# **Justin Trudeau’s Senate Reform: Is the Senate Better at Its Role After 2015?**

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Senate reforms have been a point of lively debate in Canada. Voters have expressed dissatisfaction with the current Senate (Angus Reid Institute, 2016; Bryden, 2013), especially after the scandals of three senators in 2015 (CBC, 2016). Among all the reform proposals, the appointment of senators is of particular interest here because of its semi-permanency – once appointed, senators are hard to remove until the mandatory retirement age (CTV, 2013). Before 2015, reforms of the appointment process have been mostly unsuccessful because of hurdles in the constitutional amendment (Senate GRO, 2023). After 2015, Prime Minister Justin Trudeau did not pursue the amendment process but opted to use his existing powers (Centre for Constitutional Studies, 2017) to appoint people of minority backgrounds without any party affiliations (Senate GRO, 2023). This forms the basis of my research question: what is the role of the Senate and is Trudeau advancing it?

In this essay, I argue that Trudeau has appointed more non-partisans to the Senate who come from historically underrepresented groups in the House of Commons (HoC). This advances the role of the Senate in representing minority groups’ interests and complementing the representation of the HoC. I first analyze the commonalities (demographic or professional) of all the sitting senators appointed by Trudeau after 2015. I construct a table for analysis purposes which is later attached as Appendix 1. Then, I conduct a historical analysis of the appointment patterns before 2015 and compare the patterns before 2015 with those after 2015. Later, I review Senate reform proposals and academic literature. From that, I form my theoretical analysis of the Senate’s role on which I judge what Trudeau's appointment patterns are the most relevant for the Senate’s role. Lastly, I explore what changes were made during Trudeau’s term and what lies ahead for the Senate. Limitations and critiques are discussed.

# **1. Appointment Patterns Before and After 2015**

In this section, I analyze the Appendix 1 table**.** After 2015, Trudeau first appointed seven senators based on the recommendation of the independent advisory board and then opened the application to the public (Senate GRO, 2023). Until now, he has appointed 75 senators (CBC, 2023). I observe that a substantial number of new appointees tend to:

1. Demographically, come from an advocate background for indigenous communities including indigenous legal rights and health. Examples include Renée Dupuis, Mary Jane McCallum, and Yvonne Boyer. They are sometimes also of other ethnic minorities, and sometimes not born in Canada.
2. Professionally, come from an advocate background for women’s and single parents’ rights, including Frances Lankin, Nancy Hartling, and Marilou McPhedran; or be trained in law, including Renée Dupuis, Kim Pate, and Marc Gold.
3. Politically, be appointed as non-partisan and independent senators.
4. Follow the pattern of representation by region, i.e., to achieve about an equal number of senators for each province.

I now go back in time to compare the appointment patterns before 2015 with those after 2015. In 1865, Prime Minister McDonald regarded the Senate as an institution of “sobersecond thought” (Malcolmson et al., 2021, p. 102). At that time, the Senate was created to protect property owners from “mob rule,” and to advocate for the interests of less populous regions (2021, pp. 102–103). But some corruption remained: the appointment of senators later featured patronage appointments to reward political loyalty (2021, p. 103); Colin Campbell (1978) also argued that the Senate was a “lobby” for large corporations.

I conclude that compared to the appointees before 2015, the ones after 2015 come from:

1. Advocate background.
2. Underrepresented communities: for example, the Senate achieved, albeit briefly, gender parity in 2020 (McCallion, 2021).
3. Non-partisan background.

# **2. Literature Review of the Senate’s Role**

In this section, I first examine the historical development of Senate reform, then academic literature. In the end, I distill the information and form my tentative analysis of the Senate’s role.

Senate reform has been a recurring theme in Canadian politics. At the federal level, notable attempts at reforming include Mulroney’s failed *Meech Lake Accord* and *Charlottetown Accord* to empower provinces to democratically elect senators and Harper's unsuccessful introduction of senators’ term limits. At the provincial level, Alberta’s Premier Don Getty proposed the “Triple-E Senate” (elected, effective, and equal) during the debate of the *Charlottetown Accord*. Provincial legislatures elected provincial senators (senator-in-waiting) democratically for the PM to appoint in a non-binding fashion(Senate GRO, 2023). The results of non-binding elections were respected by some PMs including Mulroney and Harper (CBC, 2007) but disregarded by others including Justin Trudeau (Maloney, 2021).

The culture in the Senate has also quietly changed. Although the Senate has arrived at the consensus that it should not oppose the HoC (Malcolmson et al., 2021, p. 103)*,* there have been recent cases where the Senate did. For example, it has been active in amending the bill concerning cruelty to animals (2021, p. 104); it has repeatedly blocked Mulroney’s government bills because of a Liberal majority in the Senate (2021, p. 104).

Aside from real-life politics, scholars also have some Senate reform proposals. Notable examples include abolition (Rancourt et al., 2023; Wall, 2013) and appointment by political affiliation according to the last election’s performance (Macfarlane, 2021).

**3. Theoretical Analysis of the Senate's Role and Assessment of Trudeau’s Appointment Patterns**

In this section, I review reform proposals from the last section and argue for my vision for Senate reform. I argue that, first, a senate is necessary. Second, for the Senate to play its distinct role in Canadian democracy, it must differentiate itself from the House of Commons (HoC). Third, because amending term limits for senators is difficult, especially with the waning interest in constitutional changes in the Canadian public, it is the most realistic to work under the condition of “job for life” until 75 years old. Fourth, Trudeau’s emphasis on appointing underrepresented community members fulfills such differentiation.

I first argue against abolition. Proponents of abolition pointed to the successful examples of Canadian provincial legislatures and countries such as New Zealand (Harder, 2022; Rancourt et al., 2023; Wall, 2013). I argue against it based on two points. First, a unicameral system (representation by population only) might only work in small areas with few regional differences. Canada, however, is a much bigger entity than a single Canadian province or New Zealand with huge regional differences in population density, economy, culture, and official languages (Giovannetti, 2019). That requires a separate institution to represent regional interests. Second, as a country, Canada’s population distribution is heavily skewed towards Central Canada, which accounts for about 60% of the national population (Statistics Canada, 2023). To not have another institution to represent the minority provinces’ interests risks the tyranny of the majority of Ontario and Quebec (Malcolmson et al., 2021, p. 5).

Having established the importance of the existence of the Senate, I argue that the Senate must differentiate itself from the HoC to avoid being redundant. I first propose “representation by region (province)” as the overarching goal of the Senate, meaning that every province will send the about same number of senators to the Upper House. We can select senators in the following ways which are all mentioned in the literature review section above: (a) democratically elect senators as what has been done in BC and Alberta; (b) appoint by party affiliations based on the last election’s performance; (c) appoint because of reward for political loyalty; (d) appoint people from underrepresented communities without political affiliations (Senate GRO, 2023). I found option (d) the most appealing and the most politically feasible one based on the following analysis.

First, I do not completely object to the election-based options (a) and (b). However, one caveat is that it often requires a term limit on the senators to keep up with the change with the HoC; but such term limits are hard to establish because of challenges from courts. Before the Progressive Conservatives (PC) came into power in 1984, the Liberals had been in power for 19 years during which many new Liberal senators were appointed. The PC then faced opposition among Liberal senators when attempting to pass the free trade agreement and the goods and service tax (Malcolmson et al., 2021, p. 104). Here, the unelected senators were able to challenge the elected MPs because of the lack of term limits. The introduction of term limits, however, can be politically difficult. Harper’s bill on instituting a nine-year term limit on senators faced legal challenges in the Supreme Court of Canada -- it required consent from seven provinces representing over 50% of the population (MacKinnon, 2014). Therefore, although I accept provincially that options (a) and (b) could work but reject them because of the difficulty to introduce term limits.

Regarding the nepotistic option (c), senators should represent their regions but not the interests of the PM because of personal relationships. After the mid-20th century, it has also been politically unacceptable (National Post, 2015). Such patronage appointments can give Prime Ministers even more power than they currently enjoy in a Prime-Ministerial government (Malcolmson et al., 2021, pp. 79–84). This risks giving Prime Ministers more power than they should have.

I would then argue that option (d), i.e., diversity appointment is preferable to advance the role of the Senate without amendments. As explained above, first, it is the most politically realistic choice that does not require constitutional amendments; second, political independence is important without a term limit for senators. I now propose a third reason: it adds one additional dimension of diversity. Because HoC is represented by population, the opinion of the majority is well represented. In the Senate, one dimension of diversity is the voice of less populous provinces; appointing people from diverse backgrounds adds a second dimension, e.g., indigenous peoples and minority ethnic groups. It could be argued that the more kinds of minorities that the Senate represents, the more equipped it is to counter the potential tyranny of the majority in the HoC. Thus, option (d) is a preferred way to increase the Parliament’s diversity of opinions without meeting the hurdles of constitutional amendments.

After the theoretical analysis, I argue that the following appointment patterns of Trudeau are relevant to advance the Senate’s role.

1. He appoints more people of underrepresented identities.
2. He appoints independent senators.

He has also exhibited the following appointment patterns during his term:

1. He has appointed more senators of indigenous backgrounds after 2021, five such senators for three years, compared with five such senators for the five years before 2021.
2. He has appointed more women senators in 2016 and from 2022-2023 compared to the years in between.

**4. Critiques and Conclusion**

Trudeau’s reform is not without its criticism. I argue that the appointment system has an inherent “Liberal bias.”The Conservatives have called Trudeau’s reform a “smoke screen” to achieve Liberal by stealth (Cudmore, 2014). In fact, according to Tumilty from National Post (2022), over 95% of the Trudeau-appointed senators voted for the Liberals compared to 78% in the whole Senate. I argue that the bias is deeper than what the statistics show. As with the Liberals’ own socially progressive agenda, many new appointees who represent social minority groups would vote with the Liberals on socially left-leaning issues. With the Conservatives leading the election poll ahead of the Liberals, Trudeau’s appointment strategy may be reverted if the Conservatives come into power. For further research, it is worth looking at the democratically elected Upper House of Australia, a country similar to Canada in its British Parliamentary tradition.

In conclusion, I proposed my interpretation of the Senate’s role: appointing people from minority backgrounds without political affiliations is the best method which does not require amending the constitution. My work is original in that I consider the appropriate reform methods in a context where constitutional changes are exceedingly difficult. Based on my interpretation, I analyzed the change in appointment patterns in 2015 and within Trudeau’s term. The analysis showed that Trudeau has advanced diversity in the Senate compared to his predecessors without some slight variations during his term.

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**Appendix 1**

Methodology: I take the table from https://bdp.parl.ca/sites/ParlInfo/default/en\_CA/People/ senatorsPrimeMinisters filtered by Prime Ministers. I set the Prime Minister to Justin Trudeau and scrape the data of all the senators who were appointed after 2015 and are currently sitting in the Senate. I then cross-reference each one with the profile on https://sencanada.ca/en/senators/ to write their demographic and professional characteristics in the corresponding place in the spreadsheet.

Because of the limitation of MS Word, the spreadsheet is further attached as a separate Excel file.