

FEATURE: SENATE REFORM

How the Senate could operate without political parties

The Senate can make a greater contribution to the governance of Canada if parties were neither the basis on which the Senators are selected nor the basis on which the Senate is organized.

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In a previous piece we proposed a new method of selecting Senators that involved the creation of an independent, non-partisan agency we called the Senate Appointments Commission (see *The Hill Times*, Jan. 25). We believe that the independence of Senators will be greatly increased if they are selected by a Senate Appointments Commission that uses legislated criteria that emphasize outstanding attainment in a profession or occupation, and/or a substantial record of interest in and contributions to public affairs.

The criteria for selecting Senators would also reflect the tasks the Senate is intended to perform: detailed review of bills originating in the Commons; thoughtful discussion about the desirability and the likely consequences (broadly defined) of government bills; investigation of emerging and distant policy issues that may need government action and wide dissemination of the results; and a forum for Canadians to give in-depth feedback on government actions and policies between elections.

It is the absence of partisanship, however, that the political class may find the most troublesome feature of our proposed method of selecting Senators. If there is no government party in the Senate, how will the government get its bills adopted? Who will move the motions needed to advance a government bill through the stages of the legislative process? If there are no government supporters in the Senate, the government's business might be sidelined. If there is no opposition party, will bills be subjected to serious examination or just rubberstamped? Without government and opposition House leaders and whips, the politicians may fear that the Senate will just fall into disorganization and no work will be done.

In this piece we describe how the Senate could—in time—operate without government and opposition parties. Parties have become essential to the House of Commons under the Westminster model. However, the Senate can make a greater contribution to the governance of Canada if parties were neither the basis on which the Senators are selected nor the basis on which the Senate is organized.

Senators by Province

Before looking at how the appointed Senate could function as a non-partisan institution, we need to consider how the number of Senators from each province is determined. We know that representation by population is not what determines how many Senate seats each province has. Rep by pop is the principle used to fix the number of seats in the House of Commons. Instead the Senate was founded on the principle that the major regions—not the provinces—of the new country of Canada would have equal representation. Using regional equality to express federalism in the Canadian Senate was an explicit rejection of the principle of equal state representation used for the U.S. Senate. Representation in the Canadian Senate was intended to put the different regions of the country on an equal footing, regardless of their respective populations.

Some advocates of a reformed Senate have complained that the Western provinces are underrepresented when their populations are compared to those of the Atlantic provinces. But their complaint ignores the equal representation given to each of the four regions into which Canada is divided by Sec. 22 of the Constitution Act, 1867: Maritime Division (New Brunswick, Nova Scotia, Prince Edward Island), Quebec Division, Ontario Division, and Western Division (Manitoba, Saskatchewan, Alberta, British Columbia). Each region, or division, has 24 seats. We should note that the provinces within each region are equally represented—except, of course, for tiny Prince Edward Island.

The Western Division was created when the U.K. Parliament enacted the Constitution Act, 1915, at the request of the House of Commons and Senate. In giving this region 24 Senate seats, the number of seats for each of the Western provinces was increased. Thus the Western Division had the same representation as the other three regional divisions even though its population was fairly small at that time.

The only anomaly is Newfoundland and Labrador, which is the only province that does not belong to a regional division. Ideally, perhaps, it should be joined with the provinces in the Maritime Division to create an Atlantic Division with 24 seats, but that would require that the two large Maritime provinces generously give up six seats. If they did, it would bring New Brunswick and Nova Scotia to seven seats each, close to the Western norm.

Table 1 shows how the population of the regions compares to the number of Senators from those regions.

Reorganizing the Senate

We can use the divisions established in the Constitution as an alternative to organizing the Senate by political party. The 105 Senators could group themselves in four regional caucuses corresponding to the Maritime Division (with the Newfoundland and Labrador senators), Quebec, Ontario, and the Western Division (with the three territorial Senators).

We believe that grouping senators this way will allow both Western Canadians and Quebecers to see that their regions each have almost a quarter of the Senate seats, regardless of how many seats they may have in the rep-by-pop Commons. Further, at the 1864 Quebec Conference, the Senate was seen as central to the federal system and as a guardian of regional interests against ill-considered action taken by a House of Commons dominated by the larger provinces. A partisan Senate where one political party holds a majority of seats has not shown itself able to fulfill that role. A Senate organized by regions will tell Canadians that it is now prepared to do so.

If Senators decide to sit as independents and to meet in regional caucuses, the question naturally arises how government bills can be dealt with in the Senate. Answering this question provides an opportunity to modernize the legislative procedure of the Senate, at least as far as government bills are concerned, in order to make that procedure more efficient. We now outline how this could be done.

A Business, or Coordinating, Committee composed of four business managers or coordinators, one for each regional division (as set out above), and presided over by the Speaker, should be established under the Senate rules. The Business Committee would be responsible for organizing business on the floor of the Senate. Each regional business manager would be chosen by that caucus and receive an extra stipend. Each business manager would be assisted by a deputy business manager and a convenor, who would be responsible for calling caucus meetings and seeing that the division is represented during voting and on committees. The business managers and convenors would replace the leaders of the government and of the opposition in the Senate and the whips. (Convenor is the term used in the Scottish Parliament for the chair of a committee.)

Government bills, whether from the Commons or directly

from the government, would not have sponsors. Any motions required to move the bill through its various stages would be deemed to be moved by the Speaker. Therefore, no Senator need act as the government spokesperson in charge of a bill. It would be the duty of the Speaker (who is a government appointee) with the business managers and the committee chairs to see that the bill moves through its various stages. However, committees may wish to consider naming a senator to be in charge of a bill, following the European practice of naming a rapporteur for each bill.

When a government bill arrives from the Commons, the procedure would be as follows: the Speaker announces that the bill is deemed to have been read a first time and referred to a committee chosen by the Speaker or the Business Committee based on the subject matter of the bill. The traditional second reading stage is eliminated because the question whether to legislate on this subject is for the government and the Commons to decide. The Senate's role is to look at the details of the bill in committee to see whether it has any unforeseen repercussions and whether they can be repaired through amendment. When a government bill is introduced in the Senate, the same procedure is followed.

Third reading would now be called second reading (the traditional second reading stage having been eliminated). Second reading and passage is thus the final stage after a bill comes through the report stage with or without amendment. The motion for second reading and passage is deemed to have been moved when the Speaker calls the order for second reading.

The foundation of confidence is the "money bill" (supply and taxation bills). A special procedure should be followed for such bills in order for the Senate not to be considered a confidence Chamber. If the Speaker of the Senate announces that a bill from the Commons is a supply (or appropriation) bill based on the annual estimates (main or supplementary), then the bill should be deemed read a first time and a second time and passed without being referred to committee or debated in the Senate. In other words, the Senate should explicitly give up its right to reject, amend or delay such bills by amending its rules accordingly. That does not prohibit a Senate committee from examining the estimates documents and reporting on them and even sending that report to the Commons, but approval of annual expenditure should lie with the Commons alone. A bill that authorizes the expenditure of funds, but is not a supply bill, should not be considered a money bill since that is the primary purpose of the bill.

If the Speaker announces that a bill from the Commons is a ways and means (or taxation) bill, then the procedure used for a supply bill should be followed except that the subject matter of the bill should be deemed referred to committee. Then the Senate can comment on the policy behind the bill without delaying the collection of taxes based on that bill. In order to be treated as a ways and means bill, a bill based on the government's budget as presented in the Commons cannot contain any other measures. The omnibus budget bills favoured by recent governments would not qualify for this expeditious procedure.

One of the advantages of the procedures we are proposing is that their implementation does not have to wait for all members of the Senate to be selected by the proposed Senate Appointments Commission. Many of our proposals could be applied immediately and would improve the efficiency of the Senate's legislative process.

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Table 1: Population by Provinces/Regions and Number of Senators

Senate Regional Divisions and Provinces	Estimated Population as of Jan. 1, 2009	Senate Seats	Percentage of Total Population
Canada	33,504,680	105	100%
Maritime Division	1,828,52	24	5.4%
Prince Edward Island	140,402	4	0.4%
Nova Scotia	939,531	10	2.8%
New Brunswick	748,319	10	2.2%
Quebec Division	7,782,561	24	23.2%
Ontario Division	12,986,857	24	38.8%
Western Division	10,290,082	24	30.7%
Manitoba	1,213,815	6	3.6%
Saskatchewan	1,023,810	6	3.1%
Alberta	3,632,483	6	10.8%
British Columbia	4,419,974	6	13.2%
Newfoundland and Labrador	508,990	6	1.5%
Yukon Territory	33,442	1	—
Northwest Territories	42,940	1	—
Nunavut Territory	31,556	1	—

—The population figures are taken from Statistics Canada estimates for January 2009.