

# Toward a Guardian Senate

## A sketch

Upgraded version of a Brief based on an [online essay](#)

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*Dum spiro, spero*

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### 1. Objective: A Guardian Senate [1-0](#)

In 1999, Senator Serge Joyal wrote, "Despite all the proposals for Senate reform, there has been very little consensus as to what that institution should be and, what if anything, it should do." [1-1](#)

On May 3, 2017, during the 33<sup>rd</sup> meeting of the Special Senate Committee on Senate Reform, Prof. Adam Dodek said, "we are now at a turning point, a period of transformation, but we do not know what the end of the road will be. It is very difficult to create a transformation plan without having an idea of the outcome of this plan. We are really in this pivotal period and I think it is very difficult to create management rules for this chamber because it is the practices between senators that will create a new atmosphere in the Senate. You asked an important question, but I do not have the answer or the solution." [1-2](#)

Clearly, it is high time that the exercise the modernization committee (MDRN) is engaged in needs a clear objective that all its members agree upon. [1-3](#)

Acknowledged roles such as a legislative role and a protector of minorities role – or to put it differently as "sober, second thought" – suggest that our Senate's overarching role is that of guardianship. [1-4](#)

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## 2. Veto power [2-0](#)

At that same meeting, the 33<sup>rd</sup> MDRN meeting, Prof. Whyte put some emphasis on the thinking of John Stuart Mill (1806-1873). Mill – quoting from Stanford’s *Plato* – “was a naturalist, a utilitarian, and a liberal, whose work explores the consequences of a thoroughgoing empiricist outlook. In doing so, he sought to combine the best of eighteenth-century Enlightenment thinking with newly emerging currents of nineteenth-century Romantic and historical philosophy.” [2-1](#)

It behooves us to bear in mind that some of the best of 18th- and 19th-century thinking is not necessarily the best of 21st-century thinking. For example, Mill, who for 35 years served in the East India Company, argued that there is a fundamental distinction between civilized and barbarous peoples and justified British rule as benevolent despotism with the proviso that the end is a move from barbarism to civilization. We might well perceive criminal law as benevolent despotism. [2-2](#)

Mill argued that, “The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.” Known as the *Harm Principle*, we see a clear connection to the Golden Rule, a rule which, incidentally, is upheld by most, if not all religions. [2-3](#)

A Guardian Senate aims to serve society and individuals by applying the Harm Principle. It cannot do so without an ultimate recourse to veto power as a means for preventing harm. [2-4](#)

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## 3. Duties [3-0](#)

Senators, as stated in their writ of summons, are appointed "for the purpose of obtaining your advice and assistance in all weighty and arduous affairs which may be the State and Defence of Canada concern." In effect, senators have a duty toward the state and defence of Canada. [3-1](#)

This summons has a clearly stated objective. But what about any senator who does not satisfy this criterion? The constitution does not specify such a shortcoming as a cause for dismissal from the Senate. Besides, what measure would apply? Nevertheless, those summoned to serve as senators are, to my mind, presumed to serve as fellow guardians. I believe that this paragraph should not be glossed over, but be given serious consideration. [3-2](#)

In 1980, the Legal and Constitutional Affairs Committee's Report on Certain Aspects of the Canadian Constitution listed four roles of the Senate, all of which were complimentary to the functions of the House of Commons:

- a legislative role;
- an investigative role;
- a regional representative role;
- a protector of linguistic and other minorities role. [3-3](#)

In order to bring the writ of summons into sharper focus, I propose that the word ‘role’ be replaced by ‘duty’ and ‘function’. The Senate’s duties are:

- legislative duty;
- regional representative duty;
- protector of linguistic and other minorities duty. [3-4](#)

Although the first of these is not explicitly specified by the *Constitution Act, 1867* and the *Constitution Act, 1982*, it happens to be the one most referred to, such as by the phrase “The House of Sober, Second Thought.” This legislative duty might be broken down into: (a) compliance with the Constitution and, more generally, (b) sharpening bills’ phrasing to make them less contestable to legal challenges. As part of second thought, the Senate may suggest alterations for the benefit of Canadians generally, including matters of ethics and “values.” [3-5](#)

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#### **4. Expanding the investigative role** [4-0](#)

The investigative role – or function – is a function needed by the Senate so as to properly perform its guardianship duties. My essay “On guard in a global environment” emphasizes the need for expanding the Senate’s investigative role to **an investigative, anticipating, and critical problem-solving role**. That role serves the Senate itself as well as the elected body in their legislative roles. It should also serve our government agencies in the performance of their roles – the execution of their duties. And, let’s not overlook this, it may serve other levels of government as well, be they provincial, municipal, school boards, what have you. [4-1](#)

In the light of the above, I am assuming that our Senate’s duties include being on guard for Canadians as a whole, in a global environment. Not to quibble over words, but how else can it perform its duty as a protector of linguistic and other minorities? Henceforth, I perceive that the Senate’s anticipating function includes a continuous critical evaluation of global events – natural, political, military, and philosophical (“values”) – and appropriate contingency planning in cooperation with the other components of our government. And – as held out in the essay’s chapter “[Our Senate: A bridge between Canada and the World?](#)” – foreign governments, possibly *via* their Senates. [4-2](#)

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#### **5. Workload** [5-0](#)

Expanding the Senate’s investigative function to include anticipation (or super-forecasting) and the ensuing need for solving ever more complex problems requires additional manpower. Prof. John Whyte, from his point of view, also likes to see a bigger Senate. [5-1](#)

Because (a) a bigger Senate calls for constitutional change and (b) I believe that constitutional changes better be avoided until a modernizing Senate has gathered sufficient operational experience, I am suggesting appointments of senators *pro-temp*. These would be mostly people with professional expertise to be remunerated for time attended (*cf.* expertise in the U.K.’s House of Lords). [5-2](#)

Additionally, the Senate might employ additional staffers. [5-3](#)

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## 6. Representative duty & representative function [6-0](#)

Provincial governments, insofar they wish to influence federal policy, have come to do so by applying their persuasive power directly on the federal executive rather than using the Senate as an intermediary. Reality therefore is that there is hardly any call, if any call at all, for senators to perform representative duties as per the constitutional 24-24-*etc.* formula. No immediate need then to tinker with that formula, which can only invite raised hackles. [6-1](#)

What I am labelling here as ‘representative function’ is an entirely different kettle of fish; it involves a number of senators – 38, say – taking the *vox populi* to the Senate floor and/or Senate committees unfiltered by Canadians’ elected representatives. My personal experience is that Members of Parliament have too little time available for meeting and acting on the concerns of those residing in their ridings. They, it appears to me, rather talk to those residents with a strong streak of selling themselves or re-election. And if they listen, they quickly forget. My essay’s chapter “[Senators seeking to understand citizens' concerns \(‘Citizens' representatives’\)](#)” introduces that representative function in the way I perceive it, but the next paragraph provides some further elaboration. [6-2](#)

Citizens’ representatives serve to gain a deep, sympathetic understanding of Canadian society throughout its social strata. Theirs is to converse with individuals as well people deeply engaged in community services: social, educational, health, religious, economic, recidivist, *etc.* They converse with mothers, policemen, bank tellers, food bank volunteers, nurses, school teachers, prostitutes, shop owners, farmers, and so forth. Their role is not to consult, theirs is to collectively take the pulse of the nation – desires, worries, needs, interests – and caucus on these matters, thence to enhance empathy for popular feelings not only within our Senate, but *via* the Senate within government as a whole. [6-3](#)

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## 7. Committees as think tanks [7-0](#)

My essay brings to the fore several thoughts about how the Senate may better execute that expanded investigative role. Those include, although not properly expressed this way, the remodeling of Senate committees into Senate teams. For those teams to function they need both appropriate leadership and best available range of expertise and/or modes of thinking. To make this possible, broadening the range of expertise and modes of thinking should be actively pursued. Needed further is the acquisition of the best available modes of tackling the increasingly more complex problems thrust upon us by an often-threatening global environment. [7-1](#)

The essay makes a number of references to people especially knowledgeable about teams for solving problems. Here is a list for quick reference: [7-2](#)

[Australian Public Service](#) published "Tackling Wicked Problems" (in 2012).

[Douglas Engelbart](#) (died 2013), researcher and inventor of the computer display screen and mouse, pioneer of digital co-operative authoring as a means of augmenting human intellect.

[James R. Fisher, Jr.](#), organizational psychologist.

[Dan Gardner](#) consultant to the PMO and coauthor with Philip E, Tetlock of *Superforecasting: The Art and Science of Prediction* (2015).

[Thomas Homer-Dixon](#), author of *The Ingenuity Gap* (2000).

[Adam Kahane](#), supports collaborative efforts to solve complex problems, cofounder of Reos Partners.

[Daniel Kahneman](#), Nobel-Prize winner, notable for his work on the psychology of judgment and decision-making.

[Scott E. Page](#), professor of complex systems, political science, and economics.

[Jeffrey Sachs](#), University Professor, Economist and Director of the Earth Institute, Columbia University.

[Ken Tencer](#), CEO, Spyder Works, a branding and innovation company. [7-3](#)

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## **7a Cognitive diversity** [7a-0](#)

Even though the word ‘diversity’ is much bandied about, it typically refers to identity diversity, such as differences in gender or race, *etc.* However, the kind of diversity needed for solving problems is cognitive diversity and/or functional diversity, a wide range of professional expertise. [7a-1](#)

Cognitive diversity includes perspectives, or the way we encode problems; heuristics, the tools and tricks used to solve problems; categories, the way we divvy up the world into similar things; models, ways of thinking about causal relationships between categories. It is cognitive diversity rather than identity diversity that makes diverse groups more innovative and productive. Identity diversity, to be sure, stemming from training, experiences, and interests are important drivers for cognitive diversity; they contribute to how people see the world differently and how people think differently about specific problems. [7a-2](#)

I like to exemplify my notion of senators expert in a field by comparing them with old-fashioned family doctors or medical GPs. They would be immediately available as senators, participating in all things senators do. In addition, they may refer cases that call for finer-grained expertise (*cf.* cardiologists, urologists, what-have-you) as needed. And even within those specialties there are sub-specialties that might be sought out for their contributions. Such a sequence of consultations, it seems to me, is about impossible to duplicate by having senators directly contacting those experts ("witnesses"), then write a report with recommendations for a committee or the Chamber at large who then debate details. Clearly, the amazing brain power of the Senate needs further augmentation to make the Senate better embrace "all walks of life." [7a-3](#)

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## **7b. Leadership** [7b-0](#)

Teams for the solving of problems need, in addition to diverse expertise, a leader who can provide the big picture and co-ordinate all of the players because they, quoting Ken Tencer, “work outside of what they know and do every day. Understanding how everything fits together isn’t a part of their job descriptions.... First you bring people together in the same room, and then you bring them together on the same page.” [7b-1](#)

My essay suggests that there shall be a senator who is experienced in creating and managing research teams. The essay overlooked mentioning that there is the need for developing team leadership. It is

hard to perceive that the current way of selecting committee membership and chairs will cut the mustard. [7b-2](#)

To give an everyday example: If you want your bathroom to be remodelled, you call an a contractor who, in turn, forms a team of a plumber, a carpenter, an electrician, a tile-layer, a painter to do the job with all the while you deciding on the bathroom equipment to be installed and how the walls are to be finished. You do not, ordinarily, separately consult individual trades people. [7b-3](#)

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### **7c. Cooperative authoring** [7c-0](#)

Typically we think of problem-solving teams of people gathering together for solving some problem. Continuing their work some other time may well provide time for additional research and reflection. [7c-1](#)

My essay suggests an alternative approach: digital collaboration in the producing of a report. This does away with the need for scheduling meeting times and locations. Furthermore, it allows time for developing a better understanding among the members of the team. [7c-2](#)

I suggest that this approach be given an opportunity to develop from experience gained. Probably best is to commission a suitable body – a university department, say – to study and test it in detail and make recommendations accordingly. [7c-3](#)

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### **7d. Complex-problem solving** [7d-0](#)

The kind of complexity I have in mind is perhaps best demonstrated by referring to [Part II](#) of my essay. It is a set of notes on a number of issues that need to be dealt by a guardian Senate. It would be a good exercise to take any such issue, view it in the context of other issues that relate to it, consider the kinds of expertise needed by some problem-solving team, and to consider what approaches to the solving of complex problems would best serve the objective. And all this while bearing in mind that many actions have unintended consequences. This leads to my thinking that teams tasked with looking into specific issues themselves belong to an overarching team tasked with avoiding solutions that create problems elsewhere. [7d-1](#)

Quoting the late Eric Sevareid, “The chief cause of problems is solutions.” Taking this caveat to a global scale: the Treaty of Versailles provided the kindling for World War II. The way business is conducted – especially in the highly competitive global environment where “nice guys finish last,” the influence of “black money,” the effects of internet crime, *etc.* – is providing the kindling for uncontrollable, massive popular reaction. We have been feeling the tremors for some time. [7d-2](#)

My essay provides a few comments about this topic, but, as before, a first step would be to commission a qualified body to delve into how best to approach complex-problem solving. [7d-3](#)

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## **7e. Assigning tasks to external bodies** [7e-0](#)

Canada has about 40 think tanks, many very well known, but all mostly in the one-issue category. In addition there are available deeply thought-out reports from U.S. think tanks such as "Global Trends 2025: A Transformed World" and "Global Trends 2030: Alternative Worlds" issued by the Directorate of National Intelligence and the National Intelligence Council in 2008 (ref.) and by the NIC in 2012. The latter two are models of reporting, complete with executive summaries. [7e-1](#)

Clearly, proper attention needs to be given to the managing of a complex of Senate committees and external think tanks. My essay recommends the appointment of an experienced executive who himself, or herself, should have been summoned to serve as a senator and ranks at the level of the traditional Speaker. [7e-2](#)

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## **7f. Whence from here?** [7f-0](#)

My essay and this Brief go way beyond what the MDRN has been engaged in up to this time. I have made an effort to put a fair amount of thought, time, and resources into it. I have also invited critical comments by senators and professors, but, with one exception, promises to me have not been kept. I believe the overall view given here is correct, but details to be open to improvement. Many witnesses are yet to be consulted. [7f-1](#)

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## **8. Healing our anaemic democracy** [8-0](#)

Our democracy is in peril. Neither the electorate nor the representatives they elect are up to the task of bringing it back to health. To avoid unnecessary repetition, I refer to my essay's brief [chapters](#) on this subject matter. [8-1](#)

I am suggestion that the Privy Council or the Lower House commands or asks our Senate to undertake a study for the purpose of advancing a remedial process – a highly complex problem! [8-2](#)

The present government made a false start by promising and looking into electoral reform. Add this to such thinking as lowering the voting age, it should be evident that the roots of the problem go deeper and require careful attention to detail. Whether this can be accomplished in time before the next federal election is a moot point. [8-3](#)

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## **9. Chamber debates vs think tank deliberations** [9-0](#)

When a person speaks, the foundation of what is said are formed in the subconscious – grammar, words, ingrained beliefs. When a person listens, what is heard becomes coloured by ingrained beliefs and desires. It is well, therefore, that time is taken to allow for careful contemplation. I doubt that verbal debates – time limits; bells ringing; rushing from one committee meeting to another – allow for sufficient contemplation. Fortunately, the debates in the Red Chamber are in this respect conducted at a

higher level than those in the Commons. The level of debate in the Commons may well profit from an appropriate interaction with the Senate, notably by advance advice from a Senate that thinks ahead, a Senate that cultivates foresight. [9-1](#)

A number of MDRN sessions have been devoted to a structure for debates. Traditionally this has been adversary: Liberals vs Conservatives. With the advent of politically independent senators, this structure is being challenged and thought has been given to caucuses other than political becoming the challengers of a given proposition. Those caucuses would vary according to senators' interests in the topics to be debated. For example, I proposed that the "citizens' representative" senators form a caucus. [9-2](#)

As for debates in problem-solving committees, there should be no adversary structure at all. Committee members participate to co-operatively solve problems and, hence, should be open-minded to whatever is being advocated in committee (think tank) debates. Surgeons are aloof to the political affiliation of whomever they put their scalpel into. [9-3](#)

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## 10. Operatonal efficiency [10-0](#)

Throughout the three and a half years I have been contemplating the value of the Senate to our country, it has struck me that enormous amounts of time are being wasted and cannot but unnecessarily wear down the energy of our senators. [10-1](#)

For example, the so-called second reading of Bill S-8 during the 40th Parliament, *An Act respecting the selection of senators*, was a debate that lasted for ten sessions stretched over a period from April 29, 2010 through March 10, 2011. From reading the *Hansard* it is quite obvious that the issue at hand was very much subject to the Canadian Constitution. In fact, that came up time and again. But sound legal insight was absent during the first four sessions. It was when the fifth session began that Senator Joyal critiqued Bill S-8 in the light of the Constitution. Had his mind and the minds of other senators involved in the debate been properly integrated (commonly known as "consulting") at an earlier point in time, both Houses could have been saved an enormous amount of time and effort that could have been put to better use. [10-2](#)

Much time has been wasted during the open meetings of the MDRN committee on repetitive assertions, notably the reading out by witnesses of their Briefs that already had been provided to the committee members. [10-3](#)

May I suggest that an outside, well-qualified body be commissioned to look into this matter? [10-4](#)

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## 11. Constitutional change [11-0](#)

One device to minimize harm is second thought, to think things through thoroughly before proceeding with some action. This includes advocacy for constitutional change. It seems best to begin the modernization of our Senate on a tentative basis, to recognize that not all will run perfectly from the word go. Expect the need for making course corrections. And then, only then when all seems well to



the Canadian people as a whole, begin the process of bringing about any desired constitutional changes.

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