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Legislative Summary

BILL S-2:
AN ACT TO AMEND THE PARLIAMENT OF CANADA ACT AND TO MAKE CONSEQUENTIAL AND RELATED AMENDMENTS TO OTHER ACTS

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For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

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LEGISLATIVE SUMMARY OF BILL S-2: AN ACT TO AMEND THE PARLIAMENT OF CANADA ACT AND TO MAKE CONSEQUENTIAL AND RELATED AMENDMENTS TO OTHER ACTS

1 BACKGROUND

Bill S-2, An Act to amend the Parliament of Canada Act and to make consequential and related amendments to other Acts, was introduced in the Senate by Senator Marc Gold and read for the first time on 24 November 2021.[1]

The bill proposes amendments to provisions of the *Parliament of Canada Act*[2] (the Act) on additional annual allowances paid to senators who occupy certain positions. It also proposes amendments to the Act that permit these senators to change the membership of the Standing Senate Committee on Internal Economy, Budgets and Administration (CIBA), and it requires that they be consulted on the appointment of certain officers and agents of Parliament. These senators are: the Leader of the Government in the Senate or the Government Representative in the Senate, the Leader of the Opposition in the Senate and the leader or facilitator of every other recognized party or parliamentary group in the Senate. The bill further proposes a consequential amendment to the *Members of Parliament Retiring Allowances Act*, as well as related amendments to several other Acts, including the *Access to Information Act*, the *Emergencies Act* and the *Lobbying Act*.

Bill S-2 is identical to Bill S-4 which was introduced in April 2021, during the 2nd Session of the 43rd Parliament, by Senator Marc Gold.[3] Bill S-4 was passed by the Senate in June 2021 and it died on the *Order Paper* when Parliament was dissolved in August 2021.

1.1 CHANGES IN THE COMPOSITION OF THE SENATE

The composition of the Senate of Canada has changed significantly over time. Until recently, the vast majority of senators were members of one of two political parties – Liberal and Conservative (formerly Progressive Conservative) – which have alternated in government and as Official Opposition.

The Senate rules, procedures and resource allocations have been modified to reflect the new realities in the Senate and to accommodate the growing number of senators who are not affiliated with a recognized party. In 2017, the *Rules of the Senate of Canada* and the *Senate Administrative Rules* were amended to include recognized parliamentary groups of at least nine senators, formed for parliamentary purposes.[4] Specifically, the *Rules of the Senate of Canada* now recognize groups of senators

other than by affiliation with a political party and give procedural rights to these groups and their leader or facilitator.[5] As well, the *Senate Administrative Rules* now provide the caucuses of recognized parliamentary groups with the same resources as those provided to caucuses of recognized parties.[6]

Today, the number of senators who are unaffiliated with a recognized party has grown considerably. As of November 2021, one recognized party (the Conservative Party of Canada) and three recognized parliamentary groups (the Independent Senators Group, the Progressive Senate Group and the Canadian Senators Group) exist. Some senators, including the Speaker and the Government Representative, sit as non-affiliated.

Although the Act presently does not define a "recognized party" or "recognized parliamentary groups," attempts have been made in the past to amend the Act to provide a definition of a "recognized party."[7] However, the Act does recognize the presence of the government, the opposition and recognized parties, and it gives them and their leadership certain statutory rights. For example, section 20.1 of the Act stipulates that consultation must be undertaken with the leader of every recognized party in the Senate before the appointment of a Senate Ethics Officer. Furthermore, under sections 62.3(1)(a) to 62.3(1)(f.4) of the Act, additional annual allowances are to be paid to senators who occupy certain positions of leadership.

Along with these changes in the composition of the Senate, the title "Leader of the Government in the Senate" was restyled in March 2016 when Prime Minister Justin Trudeau appointed an independent senator as the Representative of the Government in the Senate. A few months later, two more independent senators previously affiliated with political parties joined the Government Representative Office, one as its legislative deputy and the other as government liaison.[8] No changes were made to the Act or the *Rules of the Senate of Canada* to reflect these designation changes. However, in a 2016 ruling, the Speaker of the Senate quoted a letter from the Representative of the Government in the Senate announcing which senators were to serve as the Deputy Leader of the Government in the Senate and as the Government Whip, and that these positions were to be styled "Legislative Deputy to the Government Representative" and "Government Liaison," respectively. The Speaker ruled that allowing each leadership group in the Senate the freedom and flexibility to use titles other than those established by the *Rules of the Senate of Canada*, within reasonable limits, is consistent with past parliamentary practice and does not directly impact parliamentary proceedings.[9]

1.2 ADDITIONAL ANNUAL ALLOWANCES AND THE RIGHTS OF OTHER RECOGNIZED PARTIES OR RECOGNIZED PARLIAMENTARY GROUPS

Additional annual allowances are paid to parliamentarians along with their sessional allowances. A sessional allowance is the regular remuneration equivalent to a salary that every parliamentarian receives. The first statutory additional annual allowance in the Senate was in 1947, when the *Senate and House of Commons Act* (now the *Parliament of Canada Act*) was amended to provide an additional annual allowance to the Leader of the Government ($7,000) and the Leader of the Opposition ($4,000) in the Senate.[10]

For the House of Commons, the Act currently provides that additional annual allowances are to be paid to members who occupy leadership positions in the government, the opposition and "a party that has a recognized membership of twelve or more persons in the House."[11] In the Senate, however, only senators who occupy leadership positions in the government and the Official Opposition – the leader, deputy leader, whip, deputy whip and caucus chair – receive an additional annual allowance.

In 2001, the Standing Senate Committee on Rules, Procedures and the Rights of Parliament (RPRD) presented its seventh report on the recognition of a third party in the Senate. It recommended, among other things, that the government be asked to propose amendments to the Act to reflect the recognition of other parties pursuant to the *Rules of the Senate of Canada* and noted to that effect that the Act should be amended to provide for additional allowances to be paid to the leader, deputy leader and whip of other recognized parties.[12]

Later, in 2018, the Special Senate Committee on Senate Modernization (MDRN) noted in its 2018 report that "[n]o leadership positions within other parliamentary groups or parties are recognized under the *Parliament of Canada Act* for the purpose of receiving additional allowances."[13]

MDRN also noted in its report that, under the Act, the Leader of the Government in the Senate and the Leader of the Opposition in the Senate may change the membership of CIBA, yet no other leader or facilitator of a parliamentary party or group has this authority. Further, regarding the requirement to consult prior to the appointment of a Senate Ethics Officer, MDRN pointed out that the Act makes no mention of the leaders or facilitators of other parliamentary groups or parties, and that the language used in the Act regarding consultation requirements before the appointment of a Parliamentary Budget Officer is not consistent with the language used in the *Rules of the Senate of Canada* and the *Senate Administrative Rules*.[14]

MDRN thus recommended that RPRD undertake a review to recommend amendments to the *Parliament of Canada Act* "to ensure that all recognized parties and recognized parliamentary groups in the Senate are treated equally."[15] MDRN provided the following rationale for its conclusions:

> [These changes] seek to ensure that rules or procedures that were developed when the Senate was composed largely of senators affiliated with either the Government or the Opposition no longer limit the right of any parliamentary group, party or senator to participate in the business of the Chamber.
>
> In many cases, the Senate has already made adjustments within these rules and procedures to accommodate new parliamentary groups and new leadership configurations, but it is time to make these adjustments more certain.[16]

2 DESCRIPTION AND ANALYSIS

Bill S-2 consists of 17 clauses. Key clauses are discussed in the following section.

The bill amends the *Parliament of Canada Act* (the Act) and makes consequential and related amendments to other Acts to reflect the new composition of the Senate, among other things.

2.1 AMENDMENTS TO THE *PARLIAMENT OF CANADA ACT*

2.1.1 Changing the Membership of the Standing Senate Committee on Internal Economy, Budgets and Administration (Clause 1)

Currently, section 19.1(3) of the Act provides that, in accordance with the *Rules of the Senate of Canada*, the Leader of the Government in the Senate and the Leader of the Opposition in the Senate may change the membership of the Standing Senate Committee on Internal Economy, Budgets and Administration (CIBA), including during periods of prorogation or dissolution. Under this section, no other leader or facilitator of a parliamentary group or party has this authority. Clause 1 of Bill S-2 amends section 19.1(3) of the Act to provide that the Government Representative in the Senate and the leader or facilitator of every other recognized party or parliamentary group in the Senate may also change the membership of CIBA.

2.1.2 Consultation Before the Appointment of a Senate Ethics Officer and a Parliamentary Budget Officer (Clauses 2 and 6)

Under current section 20.1 of the Act, the leader of every recognized party in the Senate must be consulted before a Senate Ethics Officer is appointed. Clause 2 of Bill S-2 amends section 20.1 to provide that, before appointing a Senate Ethics

Officer, the Governor in Council must consult with the Leader of the Government in the Senate or Government Representative in the Senate, the Leader of the Opposition in the Senate and the leader or facilitator of every other recognized party or parliamentary group in the Senate.

Furthermore, section 79.1(1)(a) of the Act currently stipulates that the Governor in Council must consult with the Leader of the Government in the Senate, the Leader of the Opposition in the Senate and the leader of every caucus and of every recognized group in the Senate before appointing a Parliamentary Budget Officer. Clause 6 of Bill S-2 amends the wording of section 79.1(1)(a), creating the new title "Government Representative in the Senate." The wording of this section is also amended to reflect the terminology that groups in the Senate have chosen, namely "Leader or Facilitator" of a recognized party or parliamentary group in the Senate, making it consistent with the terminology used in the *Rules of the Senate of Canada*.

2.1.3 Additional Annual Allowances for Senate Leadership (Clauses 3 to 5)

At present, section 62.3(1) of the Act provides annual allowances for certain leadership positions in the Senate, including the Leader of the Government in the Senate and the Leader of the Opposition in the Senate, as well as the deputy leaders, whips, deputy whips of the government and opposition, and caucus chairs of the government and opposition. The Act does not provide annual allowances for senators who hold other positions, such as leader or facilitator of a recognized party or parliamentary group.

Clause 3 of Bill S-2 adds new section 62.4(1) to the Act; it stipulates that, beginning on 1 July 2022, additional annual allowances will be paid to senators occupying the following positions in the Senate:

- the Leader of the Government or the Government Representative ($90,500), the Leader of the Opposition ($42,800), and the leader or facilitator of the largest ($42,800), second-largest and third-largest recognized party or parliamentary group ($21,300 each);[17]
- the Deputy Leader of the Government or Legislative Deputy to the Government Representative ($42,800), the Deputy Leader of the Opposition ($27,000), and the Deputy Leader or Deputy Facilitator of the largest ($27,000), second-largest and third-largest recognized party or parliamentary group ($13,400 each);
- the Government Whip in the Senate or Government Liaison ($12,900), Opposition Whip ($7,400), and Whip or Liaison of the largest ($7,400), second-largest and third-largest recognized party or parliamentary group ($3,700 each);

- the Deputy Government Whip or Deputy Government Liaison ($6,400), the Deputy Opposition Whip ($3,200) and the Deputy Whip or Deputy Liaison of the largest ($3,200), second-largest and third-largest recognized party or parliamentary group ($1,500 each); and
- the Chair of the Caucus of Government ($7,400) and the Chair of the Caucus of the Opposition ($6,400).

New section 62.4(2) and amended sections 67 and 67.1 of the Act ensure that the amounts set out in section 62.4(1) are adjusted annually, in keeping with the index of the average percentage increase in base-rate wages published annually by Employment and Social Development Canada (clauses 3 and 4).

Clause 5 of Bill S-2 amends section 71.1(1) of the Act to include the new additional annual allowances in the calculation of annual disability allowances for senators who resign for reasons of disability.

2.2 CONSEQUENTIAL AMENDMENTS, RELATED AMENDMENTS AND COMING INTO FORCE

2.2.1 Consequential Amendment to the *Members of Parliament Retiring Allowances Act* (Clause 7)

The *Members of Parliament Retiring Allowances Act* (MPRAA)[18] governs the retiring allowances paid to eligible senators and members of the House under the Members of Parliament Pension Plan (the Plan). Membership in the Plan, funded by the contributions of Plan members and the government, is mandatory for senators and members of the House.[19]

Clause 7 of the bill amends the definition of "annual allowance" in the MPRAA to include the additional annual allowances provided for in new section 62.4 of the Act. As such, the new additional annual allowances in the bill are included in the calculation of senators' pensionable earnings, and the amount they are required to contribute to the Plan is adjusted accordingly. Thus, with this amendment, the senators' retirement allowances reflect the increased amount some senators earn as a result of the amendments to the Act.

2.2.2 Related Amendments (Clauses 8 to 16)

Currently, under certain Acts of Parliament, the Governor in Council must consult with the leader of every recognized party in the Senate before appointing officers or agents of Parliament.

The bill makes related amendments to other Acts to require Governor in Council to consult with the Leader of the Government in the Senate or Government Representative in the Senate, the Leader of the Opposition in the Senate and the leader or facilitator of every other recognized party or parliamentary group in the Senate before appointing the following officers or agents of Parliament:

- the Information Commissioner under section 54(1) of the *Access to Information Act* (clause 8);
- the Auditor General of Canada under section 3(1) of the *Auditor General Act* (clause 9);
- the Privacy Commissioner under section 53(1) of the *Privacy Act* (clause 10);
- Commissioner of Official Languages for Canada under section 49(1) of the *Official Languages Act* (clause 12);
- Commissioner of Lobbying under section 4.1(1) of the *Lobbying Act* (clause 13); and
- Public Sector Integrity Commissioner under section 39(1) of the *Public Servants Disclosure Protection Act* (clause 14).

Clauses 15 and 16 of the bill respectively amend the wording of section 5(2) of the *National Security and Intelligence Committee of Parliamentarians Act* and sections 4(2)(a) and 4(2)(b) of the *National Security and Intelligence Review Agency Act* to include the new position title "Government Representative in the Senate" and designation "Leader or Facilitator" of a recognized party or parliamentary group.

Thus, amended section 5(2) of the *National Security and Intelligence Committee of Parliamentarians Act* requires the Prime Minister to consult with the Leader of the Government in the Senate or Government Representative in the Senate, the Leader of the Opposition in the Senate and the leader or facilitator of every other recognized party or parliamentary group in the Senate before a senator is appointed to the National Security and Intelligence Committee of Parliamentarians (clause 15 of the bill).

Similarly, amended sections 4(2)(a) and 4(2)(b) of the *National Security and Intelligence Review Agency Act* provide that the Leader of the Government in the Senate or Government Representative in the Senate and the Leader of the Opposition in the Senate, as well as the leader or facilitator of every recognized party or parliamentary group in the Senate are to be consulted before a member is appointed to the National Security and Intelligence Review Agency (clause 16 of the bill).

Clause 11 of the bill also changes the composition of the Parliamentary Review Committee established under section 62(2) of the *Emergencies Act* to review the exercise of government powers after an emergency is declared; the amendments reflect the new leadership structures in the Senate.

2.2.3 Coming into Force (Clause 17)

Clause 17(1) of Bill S-2 states that the bill comes into force on a day to be fixed by order of the Governor in Council.

Since passing this bill would result in the appropriation of moneys, clause 17(2) of the bill stipulates that both a royal recommendation and the appropriation of moneys by Parliament are required before it comes into force.

NOTES

1. Bill S-2, An Act to amend the Parliament of Canada Act and to make consequential and related amendments to other Acts, 44th Parliament, 1st Session (first reading version, 24 November 2021).
2. *Parliament of Canada Act*, R.S.C. 1985, c. P-1.
3. Bill S-4, An Act to amend the Parliament of Canada Act and to make consequential and related amendments to other Acts, 43rd Parliament, 2nd Session (third reading version, 1 June 2021).
4. Senate, *Journals*, 11 May 2017; and Senate, *Journals*, 21 June 2017.
5. For example, on 11 May 2017, the Senate concurred with the Seventh report of the Standing Senate Committee on Rules, Procedures and the Rights of Parliament (RPRD), thereby amending the *Rules of the Senate of Canada* with respect to "recognized parliamentary groups." For example, rights-related senators' statements and tributes and speaking time during debate are now substantially similar to those of a recognized party and its leadership. See Senate, RPRD, "Seventh Report: Amendments to the Rules – Recognized parties and recognized parliamentary groups," *Reports*.
6. On 21 June 2017, the Senate concurred with the Fifteenth report of the Standing Committee on Internal Economy, Budgets and Administration (CIBA), thereby amending the *Senate Administrative Rules* with respect to the resources provided to caucuses of recognized parliamentary groups. See Senate, CIBA, "Fifteenth Report: Senate Administrative Rules (Caucuses)," *Reports*.
7. For example, Bill C-273 proposed to amend the *Parliament of Canada Act* to establish that, in order to be a recognized political party, a party must consist of 10% or more of the total membership of the House of Commons with representation from at least three provinces or territories, and that members of other caucuses are to be regarded as independents. The bill, however, did not pass second reading. See Bill C-273, An Act to amend the Parliament of Canada Act (recognized political parties), 37th Parliament, 1st Session.
8. For a timeline of the events that transpired during this period, see Senate GRO, "November 2019: New Senate groups," *A Brief History of the Canadian Senate: The 150-year journey towards modernizing the Upper Chamber*.
9. Senate, George Furey, Speaker, *Speaker's Ruling – Point of Order by Senator Carignan on the Government Deputy Leader and Government Whip in the Senate*.
10. Library of Parliament, "Bill 443. – An Act to amend the Senate and House of Commons Act," *House of Commons Bills, 20th Parliament, 3rd Session: 2-457*," Canadian Parliamentary Historical Resources, Database, 9 July 1947, pp. 89884 and 89885.

11. *Parliament of Canada Act*, R.S.C. 1985, c. P-1, ss. 62.3(1)(h), 62.3(1)(j), 62.3(1)(j.1), 62.3(1)(l), 62.3(1)(m) and 62.3(1)(o). However, these party leaders do not include the Prime Minister and the Leader of the Opposition. The provisions on additional annual allowances for members of the House occupying leadership positions in a party with a recognized membership of 12 or more persons were added in 1963, following the adoption of Bill C-91, An Act to amend the Senate and House of Commons Act and the Members of Parliament Retiring Allowances Act, which amended the *Senate and House of Commons Act* (now the *Parliament of Canada Act*) accordingly.

12. Senate, RPRD, "Seventh Report: Recognition of a Third Party in the Senate," *Reports*.

13. Senate, Special Committee on Senate Modernization, *Reflecting the New Reality of the Senate*, Report, December 2018, p. 10.

14. Ibid., pp. 10–11.

15. Ibid., p. 9.

16. Ibid., p. 8.

17. For the purpose of section 62.4(1) of the *Parliament of Canada Act*, the size of a recognized party or parliamentary group is determined by the number of senators who are members of each party or group.

18. *Members of Parliament Retiring Allowances Act*, R.S.C. 1985, c. M-5.

19. For information about the Members of Parliament Pension Plan, see Government of Canada, *Report on the Administration of the Members of Parliament Retiring Allowances Act*.