition be present for such meetings is often included in this motion.

⁶⁸ Under rule 12-26(2) such a report must be made within the first 15 sitting days of a new session.

⁶⁹ See Chapter 2 for further information on the Senators Attendance Policy.

⁷⁰ Rule 12-8(1).

There are two broad types of orders of reference: (1) an order of reference for a bill, the subject matter of a bill or the expenditures set out in the estimates;⁷¹ and (2) an order of reference to study a particular topic (a “special study”).

Only four committees have permanent orders of reference and are empowered by the Rules to act on their own initiative without additional authority from the Senate. The Standing Committee on Rules, Procedures and the Rights of Parliament is empowered to propose amendments to the *Rules of the Senate* and “to consider the orders and practices of the Senate and the privileges of Parliament.”⁷² The Standing Committee on Internal Economy, Budgets and Administration may consider financial and administrative issues relating to the Senate’s internal administration, subject to the *Senate Administrative Rules*.⁷³ The Standing Committee on Ethics and Conflict of Interest for Senators exercises general direction over the Senate Ethics Officer and is responsible for all matters relating to the *Ethics and Conflict of Interest Code for Senators*.⁷⁴ Another committee, the Standing Joint Committee for the Scrutiny of Regulations, has an on-going mandate provided in the *Statutory Instruments Act*⁷⁵ to review regulations made by order-in-council. Finally, the Selection Committee can propose changes to the membership of a committee.⁷⁶

Other committees receive orders of reference through motions adopted by the Senate. A committee cannot begin formal work and hearings before the Senate adopts an order of reference authorizing it to do so. A bill is referred to a committee by means of a non-debatable procedural motion moved immediately after second reading.⁷⁷ In the case of a special study, it is often the committee that develops the wording of the motion authorizing the study, which is then proposed in the Senate by the chair or another senator.⁷⁸ Any senator may, however, take the initiative to move a motion for an order of reference without consulting the committee in question. Furthermore, a motion before the Senate may be referred to a committee by means of a superseding motion.⁷⁹

Bills

Committee consideration of bills is an important part of the legislative process. While not obligatory, virtually all bills are referred to committee after second reading,⁸⁰ allowing senators the opportunity to study the bill in detail, to receive public input and to propose changes.

⁷¹ “The estimates are the expenditure plans of all government departments, consisting of main estimates, tabled annually, and supplementary estimates, tabled as required” (O’Brien and Bosc, p. 914, n. 4).

⁷² Rules 12-7(2)(a) and (c).

⁷³ Rule 12-7(1).

⁷⁴ Rule 12-7(16).

⁷⁵ *Statutory Instruments Act*, R.S.C., 1985, c. S-22, s. 19.

⁷⁶ Rule 12-2(4)(b).

⁷⁷ No notice is required for such a motion (rule 5-7(b)). The wording used to refer a bill to a standing committee is typically “That the bill be referred to the Standing Senate Committee on _____.”

⁷⁸ When the motion for a special study is by a substantive (separate) motion, as is usually the case, one day’s notice is required (rule 5-5(j)).

⁷⁹ No notice is required for such a motion (rule 5-7(b)). For more information on superseding motions, see Chapter 5.

⁸⁰ The major exceptions are appropriation bills, which are only rarely referred to committee after second reading. It may be noted, however, that the expenditures set out in the estimates, on which a particular appropriation bill is directly based, are usually examined by committee, although this also is not obligatory. All projected expenditures are typically examined by the Standing Senate Committee on National Finance, except for votes relating to the Library of Parliament. See later in this chapter for a discussion of committee consideration of the expenditures set out in the estimates.

The motion to refer a bill to a committee for study is moved immediately after the motion for second reading is adopted. As already indicated, notice is not required for this motion, and it does not include a deadline for the committee to present its report on the bill.⁸¹

Senate committees often invite ministers of the Crown, public servants, stakeholder groups, experts and individuals to appear before them to receive information relevant to bills under consideration. The invitation of witnesses is made at the discretion of the committee and usually delegated to the steering committee. In the case of a government bill, the sponsoring minister and/or the parliamentary secretary typically appear first, providing them with an opportunity to explain and defend the policy choices leading to the bill. Public servants, on the other hand, are present to respond to questions relating to technical aspects of a bill, not the policy choices behind it. Other witnesses may also appear at the invitation of the committee or at their own request if they have a particular interest in the area of study.

When the legislation being considered is a non-government public bill, the sponsor (the senator or member of the House of Commons who originally introduced the bill) usually appears first. Further information on witnesses is available later in this chapter.

While Senate committees may hear from backbench members of the House of Commons concerning a non-government public bill they are sponsoring, committees rarely hear from such members in other circumstances.

Special provisions govern committees' work on private bills.⁸²

Once a committee has completed public hearings on a bill, it proceeds to clause-by-clause consideration of the bill. Amendments can be proposed, debated and voted upon. The final recommendations of the committee on the bill are presented to the Senate in a report.⁸³

Pre-Study of Bills Before the House of Commons and Study of the Subject Matter of Bills at Second Reading in the Senate

As discussed in Chapter 7, rule 10-11 provides for a process to authorize a committee to study the subject matter of bills that have been introduced in the House of Commons but have not received first reading in the Senate.⁸⁴ This practice, often referred to as “pre-study,” allows a committee to begin hearings on a bill

⁸¹ Rule 12-23(1) obliges committees to report on a bill referred to it, but is silent as to when this must occur. Once the Senate has referred a bill to a committee, it can withdraw from that committee, possibly referring it to another committee (see, for example, *Journals of the Senate*, December 13, 2006, p. 967; and October 28, 2004, p. 118.)

⁸² These provisions are described in detail in Chapter 8.

⁸³ This process is described in detail in Chapter 7.

⁸⁴ This practice emerged in the 1970s and was widespread for approximately twenty years. It virtually disappeared in the mid-1990s. While pre-study was used for 152 bills between 1980 and 1993, it has been used less frequently since then (<http://www.parl.gc.ca/ParlInfo/Compilations/HouseOfCommons/legislation/PreStudyBySenate.aspx?Language=E>, consulted on February 9, 2015).

before it is received in the Senate, so that its recommendations on a bill can be taken into account while the bill is still before the House of Commons. A pre-study report is tabled in the Senate, not presented.⁸⁵

A committee is also sometimes given an order of reference to study the subject matter of a bill that is at second reading in the Senate.⁸⁶ Sending the subject matter to committee for consideration before the bill receives second reading allows the committee to study not only the provisions of the bill, but its principle as well.⁸⁷ General practice in the Senate is to specify in the motion referring the subject matter to committee that the bill remains on the Orders of the Day; otherwise the bill might be dropped from the Order Paper.⁸⁸ While the subject matter of the bill is before the committee, the bill is usually not debated at second reading in the Senate Chamber, although it can be.⁸⁹ Reports on the subject matter of bills already in the Senate are also tabled, not presented.

Despite having conducted a pre-study or having studied the subject matter of a bill, once the bill itself is referred to committee, that committee is still required to complete clause-by-clause study.

Estimates

The Standing Senate Committee on National Finance examines almost all expenditures set out in the government's Main Estimates and supplementary estimates for each fiscal year.⁹⁰ While engaged in the study of the expenditures set out in the estimates by order of the Senate, the committee usually hears from the President of the Treasury Board, officials and other witnesses. Since the estimates touch on all aspects of government operations, the National Finance Committee is able to review, in essence, all operations of the federal government and related matters. The committee usually makes an interim report to the Senate early in its study. This report is normally debated and adopted by the Senate, often before or at the same time as the related appropriation bill is being considered in the Senate. The committee then continues with its study of the expenditures set out in the estimates until the end of the fiscal year. It may make other interim reports before its final report. The committee only reviews the expenditures set out in the estimates; at no point does it or the Senate actually adopt the estimates themselves.

Special Studies

A motion to authorize a committee to undertake a special study normally outlines the parameters of the proposed study and sets the date by which the committee must table its final report. If it becomes apparent that the committee will require additional time, a motion must be adopted by the Senate to extend the

⁸⁵ For a distinction between tabled and presented reports, see later in this chapter.

⁸⁶ Beauchesne, 6th ed., §§673-676, pp. 201-202; and O'Brien and Bosc, p. 751. See Chapter 7 for further details.

⁸⁷ For example, in 2007-2008 the Standing Senate Committee on Energy, the Environment and Natural Resources studied the subject matter of Bill S-208, Drinking Water Sources Act; in 2006-2007, the Special Senate Committee on Senate Reform studied the subject matter of Bill S-4, An Act to amend the Constitution Act 1867 (Senate tenure); and in 2004, the Standing Senate Committee on Banking, Trade and Commerce studied the subject matter of Bill S-14, An Act to amend the Agreement on Internal Trade Implementation Act.

⁸⁸ See Chapter 7 for further information.

⁸⁹ See Speaker's ruling, *Journals of the Senate*, October 25, 2006, p. 550.

⁹⁰ While other committees have been authorized to examine expenditures set out in the estimates in the past, recent practice is that all expenditures set out in the estimates are reviewed by the Standing Senate Committee on National Finance, except for votes relating to the Library of Parliament, which are typically studied by the Standing Joint Committee on the Library of Parliament.

deadline for tabling the final report. Committees sometimes make one or more interim reports before their final report.⁹¹

While the Senate may refer any matter to any committee for consideration,⁹² standing committees usually only undertake studies that fall within their general mandate as outlined in rule 12-7. When conducting a study, committees hear witnesses and may also travel, if the Senate authorizes them to do so. Although special studies, like most parliamentary work, end with a prorogation or dissolution, the Senate often agrees to re-authorize an order of reference in a new session. In this case the Senate typically refers back to the committee in question the papers and evidence received and work already accomplished on that matter, thereby allowing the committee to build on its previous work.⁹³

Other Work

A number of provisions exist in the Rules relating to certain specific types of work performed by committees. These include the study of regulations and user fee proposals as described below. Other laws may have provisions indicating that committees should engage in reviews or other types of studies, but a separate order of reference from the Senate is required in these cases.

Disallowance of Regulations

The *Statutory Instruments Act* provides the Standing Joint Committee for the Scrutiny of Regulations with a mandate to study most statutory instruments made since December 31, 1971.⁹⁴ Since 2003, section 19.1 of the act also allows the committee to initiate a process that can lead to the disallowance of a regulation, in whole or in part, if a report of the committee containing a resolution to that effect is adopted by both houses.⁹⁵ The section sets out specific processes to be followed in the committee and in the chamber, including provision for the automatic adoption of the report after 15 sitting days unless a minister requests that a motion for the non-adoption of the report be considered.⁹⁶

Since the act was amended to include this provision it has been used on two occasions.⁹⁷ In both cases, the report was adopted by the Senate — in one case with debate and in the other without. However, neither report was adopted in the House of Commons, so the disallowance did not take place.⁹⁸

User Fee Proposals

User fee proposals are tabled in both houses.⁹⁹ Under rule 12-8(2), consultations must occur between the leaderships before tabling to designate the committee to which the proposal will be referred, since the

⁹¹ See some examples of this in *Journals of the Senate*, March 25, 2013, p. 2045; March 7, 2013, p. 1999; and March 5, 2013, p. 1978.

⁹² Rule 12-8(1).

⁹³ For example, see *Journals of the Senate*, November 7, 2013, pp. 175-176.

⁹⁴ *Statutory Instruments Act*, R.S.C., 1985, c. S-22, s. 19.

⁹⁵ Before 2003, the committee's powers to recommend disallowance of legislation were not based on statute, but on the *Standing Orders of the House of Commons* (without parallel processes being established under the *Rules of the Senate*).

⁹⁶ *Statutory Instruments Act*, R.S.C., 1985, c. S-22, s. 19.1(5). For information on disallowance reports in the Senate, see Chapter 5.

⁹⁷ See the fourth report of the joint committee presented to the Senate on February 13, 2007 (*Journals of the Senate*, p. 1045 and pp. 1052-1065); and the second report of the joint committee presented to the Senate on May 5, 2005 (*Journals of the Senate*, p. 842 and pp. 849-865).

⁹⁸ Both reports were referred back to the joint committee by the House of Commons (see the House of Commons *Journals of the Senate*, February 21, 2007, pp. 1042 and 1047; and June 8, 2005, pp. 849 and 853).

⁹⁹ *User Fees Act*, S.C. 2004, c. 6, s. 4(2).

referral to that committee is automatic at the time of tabling.¹⁰⁰ The committee then has 20 sitting days to report on the proposal. If the committee fails to report within this period, it is considered to have recommended approval of the proposal.¹⁰¹ When the 20 days for committee consideration has been interrupted by a prorogation or dissolution, the user fee proposal must be tabled once again in both houses in the new session, and the process starts again.¹⁰²

7. POWERS OF COMMITTEES

Rule 12-9 grants various powers to standing committees. Once a committee has received an order of reference from the Senate, it is empowered to inquire into and report on the matter. While conducting a study, a standing committee has the power to send for persons, papers and records. This includes the power to issue a summons insisting that certain persons or material be made available.¹⁰³ This power is rarely exercised by committees as most witnesses appear voluntarily.¹⁰⁴ However, if a summons is used and a person refuses to appear or deliver the material in question, this can constitute a contempt of Parliament and could be reported to the Senate by the committee, with a recommendation as to how to proceed. Only the Senate itself can punish for contempt. A committee has neither the power to reprimand nor the power to enforce penalties.¹⁰⁵

Rule 12-9(2)(b) also empowers a standing committee to publish such papers and evidence as may be ordered by it. This includes the minutes of the committee and the transcripts of committee meetings. These documents are posted on the Internet (at sen.parl.gc.ca and parl.gc.ca).

In addition to the powers set out in rule 12-9, committees can, as already noted, create subcommittees.¹⁰⁶

Committees can seek additional powers by way of a motion in the Senate or a committee report. These may include the power to adjourn from place to place (i.e., to travel within Canada for meetings), to travel

¹⁰⁰ For example, see *Journals of the Senate*, May 6, 2015, p. 1811.

¹⁰¹ Rule 12-22(5). Also see *User Fees Act*, S.C. 2004, c. 6, s. 6(2). If the user fee proposal is referred to the committee before its membership has been established, the 20 days would only start once this has occurred (see rule 12-22(5) and Speaker's ruling, *Journals of the Senate*, January 28, 2009, p. 43.)

¹⁰² See, for example, the proposal for Spectrum Licence Fee for Broadband Public Safety Communications in the Frequency Band 4940-4990 MHz, during the 1st and 2nd Sessions of the 39th Parliament. While the Standing Senate Committee on Transport and Communications had completed its consideration during the 1st Session, the House of Commons committee had not, so the entire process was recommenced in the 2nd Session.

¹⁰³ On this matter, see Davidson, "The Powers of Parliamentary Committees," pp. 12-15. Both Canadian and British authorities recognize that a house of Parliament cannot compel members of either house to appear without the agreement of the house of which the parliamentarian is a member (Davidson, "The Powers of Parliamentary Committees," p. 12. Also see Lee). Reference may also be made to Part III of the December 1995 report of the Special Senate Committee on the Pearson Airport Agreements.

¹⁰⁴ For additional information on summoning witnesses, see later in this chapter.

¹⁰⁵ Maingot, p. 221. On this matter more generally, see Chapter 11.

¹⁰⁶ Rule 12-12(1).

either inside or outside Canada for fact-finding work, to engage professional and other services, and to deposit a report with the Clerk of the Senate if the Senate is not sitting.¹⁰⁷

Joint committees, as bodies created by both houses of Parliament, can only conduct work or exercise powers if authorized to do so by both houses through their respective rules, orders and practices.¹⁰⁸

In Camera Meetings

Committees are authorized to hold meetings in camera (i.e., meetings from which the public is excluded) when the agenda deals with one of the following items:

- wages, salaries and other employee benefits;
- contracts and contract negotiations;
- labour relations and personnel matters;
- a draft agenda; or
- a draft report of the committee.¹⁰⁹

These restrictions on meeting in camera do not apply to joint committees.¹¹⁰

In the case of the Standing Committee on Ethics and Conflict of Interest for Senators, meetings are always in camera unless a senator who is the subject of an inquiry report from the Senate Ethics Officer being considered by the committee requests that a meeting be in public and the committee agrees to that request.¹¹¹

Business conducted during in camera meetings is confidential and the unauthorized release of such proceedings could be treated as a breach of privilege.¹¹² Transcripts are not normally taken of such meetings.

Motions of Instruction

The Senate can give direction to a committee by means of a motion of instruction. “Instructions are intended to allow a committee to do something it would not otherwise have the power to do.”¹¹³ Instructions can be either mandatory or permissive.¹¹⁴ “A mandatory instruction orders a committee to consider a specific matter or to conduct its study in a particular way. A permissive instruction gives the committee the power to do something that it could not otherwise do, but does not require it to exercise that power.”¹¹⁵ A Speaker’s ruling noted that “[i]nstructions had to be in the permissive form if they were

¹⁰⁷ Under rule 12-31, reports of the Standing Committee on Ethics and Conflict of Interest for Senators can be deposited with the Clerk of the Senate when the Senate stands adjourned. Such reports are deemed presented in the Senate at the next sitting.

¹⁰⁸ See O’Brien and Bosc, p. 989.

¹⁰⁹ See rule 12-16(1). The conditions under which subcommittees can meet in camera are less restrictive (see rule 12-12(5)).

¹¹⁰ Rule 12-16(2).

¹¹¹ Rule 12-28(1).

¹¹² *Rules of the Senate*, Appendix IV.

¹¹³ Speaker’s ruling, *Journals of the Senate*, November 30, 1995, p. 1332.

¹¹⁴ See definition of “instruction (to a committee)” in Appendix I of the *Rules of the Senate*. Also see O’Brien and Bosc, p. 994; and Erskine May, 24th ed., p. 806.

¹¹⁵ O’Brien and Bosc, p. 994.

to apply to committees which already possessed some authority... Instructions could be either permissive or mandatory if the committees involved possessed no powers because they were created on an *ad hoc* basis or if they concerned private bills.”¹¹⁶

In practice, motions of instruction arise infrequently in the Senate. These motions have most often been used in relation to dividing a bill.¹¹⁷ A motion of instruction requires one day’s notice and is debatable.¹¹⁸ If related to a bill, such a motion should be moved “immediately after the committal of the bill, or, subsequently, as an independent motion. The Instruction should not be given while the bill is still in the possession of the House, but rather after it has come into the possession of the committee. If the bill has been partly considered in committee, it is not competent to propose an Instruction.”¹¹⁹

8. ROLE OF THE CHAIR

The role of the chair in committee is to preside over meetings, to guide deliberations, to recognize who has the floor, and to help maintain order and decorum. As with the Speaker, the chair has the authority to rule on procedural issues. Any ruling can be appealed to the full committee by any member at the time it is made. As in the Senate, the wording for the motion to appeal a ruling of a chair is “That the ruling be sustained,” or some other variant in the positive. A tie vote results in the motion being defeated, thereby rejecting the ruling.¹²⁰ In addition to calling meetings to order, it is usually the chair who adjourns committee meetings. The Rules call for remarks in committee to be addressed to the chair.¹²¹

Committee chairs are entitled to participate in debate and vote like any other member of the committee, although they sometimes choose not to exercise the right to vote. The chair votes before other members.

The chair has several other roles outside committee meetings. Usually, the chair of the committee is also the chair of the Subcommittee on Agenda and Procedure (steering committee), and appears on behalf of the committee when its budget requests are reviewed by the Standing Committee on Internal Economy, Budgets and Administration. Under rule 12-22(2), the chair, or a senator designated by the chair, presents or tables reports of the committee to the Senate. Motions in the Senate related to the work of the committee are usually moved by the chair or a designated senator. The chair is also normally empowered to direct research staff on behalf of the committee.

Each committee also has a deputy chair who usually presides over meetings in the absence of the chair. The chair and deputy chair are usually from different parties. If the position of chair of a committee becomes vacant, the deputy chair does not automatically assume the role. Instead, the clerk of the

¹¹⁶ Speaker’s ruling, *Journals of the Senate*, May 2, 2000, p. 550.

¹¹⁷ For example, see *Journals of the Senate*, November 20, 2002, pp. 191-192; and December 6, 1999, pp. 204-205. Also see Speaker’s ruling, *Journals of the Senate*, May 2, 2000, pp. 549-551; and Erskine May, 24th ed., p. 558.

¹¹⁸ Rules 5-5(e) and 5-8(1)(g).

¹¹⁹ Beauchesne, 6th ed., §684, p. 204.

¹²⁰ Rule 12-20(1)(c).

¹²¹ Rule 12-20(1)(a).

committee must preside over the election of a new chair,¹²² and no other business can be taken up until a new chair has been elected.¹²³

When neither the chair nor the deputy chair is present at a meeting, the clerk of the committee will advise the committee of the absence and preside over the election of an acting chair for that meeting, following the practice in the chamber.¹²⁴ The motion to nominate an acting chair is not debatable.

9. COMMITTEE MEETINGS

Sitting Times

Committee meetings are scheduled around Senate sittings and caucus meetings, and therefore tend to take place in the mornings, late afternoons and evenings. Most committees sit twice a week. Under rule 12-18(1), a committee cannot sit while the Senate is sitting, unless it has permission from the Senate to do so. The evening suspension from 6 to 8 p.m. under rule 3-3(1) is part of a sitting, so any committees wishing to sit during that suspension must seek the permission of the Senate by way of a motion.¹²⁵

Under the *Senate Administrative Rules* “[t]he Senate Administration, acting in consultation with the leadership of the parties, shall assign a meeting schedule and reserve a room to be made available for the use of each Senate committee and subcommittee that meets regularly.”¹²⁶ Typically, the Government and Opposition Whips negotiate the schedule at the beginning of each new session of Parliament, seeking to avoid conflicts arising from limited time slots.

When a committee wishes to sit outside its usual time slot, the normal practice is to seek the approval of both whips. Meetings outside regular time slots are generally discouraged, as they often lead to conflicts for senators who are members of other committees or who have other obligations.

General Restrictions on Committee Meetings

The Rules impose certain restrictions on committee meetings. As already noted, rule 12-18(1) prohibits committees from meeting while the Senate is sitting, unless they have special permission. Such permission might be granted if, for example, there are difficulties in scheduling the appearance of a minister or if time differences make it difficult to hold a videoconference with a witness overseas. When a committee holds formal meetings elsewhere in the country, the power to adjourn from place to place is understood to include the power to meet while the Senate is sitting, and a specific exemption from rule 12-18(1) is not needed.¹²⁷

¹²² For information on the process for the election of a chair, see section above on the organization meeting.

¹²³ O’Brien and Bosc, p. 1041.

¹²⁴ Rule 2-4(2).

¹²⁵ See Speaker’s ruling, *Journals of the Senate*, June 5, 2012, p. 1343.

¹²⁶ Chapter 5:03, s. 3.

¹²⁷ See section on committee travel later in this chapter.

When the Senate is adjourned for more than one week, rule 12-18(2)(b) permits a committee to meet during the adjournment if the Senate has adopted a motion granting this power,¹²⁸ or if the government and opposition leaders (or their representatives) have given their signed agreement to a written request from the chair and deputy chair of the committee for such a meeting. If, on the other hand, the Senate is adjourned for one week or less, rule 12-8(2)(a) allows committees to meet if notice of the intention to meet during the adjournment was given to members of the committee at least one day before the adjournment. An exception to this general limitation is the Standing Committee on Ethics and Conflict of Interest for Senators, which can meet during any adjournments of the Senate, whether more or less than a week.¹²⁹

10. PROCEDURE

The role of a senator in a committee is broadly similar to the role they play in the chamber. Committees are, however, usually less formal than the chamber.¹³⁰ Notice is not required to move a motion, for example, and motions in committee do not require a seconder.¹³¹ In addition, a senator may speak more than once on a question in committee, there are no specific time limits imposed on the length of interventions in debate; and the previous question cannot be moved in a committee.¹³² The provisions of the *Ethics and Conflict of Interest Code for Senators* relating to the disclosure of private interests apply in committees.¹³³

Meeting Notices

Rule 12-15(1) requires that public notice be given for all committee meetings. The notice usually includes:

- the date, time and location of each meeting;
- the orders of reference or other business to be considered;
- the names and titles of scheduled witnesses; and
- whether the meeting will be in camera.

Notices are sent electronically to all committee members, the government and opposition leadership, interested senators who are not members, the media, and members of the public who have requested to be informed of committee meetings. Notices of meetings are also posted on the Senate channel of the Parliamentary Television Network and on the parliamentary websites.

¹²⁸ A motion is generally adopted by the Senate authorizing committees that are scheduled to meet on a Monday to meet if the Monday precedes a Tuesday on which the Senate sits after a long break. This authorization is usually granted for the duration of a session.

¹²⁹ Rule 12-29.

¹³⁰ Beauchesne, 6th ed., states that “Proceedings in the committees are more relaxed in nature than those in the House as the requirements which must be observed in the Chamber are not so strictly enforced when Members sit as committees” (§762, p. 223).

¹³¹ Rule 12-20(1).

¹³² Rule 6-9(3). For more information on the previous question, see Chapter 5.

¹³³ For further information on the *Ethics and Conflict of Interest Code for Senators*, see Chapter 2.

Motions

Motions may be moved by any committee member without notice and without a seconder.¹³⁴ Common motions moved in committee include those to create a subcommittee, to adopt a report or to amend a clause of a bill during clause-by-clause consideration.

Debate

Debate in committee tends to be much more informal than in the chamber. Formal time limits on senators' interventions in debate are rarely imposed, and senators tend to participate more than once. There is no formal practice restricting the amount of time for questioning witnesses, but senators usually limit their questions to allow for the participation of all senators who wish to speak. The chair or the clerk of the committee maintains a list of senators who wish to intervene.

Voting

As in the chamber, questions are decided by a majority of votes, including the deliberative vote of the chair. If the result is a tie, the motion is defeated.¹³⁵ The chair does not have a casting vote. Instead, when wishing to vote on a question, the chair votes first; however, to preserve impartiality, the chair often chooses not to vote.

Most decisions in committee are taken by voice vote, without members individually indicating their preference. Senators who want the record to show that a motion was not carried unanimously can indicate their wish by simply saying "on division." Committees also sometimes vote by a show of hands.

However, any member may request a recorded vote, where the names of those voting for or against a motion, or any abstentions, are registered in the committee's minutes. In such a case, the names of the members are called out by the committee clerk beginning with the chair, followed by the other members in alphabetical order. As their names are called, each senator indicates "yea," "nay" or "abstain." Once all senators present have voted, the committee clerk tallies the votes and announces the result. The chair then declares the question carried or defeated. No interruptions may be made by any members during the vote.

Points of Order and Questions of Privilege in Committee

Points of order may be raised when a member believes that the committee has departed from normal practice or procedure for a Senate committee. Examples of points of order that may be raised in committee are those concerning the appropriateness of remarks, the procedural validity of a motion or the presence of quorum. Procedure on points of order generally mirrors that followed in the chamber, as discussed in Chapter 10. Once a point of order has been considered, the chair delivers a decision. A decision may be appealed to the full committee.¹³⁶ Senators who are not members of the committee may not raise a point of order.¹³⁷

¹³⁴ Rules 12-20(1)(b) and (d).

¹³⁵ Rule 12-20(1)(c).

¹³⁶ If a chair's ruling is appealed, the question put is "Shall the chair's ruling be sustained?"

¹³⁷ See Marleau and Montpetit, p. 857.

While committees can deal with points of order arising during their proceedings, they are not empowered to decide any questions of privilege. Only the Senate can decide if a breach of privilege has occurred. A committee can therefore present a report to the Senate on a matter of privilege. In practice, however, individual senators generally raise such issues directly in the Senate under the process provided in Chapter 13 of the *Rules of the Senate*.¹³⁸ Appendix IV of the Rules outlines particular procedures to be followed when dealing with an alleged unauthorized disclosure of confidential committee reports and other documents or proceedings.¹³⁹

11. BUDGETS

Committees may incur a variety of expenses in the course of their work.¹⁴⁰ Until the Senate has granted funds to a committee, the committee may not incur expenses or commit funds.¹⁴¹ Chapter 3:06 of the *Senate Administrative Rules* outlines the financial rules and procedures governing Senate committees. It includes information on emergency funds, the budget approval process, the certification of payments, and financial monitoring and reporting. The following summarizes some of the key steps that must be undertaken by individual Senate committees in order to request and obtain funds for special studies or legislative work.

¹³⁸ See, for example, the questions of privilege raised in the Senate on May 7, 2013, relating to a witness prevented from appearing before a committee, with a ruling finding a prima facie case of privilege the next day (*Journals of the Senate*, pp. 2235-2237); on October 6, 2009, relating to the early departure of committee witnesses, with a ruling, not finding a prima facie case of privilege, delivered on October 28, 2009 (*Journals of the Senate*, pp. 1384-1386); on June 16, 2009, relating to the inability of a deputy chair and other senators to perform their responsibilities and participate freely in deciding the committee's business, with a ruling, not finding a prima facie case of privilege, delivered on September 16, 2009 (*Journals of the Senate*, pp. 1232-1237); on April 1, 2009, on a committee's inability to establish a subcommittee, with a ruling, not finding a prima facie case of privilege, delivered on April 21, 2009 (*Journals of the Senate*, pp. 448-449); and on May 16, 2007, relating to participation in committee work, with a ruling, finding a prima facie case of privilege, delivered on May 29, 2007 (*Journals of the Senate*, pp. 1562-1564). Also see Speaker's ruling of October 28, 2009, in which the Speaker noted that "the *Rules of the Senate* provide, at rule [13-2(1)(b)], that a question of privilege can be raised under the special process for such issues if the 'privileges of the Senate, of any committee thereof, or any Senator' are at issue. Accordingly, [Chapter 13 of the *Rules of the Senate*] can be used to raise questions of privilege arising from committee work, although a report of the committee is another vehicle available, as the authorities suggest." For an example of a point of order raised in the Senate about committee work see the ruling of May 9, 2007 (*Journals of the Senate*, pp. 1509-1512).

¹³⁹ These processes for dealing with questions of privilege are described in Chapter 11.

¹⁴⁰ Not all expenses related to the functioning of committees are charged directly to the committee's budget. For example, expenses for witness travel, videoconferences, postal charges, working meals in Ottawa and standard refreshments (coffee and juice) served at committee meetings held within the parliamentary precinct are charged to a central budget held by the Committees Directorate rather than to individual committees.

¹⁴¹ Expenses not charged directly to the committee's budget may be incurred (see previous footnote). There is also a provision for emergency funding, allowing a committee to incur limited expenses from its own budget before the Senate releases funds. This provision is discussed at the end of this section.

Types of Budgets

Committees can have two types of budgets: one for special study work and one for legislative work. Legislative budgets are less common because most expenses required to examine legislation – including working meals in Ottawa, witness costs and video conferencing expenses – are covered by a central budget managed by the Committees Directorate. However, committees have to adopt and seek approval for a separate budget for each special study. Funds approved for one special study can only be used for that study. Also, funds approved for legislative work cannot be used for a special study, and vice versa. New budgets are required every fiscal year and at the beginning of each new session of Parliament.

Special Study Budgets

Once the Senate adopts an order of reference for a special study, the committee clerk prepares a draft budget reflecting the committee's plans, which is reviewed by the chair and/or members of the steering committee. The budget proposal is then reviewed and signed by both the Principal Clerk of Committees and the Director of Finance. The committee considers the budget and can adopt it as drafted or make modifications.

After a budget has been adopted by a committee, it is submitted to the Standing Committee on Internal Economy, Budgets and Administration for review. Practice is that a subcommittee of the Standing Committee on Internal Economy, Budgets and Administration meets with the chair of the committee to discuss the budget application. The deputy chair and other senators often accompany the chair, as does the clerk of the committee. The subcommittee then makes recommendations to the full committee on the allocation of funds. The Internal Economy Committee can pass the budget as proposed, cut portions of the budget or reject it altogether.

At this point, the budget application and the recommendation for the release of funds by the Standing Committee on Internal Economy, Budgets and Administration are returned to the committee that originated the budget. The chair, or a senator designated by the chair, then presents a report to the Senate. The budget report has three parts, all of which are published in the *Journals of the Senate*. The first part is the actual report, which also includes the request for any powers required to implement the budget that have not already been granted to the committee for this particular order of reference during the current session, such as the power to travel or the power to hire. The second part (called Appendix A) contains the budget application as originally approved by the committee requesting the funds. The third part (called Appendix B) contains the release of funds recommended to the Senate by the Standing Committee on Internal Economy, Budgets and Administration. If the report is approved by the Senate, only the funds in Appendix B become available to the committee making the request.

There are various restrictions on the use of funds in a special study budget. Funds for public hearings outside Ottawa, for example, can only be used for that purpose, while funds for operations in Ottawa cannot be used for travel purposes. Likewise, different detailed administrative policies govern the payment of accounts and the approvals required. The clerk of the committee can provide details on current policies.

Legislative Budgets

At the organization meeting, the chair is generally authorized to seek from the Senate the power for the committee to hire professional services necessary for the study of bills, the subject matter of bills and the expenditures set out in the estimates. In recent sessions, this power has been granted to all committees by a blanket motion.¹⁴² Such authorization must have been granted prior to the adoption of a legislative budget. In addition, if any powers (such as the authority to travel) are required to implement a legislative budget, the Senate must grant them before the committee in question can adopt a draft legislative budget.

A draft legislative budget is prepared by the committee clerk, following instructions from the committee, and reviewed by the chair and/or members of the steering committee. The legislative budget proposal then proceeds through the same steps as the special study budget proposal until it is adopted, either in its original or modified form, by the Standing Committee on Internal Economy, Budgets and Administration.

The chair of the Standing Committee on Internal Economy, Budgets and Administration, or a senator designated by the chair, then presents a report to the Senate containing its recommendations on legislative budgets for one or more committees.¹⁴³ Only after the Senate has adopted this report can a committee actually use the requested funds. In the event that the Senate were to reject a budget report, the committee or committees in question would have to begin the process again with a new budget application.

Partial Releases

Because of the nature of the budgetary process, the Standing Committee on Internal Economy, Budgets and Administration sometimes recommends only a partial release of funds, covering either particular activities or a particular period of time. This can apply to both legislative budgets and special study budgets. In such cases, one or more subsequent releases of funds will sometimes follow. The new budget report for a special study will only contain a cover page and the new Appendix B, indicating the subsequent recommended release of funds by the Standing Committee on Internal Economy, Budgets and Administration.¹⁴⁴

Supplementary Budget

Supplementary funds may be requested for a special study or for legislative work for which it has already received funds from the Senate. The committee must go through the same budget application process as it did for the original budget.¹⁴⁵

¹⁴² For an example of such a motion, see *Journals of the Senate*, November 7, 2013, p. 175.

¹⁴³ In the case of legislative budgets, the budget applications originally adopted by the committees requesting the funds are not published in the *Journals of the Senate*. However, the report of the Standing Committee on Internal Economy, Budgets and Administration is published in the Journals.

¹⁴⁴ For an example of a partial release, see the Third report of the National Security and Defence Committee, *Journals of the Senate*, June 17, 2010, p. 614.

¹⁴⁵ For an example of a supplementary budget application, see the Fifth report of the Foreign Affairs Committee, *Journals of the Senate*, June 17, 2010, pp. 625-632.

Emergency Funds

When a committee needs to incur expenses but is unable to obtain a budget approval quickly enough, the *Senate Administrative Rules* empowers the steering committee of the Standing Committee on Internal Economy, Budgets and Administration to allocate up to \$10,000 to the committee so that it may operate until its budget can be properly considered and approved.¹⁴⁶ A request for emergency funds is considered to be an advance of funds on a future budget request. A subsequent detailed budget application must therefore be submitted. If these funds are to be used for any purpose requiring special powers (e.g., to hire staff or to travel), the necessary powers must be granted separately by the Senate before the expenditures can be actually incurred.

Report of Expenses

According to rule 12-26(2), committees must table a report of expenses incurred and activities undertaken within 15 sitting days at the beginning of each session for the one just ended. These expense and activity reports are published in the *Journals of the Senate* on the day they are tabled. These reports outline, for each study, the expenditures made for general expenses, for each activity (e.g. trip) and for witnesses. The reports also include the number of meetings, witnesses, reports and orders of reference. When the report of expenditures involves a committee that is not reconstituted, the most recent chair tables the report.

12. WITNESSES

A central function of a senator in committee is to hear from and question witnesses. Witnesses can include ministers of the Crown; public servants; academics; representatives of organizations, companies and interest groups; or members of the public. Committees gather much of the evidence for their reports from testimony during public hearings, and from briefs and other documents submitted to the committee. A typical public committee meeting begins with opening remarks by the chair, followed by witness statements and questions — sometimes in several rounds — by senators.

On average, Senate committees hear from over 1,300 witnesses per year, providing a direct link between Parliament and the Canadian public. Committee meetings provide a forum for witnesses' views to be heard by both parliamentarians and a larger audience. Transcripts of witness testimonies are available on the parliamentary website. Public committee meetings are available through audio webcasting and most are also available through video webcasting on the parliamentary website. Most meetings are also broadcast on CPAC.

The chair and deputy chair often take a lead role in the selection of witnesses to be invited by reviewing draft lists to be considered by the steering committee. Suggestions about individuals or organizations that could be invited to appear may be made by committee members, analysts from the Library of Parliament and the committee clerk. Members of the public who express an interest in appearing may also be taken into account. While the selection of witnesses is usually delegated to the steering committee, the proposed

¹⁴⁶ Chapter 3:06 of the *Senate Administrative Rules*, s. 4.

witness list may also be considered by the full committee. After a proposed schedule for witnesses has been agreed upon, adjustments may be required due to witness availability.

Sending for Persons, Papers and Records

Rule 12-9(2)(a) allows standing committees “to send for persons, papers and records.” These words grant standing committees with substantial powers. They allow these committees to order witnesses to appear and to require that documents be produced with few limitations.¹⁴⁷ Although special committees do not enjoy these powers automatically, they are usually granted to them in their order of reference.

One of the clear limitations on the powers of committees in this regard is that they cannot compel the attendance of members of either house and, according to rules and practices, they can only send for documents that the Senate itself can demand. With respect to the attendance of members of either house, members may choose to appear voluntarily, or the house of which they are a member can order them to appear. If a senator declines to appear when invited, a Senate committee can report to the Senate requesting that the senator be ordered to appear. If the Senate agrees to the committee’s request, the senator is ordered to attend. If a member of the House of Commons declines to appear voluntarily, the committee would have to seek the agreement of the Senate to request that the member appear. If this is given, a message will be sent by the Senate to the House of Commons requesting that the member attend. The House of Commons can then take a decision on whether to order the attendance of its member.¹⁴⁸

For a committee to be able to exercise its power to send for persons or papers, the following conditions should be met:

- the persons, papers or records must be relevant to the order of reference;
- the Senate must have the power or authority to order the presentation of the papers or the presence of the persons;
- when the Senate can obtain the required document only by an address to the Governor General, this address must originate in the Senate; and
- a summons cannot be issued by the committee against a senator or member of the House of Commons, although the Senate or House of Commons can order one of its members to attend a committee.

Once witnesses are before a committee, they are bound to answer all questions put and cannot be excused on such grounds as solicitor-client privilege, self-incrimination or that they have taken an oath not to

¹⁴⁷ See, for example, Davidson, “The Powers of Parliamentary Committees,” p. 12.

¹⁴⁸ See, for example, O’Brien and Bosc, pp. 975-977; Beauchesne, 6th ed., §866, p. 240; and Bourinot, pp. 480-482. Among other limitations on the power to compel attendance by witnesses, the person must be in Canada, and the Queen, the Governor General, the Lieutenant Governor, or a member of a provincial or territorial legislature cannot be compelled to appear (O’Brien and Bosc, pp. 975-976). For the limitations on the powers to call for papers, see Beauchesne, 6th ed., §849, p. 236. Under rule 14-2, accounts or papers involving the royal prerogative may only be requested by an address to the Governor General (see, for example, the second report of the Special Senate Committee on the Pearson Airport Agreements, *Journals of the Senate*, October 17, 1995, pp. 1218-1219).

disclose information.¹⁴⁹ A witness can, however, appeal to the chair and request that a response not be insisted upon, giving reasons.¹⁵⁰

Steps to Exercise the Power to Send for Persons, Papers and Records

The first step in summoning witnesses¹⁵¹ or having necessary documents presented before a committee is to invite the individuals in question to attend or provide the documents. In most cases, this suffices.

If the witnesses refuse to appear after the seriousness of the matter has been made clear to them, a senator on the committee can file a certificate attesting to the relevancy of each witness' testimony,¹⁵² and the committee can then adopt a motion ordering the individuals in question to appear. Once this motion is adopted, a summons – outlining the date, time and place at which attendance is required – is served on the witnesses.

To order the presentation of papers and records, the committee adopts a motion ordering the required person or organization to produce them.

If a summons or order to produce documents is ignored, and if the committee insists upon the persons appearing or the documents being presented, the committee's recourse is to report the matter back to the Senate. The enforcement of a committee's power to send for persons, papers and records lies with the Senate, not with individual committees.¹⁵³

Upon the presentation of such a report, it is then for the Senate to resolve the issue. The Senate may choose to summon the persons in question to the bar of the Senate to answer for their conduct, or require that they go before the committee to justify themselves. Although the Senate can order a witness committed to prison, neither house of the federal Parliament has followed this course since 1913.¹⁵⁴ Admonishment at the bar is another option to punish a witness who fails to comply.¹⁵⁵

¹⁴⁹ Third report of the Special Senate Committee on the Pearson Airport Agreements, December 1995, p. III-4. Also see Beauchesne, 6th ed., §§862 and 863, p. 239; and Erskine May, 22nd ed., p. 651.

¹⁵⁰ Beauchesne, 6th ed., §863, p. 239.

¹⁵¹ Before 1904, the only cases of Senate committees summoning witnesses occurred in 1872 and 1891. Between 1904 and 1995, Senate committees did not summon any witnesses, although joint committees did so during this period. On October 17, 1995, the Special Senate Committee on the Pearson Airport Agreements summoned witnesses. Since then, cases in which witnesses have been summoned include: Agriculture and Forestry Committee (witness summoned on April 26, 1999, appeared on May 3, 1999); Energy, Environment and Natural Resources Committee (witnesses summoned on June 1, 2000, appeared on June 8, 2000); and the Joint Committee for the Scrutiny of Regulations (witness summoned on May 9, 2002, appeared on May 30, 2002).

¹⁵² See, for example, the Minutes of Proceedings of the Special Senate Committee on the Pearson Airport Agreements, October 17, 1995. In this case, the certificate was "... addressed to the Chairman and state[d] 'in my opinion... evidence to be obtained from _____ is material and important in the investigation respecting _____'" (Levy, p. 3). Although a certificate is no longer filed when witnesses are summoned by House of Commons committees, this practice has been retained in Senate committees.

¹⁵³ Maingot, p. 221.

¹⁵⁴ See Maingot, p. 208; and Davidson, "The Powers of Parliamentary Committees," p. 13.

¹⁵⁵ See, for example, Erskine May, 24th ed., p. 196.

Oaths

While witnesses are rarely asked to testify under oath, section 10(3) of the *Parliament of Canada Act*¹⁵⁶ authorizes a Senate committee to administer an oath or solemn affirmation. Similarly, the Senate can administer the oath to witnesses appearing at the bar or can order that a witness appearing before a committee be examined under oath.¹⁵⁷ In committee, the oath or affirmation may be administered by the chair or by the clerk if appointed by the Speaker to do so.¹⁵⁸ The act sets out the form of the oath and also allows for a solemn affirmation to be used.¹⁵⁹

The oath does not affect the obligation of witnesses to respond to all questions. However, it does mean that a witness could be subject to prosecution for perjury in the event of giving false evidence.¹⁶⁰ Without the oath, false evidence is strictly a matter of parliamentary privilege and cannot be dealt with through the courts.

Ministers and Public Servants

When a committee begins its public hearings on a government bill, the sponsoring minister is typically invited to appear first. On occasion, a minister or the parliamentary secretary may be invited a second time just prior to clause-by-clause consideration of the bill. It is generally understood that the minister appears to explain and justify the political basis of a bill, while any officials or public servants appearing at the same time are there to explain more technical aspects.

Ministers and departmental officials are also sometimes invited to appear before committees on special studies that relate to matters that fall within the minister's responsibilities.

Public servants most often appear before a committee with a minister. Committees often accommodate the special position of public servants and refrain from questioning them on issues that would normally fall within the realm of subjects for which their minister is answerable (e.g., the reasons for a policy). However, there is no formal protection allowing public servants to refuse to answer questions.¹⁶¹

¹⁵⁶ *Parliament of Canada Act*, R.S.C., 1985, c. P-1.

¹⁵⁷ *Parliament of Canada Act*, R.S.C., 1985, c. P-1, ss. 10(1) and (2).

¹⁵⁸ *Parliament of Canada Act*, R.S.C., 1985, c. P-1, s. 13(1).

¹⁵⁹ The wording of the oath is set out in a schedule to the act as follows: "The evidence you shall give on this examination shall be the truth, the whole truth and nothing but the truth. So help you God." The wording of the solemn affirmation is: "I, ____, do solemnly, sincerely and truly affirm and declare the taking of any oath is according to my religious belief unlawful, and I do also solemnly, sincerely and truly affirm and declare, that the evidence I shall give on this examination shall be the truth, the whole truth and nothing but the truth."

¹⁶⁰ *Parliament of Canada Act*, R.S.C., 1985, c. P-1, s. 12.

¹⁶¹ Regarding the obligation of public servants to appear before committees if summoned, see, for example, Davidson, "The Powers of Parliamentary Committees," p. 14; Maingot, p. 191; Forsyth, p. 17; and O'Brien and Bosc, pp. 1068-1069. This obligation is also acknowledged in the Privy Council Office's 1990 paper "Notes on the Responsibilities of Public Servants in Relation to Parliamentary Committees." The Special Senate Committee on the Pearson Airport Agreements summoned two officials in 1995, the first time a Senate committee had used this power in almost a century (see Levy, pp. 3-4). On the non-recognition of public interest immunity in the presentation of documents, provided that the Senate has the power to order their presentation, see, for example, Davidson, "The Powers of Parliamentary Committees," p. 14; and Maingot, p. 191.

Provincial and Territorial Governments

Under Appendix II of the *Rules of the Senate*, when a committee is examining a bill or the subject matter of a bill that is, in the committee's opinion, of special interest to one or more of the provinces or territories, the governments in question should be invited to appear or to submit a brief. If any government expresses an interest in appearing, the committee should give it a reasonable opportunity to do so.

Parliamentary Privilege

Since official meetings of a committee are part of the proceedings of Parliament, any person appearing before a Senate committee is protected by parliamentary privilege. In practical terms, this means that no legal action can be taken against a witness on the basis of what they say during a committee meeting. This privilege only applies to what is said during a meeting but not to statements made before or after the meeting.¹⁶² Witnesses must also not be impeded from appearing before a committee¹⁶³ nor intimidated after their appearance before a committee.¹⁶⁴

Official Languages

Witnesses have the right to address a Senate committee in either official language. Simultaneous interpretation must be provided at all committee meetings, both within the parliamentary precinct and in other parts of Canada.¹⁶⁵

Expenses

At its organization meeting, a committee usually adopts a motion to reimburse the reasonable travelling and living expenses for one witness per organization.¹⁶⁶ Witnesses may submit an expense claim to the committee clerk within 60 days of their appearance. Such claims must be accompanied by original documentation.

Videoconferencing

Committees sometimes hear from witnesses by videoconference, significantly reducing travel time and costs. The Standing Committee on Rules, Procedures and the Rights of Parliament has, however, noted

¹⁶² For further information on privilege, see Chapter 11.

¹⁶³ See the eighth report of the Standing Committee on Rules, Procedures and the Rights of Parliament, presented on June 20, 2013 (*Journals of the Senate*, pp. 2716-2718) and adopted on June 26, 2013 (*Journals of the Senate*, p. 2757). Also see Speaker's ruling, *Journals of the Senate*, May 8, 2013, pp. 2235-2237.

¹⁶⁴ See the fifth report of the Standing Committee on Privileges, Standing Rules and Orders on this issue, *Journals of the Senate*, April 13, 2000, pp. 540-543. Also see the eighth report of the Standing Committee on Rules, Procedures and the Rights of Parliament, presented on June 20, 2013 (*Journals of the Senate*, pp. 2716-2718) and adopted on June 26, 2013 (*Journals of the Senate*, p. 2757).

¹⁶⁵ *Official Languages Act*, R.S.C., 1985, c. 31 (4th Supp.), s. 4(2).

¹⁶⁶ While committees can allow reimbursement for up to two witnesses per organization (see second report of the Standing Committee on Internal Economy, Budgets and Administration, *Journals of the Senate*, February 28, 1996, pp. 19-20), recent practice has been to authorize payment for a second witness' expenses only in exceptional circumstances, with the chair's approval.

that “Senators cannot attend or participate in the Senate by telephone or videoconference, and accordingly, the same rule applies to committee proceedings.”¹⁶⁷

13. COMMITTEE TRAVEL

Committees sometimes travel to hear from a wider variety of witnesses or to conduct fact-finding work. Travel is usually undertaken as part of a special study, but can also be done as part of the study of a bill.¹⁶⁸

Power to Travel

Rule 12-19(2) provides that a committee may adjourn from place to place when authorized to do so by the Senate. The power to travel outside the precincts of Parliament is not one a committee can exercise on its own. As already discussed, authorization to travel for a particular special study is obtained through a budget report to the Senate which contains a request for the power and funds to travel, while authorization to travel for legislative work must be granted before a budget request is made. Requests to travel tend to be general in nature, seeking an authorization for the committee to travel to any place within and/or outside Canada for the purpose of a particular study. The power to travel, once granted, lasts for the entire session. However, if a committee’s special study is completed before the end of the session, the power to travel for that study lapses with the end of the study.

Travel for Committee Meetings and Fact-Finding Work

When travelling within Canada, a committee may either hold public hearings or conduct fact-finding visits that are related to the subject under study. A public committee meeting outside the parliamentary precinct involves all the services and formalities of a public committee meeting in the parliamentary precinct and has the same status. Proceedings are interpreted and evidence is transcribed, translated, and published in both official languages. The proceedings of a committee holding public hearings within Canada have the full protection of parliamentary privilege.

Fact-finding missions, on the other hand, usually involve site visits and private meetings between committee members and organizations or individuals outside the parliamentary precinct. There are no transcripts of fact-finding meetings, but the information gathered can still be used for the committee’s study.

A committee travelling outside Canada can only conduct fact-finding missions. Official public meetings cannot be held since Parliament’s jurisdiction does not extend beyond Canada’s borders.

¹⁶⁷ See the seventh report of the committee, tabled in the Senate on November 22, 2005 (*Journals of the Senate*, p. 1273).

¹⁶⁸ For examples of committees travelling for legislative work, see the Standing Senate Committee on Energy, the Environment and Natural Resources on Bill S-15, Tobacco Youth Protection Act, in 2001; as well as the Standing Senate Committee on Agriculture and Forestry on Bill C-4, An Act to amend the Canadian Wheat Board Act and to make consequential amendments to other Acts, in 1998.

14. COMMITTEE REPORTS

Once a committee has finished its hearings on a bill or special study, a report is drafted to reflect its findings and recommendations. The report must be adopted by the committee before it can be presented or tabled in the Senate. After adopting a report, a committee often delegates to both the chair and deputy chair, or to the steering committee, the power to make minor corrections to the report (i.e., grammar, spelling, etc.) without substantially affecting the content. In the case of special studies, committees may choose to produce a number of interim reports in the course of their work prior to a final report at the end of the study.

Reporting to the Senate

Committee reports to the Senate are either substantive or administrative in nature. Substantive reports may be on bills, the subject matter of bills or the expenditures set out in the estimates, as well as special studies. Administrative reports deal with matters such as budget applications, extensions to a reporting date¹⁶⁹ or modifications to an order of reference.

As described in Chapter 7, committee may report a bill with or without amendment. In either case, the committee may append observations to its report. In addition, rule 12-23(5) allows a committee to present a report recommending that the Senate not proceed further with the legislation.¹⁷⁰ Such a report must include reasons and, if the report is adopted by the Senate, the bill is dropped from the Order Paper.

A report on a special study may be either interim or final. Reports on special studies are generally lengthy, and include the findings of the committee and its recommendations. Given the impact that these reports may have, committee members usually attempt to build a consensus on the analysis and recommendations to be included. Rule 12-22(1) states that a report “shall contain the conclusions agreed to by majority.” Occasionally, a consensus is not possible. In this case a report may include the opinion of a minority of the members, if the committee so allows.¹⁷¹ However, Senate practice does not permit the attachment of separate minority reports to a committee report.

Report with Observations on a Bill

A report on a bill sometimes has observations relating to the bill appended to it after the chair’s signature. Observations “are not a procedurally significant part of the reports. Their value... is as an advisory to the

¹⁶⁹ In practice, changes to reporting dates are usually made by motion.

¹⁷⁰ See, for example, *Journals of the Senate*, April 21, 2015, pp. 1743-1744; April 1, 2015, pp. 1723-1724; June 20, 2013, pp. 2712-2713; April 30, 2013, pp. 2195-2196; November 22, 2012, pp. 1740-1741; February 3, 2011, pp. 1181-1182; November 25, 2010, pp. 1016-1017; and June 10, 1998, pp. 794 and 799-808.

¹⁷¹ O’Brien and Bosc, p. 448. For examples of minority opinions in a committee report see, for example: second report of the Standing Senate Committee on Transport and Communications on June 21, 2006; sixth report of the Standing Senate Committee on Banking, Trade and Commerce on May 31, 2001; Minutes of the Standing Senate Committee on Energy, the Environment and Natural Resources for September 1, 1999; Minutes of the Standing Senate Committee on Banking, Trade and Commerce for August 24, 1999 (although the report on the bill did not include separate sets of observations, the committee had authorized them if required); Minutes of the Standing Senate Committee on Energy, the Environment and Natural Resources for February 20, 1997; and third report of the Special Committee on the Pearson Airport Agreements on December 13, 1995.

government to pay attention to certain elements of the law when considering future amendments to legislation.”¹⁷² They can also ensure that issues identified, insights gained and commitments made during hearings are not lost. While such observations do not form a substantive part of a committee’s report, they are fairly routine in Senate practice.

Reporting Dates

Orders of reference for special studies normally include the date by which the committee must table its final report in the Senate. This date may only be extended by decision of the Senate.

Rule 12-23(1) requires that any bill sent to committee for consideration be reported to the Senate. An order of reference for legislation does not include a specific date by which a committee must present its report. In practice, however, most committees give priority to the study of government legislation before undertaking any other work. If a committee is taking too long to consider a bill, the Senate may order it to report the bill by a certain date.¹⁷³

Tabling or Presenting a Report

A report can be either tabled or presented. The basic distinction is whether a decision of the Senate is required (as is the case with bills and committee budgets) – in which case the report is presented – or whether such a decision is optional (as is the case with reports on special studies) – in which case it is tabled.¹⁷⁴ Presented reports are read aloud in the Senate by a table officer and are published in the Journals. Tabled reports, on the other hand, are not read aloud and are not printed in the Journals.¹⁷⁵ However, a motion may be moved to have a tabled report considered by the Senate, which also allows a senator to propose its adoption, although this is not mandatory. This can be done by any senator, but it is generally done by the chair of the committee.

Depositing a Report with the Clerk

A committee may on occasion request the power to deposit a report with the Clerk of the Senate while the Senate is not sitting. If this power is granted and such a report is deposited, a senator – normally the chair of the committee – subsequently informs the Senate of this fact under the heading “Presenting or Tabling Reports from Committees” during Routine Proceedings and may move that the report be placed on the Orders of the Day for a future sitting.¹⁷⁶

¹⁷² See Speaker’s ruling, *Journals of the Senate*, December 11, 2002, pp. 412-413.

¹⁷³ See, for example, the motion adopted by the Senate on October 18, 1995 (*Journals of the Senate*, pp. 1225-1226) relating to work by the Standing Senate Committee on Legal and Constitutional Affairs on Bill C-68, An Act respecting firearms and other weapons. This motion also provided for the disposition of all remaining stages of the bill by a certain date.

¹⁷⁴ See definition of “report (of a committee)” in Appendix I of the *Rules of the Senate*. Also see rule 12-22(3).

¹⁷⁵ The one exception is the report on committee expenses required under rule 12-26. Although these reports are tabled (rule 12-26(2)), they are published in the *Journals of the Senate* (rule 12-26(4)).

¹⁷⁶ See, for example, the fourth report of the Energy Committee, deposited with the Clerk of the Senate on July 18, 2012 (*Journals of the Senate*, October 4, 2012, p. 1603). Under rule 12-31, the Standing Committee on Ethics and Conflict of Interest for Senators has the power to deposit its reports with the Clerk of the Senate.

Motions to Adopt Reports

One day's notice is required for a motion to adopt a report of a standing committee or the Committee of Selection, and two days' notice is required for a motion to adopt a report of a special committee.¹⁷⁷ Placing a report on the Orders of the Day for consideration at a future sitting fulfils this notice requirement, and no separate notice of motion to adopt the report is required.¹⁷⁸

When a presented report is called for consideration, a motion is moved for its adoption before debate begins. In the case of a tabled report, on the other hand, a motion for adoption is optional: it can be moved before debate starts, it can be moved at some point during the course of debate,¹⁷⁹ or it need never be moved. In the last case the report will drop from the Order Paper once debate concludes. When there is a motion to adopt a report, an amendment can be moved to this motion without notice.

Special procedures govern how the Senate deals with reports of the Standing Committee on Ethics and Conflict of Interest for Senators on the conduct of an individual senator.¹⁸⁰ A motion to adopt such a report is deemed moved on the fifth sitting day following its presentation, if not moved earlier. A vote to adopt such a report cannot be held until either the senator who is its subject has spoken or five sitting days have passed, whichever comes earlier.¹⁸¹ If the motion to adopt such a report has not been disposed of by the fifteenth sitting day after it was moved, the Speaker is required to put all questions necessary to dispose of the report when it is called.¹⁸² A standing vote to dispose of questions put on the fifteenth day is automatically deferred, either to 5:30 p.m. that day (if the questions are put before that time), or to 5:30 p.m. on the next sitting day (if the questions are put after 5:30 p.m.). However, if the question is put between 5:15 and 5:30 p.m., the vote takes place immediately with a 15-minute bell.¹⁸³ The senator who is the subject of the report cannot vote on any motion relating to the report¹⁸⁴.

Confidentiality of Committee Reports

Committee reports that are drafted and adopted at in camera meetings are confidential until they are presented or tabled in the Senate. Since it is the Senate that orders a committee to undertake a study, the Senate is entitled to be informed first of the results of the study. Draft reports and documents from in camera meetings are also confidential.

¹⁷⁷ See rule 5-5(f) for standing committees and the Committee of Selection, and rule 5-6(1)(e) for special committees.

¹⁷⁸ See, for example, Bourinot, pp. 476-478.

¹⁷⁹ If a motion to adopt a tabled report is moved after debate has started on the consideration of the report, any senator who has already spoken to the consideration may speak again, but only for five minutes (rule 12-22(6)).

¹⁸⁰ See rule 12-30. As already noted, reports of this committee may be deposited with the Clerk of the Senate when the Senate stands adjourned and are then deemed presented to the Senate at the next sitting (rule 12-31).

¹⁸¹ See rule 12-30(2). Under rule 12-30(4), “[i]f a report of the committee deals with the conduct of a former Senator, he or she shall be invited to speak to the report as a witness before a Committee of the Whole (also see *Ethics and Conflict of Interest Code for Senators*, subsection 51(3)).

¹⁸² Rule 12-30(5).

¹⁸³ Rule 12-30(7).

¹⁸⁴ Rules 9-7(1)(b) and 12-30(6). Also see subsection 51(5) of the *Ethics and Conflict of Interest Code for Senators*.

The unauthorized disclosure of a committee report or part of a report prior to its tabling or presentation in the Senate constitutes a breach of parliamentary privilege.¹⁸⁵ If a committee is made aware of a leak, it can, under Appendix IV of the *Rules of the Senate*, examine the circumstances surrounding the unauthorized disclosure. The committee is expected to report the alleged breach to the Senate and to advise the chamber that it is commencing an inquiry into the matter. When undertaking an investigation of the circumstances surrounding the alleged breach, the committee is expected not only to attempt to determine the source of the breach but also to address the issue of the seriousness and actual or potential implications of the unauthorized disclosure.¹⁸⁶

Such an investigation does not preclude any senator from raising a question of privilege regarding the breach in the Senate.¹⁸⁷ However, even if the Speaker found that a prima facie question of privilege exists, the subsequent case of privilege would typically not be dealt with by the Senate until after the committee completed its investigation. Waiting for the results of the committee's investigation does not prejudice the validity of a senator's question of privilege on the issue.

Similarly, if a committee decides not to investigate a leak, any senator can raise a question of privilege at the earliest opportunity after the committee has determined not to proceed.¹⁸⁸

Whatever action is taken on a question of privilege regarding a leaked committee report, if the committee's report discloses that a breach has occurred and that it has caused substantial damage to the operation of the committee or the Senate as a whole, the matter will normally be referred to the Standing Committee on Rules, Procedures and the Rights of Parliament.¹⁸⁹

Government Responses

Under rule 12-24(1), “[t]he Senate may request a complete and detailed response from the Government to a report of a standing or special committee that has been adopted by the Senate.” This request can be included in the report itself, in the motion for the adoption of the report or in a separate motion moved after the adoption of the report. In all cases, a request for a response requires that the Senate actually adopt the report, either before the request is adopted or at the same time. The request identifies the minister or ministers responsible for responding to the report.¹⁹⁰

If the Senate requests a response, the Leader of the Government in the Senate has 150 calendar days from the adoption of the request to either table the government's response in the Senate or to give an explanation for not doing so.¹⁹¹ Once a response is tabled or an explanation is provided, it is deemed referred to the relevant committee along with the committee's original report.¹⁹² If no response or explanation is provided within 150 days, the original committee report and the absence of such response

¹⁸⁵ Beauchesne, 6th ed., §877, pp. 241-242.

¹⁸⁶ For examples of reports made under this process, see Chapter 11.

¹⁸⁷ *Rules of the Senate*, Appendix IV. See, for example, the fourth and fifth reports of the Standing Committee on Privileges, Standing Rules and Orders, *Journals of the Senate*, April 13, 2000, pp. 531-543.

¹⁸⁸ *Rules of the Senate*, Appendix IV.

¹⁸⁹ *Rules of the Senate*, Appendix IV. For further information on the process for raising a question of privilege, see Chapter 11.

¹⁹⁰ Rule 12-24(2).

¹⁹¹ Rule 12-24(3).

¹⁹² Rule 12-24(4).

or explanation are deemed referred to the committee.¹⁹³ A government response requested under this rule can be deposited with the Clerk of the Senate.¹⁹⁴

Requests for government responses lapse upon the prorogation or dissolution of Parliament. In 2007, a Speaker's ruling noted that "[i]f a report was adopted in a past session or a past Parliament, a government response can be requested under rule [12-24], and must be renewed in each subsequent session, whether in the same Parliament or a new one."¹⁹⁵ If, however, the report was not adopted in an earlier session, there must be "a clear and direct procedure that unambiguously places the report before the Senate in the current session and allows Senators ample opportunity for debate."¹⁹⁶ The ruling suggests different options. The first is to refer work from past sessions to the committee during the current session, in which case the committee could adopt and table a new report (whether identical or modified) to which a government response can then be requested. A second option might be to adopt a motion to place a report from a previous session on the Orders of the Day as a precursor to a motion to adopt the report and request a government response.¹⁹⁷

On a number of occasions, when a government response requested in a previous session was essentially completed, but could not be tabled because of prorogation, the government has used its general authority to "table any papers dealing with the administrative responsibilities of the Government"¹⁹⁸ to provide the response in the new session.¹⁹⁹ However, since such responses are not made pursuant to rule 12-24, they are not automatically referred to committee.

15. ADMINISTRATION OF COMMITTEES

Committees Directorate

The Committees Directorate provides non-partisan procedural information and administrative services to all committees, with the exception of the Standing Committee on Internal Economy, Budgets and Administration, which has its own secretariat. The Standing Committee on Rules, Procedures and the Rights of Parliament may also be supported by a clerk from outside the directorate. The Committees Directorate operates under the direction of the Principal Clerk and the Deputy Principal Clerk of Committees. Each committee is assigned a clerk and an administrative assistant. Additional staff includes

¹⁹³ Rule 12-24(5).

¹⁹⁴ Rule 14-1(6).

¹⁹⁵ Speaker's ruling, *Journals of the Senate*, December 11, 2007, p. 368. The ruling also noted that "because the Senate does not have rules providing that requests for government responses are automatically revived in a new session, such requests do, in fact, die at prorogation. If a response is still desired in the new session, it must be renewed by motion, with a new period of 150 days, if the motion is adopted. This is different from the House of Commons, which does have a Standing Order allowing requests for government responses to committee reports to survive in a new session of the same Parliament."

¹⁹⁶ Speaker's ruling, *Journals of the Senate*, December 11, 2007, p. 367.

¹⁹⁷ See Speaker's ruling, *Journals of the Senate*, December 11, 2007, pp. 367-368. The second option has not been used to completion to date.

¹⁹⁸ Rule 14-1(1).

¹⁹⁹ See, for example, *Journals of the Senate*, November 15, 2007, p. 123; November 14, 2007, p. 109; October 30, 2007, p. 69; and October 17, 2007, p. 19.

legislative clerks and a statistics coordinator. These individuals are employees of the Senate who serve all members equally in both official languages.

Committee Staff

Committee Clerks

Each committee or subcommittee is assigned a clerk by the Committees Directorate. The committee clerk acts as the chief procedural, administrative and information officer of a committee or subcommittee.

The committee clerk attends all meetings of the committee and any subcommittee, including the steering committee. As the recording secretary, the committee clerk is responsible for drafting and attesting to the minutes, which are the official record of a meeting.

The committee clerk arranges and coordinates the work of the committee under the direction of the chair and the steering committee. The committee clerk handles relations and correspondence with interested parties and potential witnesses, and ensures the translation and distribution of documents to members. The clerk also organizes meetings, arranges the appearance of witnesses, and coordinates all logistics – including transportation and accommodation – when the committee travels. The committee clerk also presides over the election of the chair and the acting chair, in cases where the chair is absent.

Drafting the committee budget upon instruction from the chair and other members is another responsibility of the committee clerk. In addition, the committee clerk is involved in the preparation of any contracts of the committee. All expenditures and disbursements of the committee, including payments to witnesses and consultants, are tracked by the committee clerk with the assistance of the Finance and Procurement Directorate.

Finally, the committee clerk coordinates the preparation, translation, editing and publishing of committee reports.

Analysts

Most committees require research support to accomplish their work, and analysts from the Library of Parliament assist committees in this regard. They are responsible for preparing briefing notes and suggested questions pertaining to the work of the committee during hearings. Analysts usually work with the chair, the steering committee and the committee clerk in the selection of witnesses. They assist the committee by preparing draft reports, especially lengthy reports associated with special studies as well, as the observations sometimes annexed to reports on bills. Like Senate Administration personnel, analysts from the Library of Parliament are non-partisan.

Consultants

Committees may contract expert consultants who are not employed by Parliament. This option is most often used when a committee is studying a topic that may be outside the expertise of available Library of Parliament analysts, or when a particular individual's skills are required. These professionals tend to be subject matter experts, legal counsel or specialized service providers. If a committee decides to request

the services of a consultant, it must first obtain power from the Senate to allow it to engage professional services,²⁰⁰ as well as the necessary funds.

16. COMMITTEE DOCUMENTS

The principal documents that Senate committees produce are minutes, evidence and reports. Other documents related to the work of committees, such as briefs and submissions from witnesses, are kept in the archives of the committee. As the custodian of committee documents, the committee clerk is responsible for ensuring that they are made available as necessary to parliamentarians and the public.

Minutes of Proceedings and Evidence (Issue)

After committee meetings, an official document is prepared called the Minutes of Proceedings and Evidence (also referred to as a committee “issue”). It is comprised of the minutes, the evidence taken during the meeting, a list of witnesses having appeared, and any other document ordered by the committee to be appended to the issue. The documents of more than one meeting may be included in a single issue. An issue is not printed, but is available on the parliamentary website.

The minutes of proceedings are the official record of a committee’s meetings and decisions. Prepared by the committee clerk after every meeting, they include information about the time, date and location of the meeting; the members present; the order of reference that was considered; decisions taken; the names of witnesses; and other business conducted.

The verbatim evidence of public meetings is transcribed for eventual publication. A draft version of the transcript, generally called “the blues,” is made available to senators and witnesses for minor corrections before final editing and publishing as the “Evidence of the committee.” The blues may also be distributed to other interested parties (including journalists, government officials and observers of the committee’s work). The first draft of the blues is typically available within twenty-four hours of a meeting, and a short time is allowed for corrections. The timeframes are longer for meetings outside the parliamentary precinct. The edited transcript is published on the committee’s website along with the minutes of proceedings and other information relevant to that meeting to form an “issue” of the committee’s proceedings.

Reports to the Senate

As previously noted in this chapter, committees may report to the Senate for a number of reasons. Reports may be substantive or administrative in nature; they may seek decisions of the Senate, or they may simply provide information. All reports are published by the committee, and those that are presented (not tabled) are also published in the *Journals of the Senate*.

²⁰⁰ The power to engage professional services to study bills, the subject matter of bills or the expenditures set out in the estimates has recently been granted to all committees through a blanket motion in the Senate. See, for example, *Journals of the Senate*, November 7, 2013, p. 175.

Briefs, Submissions, Correspondence and Other Documents

Briefs, submissions and correspondence received by the committee are distributed to members of the committee, together with a translation, by the committee clerk's office. The originals of such documents are retained in the committee archives.

Other Documents and Exhibits

Committee members or witnesses sometimes request that material be tabled with the committee, filed as an exhibit or appended to a committee issue, although the last option is seldom used. Exhibits and other documents tabled during a meeting are retained by the committee clerk to be archived, and then form part of the official record.

A senator will sometimes ask that a specific document be recorded in the minutes of a meeting. The committee must adopt a motion to that effect, preferably at the time the document is tabled.

17. EXTERNAL RELATIONS

Media

Media coverage of Senate committees helps inform the public about their work and also contributes to a public understanding of the Senate and the work done by senators. The Senate Communications Directorate works with committees to inform the media of the various committee activities and to heighten the profile of the work of committees.

Committee clerks may provide the media with the blues for meetings or with information concerning upcoming meetings and matters currently being considered by a particular committee. Any questions of a political or partisan nature will be directed to members of the committee.

Broadcasting

A committee can broadcast its meetings subject to the availability of resources. The committee clerk makes necessary arrangements. If more committees request to be broadcast than can be accommodated, the Government and Opposition Whips will provide direction. Since September 2012, committees no longer have to request a sessional power to allow electronic coverage of their proceedings, as rule 14-7(2) now grants them that power.

When a Senate committee meeting is televised for broadcast, it may be available live on the Parliamentary Television Network (PTN). Such broadcasts are available in French, English and floor languages to all offices on Parliament Hill. Webcasts of public committee meetings and a video on demand service are available to members of the public on the Internet (at sen.parl.gc.ca and parl.gc.ca). Senate committee meetings videotaped for broadcast are provided to the Cable Public Affairs Channel (CPAC), with whom the Senate has an agreement to broadcast a fixed number of hours of Senate committee meetings per week, for broadcast in English and French at a later date.

Under rule 14-7(2), public proceedings in any committee may be broadcast and taped using audio feed facilities installed for that purpose. This provision also allows audio webcasting.

Senate Website

The parliamentary website provides information about committees and includes public websites for each committee. The following information can be found for both current and past sessions:

- committee mandates;
- committee issues, with minutes and transcripts;
- committee reports;
- current membership;
- schedule of meetings;
- orders of reference;
- names of witnesses who have appeared before the committee;
- press releases and other media-related documents such as backgrounders; and
- links to the webcasting of committee meetings.

CHAPTER 10

Points 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. It differs from a question of privilege in that it relates strictly to procedural matters — i.e., the internal proceedings — of the Senate and its committees, whereas questions of privilege relate to the rights and immunities of the Senate and senators necessary for their duties. This chapter explains this distinction as well as the correct process for raising a point of order and the Speaker's role in its resolution.*

1. DEFINITION AND PURPOSE

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. Any irregularity, perceived or real, in the practices of the Senate can give rise to a point of order. The purpose of a point of order is to seek a decision of the Speaker or the chair of a committee to correct the irregularity. There is a wide range of matters that can be raised as a point of order, such as issues relating to:

- order and decorum during proceedings;
- the use of unparliamentary language or other improprieties in debate, including issues of relevance and repetition;
- errors contained in bills, motions, or reports;
- the admissibility of amendments; and
- the need for a Royal Recommendation or Royal Consent to a bill.

Difference between a Point of Order and a Question of Privilege

Points of order must be distinguished from questions of privilege. Points of order relate strictly to procedural matters (i.e., internal proceedings) of the Senate and its committees, whereas questions of privilege relate to the rights and immunities of the Senate and senators necessary to carry out their duties and functions. In other words, a point of order arises with a departure from the *Rules of the Senate*, established procedures or customary practices. A question of privilege arises with an alleged breach of the powers, rights or immunities of the Senate, a committee or any senator. While senators may enjoy the protection of privilege to enable them to carry out their duties, they are nonetheless subject to the Rules and proceedings of the Senate. Attempts to claim a question of privilege by a senator often amount to a

complaint about a procedure or practice, which is essentially a matter of order and not privilege.¹ A point of order is not a matter of privilege, and it is not possible to claim privilege against a proceeding of the Senate.²

2. PROCESS FOR RAISING A POINT OF ORDER

When to Raise a Point of Order

While a point of order need not be raised at the first opportunity,³ it should be raised when the object of the complaint (an event or a proceeding), is still before the Senate, or the issue is still relevant to the question before the Senate.⁴ In particular, a point of order relating to a procedural matter should be raised promptly and before the matter is decided, which would render any objection to it out of place.⁵ Furthermore, a point of order cannot be raised in anticipation. Consequently, the Speaker cannot be asked hypothetical questions on procedure.⁶

A point of order can be raised during committee proceedings⁷ as well as in a Committee of the Whole.⁸ The general procedure for raising a point of order during committee proceedings is similar to the procedure and practices followed by the Senate, with necessary adjustments. The committee chair's role in maintaining order and decorum, and rendering decisions on points of order is equally similar to that of the Speaker in the chamber.⁹

Neither a committee nor its chair has the power to punish or censure acts of disorder, misconduct or disobedience. While committees enjoy certain powers and privileges, as authorized by the Senate, the power to enforce them remains with the Senate. In cases where further action is desired, a committee may present a report to the Senate, which in turn can decide whether it agrees with the committee, as well as how to enforce its rights.¹⁰

¹ Maingot, pp. 13-14 and 223-224.

² Speaker's ruling, *Journals of the Senate*, October 4, 1990, pp. 1816-1817. See Chapter 11 for further information on parliamentary privilege.

³ *Journals of the Senate*, February 24, 2009, pp. 129-130; and February 26, 2008, pp. 579-580.

⁴ *Journals of the Senate*, February 24, 2009, pp. 129-130; February 26, 2008, pp. 579-580; April 24, 2007, pp. 1368-1370; May 14, 1996, pp. 202-206; and April 23, 1986, p. 1270.

⁵ "[T]he matter must be raised before the question has passed to a stage at which the objection would be out of place" (Speaker's ruling, *Journals of the Senate*, February 24, 2009, pp. 129-130).

⁶ *Journals of the Senate*, April 30, 1985, p. 406; Beauchesne, 6th ed., §323, p. 97; and O'Brien and Bosc, p. 636.

⁷ Rules 1-1 and 12-20(4). Parliamentary procedural authorities agree that only members of the committee may raise points of order in the course of committee proceedings. On this topic, see Marleau and Montpetit, pp. 857-858; Erskine May, 24th ed., p. 817; Odgers, p. 478; and Australia, *House of Representatives Practice*, pp. 694-695.

⁸ Rules 1-1 and 12-32(3).

⁹ Beauchesne, 6th ed., §820(1), p. 232; and O'Brien and Bosc, pp. 1048-1050.

¹⁰ Beauchesne, 6th ed., §§820, 823, 824 and 825, p. 232; and O'Brien and Bosc, p. 1048.

Restrictions on Raising Points of Order

The *Rules of the Senate* prohibit raising points of order during Routine Proceedings and Question Period.¹¹ A point of order in relation to a notice (of motion or inquiry) given during Routine Proceedings can only be raised when the item mentioned in the notice is moved for adoption or, in the case of an inquiry, when debate begins. A point of order relating to a bill is delayed until second reading has been moved. For other matters arising during Routine Proceedings or Question Period, a point of order is delayed until the start of Orders of the Day.¹² The Rules also prohibit the use of a point of order for the purpose of moving the adjournment of the Senate.¹³ By custom, the same logic applies to the use of a point of order to gain the floor in order to move a dilatory motion.¹⁴

In addition, a point of order cannot be raised:

- during a standing vote – any matter regarding the regularity of the voting process should be raised immediately after the results are announced;¹⁵
- when another point of order is under consideration;¹⁶ and
- in relation to one’s own motion in order to delay or block its progress.¹⁷

Many issues raised as points of order are in fact attempts to engage in debate or to seek clarification. As such, the Speaker will not allow such interventions to continue once their true nature has been established.¹⁸

Use of Points of Order to Gain the Right to Speak

As noted in Chapter 5, if two senators rise to speak the Speaker recognizes the senator who, in the Speaker’s opinion, rose first.¹⁹ Immediately afterwards, a third senator may rise on a point of order and propose a motion that the other senator who rose be now heard. This motion must be put immediately, without debate or amendment. If the motion is adopted, the senator named in the motion is given the floor to speak, and a similar motion cannot be moved until the end of the speech.²⁰ If the motion is defeated, the original senator recognized by the Speaker is given the floor, and no motion to hear another senator can be moved until that senator’s time has expired.²¹

¹¹ Rule 4-11(3). Points of order are permitted prior to the start of the Routine Proceedings. In particular, the time for Senators’ Statements is not part of the Routine Proceedings (see rule 4-5). Also see Speaker’s rulings, *Journals of the Senate*, October 8, 2002, pp. 41-42; December 11, 1997, pp. 346-347; and March 5, 1997, pp. 1067-1068.

¹² Rule 4-11(1).

¹³ Rule 5-13(2).

¹⁴ Rule 1-1; and O’Brien and Bosc, p. 635.

¹⁵ *Debates of the Senate*, April 27, 2004, p. 928; Beauchesne, 6th ed., §320, p. 97; and O’Brien and Bosc, p. 636.

¹⁶ “One point of order must be disposed of before another one is raised” (O’Brien and Bosc, p. 632).

¹⁷ Beauchesne, 6th ed., §318, p. 96.

¹⁸ O’Brien and Bosc, p. 632.

¹⁹ Rule 6-4(1).

²⁰ Rules 6-4(2) and (3).

²¹ Rule 6-4(3).

How to Raise a Point of Order

A senator who believes that the Senate is proceeding contrary to the *Rules of the Senate* or its accepted practices may raise a point of order subject to certain restrictions as noted above. To do so, the senator must rise and say “On a point of order” to attract the Speaker’s attention. Once recognized by the Speaker, the senator succinctly explains the nature of the complaint and how proper procedure has not been followed by citing which specific rules, practices, procedures or precedents have been breached. At the same time, the senator may suggest a remedy to the situation at hand or alternatives that can be used to avoid repeating the same problem.

Once the initiating senator’s intervention is completed, the Speaker may give a ruling immediately if the matter is straightforward. The Speaker can also choose to hear from other senators who wish to contribute to the discussion on the point of order. The Speaker often calls upon the initiating senator to reply to any comments made in the discussion before bringing it to a close. During the interventions on a point of order, the normal rules regarding both time limits on debate or the number of times a senator may speak do not apply. These matters remain at the sole discretion of the Speaker, who also determines when sufficient arguments have been heard, and may deliver a ruling immediately or take the matter under advisement.²²

On occasion, the consideration of a point of order has been either delayed to a future sitting or interrupted and continued later.²³

3. RESOLVING A POINT OF ORDER

Role of the Senate

During discussion on a point of order, senators may agree to resolve the issue by pursuing alternative actions or remedies before an intervention by the Speaker is required.²⁴ This practice is in keeping with the notion that the Senate has always been a self-regulating body. Similarly, the Senate may decide to resolve a situation by proceeding, with leave, in a manner other than that provided by the Rules or established practices. Actions taken with leave do not constitute precedents. Rather, such actions are exceptions to a rule or practice that occur on a case by case basis.²⁵

²² Rule 2-5(1).

²³ See, for example, *Journals of the Senate*, October 27, 2003, pp. 1223-1227; May 29, 1996, pp. 252-255; and May 8, 1991, p. 2489. Similarly, initial discussion on the merits of a question of privilege has been suspended by the Speaker, pursuant to rule 2-5(1), to be resumed at a later sitting. See, for example, *Journals of the Senate*, March 4, 2014, p. 472; February 26, 2013, p. 1940; December 8, 2011, p. 719; February 9, 2011, p. 1201; and May 28, 2008, p. 1101.

²⁴ For an example of senators reaching an agreement on a point of order before the Speaker was able to rule, see *Debates of the Senate*, October 3, 2002, p. 45.

²⁵ See definition of “leave of the Senate” in Appendix I of the *Rules of the Senate*, and rule 1-3(1). Also see Speaker’s rulings, *Journals of the Senate*, February 23, 2005, pp. 490-492; and December 4, 2002, pp. 286-289.

Role of the Speaker

The Speaker presides over sittings of the Senate with responsibility for maintaining order and decorum, and is vested with certain authority to assist the Senate in managing its agenda. The *Rules of the Senate* initially limited the Speaker to explaining a rule or, when asked, to deciding a point of order, subject to an appeal. At that time, the Speaker was not given any authority to enforce the *Rules of the Senate* except in response to an intervention by a senator. A series of incidents in the 1890s and in the early 20th century led to a re-evaluation of the Speaker's role. As a result, in 1906 a rule was added that allowed the Speaker to preserve order and decorum.²⁶ In 1975, the Speaker was explicitly given the authority to call a senator to order, in which case the senator cannot speak again, except on the point of order, until the issue is decided.²⁷ A further rule change in 1991 allowed the Speaker to take the initiative to enforce the *Rules of the Senate* and maintain order in the Senate.²⁸ Although this authority has not been frequently exercised,²⁹ on at least one occasion the Speaker has taken the initiative to question and rule on the acceptability of a motion in amendment without a point of order having been raised.³⁰

The *Rules of the Senate* limit the authority of the Speaker in ruling on matters relating to the *Ethics and Conflict of Interest Code for Senators*. In such cases, the Speaker is limited to matters expressly incorporated into the Rules.³¹ Furthermore, in keeping with parliamentary tradition and custom, the Speaker does not rule on points of order about constitutional matters, points of law³² or hypothetical questions of procedure.³³ It is generally accepted that committees are “masters of their own proceedings” insofar as they comply with the *Rules of the Senate*,³⁴ and the Speaker usually refrains from involvement in their proceedings.³⁵

The Speaker, or a senator acting on the Speaker's behalf, does not participate in the discussion on a point of order which requires a decision from the chair.³⁶

If the Speaker is absent when a point of order is heard or when a ruling is to be rendered, either the Speaker *pro tempore*, or a senator acting on the Speaker's behalf, may hear the point of order and deliver the ruling. The senator acting on the Speaker's behalf often takes a matter under advisement to allow the Speaker to review the issue and deliver a formal ruling.

²⁶ *Journals of the Senate*, May 2, 1906, p. 137.

²⁷ Rule 2-7(4). *Journals of the Senate*, November 26, 1975, p. 592. A variation of the rule about a senator being called to order had existed since at least 1876; however, it was only in 1975 that the rule was changed.

²⁸ Rule 2-6(1). Also see *Journals of the Senate*, June 18, 1991, p. 180.

²⁹ Speaker's rulings, *Journals of the Senate*, April 8, 2008, p. 742-743; March 20, 2007, pp. 1160-1162; and April 2, 1998, pp. 577-582.

³⁰ Speaker's ruling, *Journals of the Senate*, November 27, 1997, p. 249.

³¹ Rule 2-1(2).

³² Speaker's rulings, *Journals of the Senate*, November 20, 1997, pp. 194-195; May 14, 1996, pp. 202-206; May 8, 1996, pp. 183-185; November 23, 1995, pp. 1310-1312; June 22, 1995, pp. 1121-1122; January 30, 1991, pp. 2214-2215; and October 3, 1990, pp. 1812-1813. Also see Beauchesne, 6th ed., §324, p. 97; and O'Brien and Bosc, p. 636.

³³ Speaker's ruling, *Journals of the Senate*, April 30, 1985, p. 406; Beauchesne, 6th ed., §323, p. 97; and O'Brien and Bosc, p. 636.

³⁴ Speaker's ruling, *Journals of the Senate*, September 16, 2009, p. 1234.

³⁵ Speaker's rulings, *Journals of the Senate*, October 20, 2005, pp. 1217-1219; and May 18, 2005, pp. 924-925; April 20, 2005, p. 777; and November 3, 2003, pp. 1298-1300. Also see Beauchesne, 6th ed., §760(3), p. 222.

³⁶ Rule 2-3.

As already noted, in cases where the point of order is straightforward or it is apparent that it has been raised for purposes other than correcting irregular procedure, the Speaker usually makes a ruling immediately. In situations where the question raised is ambiguous, several Speakers “have expressed a preference for presuming a matter to be in order, unless and until the contrary position is established.”³⁷ If the point of order involves a more complex issue, the Speaker may take the matter under advisement to prepare a ruling to be given at a later time.³⁸ If the decision is rendered immediately, depending on the outcome, the Senate will either continue with the item of business that was interrupted or proceed to the next item of business. In a case where the Speaker reserves the decision for a later ruling, the item under consideration is usually left in abeyance³⁹ until a ruling is rendered, and the Senate proceeds to the next item of business.⁴⁰ The provisions of rule 4-15(2), which provides that an item of non-Government Business drops if not proceeded with for 15 consecutive days, continue to apply even when an item is awaiting a Speaker’s ruling.

In urgent cases, or when a ruling is required before the Senate can proceed with its business, the Speaker may, with leave of the Senate, suspend a sitting to prepare a decision on the point of order.⁴¹

Rulings that are prepared in advance usually begin with a brief summary of the complaint along with the key elements raised by all sides participating in the discussion of the point of order. This summary serves to frame the context and the issues being examined as well as the subsequent decision. The Speaker gives reasons for a decision, as well as references to the applicable rules or other relevant authorities.⁴² The *Rules of the Senate* are always the primary reference tool when determining a point of order. Furthermore, in cases where a conflict exists between the Rules and practices of the Senate, the Rules have priority.⁴³ Other parliamentary jurisdictions and their parliamentary authorities may be used as a reference or guide, especially when the Rules are silent on a matter.⁴⁴ In such instances, reference is commonly made to sources such as: *House of Commons Procedure and Practice*; *Beauchesne’s Parliamentary Rules and Forms*; *Bourinot’s Parliamentary Procedure and Practice*; *Erskine May’s Treatise on the Law, Privileges, Proceedings and Usage of Parliament*; *Odgers’ Australian Senate Practice*; and *House of Representatives Practice* from Australia.

The text of a Speaker’s ruling and the outcome of any appeal are published in the *Journals of the Senate*. Similarly, a ruling given by a committee chair and the outcome of any appeal are published in the minutes of proceedings of the committee.

³⁷ Speaker’s ruling, *Journals of the Senate*, April 16, 2013, p. 2076.

³⁸ Rule 2-5(1).

³⁹ If the procedural probity of an item is in question, consideration of that item is left in abeyance until the Speaker has ruled on the matter. Nonetheless, in certain circumstances such as the need for Royal Consent, the Speaker has permitted debate on an item to continue even though a ruling is pending. For further information on Royal Consent and related rulings on this matter, see Chapter 7. With respect to leaving items in abeyance pending a ruling, see Speaker’s ruling, *Journals of the Senate*, November 4, 2003, pp. 1314-1317.

⁴⁰ Rule 2-5(1). On at least one occasion, discussion on a point of order has been reopened, with leave, after the Speaker had previously taken the matter under advisement. See *Journals of the Senate*, March 25, 1998, p. 544.

⁴¹ *Journals of the Senate*, June 10, 2003, pp. 916-917, and *Debates of the Senate*, June 10, 2003, p. 1576; and *Journals of the Senate*, February 20, 2004, pp. 183-185, and *Debates of the Senate*, February 20, 2004, pp. 321-322.

⁴² Rule 2-5(2).

⁴³ Rule 1-1(1).

⁴⁴ Rule 1-1(2).

Appealing a Speaker's Ruling

Speaker's decisions may be challenged, except for those dealing with speaking times⁴⁵ and decisions on voice votes in the absence of a request for a standing vote.⁴⁶ To appeal a Speaker's decision a senator rises and says "I appeal the Speaker's ruling." The Speaker then puts the question to the Senate using the following positive formula: "Shall the Speaker's ruling be sustained?"⁴⁷ A decision on the matter must be rendered by the Senate immediately without debate.⁴⁸ In order for the decision of the Speaker to be upheld, the motion must be adopted by a majority vote. If there is a tie vote or if a majority of votes are opposed to the motion, the decision of the Speaker is overturned.⁴⁹ According to parliamentary custom and tradition, it is not appropriate to reflect on past rulings or to call them into question once a decision is rendered and any related appeal decided by the Senate.⁵⁰

With respect to committee practices, all decisions by committee chairs may also be appealed.⁵¹ The procedure is similar to that followed by the Senate itself. Although a chair's ruling may be appealed to the full committee, it cannot be further appealed to the Senate, unless the issue is brought to the Senate's attention by a report of the committee.⁵² If there is an appeal, the question is: "Shall the chair's ruling be sustained?"⁵³ If there is a tie, the ruling is overturned.⁵⁴

⁴⁵ Rules 2-5(3) and 6-3(2).

⁴⁶ Rule 9-2(2).

⁴⁷ Since Confederation, practice has varied with respect to the wording of the motion to appeal. Earlier versions regularly used a negative formula such as "That the ruling of the Honourable the Speaker be not accepted by the Senate." Nonetheless, early examples of the use of the positive formula can also be found (see *Journals of the Senate*, December 14, 1964, pp. 773-774; September 4, 1917, p. 385; and April 8, 1915, p. 205). Since the 1980s, the positive formula has always been used. For further information on historical practices relating to appeals and the role of the Speaker, consult Dawson.

⁴⁸ Rule 2-5(3). For examples of rulings there were sustained see *Journals of the Senate*, February 21, 2001, pp. 77-83; and April 9, 1992, pp. 799-800. For examples of rulings that were overturned, see *Journals of the Senate*, March 31, 2009, pp. 418-419; October 3, 2002, pp. 43-44; and May 23, 1990, pp. 999-1000.

⁴⁹ Rule 9-1; and *Constitution Act, 1867*, s. 36.

⁵⁰ Speaker's ruling, *Journals of the Senate*, April 29, 2008, pp. 1001-1003; Beauchesne, 6th ed., §168(1), p. 49; and O'Brien and Bosc, pp. 309, 615 and 637.

⁵¹ Rules 2-5(3) and 12-20(4). On at least one occasion, a ruling given by the chair of a Committee of the Whole was appealed (*Journals of the Senate*, September 4, 1917, p. 385).

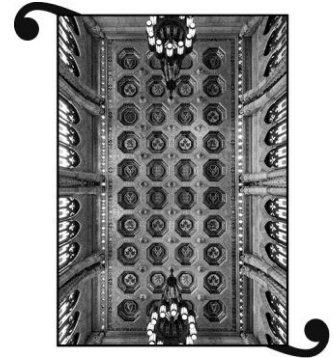
⁵² Speaker's ruling, *Journals of the Senate*, October 4, 1990, pp. 1816-1817; and Beauchesne, 6th ed., §§821 and 822, p. 232.

⁵³ See, for example, *Proceedings of the Standing Senate Committee on National Finance*, July 12, 2005, p. 27:7.

⁵⁴ Rule 12-20(1)(c).

CHAPTER 11

Privileges and Immunities



The origins of parliamentary privilege extend back to the earliest days of the English Parliament when its main purpose was to prevent the sovereign from interfering in the work of Parliament. Today, however, there is discussion on the scope and application of parliamentary privilege and even its evolution. This chapter provides some historical background by identifying key milestones in the development of privilege in the United Kingdom and Canada (Part I), and serves as a guide to raising and resolving questions of privilege in the Senate (Part II).

PART I – DEFINITION AND HISTORICAL OVERVIEW OF PRIVILEGE

1. PRIVILEGE DEFINED

The origins of parliamentary privilege extend back to the earliest days of the English Parliament; however, its evolution cannot easily be traced in a straight line. The scope of privilege and its acceptance over the centuries have been subjected to the vagaries of political events and circumstances thus making it difficult to establish the historical foundations of parliamentary privilege.¹ Sir William Blackstone stated that “[p]rivilege of Parliament was principally established in order to protect its members not only from being molested by their fellow-subjects, but also more especially from being oppressed by the power of the Crown.”² He also concluded that the list of privileges is necessarily incomplete to accommodate any possible violations of the rights of Parliament: “The dignity and independence of the two houses are therefore in great measure preserved by keeping their privileges indefinite.”³ As a result, some of the privileges that have been claimed or contested in centuries past are obsolete for all practical purposes today and others have evolved to adapt to new circumstances. Despite the changed social and political circumstances of the modern era, parliamentary privilege remains an integral part of our parliamentary system.

The standard definition of parliamentary privilege, which is still used today, was first formulated in 1946, in the 14th edition of the *Treatise on the Law, Privileges, Proceedings and Usage of Parliament* of Erskine May, and reads as follows:

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 bodies or individuals. Some privileges rest solely on the law and custom of Parliament, while others have been defined by statute.⁴

¹ For a detailed discussion on the origins and evolution of parliamentary privilege, see Lieberman.

² Blackstone, p. 132.

³ Blackstone, p. 132.

⁴ Erskine May, 24th ed., p. 203.

11: Privileges and Immunities

The term “privilege,” in this context, does not refer to a special benefit, advantage or arrangement given to Parliament and its members. Rather, parliamentary privilege is “an immunity from the ordinary law which is recognised by the law as a right of the Houses and their members.”⁵

In a 1996 report, the Australian Senate Committee of Privileges described parliamentary privilege in the following way:

The privileges of Parliament are immunities conferred in order to ensure that the duties of members as representatives of their constituents may be carried out without fear of intimidation or punishment, and without improper impediment. These immunities, established as part of the common law and recognised in statutes such as the Bill of Rights of 1688, are limited in number and effect. They relate only to those matters which have come to be recognised as crucial to the operation of a fearless Parliament on behalf of the people.... [A] privilege of Parliament is more properly called an immunity from the operation of certain laws, which are otherwise unduly restrictive on the proper performance of the duties of members of Parliament.⁶

The purpose of privilege is to enable Parliament and, by extension, its members to fulfill their functions without undue interference or obstruction. Privilege belongs properly to the assembly or house as a collective. Individual members can only claim privilege if “any denial of their rights, or threat made to them, would impede the functioning of the House.”⁷ In addition, members cannot claim any privileges, rights or immunities that are unrelated to their functions in the house.⁸

Privilege covers parliamentary proceedings only. However, the concept of “parliamentary proceedings” has never been clearly defined and its exact scope is, to some extent, still open.⁹ Since there is no statutory definition, the determination of whether something constitutes a proceeding in Parliament is left to Parliament itself and to the courts.¹⁰ Erskine May provides a broad description of a parliamentary proceeding as:

... some formal action, usually a decision, taken by the House in its collective capacity. While business which involves actions and decisions of the House are clearly proceedings, debate is an intrinsic part of that process which is recognized by its inclusion in the formulation of article IX [of the *Bill of Rights*]. An individual Member takes part in a proceeding usually by speech, but also by various recognized forms of formal action, such as voting, giving notice of a motion, or presenting a petition or report from a committee, most of such actions being time-saving

⁵ Odgers, p. 40.

⁶ Australian Senate Committee of Privileges, 62nd report, p. 1.

⁷ Griffith and Ryle, p. 124, par. 3-003; Erskine May, 24th ed., p. 203; and Report of the U.K. Select Committee on Parliamentary Privilege, p. vii, par. 12.

⁸ While the term “personal privilege” is sometimes used, it is not related in any way to parliamentary privilege nor to the rights or immunities that individual members enjoy as parliamentarians. Such “points of personal privilege” are discussed in Part II of this chapter.

⁹ Report of the U.K. Joint Committee on Parliamentary Privilege, 1999, Vol. 1, p. 10, par. 12, and p. 17, par. 36-37; and Griffith and Ryle, pp. 127-133, par. 3-009 to 3-018. Although calls to establish a statutory definition of a parliamentary proceeding have been frequently made in Britain, concerns have equally been raised about whether such a statutory definition would limit, restrict or impede the control that Parliament has over its internal affairs. For a list of recent proposals, see Erskine May, 24th ed., pp. 238-239.

¹⁰ Erskine May, 24th ed., p. 235; Griffith and Ryle, pp. 127-130, par. 3-009 to 3-013; and Robert, “An Opportunity Missed...”

substitutes for speaking. Officers of the House take part in its proceedings principally by carrying out its orders, general or particular. Members of the public also may take part in the proceedings of a House, for example by giving evidence before it or one of its committees, or by securing the presentation of a petition.¹¹

The Australian Parliament enacted a statutory definition of a proceeding in Parliament in the *Parliamentary Privileges Act, 1987*.¹² The definition presented in section 16(2) reads as follows:

... *proceedings in Parliament* means all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee, and, without limiting the generality of the foregoing, includes:

- (a) the giving of evidence before a House or a committee, and evidence so given;
- (b) the presentation or submission of a document to a House or a committee;
- (c) the preparation of a document for purposes of or incidental to the transacting of any such business; and
- (d) the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.

2. COLLECTIVE AND INDIVIDUAL PRIVILEGES, AND CONTEMPTS

As explained earlier, the essential purpose of parliamentary privilege is to allow Parliament to control its proceedings without undue interference and fear of reprisal, as well as to allow members to carry out their parliamentary duties. In describing the specific rights and immunities provided by parliamentary privilege, it is useful to structure them into those rights and immunities that apply to the Senate as a body, and those that apply to senators as individuals.

The rights and immunities that belong to the Senate collectively all relate in some way to the principle that Parliament has the right of control over its own proceedings. These main collective rights include the following:

- the regulation of its proceedings or deliberations, which includes the right to exclude strangers, to debate behind closed doors, and to control publication of debates and proceedings;
- the power to discipline or punish breaches of privilege or contempt;
- the maintenance of the attendance and service of its members;
- the authority to institute inquiries, to summon witnesses and demand papers;
- the administration of oaths to witnesses; and
- the publication and distribution of papers free from civil liability (defamation).

¹¹ Erskine May, 24th ed., pp. 235-236.

¹² [Australia] *Parliamentary Privileges Act, 1987*, Act No. 21 of 1987. In 2014 New Zealand adopted a similar approach, with the adoption of the *Parliamentary Privilege Act 2014*, assented to on August 7, 2014.

The individual privileges that senators enjoy include the following:

- freedom of speech in Parliament and its committees;
- freedom from arrest in civil cases;
- exemption from jury duty and from appearance as a witness in a court case; and
- freedom from obstruction and intimidation.

Regulation of Proceedings

The right of a house to regulate and control its proceedings free from any external interference is paramount to the proper functioning and independence of Parliament. In exercising control over its proceedings, a house of Parliament is entitled to discipline its members, summon witnesses, exclude strangers and meet behind closed doors, control publication of its debates and proceedings, administer statute law relating to its proceedings, establish its own rules of procedure, and send for persons in custody.¹³

Penal Powers

The power to punish for contempt is an inherent right of both houses of Parliament and is comparable to the power held by the courts in this field. It is a discretionary power and punishment can range from a simple finding of contempt with no further action, to a censure, reprimand or admonition of an individual at the bar, and ultimately to incarceration. Since the advent of the *Canadian Charter of Rights and Freedoms*, the power of incarceration has been questioned.¹⁴ The penal powers of Parliament are a means of enforcing and safeguarding its authority and ensuring that it can carry out its duties without obstruction. They also provide a means to deal with situations without having to wait for the courts to resolve them.¹⁵ The *Rules of the Senate* only make one reference to imprisonment and it relates to senators, officers or employees of the Senate appearing before the House of Commons or one of its committees to answer any accusation without the approval of the Senate.¹⁶

Attendance of Senators

The *Rules of the Senate* impose a duty on senators to attend the Senate whenever and wherever it is in session.¹⁷ Furthermore, both the *Parliament of Canada Act*¹⁸ and the *Rules of the Senate*¹⁹ impose a financial penalty on senators who are absent for more than 21 sitting days in a session.²⁰ Although the Senate does not usually enforce this privilege, other than through the financial penalty as set out in the Rules, it could nonetheless compel the attendance of one of its members.²¹

¹³ For a detailed discussion of all these powers, see Maingot, Chapter 11. These powers do not include the control over quorum, voting or the obligation to use English and French, all of which are set by the Constitution (see Robert, "Parliamentary Privilege in the Canadian Context...").

¹⁴ Maingot, pp. 334-341; and O'Brien and Bosc, pp. 77-82 and 127-128.

¹⁵ Erskine May, 24th ed., p. 191.

¹⁶ Rule 16-4(4).

¹⁷ Rule 15-1(1). Also see the standard wording of a senator's commission, such as found in Appendices A and B to Chapter 2.

¹⁸ *Parliament of Canada Act*, R.S.C., 1985, c. P-1, ss. 57-59.

¹⁹ Rule 15-1(3).

²⁰ For further information on the Attendance Policy for Senators, see Chapter 2.

²¹ See, for example, *Journals of the Senate*, December 16, 1997, pp. 381-382.

Institute Inquiries, Summon Witnesses and Request the Production of Papers

Parliament, seen as “Grand Inquest of the Nation,” is free to institute inquiries, summon witnesses and require the production of documents in its consideration of public policy matters.²² The only limitations to these powers would be those that are self-imposed. The power to conduct inquiries is usually delegated by the Senate to its committees, which are also given the power to send for persons, papers and records.²³ In the exercise of this power, Parliament is not bound by the principles of natural justice such as those relating to admissibility of evidence or hearsay, etc.²⁴

Administration of Oaths to Witnesses

This power is neither part of the historically claimed privileges nor part of the customary law of Parliament. Rather, it is a legislated power that provides that any person who wilfully gives false evidence under oath or after making a solemn affirmation and declaration is liable to the penalties of perjury.²⁵ This legislative provision exposing a witness to the charge of perjury is an implicit limitation on the privileges of Parliament in that during the course of a court hearing on perjury charges, the court will have to inquire and examine the debates and proceedings of Parliament, which normally cannot occur under article 9 of the 1689 *Bill of Rights*. Furthermore, even if a witness has not sworn an oath or made a solemn affirmation and declaration, the witness could still be liable to the charge of contempt of Parliament if the house determined that it or one of its committees had been wilfully misled or given false evidence.²⁶ A more detailed description of this power can be found later in this chapter.

Protection of Parliamentary Papers

The right of Parliament to publish papers for distribution beyond its precincts immune from any civil liability, including defamation, was established by the enactment of the *Parliamentary Papers Act, 1840*.²⁷ This law was a direct result of the judgments arising from the *Stockdale v. Hansard*²⁸ case of 1839, where the court denied the existence of this privilege asserted by the House of Commons. The case is also important because it established the role of the court in determining the existence of privilege and its scope based either on history or necessity.

²² For additional information, consult Lee.

²³ Rule 12-9. For further information on the powers of committees to send for persons, papers and records, see Chapter 9.

²⁴ Maingot, pp. 190-191.

²⁵ *Parliament of Canada Act*, R.S.C., 1985, c. P-1, ss. 10-13; and *Criminal Code*, R.S.C., 1985, c. C-46, ss. 118 and 131-132.

²⁶ Report of the U.K. Joint Committee on Parliamentary Privilege, 1999, Vol. 1, p. 82, par. 317-318.

²⁷ [U.K.] *Parliamentary Papers Act, 1840*, 3 & 4 Vict., c. 9. In Canada, similar legislation exists in the *Parliament of Canada Act*, R.S.C., 1985, c. P-1, ss. 7-9.

²⁸ *Stockdale v. Hansard*, (1839) 9 Ad & E 1; 112 E.R. 1112.

Freedom of Speech

Freedom of speech allows senators to carry out their parliamentary duties without fear of harassment or the risk of legal action. It does not provide protection for anything said that is not in relation to a senator's parliamentary duties. As Maingot points out, freedom of speech is not a personal right but one that enables parliamentarians to fulfil their proper duties:

The privilege of freedom of speech, though of a personal nature, is not so much intended to protect the Members against prosecutions for their own individual advantage, but to support the rights of the people by enabling their representatives to execute the functions of their office without fear of either civil or criminal prosecutions.²⁹

Freedom from Arrest in Civil Matters, Freedom from Molestation, Exemption from Jury Duty and Freedom from Appearing as a Witness in a Court Case

Freedom from arrest in civil matters; freedom from molestation, intimidation and obstruction; the exemption from jury duty;³⁰ and the exemption from being required to appear as a witness in court cases are all based on the age-old principle that attendance in Parliament takes precedence over any other obligations a senator may have outside Parliament and that senators must not be prevented from carrying out their parliamentary duties. Freedom from arrest in civil actions, exemption from a notice for jury duty and exemption from being subpoenaed to attend court as a witness extend to persons who are required to be in attendance upon the Senate or the House of Commons, or one of its committees. Officers of either house are protected in the same way if their duties require them to be in immediate attendance upon the services of the house.³¹

Freedom from arrest is limited only to civil matters. Parliamentarians do not enjoy freedom from arrest in criminal matters. In this respect, they are responsible for their actions like all other persons.³²

If senators are to carry out their parliamentary duties properly, it is only logical that along with the other privileges listed above, they be protected from interference in the performance of their duties. For example, any attempt to prevent senators from entering Parliament or to intimidate them in carrying out their duties would constitute a breach of privilege. As explained by Maingot, the *Criminal Code* prohibits intimidation of the Parliament of Canada or of any provincial legislature.³³

Members are entitled to go about their parliamentary business undisturbed. The assaulting, menacing, or insulting of any Member on the floor of the House or while he is coming or going to or from the House, or on account of his behaviour during a proceeding in Parliament, is a violation of the rights of Parliament. Any form of intimidation (it is a crime to commit "an act of

²⁹ Maingot, p. 26.

³⁰ In the U.K. the exemption provided by privilege for jury duty was abolished in 2003. However, the immunity from compulsory attendance as a witness still exists.

³¹ Maingot, p. 160.

³² Maingot, pp. 150-158.

³³ *Criminal Code*, R.S.C., 1985, c. C-46, s. 51.

violence in order to intimidate the Parliament of Canada”) of a person for or on account of his behaviour during a proceeding in Parliament could amount to contempt.³⁴

Duration of the Protection of Privilege

Some privileges, such as freedom of speech, protect a senator in the moment the words are spoken. However, other privileges are not confined to a single moment or act, and are more generally associated with the service of the house. These privileges may be claimed only during a limited period made up of the session plus a convenient and reasonable time, traditionally 40 days, before and after the session. Erskine May explains the origin of this time period:

There may be an historical connection between such a right and the fact that in ancient custom writs of summons for a Parliament were issued at least 40 days before its appointed meeting.³⁵

There is no clear and accepted consensus in Canada on the length of such a period before and after a parliamentary session. At the federal level, the protection of privilege has generally been taken to be 40 days before and after a session.³⁶ However, several provincial legislatures have applied, through legislation, shorter periods of immunity than the 40 days, and some do not specify any time frame at all.³⁷

³⁴ Maingot, pp. 230-231.

³⁵ Erskine May, 24th ed., p. 249.

³⁶ In recent years, there have been three court cases in Canada that have addressed the 40-day rule and the obligation of parliamentarians to appear in court. In all three cases, the courts have come to different conclusions as to the length of time during which members are exempt from appearing in court. In *Telezone Inc. v. Canada (Attorney General)*, ([2003] O.J. No. 2543), the Ontario Superior Court held that the 40-day rule is obsolete because of advances in communication and transportation. The court recognized the privilege, but determined that in a modern context of a country the size of Canada, its duration should be only during the sittings of an actual session, as well as 14 days before and after ([2003] O.J. No. 2543, par. 16-20). This decision was overturned in the Ontario Court of Appeal, which reverted to the 40-day rule both before and after the session ([2004], 69 O.R. (3d) 161). In another case, a 14-day rule was adopted by the Federal Court in *Samson Indian Nation and Band v. Canada* (2003) (F.C.J. No. 1238 (QL)(S.C.J.) par. 45). This ruling occurred during a prorogation, and was not appealed. In *Ainsworth Lumber Co. v. Canada (Attorney General)* (2003) (B.C.J. No. 901 (QL), par. 45, 57 and 62), the British Columbia Court of Appeal held that the privilege was limited to the parliamentary session, with no extension before or after it. Leave to appeal *Ainsworth* to the Supreme Court of Canada was denied. The Ontario Court of Appeal ruling on *Telezone Inc. v. Canada* did not disturb the Federal Court decision in *Samson* or the B.C. Court of Appeal decision in *Ainsworth*. Consequently, there are three different decisions applicable to Parliament, depending on the jurisdiction involved (Robert and MacNeil, pp. 33-35).

³⁷ For example, Ontario and British Columbia provide for 20 days of protection, Nova Scotia for 15 days and Quebec for two days before and after a sitting of the National Assembly (Ontario, *Legislative Assembly Act*, R.S.O. 1990, ch. L-10, s. 38; British Columbia, *Legislative Assembly Privilege Act*, R.S.B.C. 1996, ch. 259, s. 5; Nova Scotia, *House of Assembly Act*, R.S. (1992 Supp.), c. 1, s. 28; and Quebec, *An Act Respecting the National Assembly*, R.S.Q., ch. A-23.1, s. 46.)

Contempt

Any actions that substantially obstruct Parliament and its members in the performance of their duties are considered contempts of Parliament.³⁸ A broad spectrum of severity of contempt exists, ranging from minor breaches of decorum to serious attacks against the authority of Parliament. Erskine May offers the following definition of contempt:

Generally speaking, any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results, may be treated as a contempt even though there is no precedent of the offence. It is therefore impossible to list every act which might be considered to amount to a contempt, the power to punish for such an offence being of its nature discretionary.³⁹

The power to discipline for contempt can be seen as a complementary way for Parliament to assert its privilege. The explanation for this is that the houses of Parliament should be allowed to protect themselves against acts that interfere with their functions, and thus maintain the authority and dignity of Parliament. This ability to address affronts, whether or not they fall within the fairly narrowly defined categories of privilege, is essential to achieve this end. Both breaches of privilege and contempts may be raised as questions of privilege.⁴⁰

3. HISTORICAL EVOLUTION OF PRIVILEGE — THE ORIGINS

The establishment and evolution of privilege in English history is the result of the struggle of Parliament to assert its independence from the Crown and all other outside influences. Its history extends at least as far back as the 14th century. On the one hand, certain privileges were claimed and upheld with the consent of the Crown (such as freedom from molestation). On the other hand, many privileges were established by Parliament itself (such as freedom of speech). These latter privileges frequently went against the wishes of the Crown or at the very best enjoyed reluctant support and took many years, even centuries, to be fully enshrined and accepted.⁴¹ As such, parliamentary privilege as it exists today is a concrete expression of the independence of Parliament.

³⁸ Erskine May, 24th ed., pp. 251-271; O'Brien and Bosc, pp. 82-88; and Maingot, pp. 14-15. For Speaker's rulings dealing with contempt, see *Journals of the Senate*, May 8, 2013, pp. 2235-2237; June 17, 2009, pp. 1134-1137; March 31, 2009, pp. 416-418; May 30, 2006, pp. 178-179; November 23, 2005, pp. 1302-1303; November 4, 2003, pp. 1314-1317; June 11, 2002, pp. 1710-1713; October 2, 2001, pp. 804-806; September 9, 1999, pp. 1840-1841; February 24, 1998, pp. 468-471; May 1, 1996, pp. 163-164; November 7, 1995, pp. 1263-1264; April 1, 1993, pp. 1940-1942; and September 26, 1990, pp. 1245-1246. Also see motion adopted by the Senate on December 16, 1997, pp. 381-382, and related reports on the same matter presented on February 11, 1998, pp. 426-427, and February 19, 1998, pp. 457-458. Also see the Report of the U.K. Joint Committee on Parliamentary Privilege, 1999, Vol. 1, pp. 10-11, par. 14.

³⁹ Erskine May, 24th ed., p. 251.

⁴⁰ Report of the U.K. Joint Committee on Parliamentary Privilege, 1999, Vol. 1, pp. 81-82, par. 315. The 1999 report of the U.K. Joint Committee on Parliamentary Privilege does provide a partial list of contempts (see pp. 70-71, par. 264). In addition, the New Zealand House of Representatives has codified contempt in its Standing Orders (see *Standing Orders of the House of Representatives* (2014), Standing Orders 409-410), and more recently that country enacted legislation to codify privilege (*Parliamentary Privilege Act 2014*, assented to on August 7, 2014).

⁴¹ Report of the U.K. Joint Committee on Parliamentary Privilege, 1999, Vol. 1, pp. 8-9, par. 5.

Pre-1688 Period

Probably the most ancient privilege accorded to members of Parliament is freedom from molestation, which can be traced back to the 14th century.⁴² This protection was granted to all members of Parliament during their service to the King in Parliament as well as for a certain time period before and after. It was originally intended to guard members of Parliament against physical restraint, imprisonment or other abuse that would have impeded them from attending to the King's business in Parliament. However, over time, this protection was expanded to include civil legal processes as well. The protection from molestation has never included immunity from criminal acts such as treason, felonies or breaches of the peace, since such acts were offences against the King's own interests.⁴³

Other privileges were also claimed by members of the English House of Commons as it attempted to assert its role in Parliament. These privileges were considered necessary to protect members against the powers and interference of the King and the House of Lords. In the early 14th and 15th centuries, several members and Speakers, despite the claims of liberties of the house, were imprisoned by the King, who had been offended by their conduct in Parliament.⁴⁴ During this period, there was a growing conviction that Parliament was entitled to certain rights. When Sir Thomas More was elected Speaker of the House of Commons in 1523 he was one of the first Speakers recorded as having petitioned the King to recognize certain privileges of the house.⁴⁵ By the end of the 16th century, the Speaker's petition to the King had become a permanent practice. A similar petition, claiming privileges on behalf of the house, is read by the newly elected Speaker of the Canadian House of Commons at the beginning of each Parliament.⁴⁶

Despite these petitions, the privileges of members in England were not readily recognized by the Crown, and in the early 17th century, members were still being imprisoned by order of the Crown.⁴⁷ It was only in 1688, with the overthrow of King James II and a shift of power away from the Crown to Parliament, that parliamentary privileges started to be more formally recognized.

1689: *Bill of Rights*

After the establishment of the supremacy of Parliament in 1688-89 during the Glorious Revolution, a number of key events occurred that solidified parliamentary privilege. The first of these occurred in 1689 when freedom of speech and the independence of Parliament were recognized by statute in article 9 of the English *Bill of Rights*,⁴⁸ which declared "[t]hat the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament." The freedom of speech in article 9 was intended to protect members from possible question, admonition or punishment by the other branches of government, the Crown, the executive and courts of law.⁴⁹ The *Bill of Rights* provided an explicit statutory basis for what had previously been implied in earlier claims and

⁴² One of the first recorded cases occurred in 1340. See Bryant, pp. 214-215.

⁴³ For a detailed history of this privilege, see Erskine May, 24th ed., pp. 209-215. Also see Lieberman, pp. 112-126.

⁴⁴ O'Brien and Bosc, p. 64.

⁴⁵ Erskine May, 24th ed., p. 207.

⁴⁶ Erskine May, 24th ed., p. 206; and O'Brien and Bosc, pp. 365-366.

⁴⁷ O'Brien and Bosc, p. 65.

⁴⁸ [U.K.] 1 Will. & Mar. (2nd Sess.), c. 2, s. 1 [1689 according to the present calendar]. It should be noted that the *Bill of Rights 1689* is also referred to as the *Bill of Rights 1688* in various publications.

⁴⁹ Erskine May, 24th ed., p. 222; and Maingot, p. 26.

declarations of freedom of speech by the English House of Commons.⁵⁰ Furthermore, the statement that “proceedings in Parliament” are protected by parliamentary privilege has, over time, given rise to the concept that not only members of Parliament but also officers of Parliament and the public are protected by parliamentary privilege when participating in proceedings in Parliament.⁵¹

1704: Limits on the Creation of New Privileges

Although parliamentary privilege is essential to allow parliamentarians to perform their duties, it must also be recognized that there are limits to its scope and applicability. As observed in Erskine May, there is a need to balance two potentially conflicting principles:

On the one hand, the privileges of Parliament are rights ‘absolutely necessary for the due execution of its powers’; and on the other, the privilege of Parliament granted in regard of public service ‘must not be used for the danger of the commonwealth’.⁵²

Over the course of time, as the authority and independence of Parliament became more clear and certain, the need to assert or claim certain privileges that were not immediately necessary for the execution of parliamentary business diminished. Perhaps with this in mind, Parliament in 1704 agreed by way of a resolution that neither house could grant itself any new privilege “not warranted by the known laws and customs of Parliament.”⁵³ As a result of this decision, “it is now generally accepted that no new privilege can be created except by legislation.”⁵⁴

1737 and 1770: *Parliamentary Privileges Act*

The evolution of the privilege of freedom from arrest demonstrates the gradual and voluntary limitations placed on privilege. Protection was expanded to include civil processes in addition to freedom from arrest or obstruction from attending Parliament. Over time, the use of this privilege was reined in. In 1737, the *Parliamentary Privileges Act* allowed civil processes to be started during periods of dissolution and prorogation as well as adjournments of more than 14 days.⁵⁵ By 1770, it was established that “any person may at any time commence and prosecute an action or suit in any court of law against peers or Members of Parliament . . .”⁵⁶ This latter statute further clarified that the privilege no longer applied to members’ servants.⁵⁷ In addition, although civil proceedings may be started under this statute, no member can be arrested or imprisoned as a result.⁵⁸ With the passage of the *Judgements Act 1838*, imprisonment in civil cases was, for all intents and purposes, abolished.⁵⁹

⁵⁰ Maingot, p. 78.

⁵¹ Maingot, p. 77.

⁵² Erskine May, 24th ed., pp. 217-218.

⁵³ U.K. Commons Journals (1702-1704), February 28, 1704, p. 555; and March 6, 1704, pp. 559-563. Also see Erskine May, 24th ed., p. 218.

⁵⁴ Report of the U.K. Joint Committee on Parliamentary Privilege, 1999, Vol. 1, p. 12, par. 17.

⁵⁵ Erskine May, 24th ed., p. 212; *Parliamentary Privileges Act, 1737*, ch. 24, 11 Geo. 2 (A.D. 1738).

⁵⁶ Erskine May, 24th ed., p. 212.

⁵⁷ Erskine May, 24th ed., p. 218.

⁵⁸ Erskine May, 24th ed., p. 212.

⁵⁹ Erskine May, 24th ed., p. 215. Also see the Report of the U.K. Joint Committee on Parliamentary Privilege, 1999, Vol. 1, p. 85, par. 327.

1840: Protection of Parliamentary Papers

In the 1830s, the assertion that publications ordered by the House of Commons were protected by privilege was openly challenged in the courts. In 1837, as the result of these earlier court actions, the House of Commons launched an inquiry which culminated in the adoption of a resolution stating that the publication of parliamentary reports, votes and proceedings was protected by privilege.⁶⁰ Despite this decision, a further court action was launched in 1839: the case of *Stockdale v. Hansard*.⁶¹ Messrs. Hansard, the printers of the House of Commons, were sued for libel by Mr. Stockdale. Messrs. Hansard had printed, by order of the House of Commons, a report from the inspectors of prisons tabled in the house. The inspectors had found a book on the generative system published by Stockdale in a prison library. In their report they described the book as disgusting, indecent and obscene.⁶² The court ruled that the 1837 resolution was not sufficient to extend the protection of privilege to all documents published by order of the house; rather, it extended protection only to papers printed by order of the house for the use of its own members.⁶³ In other words, the court distinguished between indiscriminate publication and publication for the use of its members. Only the latter is protected by privilege.

To settle the issue once and for all, the *Parliamentary Papers Act, 1840*⁶⁴ was passed to provide protection against criminal or civil proceedings to persons who publish papers by order of either house of Parliament.⁶⁵

In providing the protection of parliamentary privilege to publications, the act distinguishes between the publication of complete reports and the publication of partial reports or extracts. Complete reports and copies of authenticated reports enjoy absolute legal privilege and protection from all civil and criminal actions.⁶⁶ All that is required in such cases is a certificate from the appropriate authority confirming that such publication is by order of either house of Parliament. Partial reports or extracts enjoy qualified legal privilege and protection in that the contents of these documents are not true to the original as approved by Parliament, but rather have been selected by a publisher and are therefore beyond the control of Parliament. In this latter case, the publisher must conclusively show in court that the partial report or extract was published *bona fide* and without malice to receive a not guilty verdict.⁶⁷

Newspaper reports about parliamentary debates and proceedings are not normally taken from Hansard but rather rely on other means to report information. Consequently, since they are not extracted from an official publication of Parliament, they are not protected under section 3 of the *Parliamentary Papers Act, 1840*.⁶⁸ The first case in which a newspaper was sued for libel for having published a report of a debate in

⁶⁰ U.K. Commons Journals, 1837, May 30 and 31, 1837, pp. 418-419. Also see Erskine May, 24th ed., pp. 288-289.

⁶¹ *Stockdale v. Hansard*, (1839) 9 Ad & E 1; 112 E.R. 1112.

⁶² Maingot, p. 64.

⁶³ *Stockdale v. Hansard*, (1839) 9 Ad & E 1; 112 E.R. 1112. For a full account of the trials, see Lieberman.

⁶⁴ [U.K.] Ch. 9, 3 & 4 Vict. The long title of this statute is: An Act to give summary Protection to Persons employed in the Publication of Parliamentary Papers.

⁶⁵ Erskine May, 24th ed., pp. 225 and 290.

⁶⁶ [U.K.] *Parliamentary Papers Act, 1840*, 3 & 4 Vict., c. 9, ss. 1-2.

⁶⁷ [U.K.] *Parliamentary Papers Act, 1840*, 3 & 4 Vict., c. 9, s. 3.

⁶⁸ Report of the U.K. Joint Committee on Parliamentary Privilege, 1999, Vol. 1, p. 91, par. 356.

the House of Lords, *Wason v. Walter*,⁶⁹ occurred in 1868. In that case, the court ruled that a newspaper could not be sued for libel for publishing a report of a debate in Parliament as long as such report was a faithful account of the debate. In its decision, the court stated that the privilege granted by the *Parliamentary Papers Act, 1840* did not apply, but that the common law applied to grant qualified legal privilege to the newspaper. The court ruled that the public's right to information about proceedings is more important any inconvenience to a particular individual.⁷⁰

During this era, the concept of necessity had already started to be articulated. This gradual evolution in the understanding of privilege foreshadowed the present era, in which necessity has become an increasingly central element in determining the acceptance of privilege.

Recent Studies and Developments in the United Kingdom

There have been a number of revisions and limitations on parliamentary privilege in the UK during the latter part of the 20th century.

In December 1967, the U.K. House of Commons Select Committee on Parliamentary Privilege issued a report containing 24 key recommendations.⁷¹ The report rejected the suggestion that the exercise of penal jurisdiction ought to be transferred from Parliament to the courts as a more appropriate tribunal for determining whether a contempt or a breach of privilege has been committed.⁷² The committee did recommend changes to the procedure for how questions of privilege and contempt should be raised and dealt with by the house.⁷³ In the decade following the report, only a few of the recommendations were actually implemented.⁷⁴

In 1977, the House of Commons Committee of Privileges was tasked with reviewing the 1967 committee recommendations.⁷⁵ The committee made seven key recommendations in its report, which encompassed many of the recommendations made in 1967. The report was adopted in early 1978. All recommendations that did not require legislation were brought into immediate effect.⁷⁶ One of the key elements that was endorsed was a 1967 recommendation that penal jurisdiction should be exercised as sparingly as possible and only when it is deemed essential to provide reasonable protection for the house, its members or its officers from obstruction, threat of obstruction or substantial interference with the performance of their parliamentary functions.⁷⁷ In the years following the adoption of this guiding principle, there has been a significant reduction in the number of occasions in which the House of Commons or a committee of privileges has had to examine matters of privilege.⁷⁸

⁶⁹ *Wason v. Walter* (1868-1869) LR 4 QB 73.

⁷⁰ Erskine May, 24th ed., pp. 224 and 226; and Maingot, pp. 43-44. For a discussion on other recent issues surrounding the application of the U.K. *Parliamentary Papers Act*, consult Leopold.

⁷¹ Report of the U.K. Select Committee on Parliamentary Privilege, pp. xlix-li, par. 205.

⁷² Report of the U.K. Select Committee on Parliamentary Privilege, pp. xxxvii-xxxix, par. 138-146.

⁷³ Report of the U.K. Select Committee on Parliamentary Privilege, pp. xli-xlvii, par. 159-192.

⁷⁴ For a list of the 1967 committee recommendations and the actions taken on them, see the Third Report of the U.K. Committee of Privileges, Appendix A, pp. xxiii-xxvii.

⁷⁵ Third Report of the U.K. Committee of Privileges, dated June 14, 1977.

⁷⁶ U.K. *Commons Journals*, February 6, 1978, p. 170.

⁷⁷ Third Report of the U.K. Committee of Privileges, pp. iii-iv, par. 4.

⁷⁸ Report of the U.K. Joint Committee on Parliamentary Privilege, 1999, Vol. 1, pp. 12-13, par. 20-22.

11: Privileges and Immunities

In 1999, the U.K. Joint Committee on Parliamentary Privilege presented a report containing a number of recommendations aimed at clarifying and modernizing the concept and application of parliamentary privilege. The approach taken by the committee was to thoroughly review the basic precepts of privilege. It began by questioning whether all currently existing privileges were still necessary:

We have asked ourselves, across the field of parliamentary privilege, whether each particular right or immunity currently existing is necessary today, in its present form, for the effective functioning of Parliament. Parliament should be vigilant to retain rights and immunities which pass this test, so that it keeps the protection it needs. Parliament should be equally vigorous in discarding rights and immunities not strictly necessary for its effective functioning in today's conditions.⁷⁹

The concept of necessity was central to the review undertaken by the joint committee. It provided the context in which the committee sought to determine the modern application of the two principal pillars of privilege: freedom of speech and exclusive cognizance. With respect to the former, necessity was used to suggest limits to the absolute protection provided by freedom of speech to parliamentary activities, restricting it to those activities that require this high degree of protection. Recent changes to the law and decisions of the courts have allowed exceptions to the sweeping protection originally ensured by article 9 of the *Bill of Rights*. The committee had mixed views about some of these developments. It accepted the exceptions to article 9 established by the courts so long as they did not question the motives of parliamentarians or cast doubt on the propriety of the proceedings of Parliament.⁸⁰ As to the matter of exclusive cognizance, the committee was firm in asserting that the right of Parliament to administer its internal affairs, but this right should be confined to activities directly related to its core functions. This immunity from the application of the law should not be extended to include laws relating to such matters as health and safety or data protection. Put simply, the committee concluded that Parliament should no longer be considered a statute-free zone.⁸¹

Among its conclusions, the committee accepted that privilege should be codified through a Parliamentary Privileges Act, based on the model enacted in Australia. In the committee's view, a statute on privilege was the natural next step in its modernization. Such a law could be drafted to maintain a useful level of flexibility. More importantly, however, it would provide the basis for a clearer understanding of the purpose and scope of privilege rooted in necessity that would be useful to both parliamentarians and ordinary citizens.⁸²

Despite its acknowledged merits, the 1999 report was not adopted by either house and was debated only once in the Commons.⁸³ As a consequence, none of its recommendations were implemented. A decade later, in 2009, the Westminster Parliament became embroiled in an expenses scandal that included attempts by some parliamentarians to claim immunity from prosecution for fraud on the basis of parliamentary privilege. In the public uproar that followed, the coalition government elected in 2010

⁷⁹ Report of the U.K. Joint Committee on Parliamentary Privilege, 1999, Vol. 1, p. 8, par. 4.

⁸⁰ Report of the U.K. Joint Committee on Parliamentary Privilege, 1999, Vol. 1, pp. 1-2.

⁸¹ Report of the U.K. Joint Committee on Parliamentary Privilege, 1999, Vol. 1, pp. 2-3.

⁸² Report of the U.K. Joint Committee on Parliamentary Privilege, 1999, Vol. 1, p. 7, par. 39, and pp. 95-97, par. 376-385.

⁸³ Commons Hansard, October 27, 1999, columns 1021-1074.

stated in the Queen's Speech opening the new Parliament its commitment to bring forward a bill to reform parliamentary privilege.⁸⁴ Before any specific proposal was brought forward, the Supreme Court of the United Kingdom rendered a decision on the merits of the claims to immunity made by the parliamentarians seeking to avoid prosecution for the fraudulent expenses. In *R. v. Chaytor*,⁸⁵ decided in December 2010, the court unanimously rejected the assertion that parliamentary privilege, based either on common law or the *Bill of Rights*, protected the three former members from prosecution. This decision seems to have had an impact on the approach subsequently taken by the government with respect to reforming parliamentary privilege. This is clear from its unprecedented consultation document, the Green Paper on parliamentary privilege, published in April 2012.⁸⁶ While it acknowledged that the time had come for a comprehensive review, the government concluded that there was no need for codification. A joint committee report on parliamentary privilege issued in July 2013 basically followed the lead of the Green Paper and agreed with most of its findings, including the all-important one regarding codification⁸⁷. This remains the current situation at Westminster.

4. HISTORY AND EVOLUTION OF PRIVILEGE IN CANADA

Unlike the United Kingdom, Canada has never experienced the same type of struggles and challenges to assert and defend parliamentary privilege. Rather, privilege was explicitly authorized by the Constitution and subsequently claimed through legislation. When the *Canadian Charter of Rights and Freedoms* was entrenched in the Constitution in 1982, the environment in which claims to parliamentary privilege had been accepted with little question changed. Since then a number of court challenges have been raised. This section provides an overview of the origin and evolution of privilege in Canada since Confederation.

Historical Background

In Canada, the federal Parliament was authorized to claim privileges through section 18 of the *Constitution Act, 1867*. The original text of this section limited the privileges that could be claimed in Canada to those held and enjoyed by the British House of Commons at the time of Confederation.

In 1868, the federal Parliament first claimed privilege under the authority granted to it by the *Constitution Act, 1867* by passing *An Act to define the privileges, immunities and powers of the Senate and House of Commons, and to give summary protection to persons employed in the publication of Parliamentary Papers*.⁸⁸ This statute made a general claim to all the privileges, immunities and powers held by the U.K. House of Commons at the time of the adoption of the *British North America Act, 1867*. It did not contain an enumeration or definition of the privileges claimed; however, it did specify that it was claiming only those privileges that were "consistent with and not repugnant to" the *British North America Act, 1867*.⁸⁹

⁸⁴ Lords Hansard, May 26, 2010, column 6.

⁸⁵ [2010] UKSC 52.

⁸⁶ *Parliamentary Privilege*, April 2012 (Green Paper).

⁸⁷ Report of the U.K. Joint Committee on Parliamentary Privilege, 2013.

⁸⁸ S.C. 1868, c. 23 (assented to on May 22, 1868).

⁸⁹ See section 1 of the act. Also see Robert, "Parliamentary Privilege in the Canadian Context...".

Furthermore, it also included provisions to protect individuals engaged in the publication of parliamentary papers that closely resembled the protection provided in the U.K. *Parliamentary Papers Act, 1840*.⁹⁰ The 1868 statute has since been replaced by the *Parliament of Canada Act*, which contains similar language.⁹¹

Power to Administer Oaths to Witnesses

Following the general claim of privileges made in 1868, there have only been three instances where further legislation was enacted claiming new powers and clarifying those powers. All of these instances relate to the administration of oaths to witnesses appearing before one of the houses or a parliamentary committee.

The first statute was passed in 1868. Since most applications for divorce were obtained through private bills passed by the federal Parliament, there were serious difficulties in dealing with divorce cases as Parliament was unable to examine witnesses under oath. To remedy this situation, an act was passed that allowed oaths to be administered to witnesses appearing either at the bar of the Senate or before committees of both houses in relation to their consideration of private bills.⁹² The 1868 Canadian act went beyond the powers of the U.K. House of Commons at the time by allowing for the administration of oaths to witnesses at the bar of the Senate. Although the 1868 act was never disallowed, the law officers of the Crown in England declared the section of the act pertaining to the administration of oaths at the bar of the Senate “void and inoperative” because it was “repugnant to the provisions of the British North America Act.” The other section of the act – relating to the administration of oaths to witnesses by committees in the course of their study of private bills – was not questioned since it was clearly an established power of the U.K. House of Commons.⁹³

In 1873, the Pacific Scandal gave rise to the belief that a more general power to swear in witnesses was needed and a new Canadian act relating to the administration of oaths was passed.⁹⁴ This statute enabled either house to authorize one of its committees, by way of a resolution, to examine a witness under oath. It was broader in range than the 1868 act in that it was not limited to private bills. This time, the British government disallowed the 1873 statute on the grounds that it was *ultra vires* (i.e., beyond its power).⁹⁵ The power to administer oaths in the U.K. House of Commons was only established in 1871.⁹⁶ Given the limitation imposed by section 18 of the *Constitution Act, 1867*, the federal Parliament was only authorized to claim the privileges held by the U.K. House of Commons as of 1867.

⁹⁰ [U.K.] 3 & 4 Vict., c. 9.

⁹¹ *Parliament of Canada Act*, R.S.C., 1985, c. P-1, ss. 4-9.

⁹² *An Act to Provide for Oaths to Witnesses being administered in certain cases for the purposes of either House of Parliament*, S.C., 1867-68, c. 24. This provision is now contained in sections 10-13 of the *Parliament of Canada Act*.

⁹³ See correspondence from the Secretary of State for the Colonies (Earl of Kimberley) to the Governor General (Earl of Dufferin) in *Journals of the Senate*, October 23, 1873, p. 19. Also see Bourinot, p. 486.

⁹⁴ *An Act to provide for the examination of witnesses on Oath by Committees of the Senate and House of Commons, in certain cases*, S.C., 1873, c. 1.

⁹⁵ The disallowance proclamation can be found in the *Journals of the Senate*, October 23, 1873, pp. 19-20, and the correspondence relating to the disallowance can be found on pp. 14-20.

⁹⁶ [U.K.] *An Act for enabling the House of Commons and any Committee thereof to administer Oaths to Witnesses, 1871*, 34 & 35 Vict., c. 83 (short title: *Parliamentary Witnesses Oaths Act, 1871*).

To resolve this problem, the British Parliament passed the *Parliament of Canada Act, 1875*, which amended section 18 of the *Constitution Act, 1867*.⁹⁷ The purpose of the amendment was twofold. First, it established that the Parliament of Canada would no longer be restricted to the privileges of the U.K. House of Commons as they existed in 1867, but could claim any privileges held by the British Parliament.⁹⁸ In other words, Canadian law could be enacted to ensure that privileges in Canada kept up with the evolution of privilege in Britain. It was, however, still not permitted for Canadian law to prescribe more extensive privilege than that available to British parliamentarians. Second, it clarified that the 1868 Canadian oaths act⁹⁹ “shall be deemed to be valid, and to have been valid” from the date it received Royal Assent and thereby removed any uncertainty as to its status.¹⁰⁰

As a result of the 1875 amendment to the *Constitution Act, 1867*, the Parliament of Canada in 1876 adopted an act that was identical to the 1873 act giving both houses and their committees the general power to swear in witnesses.¹⁰¹ Finally, in 1894, the Canadian Parliament enacted further legislation expanding the power to administer oaths.¹⁰² This act accomplished three main things:

- it authorized the administration of oaths at the bar;
- it authorized parliamentary committees to administer oaths when they saw fit;¹⁰³ and
- it provided, for the first time, for the possibility of making a solemn affirmation and declaration to those who conscientiously object to taking an oath.

In short, the 1894 statute copied the same provisions that were enacted in the 1871 U.K. *Parliamentary Witnesses Oaths Act* and thereby brought the powers of the Canadian Parliament into line with those of the U.K. House of Commons. The current provisions relating to the power of examination of witnesses under oath in Parliament are now contained in the *Parliament of Canada Act*.¹⁰⁴

Legislation authorizing the administration of oaths to witnesses entails an implicit limitation of parliamentary privilege – more specifically, to article 9 of the English *Bill of Rights*.¹⁰⁵ Before a statutory exception was enacted, article 9 of the English *Bill of Rights* barred any court from inquiring into any parliamentary proceeding. However, once a statutory exception was enacted, the courts were allowed to admit proceedings in Parliament as evidence in perjury trials.¹⁰⁶ Witnesses who do not take an oath can

⁹⁷ [U.K.] *An Act to remove certain doubts with respect to the powers of the Parliament of Canada under section eighteen of the British North America Act, 1867*, 1875, 38 & 39 Vict., c. 38 (short title: *Parliament of Canada Act, 1875*).

⁹⁸ [U.K.] *Parliament of Canada Act, 1875*, 38 & 39 Vict., c. 38, section 1.

⁹⁹ *An Act to Provide for Oaths to Witnesses being administered in certain cases for the purposes of either House of Parliament*, S.C. 1867-68, 31 Vict., c. 24.

¹⁰⁰ [U.K.] *Parliament of Canada Act, 1875*, 38 & 39 Vict., ch. 38, section 2.

¹⁰¹ *An Act to provide for the examination of witnesses on oath by Committees of the Senate and House of Commons, in certain cases*, S.C. 1876, c. 7.

¹⁰² *An Act to provide for the examination of witnesses on oath by the Senate and House of Commons*, S.C. 1894, c. 16 (short title: *The Parliamentary Witnesses Oaths Act, 1894*).

¹⁰³ Under the 1876 statute, committees could only administer an oath following a resolution by either the Senate or the House of Commons.

¹⁰⁴ *Parliament of Canada Act*, R.S.C., 1985, c. P-1, ss. 10-13.

¹⁰⁵ [U.K.] 1 Will. & Mar. (2nd Sess.), 1689, ch. 2, s. 1.

¹⁰⁶ *Criminal Code*, R.S.C., 1985, c. C-46, ss. 118 and 131-132; Erskine May, 24th ed., p. 240; and Maingot, pp. 144-145 and 192.

still be liable for contempt of Parliament if a house concludes that they were wilfully misleading. However, witnesses who do take an oath can be liable for contempt of Parliament as well as for punishment under the laws of perjury.¹⁰⁷

Role of the Courts in the Evolution of Privilege in Canada

In addition to legislation claiming and defining the privileges of the federal Parliament, the courts have also played a role in further defining the scope of privilege.

Prior to Confederation, courts dealt with parliamentary privilege by placing limits on the privileges claimed by colonial legislatures. These cases highlighted a clear distinction between the Parliament of the United Kingdom, which was also called “the high court of Parliament,” and the simple legislative bodies in the colonies.¹⁰⁸ The Parliament of Great Britain, “from its original nature, possessed attributes which no colonial legislature could ever inherit, and therefore it possessed privileges and powers which no legislative assembly could hope to claim or exercise.”¹⁰⁹

As Canada evolved as a nation post-Confederation, so did the law of parliamentary privilege in the country. A review of three Supreme Court cases provides the following principles with respect to the status of parliamentary privilege in Canada:¹¹⁰

- all privilege (both inherent and legislated) is constitutional in nature and, therefore, equal in status to Charter rights with neither being subordinate to the other;
- the burden of proving the existence of a claimed privilege is on Parliament;
- the foundation of all privilege is necessity – in other words, if the immunity is not absolutely necessary for a legislature to carry out its constitutional functions, there is no basis to claim privilege;
- necessity is determined by the contemporary context – this necessity must be proven on two levels: first by demonstrating its historical existence, and second by determining whether the claimed privilege is still necessary today; and
- Parliament is not a “statute-free zone” and, therefore, not outside the ambit of Charter review.

Senate Study of Privilege

In light of the continuing evolution of privilege in Canada, especially since the entrenchment of the Charter, the Senate’s Standing Committee on Rules, Procedures and the Rights of Parliament decided to review privilege in Canada in the 21st century. In early 2014 it established a Subcommittee on Parliamentary Privilege,¹¹¹ which reported to the committee in early 2015.¹¹² This marked the first time a

¹⁰⁷ For a discussion on the history and contemporary issues surrounding the administration of oaths and the powers of parliamentary committees, see Robert and Armitage.

¹⁰⁸ For a legal opinion on this distinction, see Kennedy, pp. 297-299. For a general description of colonial court cases relating to privilege, see Wittke, (Chapter 7, “Procedure in the Dependencies”), pp. 172-184.

¹⁰⁹ Wittke, pp. 172-173.

¹¹⁰ Summaries of some key Canadian court cases relating to parliamentary privilege are found in the appendix to this chapter.

¹¹¹ Minutes of Proceedings of the Standing Committee on Rules, Procedures and the Rights of Parliament, April 1, 2014.

¹¹² The subcommittee tabled its report with the committee on January 27, 2015. The report is available at www.parl.gc.ca/Content/SEN/Committee/412/rprd/rep/repsub01jan27-e.pdf.

parliamentary body in Canada had ever completed a comprehensive study of parliamentary privilege. The committee subsequently adopted the subcommittee's report as an interim report to the Senate.¹¹³

PART II – PROCESSES FOR RAISING AND ESTABLISHING A QUESTION OF PRIVILEGE IN THE SENATE

There are various ways in which a question of privilege can be raised¹¹⁴, including:

- through a substantive motion with one day's notice (rules 5-5(j) and 13-2(2));
- through a self-initiated committee investigation concerning the unauthorized disclosure of confidential committee reports, documents or proceedings (Appendix IV of the *Rules of the Senate*);
- through a committee report bringing a possible issue of privilege to the Senate's attention;
- by rising without notice if the matter arose either after the time for giving written notice or during the sitting (rule 13-4(a)); and
- by providing a written notice before the sitting, followed by an oral notice at the start of the sitting (rules 13-3(1) and (4)) – this final process is the normal procedure for raising such matters in the Senate.

Prior to 1991, a question of privilege could be raised at any time during a sitting by moving a motion calling on the Senate to take action. When such a motion was moved, the consideration of all Senate business (including Orders of the Day) was suspended until the motion was either decided or adjourned. Following major revisions made to the *Rules of the Senate* in 1991, the procedure for raising a question of privilege became more restrictive.

On occasion, senators rise on a "point of personal privilege" in an attempt to make a personal comment or statement, even if there is no question before the chamber. These "points of personal privilege" are not in any way related to either parliamentary privilege or to the rights and immunities that individual members enjoy as parliamentarians. Instead, such statements are usually meant to correct an error in debate, retract a previous statement, apologize to the Senate or make some other general announcement. A point of personal privilege should not give rise to debate and the Speaker retains complete discretion over whether to allow such remarks.¹¹⁵ Since it is not a matter of privilege, no action is taken after the statement has been made.

Raising a Question of Privilege with One Day's Notice

Rule 13-2(1) states that in order for a question of privilege to be accorded priority, it must, among other things, be raised at the earliest opportunity. If this criterion is not met, the question of privilege can nonetheless be raised by motion after one day's notice.¹¹⁶ Under this method, the motion is dealt with in the same way as any other non-governmental substantive motion. It will appear on the Notice Paper until moved; it can be debated, amended and adjourned; and it is subject to being dropped from the *Order*

¹¹³ Minutes of Proceedings of the Standing Committee on Rules, Procedures and the Rights of Parliament, May 12, 2015.

¹¹⁴ See Speaker's ruling, *Journals of the Senate*, March 25, 2010, p. 166. Also see the definition of "question of privilege" under "privilege" in Appendix I of the *Rules of the Senate*.

¹¹⁵ O'Brien and Bosc, pp. 158-159.

¹¹⁶ Rules 5-5(j) and 13-2(2). Research has not found any cases of such motions being moved since the 1991 rule change.

Paper and Notice Paper if it is called but not taken up after 15 consecutive sitting days.¹¹⁷ However, unlike the procedure for raising a question of privilege with written notice under rule 13-3, such motions are not subject to the examination of the Speaker to determine if there is a prima facie (first impression) question of privilege before they can be moved.¹¹⁸

Raising a Question of Privilege with Respect to the Unauthorized Release of Committee Documents or Proceedings

Following the adoption of a report of the Standing Committee on Privileges, Standing Rules and Orders in June 2000, a procedure was established for dealing with the unauthorized disclosure of confidential committee reports and other documents or proceedings.¹¹⁹ This procedure allows a committee to initiate an investigation of an alleged leak of confidential material and report its findings to the Senate.

If a leak of a confidential committee report, document or proceeding comes to light, the committee is expected to report the alleged breach to the Senate and advise the chamber that it is launching an inquiry into the matter.¹²⁰ The notification of the alleged breach in the Senate would serve as notice regarding a possible question of privilege. The ensuing investigation must be carried out in a timely manner and must establish the facts and address the seriousness and implications (either actual or potential) of the leak.¹²¹ Upon the completion of the investigation, if the committee tables a report disclosing that a leak occurred and that it caused substantial damage to the operation of the committee or to the Senate as a whole, the matter would ordinarily be referred to the Standing Committee on Rules, Procedures and the Rights of Parliament.¹²²

Senators may also raise a question of privilege in the chamber relating to a leak by using one of the other processes for raising a question of privilege. In such situations, senators are not penalized for not raising a question of privilege “at the earliest opportunity” if they decide to wait for the committee’s investigation to be completed, should the committee decides not to proceed with the matter, or if the matter is not

¹¹⁷ Rule 4-15(2).

¹¹⁸ Rule 13-5(5).

¹¹⁹ For the full text of the fourth report of the Standing Committee on Privileges, Standing Rules and Orders, see *Journals of the Senate*, April 13, 2000, pp. 521 and 531-539. This report was adopted by the Senate on June 27, 2000 (see *Journals of the Senate*, p. 795). An extract from the report is published as Appendix IV of the *Rules of the Senate*.

¹²⁰ Appendix IV of the *Rules of the Senate*. This has happened on several occasions. In response to a question during Question Period, the chair of the Official Languages Committee informed the Senate that she would raise the matter at the next committee meeting (see *Debates of the Senate*, March 1, 2007, pp. 1874-1875). In a second case, the Standing Committee on Internal Economy, Budgets and Administration tabled a report informing the Senate about an apparent leak and that it was undertaking an investigation of the matter (see the second report of the committee tabled on June 8, 2006). In another case, the chair of the Standing Senate Committee on Banking, Trade and Commerce made a statement during Senators’ Statements to inform the Senate that a leak had occurred and would be investigated (see *Debates of the Senate*, October 3, 2012, p. 2546), and a report was subsequently tabled on October 30.

¹²¹ Appendix IV of the *Rules of the Senate*.

¹²² Appendix IV of the *Rules of the Senate*. Of the cases that have been dealt with under Appendix IV of the *Rules of the Senate*, five have led to final reports, but none of them found that further action was warranted, and none of these reports were adopted by the Senate (see the sixteenth report of the Standing Senate Committee on Legal and Constitutional Affairs, *Journals of the Senate*, October 30, 2014, p. 1301; the seventh report of the Standing Senate Committee on Banking, Trade and Commerce, *Journals of the Senate*, October 30, 2012, p. 1669; the seventh report of the Standing Senate Committee on Official Languages, *Journals of the Senate*, May 8, 2007, p. 1449; the seventh report of the Standing Senate Committee on Fisheries and Oceans, *Journals of the Senate*, November 6, 2003, pp. 1336-1337; and the seventh report of the Standing Senate Committee on Banking, Trade and Commerce, *Journals of the Senate*, February 25, 2003, pp. 524-525). In another instance an investigation under Appendix IV only involved a report informing the Senate of an apparent leak. No final report was ever tabled by the committee (see the second report of the Standing Committee on Internal Economy, Budgets and Administration, *Journals of the Senate*, June 8, 2006, p. 215).

proceeded with in a timely manner.¹²³ Under this process, if the Speaker finds that a prima facie question has been established, and if the affected committee has not yet submitted a report on the matter to the Senate, any motion to take action would be adjourned until the committee submits its report.¹²⁴

Raising a Question of Privilege by Means of a Committee Report

A committee can bring matters of privilege to the Senate's attention by means of a report. Indeed, in some legislative bodies, including the House of Commons, this is the method used to bring matters of privilege arising from committee work to the chamber.¹²⁵ Other methods are available in the Senate.¹²⁶ The Speaker has noted that:

Many parliamentary authorities do indeed state that such a matter should only be considered, except in rare instances, upon a report of the committee in question. However, the *Rules of the Senate* provide, at rule [13-2(1)], that a question of privilege can be raised under the special process for such issues if the “privileges of the Senate, [any of its committees] or any Senator” are at issue. Accordingly, rule [13-2] can be used to raise questions of privilege arising from committee work, although a report of the committee is another vehicle available, as the authorities suggest.¹²⁷

In practice, questions of privilege are rarely if ever raised in the Senate by means of a committee report, except for those related to the unauthorized release of material as described above.

Raising a Question of Privilege Without Notice (rule 13-4(a))

Rule 13-4 states that a question of privilege can be raised without notice, provided that “a Senator becomes aware of [the] matter... either after the time for giving a written notice or during the sitting.” In this situation the senator can choose either to raise it during the sitting without notice or to wait until the next sitting. The second option requires that all normal requirements for written and oral notices be met.¹²⁸

If the senator chooses to raise the question of privilege during the sitting without notice, this cannot be done during Routine Proceedings, Question Period or a vote.¹²⁹ The senator would generally follow the process for raising a question of privilege described in the following section as far as the circumstances

¹²³ Appendix IV of the *Rules of the Senate*.

¹²⁴ Appendix IV of the *Rules of the Senate*. This has happened on two occasions. See Speaker's rulings, *Journals of the Senate*, December 12, 2003, p. 424; and May 27, 2003, p. 851.

¹²⁵ See O'Brien and Bosc, pp. 149-152.

¹²⁶ See, for example, Speaker's ruling dealing with a question of privilege raised in the Senate after written and oral notice, *Journals of the Senate*, October 28, 2009, pp. 1384-1386, and a ruling dealing with a question of privilege raised without notice under then rule 59(10) (replaced by current rule 13-4(a), *Journals of the Senate*, of April 21, 2009, pp. 448-449.)

¹²⁷ Speaker's ruling, *Journals of the Senate*, October 28, 2009, p. 1385. Also see ruling of December 10, 2013, where the Speaker noted as follows: “Since this question of privilege involves events in committee, it is appropriate to note that senators can raise issues of privilege arising from committee proceedings directly on the floor of the Senate. A report of the committee is not essential. The fact that the committee could make a report on the issue has never been understood as bringing the issue of a reasonable alternative process — the fourth criterion [of rule 13-3(1)] — into play” (*Journals of the Senate*, p. 284).

¹²⁸ Rule 13-4(b).

¹²⁹ Rule 13-4(a).

warrant. The Speaker has noted that “rule 13-[4] allows flexibility in raising a question of privilege when the matter arises after the time for giving written notice. The rule seeks to accommodate unusual or urgent circumstances.”¹³⁰ The same ruling established that if the matter giving rise to the question of privilege arose before the sitting but after the time for giving written notice, there is no obligation to give oral notice of it during Senators’ Statements (a normal requirement under rule 13-3(4)), and it can simply be raised at the conclusion of Question Period.

When a senator chooses to raise a question of privilege without notice the matter is taken into consideration immediately. The Speaker can, however, at any time direct that further consideration be delayed. The question of privilege would be taken up again at the normal time for considering a question of privilege (the earlier of the end of Orders of the Day or 8 p.m., or noon on a Friday), before any question of privilege for which normal written and oral notices were given.¹³¹

Proceedings on a question of privilege raised without notice otherwise follow the steps described in the following section (i.e., the Speaker gives a ruling, which can be appealed, and, if it is determined that there is a case of privilege, the senator can move a motion).¹³²

Process for Raising a Question of Privilege with Written and Oral Notices

Since 1991, the standard method for raising a question of privilege¹³³ has involved giving written and oral notices. This process involves the following steps:

- written and oral notices;
- consideration of the matter giving rise to the question of privilege;
- a decision by the Speaker on whether a prima facie question of privilege has been established (if yes, the matter is termed a case of privilege); and
- if a case of privilege is established, a motion is moved for the Senate to take action or to refer the case of privilege to the Standing Committee on Rules, Procedures and the Rights of Parliament.

These steps are described in detail below.

¹³⁰ Speaker’s ruling, *Journals of the Senate*, October 30, 2012, p. 1670.

¹³¹ Rule 13-5(2).

¹³² Rule 13-4(a) specifically states that if a question of privilege is raised without notice it “otherwise generally follow[s] the provisions of ... chapter [13 of the Rules].”

¹³³ From June 1991 to September 2013 (end of the 1st session of the 41st Parliament), 70 questions of privilege were raised in the Senate. Fifty-four cases were raised using the normal procedure requiring written and oral notice. Eleven cases were raised without notice under rule 13-4 or the preceding provision that generally covered this point, rule 59(10). There were five cases examined under Appendix IV to the *Rules of the Senate* (three of which were self-initiated by the committee, and the other two were undertaken after the procedure requiring written and oral notice was followed and the Speaker made a prima facie finding). Finally, there were no cases of privilege raised by way of a substantive motion with one day’s notice under rule 13-2(2).

Written Notice

A senator wishing to raise a question of privilege must provide a written notice “indicating the substance of the alleged breach” to the Clerk of the Senate at least three hours before the beginning of a sitting of the Senate (or no later than 6 p.m. on Thursday for a Friday sitting).¹³⁴ The Clerk, in turn, is responsible for arranging the translation and distribution of the notice to each senator’s office.¹³⁵ However, the failure of a senator to receive a copy of the written notice does not invalidate the notice and cannot be used as grounds to delay consideration of the question of privilege.¹³⁶

Oral Notice

A senator who has complied with the written notice requirement is recognized during Senators’ Statements to give oral notice of the question of privilege. The senator must “clearly identify the matter that will be raised as a question of privilege” and indicate a readiness to move a motion seeking Senate action or referring it to the Standing Committee on Rules, Procedures and the Rights of Parliament.¹³⁷

As with all other senators’ statements, a senator is limited to an intervention of three minutes when giving oral notice of a question of privilege.¹³⁸ If more than one written notice on distinct questions of privilege is received in advance of the sitting, the Speaker generally recognizes the senators in the order in which the notices were received. If there has been a request for an emergency debate, which would normally result in there being no Senators’ Statements, statements are nevertheless called if written notice of a question of privilege has been received, for the purpose of allowing oral notice of the question of privilege.¹³⁹

Consideration of a Notice of a Question of Privilege

The Senate considers a notice of a question of privilege at 8 p.m. (noon on a Friday) or after completing the Orders of the Day, whichever comes first.¹⁴⁰ If more than one notice on distinct questions of privilege is received on the same day, the Senate considers them in the order in which they were received. Debate on one question of privilege is ended before the next is taken up.¹⁴¹ If a question of privilege is raised without notice under rule 13-4(a) and its consideration is deferred, that debate would resume before the

¹³⁴ Rule 13-3(1).

¹³⁵ Rule 13-3(2).

¹³⁶ Rule 13-3(3).

¹³⁷ The Speaker has ruled that a notice for a question of privilege must be “sufficiently explanatory and comprehensive.” See Speaker’s ruling, *Journals of the Senate*, October 26, 2006, pp. 557-560.

¹³⁸ Rule 4-2(3).

¹³⁹ Rule 4-4(2).

¹⁴⁰ Rule 13-5(1). Debate on the question of privilege can be delayed to deal with either a motion moved after the Speaker has found a prima facie question of privilege or an emergency debate (rules 4-16(2), 8-4(2), 13-6(2) and (11)).

¹⁴¹ Rules 13-5(3) and (4). See *Journals of the Senate*, December 16, 1997, p. 374; and December 17, 1997, pp. 389-390. Although these were treated as distinct questions of privilege for the purpose of debate, the Speaker delivered only one ruling since they were about the same subject matter. See Speaker’s ruling, *Journals of the Senate*, February 24, 1998, pp. 468-471.

Senate turns to questions of privilege raised with the normal written and oral notices.¹⁴² On a few occasions the Senate has agreed to postpone consideration of a question of privilege until the next sitting.¹⁴³

The rules for debate at this stage are similar to those governing points of order. The senator who gave notice is recognized first by the Speaker to give a succinct explanation of the matter, along with references to any specific rules, practices, precedents or parliamentary authorities to support the complaint.

Once the initiating senator's intervention is concluded, the Speaker generally chooses to hear from other senators. Although not required to do so, the Speaker often calls upon the initiating senator to reply to any comments made in the discussion before bringing it to a close. During the interventions on a question of privilege, the normal rules regarding both time limits on debate or the number of times a senator may speak do not apply. These matters remain at the sole discretion of the Speaker,¹⁴⁴ who also decides when enough debate has been heard on the matter to determine whether a prima facie question of privilege has been established. The Speaker may either deliver a ruling immediately or take the matter under advisement.¹⁴⁵ On occasion, the Speaker has heard further arguments at a subsequent sitting before taking the matter under advisement.¹⁴⁶ In urgent cases, or when a ruling is required before the Senate can proceed with its business, the Speaker may, with leave of the Senate, suspend a sitting to prepare a decision on the question of privilege immediately.¹⁴⁷

Resolution of a Question of Privilege Prior to a Speaker's Ruling

On at least one occasion, after written and oral notices had been given, the initiating senator requested that the matter be held over until the next sitting when the Speaker called for debate on the question of privilege. The Senate did not grant leave, and the question of privilege was not proceeded with further.¹⁴⁸ In another case, the Senate reached a consensus during debate on the question of privilege and agreed to allow a motion to refer the matter to the Standing Committee on Internal Economy, Budgets and

¹⁴² Rule 13-5(2).

¹⁴³ *Journals of the Senate*, September 7, 1999, p. 1798; December 16, 1997, p. 382; November 23, 1995, p. 1238; and March 30, 1993, p. 1924. When the Senate has adjourned before dealing with a question of privilege, the matter has been taken up at the appropriate time at the next sitting of the Senate (see Speaker's ruling, *Journals of the Senate*, May 29, 2007, p. 1562).
¹⁴⁴ Rule 2-5(1).

¹⁴⁵ Rule 2-5(1). On at least one occasion, a ruling was never delivered on a question of privilege due to dissolution. See *Journals of the Senate*, July 12, 1991, p. 2289 (this was the last sitting day of the session). Questions of privilege and points of order are not automatically revived in a subsequent session. They must be raised again once the new session has started. For examples of revived questions of privilege, see *Journals of the Senate*, September 9, 1999, pp. 1840-1841; and October 13, 1991, p. 30. Also see *Journals of the Senate*, September 14, 1999, p. 1893.

¹⁴⁶ *Journals of the Senate*, February 26, 2013, p. 1940; and *Debates of the Senate*, February 26, 2013, p. 3331; *Journals of the Senate*, May 28, 2008, p. 1101; *Debates of the Senate*, May 28, 2008, pp. 1415-1416; *Journals of the Senate*, November 27, 2001, p. 1019; and *Debates of the Senate*, November 27, 2001, p. 1799.

¹⁴⁷ The only known occasion on which this has occurred in relation to a question of privilege was on December 8, 2011 (*Debates of the Senate*, pp. 852 and 854). This situation has arisen more often in relation to a point of order (*Journals of the Senate*, February 20, 2004, pp. 183-185; *Debates of the Senate*, February 20, 2004, pp. 321-322; *Journals of the Senate*, June 10, 2003, pp. 916-917; and *Debates of the Senate*, June 10, 2003, p. 1576).

¹⁴⁸ *Debates of the Senate*, November 23, 2006, pp. 1300 and 1338-1339.

Administration. Since the matter had been resolved by the Senate, the Speaker never gave a ruling.¹⁴⁹ On several other occasions, a question of privilege has been withdrawn after debate had taken place, thus eliminating the need for a Speaker's ruling.¹⁵⁰

The Role of the Speaker

Prior to the 1991 changes to the *Rules of the Senate*, the Speaker had limited responsibilities in relation to questions of privilege. The Rules now provide a greater role for the Speaker. When a question of privilege is raised by a senator, the Speaker decides whether there appears to be a prima facie question of privilege, that is to say one in which "a reasonable person could conclude that there may have been a violation of privilege"¹⁵¹. This practice was patterned after the role developed for the Speaker of the House of Commons in the United Kingdom and subsequently in Canada.¹⁵²

There are certain limitations on matters with which the Speaker can deal. The *Rules of the Senate* limit the authority of the Speaker in ruling on matters relating to the *Ethics and Conflict of Interest Code for Senators*. In such cases, the Speaker is restricted to matters expressly incorporated into the Rules.¹⁵³ Furthermore, the Speaker, in keeping with parliamentary tradition and custom, does not rule on constitutional matters or points of law, or hypothetical questions on procedure.¹⁵⁴

The Speaker, or a senator acting on behalf of the Speaker, cannot participate in the discussion on a question of privilege on which a decision must be made.¹⁵⁵

If the Speaker is absent when a question of privilege is considered, or when a ruling is to be given, either the Speaker *pro tempore* or the senator acting on behalf of the Speaker may hear the discussion and deliver the ruling. In such cases, the senator acting for the Speaker has the same authority, privileges and powers as the Speaker. That senator's actions have the same effect and validity as if done by the Speaker.¹⁵⁶ Often, however, the Speaker *pro tempore* or the senator acting on behalf of the Speaker takes the matter under advisement to allow the Speaker to review the issue and deliver a ruling.

The role of the Speaker in matters involving privilege is limited to determining whether a prima facie question of privilege has been established.¹⁵⁷ Joseph Maingot offers the following explanation of what constitutes a prima facie question:

A *prima facie* [question] of privilege in the parliamentary sense is one where the evidence on its face as outlined by the Member is sufficiently strong for the House to be asked to debate the

¹⁴⁹ *Journals of the Senate*, November 21, 1991, p. 339; and *Debates of the Senate*, November 21, 1991, pp. 581-584.

¹⁵⁰ *Journals of the Senate*, November 29, 2001, p. 1034; November 20, 2001, pp. 988-989; October 2, 2001, p. 809; and February 20, 2001, p. 70.

¹⁵¹ Speaker's ruling, *Journals of the Senate*, May 29, 2007, p. 1562.

¹⁵² Beauchesne, 4th ed., pp. 94-96; and O'Brien and Bosc, pp. 71-74.

¹⁵³ Rule 2-1(2).

¹⁵⁴ Speaker's rulings, *Journals of the Senate*, November 20, 1997, pp. 194-195; May 14, 1996, pp. 202-206; May 8, 1996, pp. 183-185; November 23, 1995, pp. 1310-1312; June 22, 1995, pp. 1121-1122; January 30, 1991, pp. 2214-2215; and October 3, 1990, pp. 1812-1813. Also see Beauchesne, 6th ed., §§323-324, p. 97; and O'Brien and Bosc, p. 636.

¹⁵⁵ Rule 2-3.

¹⁵⁶ Rules 2-4(2) and (3); and the *Parliament of Canada Act*, R.S.C., 1985, c. P-1, ss. 17-19. Also see the point of order on Bill C-259, An Act to amend the Excise Tax Act (elimination of excise tax on jewellery), *Debates of the Senate*, November 23, 2005, pp. 2165-2166, and the subsequent Speaker's ruling, *Journals of the Senate*, November 23, 2005, pp. 1307-1309.

¹⁵⁷ Rule 13-5(5).

11: Privileges and Immunities

matter and to send it to a committee to investigate whether the privileges of the House have been breached or a contempt has occurred and report to the House.¹⁵⁸

In determining whether a prima facie question of privilege has been established, the Speaker evaluates whether the criteria set out in rule 13-2(1) have been met. The matter must:

- “be raised at the earliest opportunity;”¹⁵⁹
- “be a matter that directly concerns the privileges of the Senate, any of its committees or any Senator;”
- “be raised to correct a grave and serious breach;” and
- “be raised to seek a genuine remedy that the Senate has the power to provide and for which no other parliamentary process is reasonably available.”¹⁶⁰

For a prima facie question of privilege to be established, the question must meet all these criteria.¹⁶¹

In short, the Speaker is limited to determining whether, at first appearance, the issue raised has obstructed the work of the Senate, one of its committees or a senator, or whether there appears to be any contempt against the dignity of Parliament. In a ruling, the Speaker does not give an opinion or render a judgment on the actual merits of the question of privilege. This role is reserved exclusively for the Senate as a whole to debate and decide.¹⁶²

In addition to ascertaining whether the criteria are met, the Speaker is obliged to provide reasons for the decision, with references to any rule or relevant practices and authorities.¹⁶³ A ruling, particularly if taken under advisement so that the Speaker can prepare a written text, generally begins with a summary of the question of privilege, including key elements raised during debate. This summary serves to frame the context and the issues being examined, as well as the subsequent decision. The ruling will then typically state whether each of the four criteria set out in rule 13-2(1) have been met. The full text of a Speaker’s ruling and the outcome of any appeal of the ruling are printed in the *Journals of the Senate*.

Appealing a Speaker’s Ruling

A Speaker’s ruling on whether a question of privilege has prima facie merits or not is subject to appeal to the Senate.¹⁶⁴ When a decision is appealed, the Speaker puts the question to the Senate using the

¹⁵⁸ Maingot, p. 221. Also see the Speaker’s ruling of May 29, 2007 (*Journals of the Senate*, p. 1562), which, after citing Maingot, states as follows: “In effect, this is a means to allow the Speaker to weed out cases that are not questions of privilege. If the Speaker rules that a reasonable person could conclude that there may have been a violation of privilege, the senator who raised the matter is given the opportunity to propose some type of remedy by immediately moving a motion either to refer the matter to the Standing Committee on Rules, Procedures and the Rights of Parliament, or to call upon the Senate to take some action. In the end, the matter remains in the hands of the Senate, with the Speaker only providing an initial review.”

¹⁵⁹ If not raised at the earliest opportunity, the matter can still be pursued by means of a substantive motion, as discussed earlier, but it cannot be taken into consideration under the procedures provided for in chapter 13 of the *Rules of the Senate* (see rule 13-2(2)). Senate “precedents establish that even a delay of a few days can result in a question of privilege failing to meet this criterion. Attempting to exhaust alternative remedies before giving notice of a question of privilege does not exempt it from the need to meet the first criterion” (Speaker’s ruling, *Journals of the Senate*, December 10, 2013, p. 284).

¹⁶⁰ Rule 13-2(1), subsections (a), (b), (c) and (d) respectively.

¹⁶¹ See Speaker’s ruling, *Journals of the Senate*, April 24, 2013, p. 2163.

¹⁶² Rules 13-1 and 13-6(1). Also see Speaker’s rulings, *Journals of the Senate*, February 28, 2013, pp. 1960-1962; and May 29, 2007, pp. 1562-1563.

¹⁶³ Rules 2-5(2) and 13-5(5).

¹⁶⁴ Rule 2-5(3).

following positive formula: “Shall the Speaker’s ruling be sustained?”¹⁶⁵ A decision on the matter must be rendered by the Senate immediately without debate, although the bells can ring for up to an hour if there is a request for a standing vote.¹⁶⁶ The motion must be adopted by a majority vote in order for the decision of the Speaker to be upheld. If there is a tie vote or if a majority of votes are opposed to the motion, the decision of the Speaker on the question of privilege is overturned.¹⁶⁷ According to parliamentary custom and tradition, it is not appropriate to reflect on past rulings or to call them into question once a decision is rendered and any related appeal has been decided by the Senate.¹⁶⁸

*Motion to Deal with a Case of Privilege*¹⁶⁹

If the Speaker rules that a prima facie question of privilege has been established, it is then the role of the Senate to determine whether any privilege was actually breached and what action, if any, should be taken. To this effect, the senator who raised the question of privilege may move a motion immediately following the Speaker’s ruling.¹⁷⁰ Conversely, if the Speaker finds that a prima facie question of privilege has not been established, the matter is not proceeded with further.¹⁷¹

If a prima facie question of privilege is established, the motion to deal with the subsequent case of privilege can either call on the Senate to take action on the matter or propose that it be referred to the Standing Committee on Rules, Procedures and the Rights of Parliament for investigation and report.¹⁷² Although the motion must be moved immediately after the ruling is delivered, debate can only start at 8 p.m. (noon on Fridays) or at the end of Orders of the Day, whichever comes first.¹⁷³

Senators, including leaders, may speak on the motion for up to 15 minutes and only once. There is no right of final reply.¹⁷⁴ The maximum time allowed for debate is three hours – which can usually be spread over several sittings – after which the Speaker must interrupt proceedings and put all questions necessary

¹⁶⁵ Practice has sometimes varied with respect to the wording of the motion to appeal. Earlier versions regularly used a negative formula such as “That the ruling of the Honourable the Speaker be not accepted by the Senate.” Nonetheless, early examples of the use of the positive formula can also be found (see *Journals of the Senate*, April 8, 1915, p. 205; September 4, 1917, p. 385; and December 14, 1964, pp. 773-774). To eliminate any possible confusion, recent practices (since the 1980s) have always used the positive formula. For further information on historical practices relating to appeals and the role of the Speaker, consult Dawson.

¹⁶⁶ Rules 2-5(3) and 9-5. Only two rulings on questions of privilege have been challenged on appeal since the 1991 changes to the *Rules of the Senate*. On February 21, 2001 the ruling was sustained (see *Journals of the Senate*, pp. 77-83). On March 31, 2009, the ruling was overturned (see *Journals of the Senate*, pp. 416-419). See Chapter 10 for other examples of appeals to rulings on points of order.

¹⁶⁷ Rule 9-1; *Constitution Act, 1867*, s. 36.

¹⁶⁸ Speaker’s ruling, *Journals of the Senate*, April 29, 2008, pp. 1001-1003; Beauchesne, 6th ed., §168(1), p. 49; and O’Brien and Bosc, pp. 309, 615 and 637.

¹⁶⁹ As already noted, once a question of privilege has been found to have prima facie merits, it becomes a “case of privilege.” See definition of “privilege” in Appendix I of the *Rules of the Senate*.

¹⁷⁰ Rule 13-6(1). If the ruling finding a prima facie question of privilege were overturned on appeal, a prima facie question of privilege would be deemed to have not been established and the matter is not proceeded with further.

¹⁷¹ If the ruling were overturned on appeal, a prima facie question of privilege would be deemed to have been established, and a motion to take action or to refer the matter to committee could be moved (see case of March 31, 2009 (*Journals of the Senate*, pp. 416-419)).

¹⁷² Rule 13-6(1).

¹⁷³ Rule 13-6(2). Unlike a question of privilege, the motion relating to a case of privilege has priority over an emergency debate if both would otherwise be raised at the same time (rules 4-16(2), 8-4(2), and 13-6(2) and (1)).

¹⁷⁴ Rule 13-6(3). A ruling on February 28, 2013 noted that if there is a debatable motion moved in relation to the motion on the case of privilege (e.g., an amendment or a motion to refer the motion to committee), senators who have already spoken can speak again. Time taken in this debate counts towards the three hours of debate under rule 13-6(4).

to dispose of the motion. The motion is amendable¹⁷⁵ and debate can in most situations be adjourned, provided that the three-hour limit for debate is not surpassed.¹⁷⁶

Debate on the motion can continue past the ordinary time of adjournment on the first day of debate¹⁷⁷. In this situation, if the motion started before the end of the Orders of the Day, the Senate will continue with its business where it was interrupted, once debate on the motion has been adjourned or the question has been put. Business continues until the Senate reaches the end of Orders of the Day, but for no longer than the time spent on the motion relating to the case of privilege. If necessary, the ordinary time of adjournment is suspended.¹⁷⁸ If the motion was taken up after the end of the Orders of the Day, the Senate will automatically adjourn once the motion has been adjourned or concluded.¹⁷⁹ In all cases, the Notice Paper is not proceeded with for that sitting.¹⁸⁰

If debate on the motion concludes prior to the ordinary daily hour of adjournment, a request for a standing vote may be deferred until 5:30 p.m. on the next sitting day.¹⁸¹ If debate concludes after the ordinary time of adjournment, the deferral is automatic if a standing vote is requested.¹⁸²

Contempt as Question of Privilege

Even if no privilege has been clearly breached, it is still possible to consider whether an issue amounts to contempt of Parliament. This option is available when the alleged affront against the dignity of Parliament does not fall within one of the specifically defined privileges. The Senate may punish, as contempt, an action that substantially interferes with or obstructs the performance of its duties or offends against its dignity or authority.¹⁸³ As explained earlier, contempt has a much larger and less defined scope than privilege. Issues of contempt are raised as questions of privilege and follow the same process.

¹⁷⁵ Rule 13-6(4). See, for example, *Journals of the Senate*, March 5, 2013, p. 1977.

¹⁷⁶ Rule 13-6(5). If debate goes beyond the ordinary time of adjournment on the first day of debate, the motion cannot be adjourned, and the Senate must instead continue until debate is concluded or the three hours expire (rule 13-6(6)).

¹⁷⁷ In this case debate on the motion cannot be adjourned (rule 13-6(6)).

¹⁷⁸ Rule 13-6(10). If the Senate reaches the end of the Orders of the Day before the expiration of the time taken to consider the motion, it would automatically adjourn (rules 13-6(10)(a) and (b)(i)). A motion simply to adjourn the sitting is also possible (rule 13-6(10)).

¹⁷⁹ Rule 13-6(9). See, for example, *Journals of the Senate*, February 28, 2013, p. 1966.

¹⁸⁰ See rules 13-6(9), 13-6(10)(a) and 13-6(10)(b)(i). This is to underscore the importance and gravity of matters of privilege. See Speaker's statement, *Debates of the Senate*, June 26, 2008, p. 1691. On occasion, with leave, the Senate has continued to consider items on the Notice Paper (*Journals of the Senate*, June 26, 2008, p. 1403; and April 1, 1993, p. 1942). If an emergency debate were to be held on the same day or a question of privilege raised after written and oral notices (or deferred from earlier in the sitting if raised without notice) were to be considered, the adjournment or resumption of the Orders of the Day would be further delayed (rule 13-6(11)).

¹⁸¹ Rule 13-6(7).

¹⁸² Rule 13-6(8).

¹⁸³ For rulings dealing with contempt, see cases cited in section on contempt earlier in this chapter.

Report from Standing Committee on Rules, Procedures and the Rights of Parliament on a Case of Privilege

If a motion is adopted to refer a case of privilege to the Standing Committee on Rules, Procedures and the Rights of Parliament, the committee studies the matter and submits a report to the Senate containing its assessment of the matter. The report can contain recommendations for action by the Senate. Once the report is presented to the Senate, it is treated like any other committee report and placed on the Orders of the Day for consideration. The report can be debated, adjourned and amended. A decision of the Senate on the report is required before any of the recommendations contained in the report can take effect or be implemented.

APPENDIX: Key Canadian Court Cases Relating to Privilege

Kielly v. Carson (1842 – Newfoundland)

One notable case prior to Confederation was that of *Kielly v. Carson* in 1842 in Newfoundland. Carson, a member of the House of Assembly, had made remarks in the assembly about the management of the hospital in St. John's. Kielly, who was the manager of the hospital, reproached the member outside the chamber. As a result, Kielly was found in contempt by the assembly and after refusing to apologize at the bar, he was committed to jail. Kielly later brought a lawsuit against the Speaker and Carson. The Supreme Court of Newfoundland decided in favour of the Speaker. The Judicial Committee of the Privy Council overturned that decision and stated that the assembly only had such powers as were reasonably necessary for the proper exercise of its functions and duties which did not include the power of arrest for a contempt committed outside the house.¹⁸⁴ In other words, a colonial legislature did not enjoy all the privileges and powers that the Parliament in Great Britain did, simply because a colonial legislature did not have a body of ancient precedents. Such privileges and powers could only be granted by means of an imperial statute.¹⁸⁵

Landers v. Woodworth (1878 – Nova Scotia)

In 1874, Douglas B. Woodworth, a member of the Nova Scotia House of Assembly, accused the provincial secretary of falsifying a public record. An investigation into the matter by a committee of the house determined that the charge was unfounded. The Assembly then passed a resolution finding Woodworth guilty of a breach of privilege and ordering him to appear at the bar of the house to apologize. When Woodworth refused to appear at the bar and apologize, the house ordered the Sergeant-at-Arms to remove him from the house. Woodworth then took the matter to court, claiming that he had been unjustly found in contempt and expelled from the house. The Speaker, David C. Landers, and certain members of the house were named as defendants.¹⁸⁶ In 1878, the Supreme Court of Canada held that Woodworth's removal from the chamber was due to his refusal to offer an apology and not because he was obstructing the business of the house.¹⁸⁷ The court declared that in the absence of any legislation defining privileges, the removal was beyond the legislature's power unless the member was actually obstructing business.

In 1876, the Nova Scotia legislature adopted legislation conferring upon its members such privileges as were held by the Senate and House of Commons.¹⁸⁸

¹⁸⁴ Maingot, pp. 201-202.

¹⁸⁵ Maingot, p. 202.

¹⁸⁶ Todd, pp. 690-691.

¹⁸⁷ *Landers v. Woodworth*, (1878), 2 S.C.R. 158.

¹⁸⁸ *An Act respecting the Legislature of Nova Scotia*, S.N.S. 1876, c. 22.

Fielding v. Thomas (1896 – Nova Scotia)

In 1891, the Nova Scotia House of Assembly passed legislation increasing the salary of one of its members, Lawrence, in his capacity as recorder of the town of Truro.¹⁸⁹ The Mayor of Truro, Thomas, published articles and signed a petition accusing Lawrence of misbehaviour in his office of recorder and as member of the legislature, as well as promoting his own salary increase. The House of Assembly subsequently passed a motion charging Thomas with breach of privilege and ordering him to appear before the bar of the house. After appearing before the bar, Thomas refused to return and appear again. As a result, the assembly passed an order for his arrest and committal to the common jail of Halifax for 48 hours. Thomas then brought an action for assault and imprisonment against the members of the assembly who had voted for his imprisonment. Following trials in Nova Scotia, the matter was referred directly to the Judicial Committee of the Privy Council, which ruled that a provincial legislature did have authority, under section 92 of the *Constitution Act, 1867*, to define through legislation the powers and privileges of the provincial legislature. Since the Nova Scotia legislature had legislated its powers and privileges in 1876, it followed that the House of Assembly had the power to make a finding of contempt for failure to obey an orders and to punish such contempt by imprisonment.¹⁹⁰

Payson v. Hubert (1904 – Nova Scotia)

In 1902, Annabella Hubert created a disturbance in the corridors of the Nova Scotia House of Assembly in relation to a petition that she had presented, and that had not been acted on. The Chief Messenger of the House of Assembly, W.W. Payson, acting on the direct orders of the Speaker, asked Hubert to leave the precinct. Upon her refusal, Payson then removed Hubert from the building “using no more force than was necessary.”¹⁹¹ The House of Assembly was not in session at the time of this event. Hubert subsequently brought a civil suit against the Chief Messenger for assault. This matter was ultimately decided by the Supreme Court of Canada in 1904.¹⁹² The court ruled that the Speaker and other officers of the House of Assembly have the authority to maintain order and decorum in the chamber and in the precincts of the assembly even when the house is not sitting. The ruling also made clear that:

... the liberty of access which the public has to attend the proceedings of the House of Assembly and its Committees and to visit the precincts and rooms of the House is not a *right* but a *license* or *privilege* capable of being revoked, and when properly revoked as to any one leaving him or her a trespasser and liable to expulsion as such.¹⁹³

Limits on Freedom of Speech (1976 and 1977 – House of Commons)

There are two notable cases in the 1970s relating to the privilege of freedom of speech. The first is the 1976 *Ouellet No. 1* case. André Ouellet, a federal cabinet minister, had made controversial statements about the decision of a judge in a judicial proceeding to a journalist outside of the House of Commons. The Superior Court of Québec ruled that statements made outside the house were not protected by

¹⁸⁹ *An Act relating to the Town of Truro*, S.N.S. 1891, c. 119, s. 3.

¹⁹⁰ Maingot, pp. 205-206.

¹⁹¹ *Hubert v. Payson*, (1903), N.S.R. 211.

¹⁹² *Payson v. Hubert*, (1904), 34 S.C.R. 400.

¹⁹³ *Payson v. Hubert*, (1904), 34 S.C.R. 417.

parliamentary privilege.¹⁹⁴ This decision was affirmed on appeal.¹⁹⁵ As a result, Ouellet was found to be in contempt of the court.

The second case arose in 1977, when five members of Parliament brought forward a notice of motion to the Supreme Court of Ontario asking it to determine whether a statutory order under the *Atomic Energy Control Act* prohibiting them from releasing information was a breach of their privilege of freedom of speech.¹⁹⁶ The court ruled that members of Parliament were free to use the information in Parliament and that they could release the information to the media; however, the media would have to decide for themselves whether or not to publish that information. The media would not be able to claim the same privilege that parliamentarians used in releasing the information to them. The court stated: “The privilege of the Member is finite and cannot be stretched indefinitely to cover any person along a chain of communication initiated by the Member. The privilege stops at the press.”¹⁹⁷ Finally, the court also held that members of Parliament could not release such information to constituents or anyone else outside of Parliament, noting that things done by a member beyond the walls of Parliament are generally not protected.¹⁹⁸

Patriation of the Constitution in 1982 and the Canadian Charter of Rights and Freedoms

Although inherited from and patterned on the British concept of privilege, Canadian parliamentary privilege has developed in its distinct way. Up until 1982, any changes to the privileges of Parliament could only be made in accordance with the provisions of section 18 of the *Constitution Act, 1867*. However, since 1982, when the Constitution was patriated, the Parliament of Canada has, subject to other provisions of the Constitution, had the exclusive right to make amendments relating to the federal executive government, the Senate and the House of Commons.¹⁹⁹ Parliamentary privilege can therefore be expanded or limited through amendment of the Constitution made by law.

The Supreme Court of Canada has issued three major rulings since the patriation of the Constitution that shed light on the concept and scope of privilege in Canada. Furthermore, these rulings, in keeping with reasoning dating as far back as the *Stockdale v. Hansard* case, have consistently emphasized the principle of necessity in determining the validity of any assertion of parliamentary privilege.

New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly) (1993)

This case, commonly referred to as Donahoe,²⁰⁰ concerned the right of the legislature to exclude strangers from its proceedings. The New Brunswick Broadcasting Co., operating under the name MITV, claimed the right to film the proceedings of the Nova Scotia House of Assembly with its own cameras. It cited section 2(b) of the *Canadian Charter of Rights and Freedoms*, which guarantees freedom of the press and other media of communication. The Nova Scotia legislature opposed the claim on the basis that the

¹⁹⁴ *Re Ouellet (No. 1)* (1976), 67 D.L.R. (3d) 73, pp. 84-90.

¹⁹⁵ *Re Ouellet*, (1976), 72 D.L.R. (3d) 95. Also see Maingot, pp. 92-94.

¹⁹⁶ SOR/76-644.

¹⁹⁷ *Clark v. Canada (Attorney General)*, (1977), 81 D.L.R. (3d) 33, p. 56.

¹⁹⁸ *Clark v. Canada (Attorney General)*, (1977), 81 D.L.R. (3d) 33, p. 56.

¹⁹⁹ *Constitution Act, 1982*, s. 44.

²⁰⁰ Arthur Donahoe was the Speaker of the Nova Scotia House of Assembly at the time.

proposal would interfere with the decorum and orderly proceedings of the house.²⁰¹ Although lower courts ruled in favour of the New Brunswick Broadcasting Co., the Supreme Court of Canada overturned those decisions on appeal.²⁰² The majority decision held that:

[I]t is reasonable and correct to find that the House of Assembly of Nova Scotia has the constitutional power to exclude strangers from its chamber on the basis of the preamble to the Constitution, historical tradition, and the pragmatic principle that the legislatures must be presumed to possess such constitutional powers as are necessary for their proper functioning.²⁰³

The majority of judges asserted that there were two categories of privilege, which are:

- constitutionally inherent privilege (i.e., not dependent on statute for its existence); and
- privilege that is not constitutionally inherent (i.e., statutory in basis).²⁰⁴

With regard to historically inherent privilege, Justice McLachlin, in delivering the majority opinion stated:

[I]t seems clear that, from an historical perspective, Canadian legislative bodies possess such inherent privileges as may be necessary to their proper functioning. These privileges are part of the fundamental law of our land, and hence are constitutional. The courts may determine if the privilege claimed is necessary to the capacity of the legislature to function, but have no power to review the rightness or wrongness of a particular decision made pursuant to the privilege.²⁰⁵

The significance of the decision is that it recognized the complete jurisdiction of a legislative body where a privilege has a historical foundation and is necessary for its functioning. In such a case, the court will not intervene. However, the decision also implied that the court may intervene in instances where it finds that an activity or matter in question is not necessary to maintain or uphold the dignity and efficiency of the legislative body.²⁰⁶

Harvey v. New Brunswick (Attorney General) (1996)

This case involved Fred Harvey, who was elected as a member of the Legislative Assembly of New Brunswick in September 1991. He was then charged and convicted of violating sections 111(1) and 111(8) of the New Brunswick *Elections Act*²⁰⁷ for having induced a 16 year-old to vote even though he knew she was not qualified to vote. As a result, his seat was vacated in January 1993 upon conviction in

²⁰¹ Maingot, p. 307.

²⁰² For further information on this case, consult Davidson, “Parliamentary Privilege and Freedom of the Press...” pp. 10-12; and Bonsaint.

²⁰³ *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 S.C.R. 319, pp. 374-375.

²⁰⁴ Maingot, p. 307.

²⁰⁵ *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 S.C.R. 319, pp. 384-385.

²⁰⁶ Maingot, p. 342.

²⁰⁷ *Elections Act*, R.S.N.B. 1973, c. E-3.

accordance with section 119(c) of the same act.²⁰⁸ Harvey challenged his expulsion from the assembly as well as the constitutionality of parts of the *Elections Act* that disqualified him from voting or seeking re-election, both for a period of five years. He alleged infringement of section 3 of the Charter, which guarantees the right to vote and to be qualified for membership of a Legislative Assembly.²⁰⁹ The trial judge ruled that the portion of section 119(c) requiring a sitting member to vacate his seat upon conviction was justified under section 1 of the Charter.²¹⁰ Harvey's appeals to both the Court of Appeal and the Supreme Court of Canada were rejected.

Although the Supreme Court ruling was unanimous in rejecting the appeal, a minority of justices based part of their reasoning on the historical privileges of the legislature. The majority, however, based their reasoning on a determination that Charter rights were not violated. They refused to consider the case as relating to privilege since only one intervener had raised the issue. Neither the appellant nor the respondent framed their action in terms of privilege before the court.

Canada (House of Commons) v. Vaid (2005)

This case involved Satnam Vaid, who worked as a chauffeur to three consecutive Speakers of the House of Commons between 1984 and 1995. In January 1995 he was terminated, but was later reinstated after a successful grievance launched pursuant to the *Parliamentary Employment and Staff Relations Act*.²¹¹ When he returned to work, he was informed that his position had been designated as bilingual imperative. Upon completing French language training, he was then advised that his position would become surplus effective May 1997 due to a reorganisation within the Speaker's office. After his position was made redundant, Vaid complained to the Canadian Human Rights Commission, alleging racial discrimination and workplace harassment. The commission accepted the complaints and referred them to the Canadian Human Rights Tribunal. The Speaker and the House of Commons challenged the tribunal's jurisdiction in the matter. They claimed that staffing, management and dismissal of any employee were protected by privilege and therefore immune from external review. Furthermore, they claimed that acts of Parliament, including the *Canadian Human Rights Act*, that govern other employers, do not apply within the parliamentary precincts. This challenge of the tribunal's jurisdiction was heard by the Federal Court and the Federal Court of Appeal, which both found in favour of Mr. Vaid. Finally, the House of Commons appealed to the Supreme Court of Canada, which agreed to hear the case.²¹²

The Supreme Court granted the appeal of the House of Commons on the question of the appropriate body to hear the complaint by agreeing with the House of Commons that, in this particular case, the Canadian Human Rights Tribunal did not have jurisdiction over the matter. Rather, the matter should be pursued under the provisions of the *Parliamentary Employment and Staff Relations Act*. This decision was based on administrative law principles rather than a claim of privilege.²¹³

²⁰⁸ *Elections Act*, R.S.N.B. 1973, c. E-3, s. 119(c).

²⁰⁹ *Constitution Act, 1982*, s. 3.

²¹⁰ *Constitution Act, 1982*, s. 1.

²¹¹ *Parliamentary Employment and Staff Relations Act*, R.S.C., 1985, c. 33 (2nd Supp.).

²¹² For further information on this case, consult Joyal, "The Vaid Case..." and Fox-Decent, "Parliamentary Privilege and the Rule of Law." Also see Fox-Decent, "Parliamentary Privilege, Rule of Law and the Charter after the Vaid Case."

²¹³ *Canada (House of Commons) v. Vaid*, [2005] 1 S.C.R. 667, 2005 SCC 30, par. 6.

Notwithstanding this decision, the court also addressed the claim of privilege made by the House of Commons. The justices stated that the party who seeks to rely on the immunity provided by parliamentary privilege has the onus of establishing its existence, an onus the Speaker and the House of Commons had failed to meet. The court held that while “[l]egislative bodies created by the *Constitution Act, 1867* do not constitute enclaves shielded from the ordinary law of the land,” they are entitled to assert a legitimate claim of privilege where appropriate.²¹⁴ If the privilege claimed is historically well-founded, courts should not be allowed any oversight of the actions covered by the privilege. However, if the privilege claimed has not already been authoritatively established, then the courts will have a role in determining its legitimacy. Furthermore, the court’s role is limited to determining the existence and scope of a claimed privilege, but it cannot render a judgment on the exercise of a legitimately claimed privilege.²¹⁵

Justice Binnie, in delivering the unanimous decision of the court, elaborated on the court’s view of privilege by stating that the test of necessity must be used in determining the existence and scope of privilege:

In order to sustain a claim of parliamentary privilege, the assembly or member seeking its immunity must show that the sphere of activity for which privilege is claimed is so closely and directly connected with the fulfilment by the assembly or its members of their functions as a legislative and deliberative body, including the assembly’s work in holding the government to account, that outside interference would undermine the level of autonomy required to enable the assembly and its members to do their work with dignity and efficiency.²¹⁶

The Supreme Court, after applying the necessity test, unanimously rejected the notion that the courts have no jurisdiction over any labour issue arising in Parliament, and concluded that statute law does apply to Parliament.²¹⁷

One of the key points that this case established is that privilege has its limits. It ought not to be asserted to derogate arbitrarily from the legitimate rights of others. With respect to the claim of immunity from the application of statute law, the Supreme Court definitively established that privilege constitutes only partial immunity from the law and only as it relates to the house’s core functions.²¹⁸

²¹⁴ *Canada (House of Commons) v. Vaid*, [2005] 1 S.C.R. 667, 2005 SCC 30, par. 29.

²¹⁵ *Canada (House of Commons) v. Vaid*, [2005] 1 S.C.R. 667, 2005 SCC 30, par. 40.

²¹⁶ *Canada (House of Commons) v. Vaid*, [2005] 1 S.C.R. 667, 2005 SCC 30, par. 46.

²¹⁷ *Canada (House of Commons) v. Vaid*, [2005] 1 S.C.R. 667, 2005 SCC 30, par. 63-70.

²¹⁸ *Canada (House of Commons) v. Vaid*, [2005] 1 S.C.R. 667, 2005 SCC 30, par. 46.

PARLIAMENTS AND SESSIONS

1867-2015

41st Parliament

2nd Session 2013-10-16 –
1st Session 2011-06-02 – 2013-09-13

40th Parliament

3rd Session 2010-03-03 – 2011-03-26
2nd Session 2009-01-26 – 2009-12-30
1st Session 2008-11-18 – 2008-12-04

39th Parliament

2nd Session 2007-10-16 – 2008-09-07
1st Session 2006-04-03 – 2007-09-14

38th Parliament

1st Session 2004-10-04 – 2005-11-29

37th Parliament

3rd Session 2004-02-02 – 2004-05-23
2nd Session 2002-09-30 – 2003-11-12
1st Session 2001-01-29 – 2002-09-16

36th Parliament

2nd Session 1999-10-12 – 2000-10-22
1st Session 1997-09-22 – 1999-09-18

35th Parliament

2nd Session 1996-02-27 – 1997-04-27
1st Session 1994-01-17 – 1996-02-02

34th Parliament

3rd Session 1991-05-13 – 1993-09-08
2nd Session 1989-04-03 – 1991-05-12
1st Session 1988-12-12 – 1989-02-28

33rd Parliament

2nd Session 1986-09-30 – 1988-10-01
1st Session 1984-11-05 – 1986-08-28

32nd Parliament

2nd Session 1983-12-07 – 1984-07-09
1st Session 1980-04-14 – 1983-11-30

31st Parliament

1st Session 1979-10-09 – 1979-12-14

30th Parliament

4th Session 1978-10-11 – 1979-03-26
3rd Session 1977-10-18 – 1978-10-10
2nd Session 1976-10-12 – 1977-10-17
1st Session 1974-09-30 – 1976-10-12

29th Parliament

2nd Session 1974-02-27 – 1974-05-09
1st Session 1973-01-04 – 1974-02-26

28th Parliament

4th Session 1972-02-17 – 1972-09-01
3rd Session 1970-10-08 – 1972-02-16
2nd Session 1969-10-23 – 1970-10-07
1st Session 1968-09-12 – 1969-10-22

27th Parliament

2nd Session 1967-05-08 – 1968-04-23
1st Session 1966-01-18 – 1967-05-08

26th Parliament

3rd Session 1965-04-05 – 1965-09-08
2nd Session 1964-02-18 – 1965-04-03
1st Session 1963-05-16 – 1963-12-21

25th Parliament

1st Session 1962-09-27 – 1963-02-06

24th Parliament

5th Session 1962-01-18 – 1962-04-19
4th Session 1960-11-17 – 1961-09-29
3rd Session 1960-01-14 – 1960-08-10
2nd Session 1959-01-15 – 1959-07-18
1st Session 1958-05-12 – 1958-09-06

23rd Parliament

1st Session 1957-10-14 – 1958-02-01

22nd Parliament

5th Session 1957-01-08 – 1957-04-12
4th Session 1956-11-26 – 1957-01-08
3rd Session 1956-01-10 – 1956-08-14
2nd Session 1955-01-07 – 1955-07-28
1st Session 1953-11-12 – 1954-06-26

Parliaments and Sessions

21st Parliament

7 th Session	1952-11-20 – 1953-05-14
6 th Session	1952-02-28 – 1952-11-20
5 th Session	1951-10-09 – 1951-12-29
4 th Session	1951-01-30 – 1951-10-09
3 rd Session	1950-08-29 – 1951-01-29
2 nd Session	1950-02-16 – 1950-06-30
1 st Session	1949-09-15 – 1949-12-10

20th Parliament

5 th Session	1949-01-26 – 1949-04-30
4 th Session	1947-12-05 – 1948-06-30
3 rd Session	1947-01-30 – 1947-07-17
2 nd Session	1946-03-14 – 1946-08-31
1 st Session	1945-09-06 – 1945-12-18

19th Parliament

6 th Session	1945-03-19 – 1945-04-16
5 th Session	1944-01-27 – 1945-01-31
4 th Session	1943-01-28 – 1944-01-26
3 rd Session	1942-01-22 – 1943-01-27
2 nd Session	1940-11-07 – 1942-01-21
1 st Session	1940-05-16 – 1940-11-05

18th Parliament

6 th Session	1940-01-25 – 1940-01-25
5 th Session	1939-09-07 – 1939-09-13
4 th Session	1939-01-12 – 1939-06-03
3 rd Session	1938-01-27 – 1938-07-01
2 nd Session	1937-01-14 – 1937-04-10
1 st Session	1936-02-06 – 1936-06-23

17th Parliament

6 th Session	1935-01-17 – 1935-07-05
5 th Session	1934-01-25 – 1934-07-03
4 th Session	1932-10-06 – 1933-05-27
3 rd Session	1932-02-04 – 1932-05-26
2 nd Session	1931-03-12 – 1931-08-03
1 st Session	1930-09-08 – 1930-09-22

16th Parliament

4 th Session	1930-02-20 – 1930-05-30
3 rd Session	1929-02-07 – 1929-06-14
2 nd Session	1928-01-26 – 1928-06-11
1 st Session	1926-12-09 – 1927-04-14

15th Parliament

1 st Session	1926-01-07 – 1926-07-02
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14th Parliament

4 th Session	1925-02-05 – 1925-06-27
3 rd Session	1924-02-28 – 1924-07-19
2 nd Session	1923-01-31 – 1923-06-30
1 st Session	1922-03-08 – 1922-06-28

13th Parliament

5 th Session	1921-02-14 – 1921-06-04
4 th Session	1920-02-26 – 1920-07-01
3 rd Session	1919-09-01 – 1919-11-10
2 nd Session	1919-02-20 – 1919-07-07
1 st Session	1918-03-18 – 1918-05-24

12th Parliament

7 th Session	1917-01-18 – 1917-09-20
6 th Session	1916-01-12 – 1916-05-18
5 th Session	1915-02-04 – 1915-04-15
4 th Session	1914-08-18 – 1914-08-22
3 rd Session	1914-01-15 – 1914-06-12
2 nd Session	1912-11-21 – 1913-06-06
1 st Session	1911-11-15 – 1912-04-01

11th Parliament

3 rd Session	1910-11-17 – 1911-07-29
2 nd Session	1909-11-11 – 1910-05-04
1 st Session	1909-01-20 – 1909-05-19

10th Parliament

4 th Session	1907-11-28 – 1908-07-20
3 rd Session	1906-11-22 – 1907-04-27
2 nd Session	1906-03-08 – 1906-07-13
1 st Session	1905-01-11 – 1905-07-20

9th Parliament

4 th Session	1904-03-10 – 1904-08-10
3 rd Session	1903-03-12 – 1903-10-24
2 nd Session	1902-02-13 – 1902-05-15
1 st Session	1901-02-06 – 1901-05-23

8th Parliament

5 th Session	1900-02-01 – 1900-07-18
4 th Session	1899-03-16 – 1899-08-11
3 rd Session	1898-02-03 – 1898-06-13
2 nd Session	1897-03-25 – 1897-06-29
1 st Session	1896-08-19 – 1896-10-05

Parliaments and Sessions

7th Parliament

6 th Session	1896-01-02 – 1896-04-23
5 th Session	1895-04-18 – 1895-07-22
4 th Session	1894-03-15 – 1894-07-23
3 rd Session	1893-01-26 – 1893-04-01
2 nd Session	1892-02-25 – 1892-07-09
1 st Session	1891-04-29 – 1891-09-30

6th Parliament

4 th Session	1890-01-16 – 1890-05-16
3 rd Session	1889-01-31 – 1889-05-02
2 nd Session	1888-02-23 – 1888-05-22
1 st Session	1887-04-13 – 1887-06-23

5th Parliament

4 th Session	1886-02-25 – 1886-06-02
3 rd Session	1885-01-29 – 1885-07-20
2 nd Session	1884-01-17 – 1884-04-19
1 st Session	1883-02-08 – 1883-05-27

4th Parliament

4 th Session	1882-02-09 – 1882-05-17
3 rd Session	1880-12-09 – 1881-03-21
2 nd Session	1880-02-12 – 1880-05-07
1 st Session	1879-02-13 – 1879-05-15

3rd Parliament

5 th Session	1878-02-07 – 1878-05-10
4 th Session	1877-02-08 – 1877-04-28
3 rd Session	1876-02-10 – 1876-04-12
2 nd Session	1875-02-04 – 1875-04-08
1 st Session	1874-03-26 – 1874-05-26

2nd Parliament

2 nd Session	1873-10-23 – 1873-11-07
1 st Session	1873-03-05 – 1873-08-13

1st Parliament

5 th Session	1872-04-11 – 1872-06-14
4 th Session	1871-02-15 – 1871-04-14
3 rd Session	1870-02-15 – 1870-05-12
2 nd Session	1869-04-15 – 1869-06-22
1 st Session	1867-11-06 – 1868-05-22

INDEX
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