



Governor General David Johnston reads the Speech from the Throne in the Senate Red Chamber on December 4. The Trudeau government has created an Independent Advisory Board to recommend Senate appointments to the Prime Minister. Adam Scotti photo

# The Political Fire Walking of Senate Reform

Adam Dodek

*Both Stephen Harper and Justin Trudeau believed that they had to change the way senators were appointed. That is where their agreement on Senate reform ended. Prime Minister Harper adopted an all-or-nothing approach, trying to radically alter the Senate while still controlling its internal affairs. Prime Minister Trudeau has embraced a plan to reform the Senate from the outside as well as the inside. From the outset, he faces a two-term proposition of playing the math and fighting an ingrained institutional culture.*

The Trudeau government's Senate reform plan is clearly a work in progress. It is emerging in pieces, apparently without much consultation with the Senate itself.

In December, Government House Leader Dominic LeBlanc and Minister of Democratic Institutions Maryam Monsef announced various components of what will eventually be the Trudeau plan for Senate ap-

pointments. They have also publicly floated several trial balloons such as having ministers appear before the Senate for questioning and overhauling the Senate's rules.

In contrast, the Harper government's Senate reform plan was clear. It was also grand (if not grandiose), unilateral and ultimately unconstitutional, as declared by the Supreme Court of Canada in April 2014. The Harper government's response was to turn its back on Senate reform, take its ball and walk away. For a decade, it displayed absolutely no interest in internal reform of the Senate. The Harper government did not want a better Senate, it demanded an entirely different Senate. This radical reformist approach made many small-c conservatives as well as some capital-c Conservatives deeply uncomfortable. A more anti-Burkean approach could not be imagined.

Prime Minister Justin Trudeau and his advisers are clearly absorbing some of the lessons that the Senate taught the Harper Conservatives over the past decade, among them that it cannot simply be ignored in the hope that Canadians won't notice its bad behaviour.

Both Harper and Trudeau saw the legitimacy of the Senate as the problem. However, their diagnoses of the cause of the problem are fundamentally different. For Harper and his Reform-based supporters, the problem with the Senate was its undemocratic character. The solution therefore was to make senators elected and establish term limits. For Trudeau and those around him, the Senate's problem is politics itself. They want to take politics out of the Senate. Or perhaps more accurately, they want to take the Senate out of Liberal Party politics.

In January 2014, Justin Trudeau expelled all Liberal senators from the party's caucus. "There are no more Liberal senators," Trudeau declared. It was a bold move that demonstrated leadership and succeeded in neutralizing the Senate as an issue for candi-

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date Trudeau. But it was a move that was not thought out as to its impact on a future-Prime Minister Trudeau. With the election 22 months in the future, that was understandable.

Now, the Senate is Justin Trudeau's problem.

**H**aving diagnosed the Senate's problem as partisanship, Trudeau is set to fix that. The first two moves were contradictory: on the same day that he announced an independent advisory body to oversee a merit-based, non-partisan appointment process, Trudeau made a very partisan appointment for Speaker of the Senate. The appointment of George Furey from Newfoundland and Labrador was a political necessity, but it was deeply unpopular with senators who had expressed their desire to elect their own Speaker, as their House of Commons counterparts are able to do (the Constitution provides that the Speaker of the House is elected and the Speaker of the Senate is appointed by the Governor General, on the advice of the cabinet). Facing a Conservative majority in the Senate, the Trudeau government could not permit this. They were also unwilling to allow the "independent Liberals" to nominate one of their own because that would have meant recognizing their former caucus compatriots, which they were also not prepared to do. In the event, the PM maintained the very unreformed tradition of choosing the Speaker of the Senate himself.

The proposed Independent Advisory Board draws inspiration from the successful Advisory Committee on Vice-Regal Appointments established by Harper. It also shares features with some provincial judicial appoint-

ments advisory committees, such as Ontario's, which submits a shortlist of recommended candidates to the Attorney General for judicial appointment. But there are many questions about how this committee will operate, such as whether it will interview candidates.

The next step in the process will be the appointment of a "government representative" (but not a "Government Leader") from among five new independent senators to be appointed in January. How this new senator, completely unfamiliar with the procedures of the Red Chamber, will steer government legislation through a Senate with no government members but with a majority of opposition members, remains to be seen.

In actuality, the Trudeau government's goal of eradicating partisanship is likely both unobtainable and undesirable.

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It is unobtainable at least in the near term due to numbers. There are 105 seats in the Senate. The Conservative Party currently has 47 members,

the formerly-Liberal senators number 29 and there are 7 independents. That leaves 22 vacancies for Trudeau to fill. Those 47 Conservative senators are the main stumbling block to eradicating partisanship in the Senate. But Trudeau should not underestimate the desire of the 29 formerly-Liberal senators to remain Liberals. Their response to Trudeau's January 2014 announcement was not one of "liberation"; they did not abandon the Liberal caucus and choose to sit as independents. They continued to caucus as a group, although they no longer felt bound to vote as a bloc. They were the opposition, so the stakes were low.

In attempting a Senate makeover, Trudeau is confronted by a demographic challenge. Attrition—which is often a policy maker's best friend—will not assist Trudeau as much as could be expected. Harper's senators are young. Many of those 47 Conservative Senators will be around for decades. The senators that Harper appointed were very different in vintage than those appointed by his predecessor, Jean Chrétien, who often appointed people in their late 60s to the Red Chamber.

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By my count, between 2016 and 2019, there will only be 24 additional vacancies, of which only 10 will be Conservative retirements. So, Trudeau will only be able to appoint 46 “new” senators, still leaving a majority of old-school partisans in the Red Chamber. Between 2020 and 2023, there are only another 18 mandatory retirements. Which means

Trudeau's plan for Senate reform is at least a two-term project.

The other challenge is political culture. It will take more than rule changes and appointing independent senators to take the partisanship out of the Senate. Trudeau may not want the Liberal senators but they stubbornly cling to their identity and affiliation as Liberals. They have been expelled from the Liberal Party's caucus but they still caucus together.

It will be interesting to see what happens with the 22 “independent” appointments that the Prime Minister is likely to make in 2016. Politics is a team sport; it is not long distance running. There are only so many mavericks who have the personality to be lone wolves. Most of us want and like to be part of a group. Especially those who are attracted to public service.

Eradicating partisanship may also be undesirable. What the Trudeau government will have to come to grips with is that the Senate is not an expert panel of independent, diverse voices, although it may serve this function at times, and serve it well. The Senate is a critical and constitutional part of the day-to-day process of legislating in Canada. It is needed to pass the government's legislation.

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The benefit of now-reviled partisanship is that it enables the organization of individual members into different permanent blocs that make conducting business more manageable. In short, partisanship facilitates the efficient transaction of legislative business. Of course, that efficacy can go to extremes, stifle debate and prevent the careful consideration of legislation. But the tension between independence and efficacy is real.

As the Trudeau government faces the challenge of reforming the Senate over the next few years and possibly beyond, it may come to wish that the Supreme Court had been more flexible on the Harper plan for senatorial term limits. That might have made things much easier. For Trudeau, the Senate will be a continuous work in progress. **P**

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