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# The Case for an Elected Speaker of the Senate

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by Senator Donald Oliver

*On March 20, 2003 Senator Donald Oliver tabled Bill S-16 whose purpose is to change the method of selection of the Speaker of the Senate. At present, the Speaker as mandated by Section 34 of the Constitution Act, 1867, is appointed by the Governor General, on the Prime Minister's recommendation. Under the Bill Section 34 would be repealed and replaced with a provision dictating that the Senate elect one of its members to be Speaker and another to be Deputy Speaker. The Bill provides for a voting procedure similar to that in place in the House of Commons, by secret ballot, and provides that the elected speaker may not vote except on occasions where the votes in the Senate on a particular matter are actually tied. This article outlines some arguments in favour of these changes.*



I was summoned to the Senate on September 7, 1990, by Prime Minister Brian Mulroney. My first few months were filled with conflicting views on this institution. I appreciated the power possessed by the Senate and its role in policy formulation, but I was overwhelmed by feelings that changes were urgently needed to make it more relevant and accountable.

To this end, I recently led a two day discussion of the Conservative Caucus on Senate reform. We reached a number of relevant conclusions including committee realignment and recommendations that more government Bills should be introduced in the Senate. However, one overarching theme in our discus-

sions was that the Senate should (in order to play its proper role in the Confederation of offering "sober, second thought" on legislation) be as independent as possible from government interference and control.

One aspect of the Senate that symbolizes this control is the procedure for appointment of the Speaker. I have been impressed with the results obtained by the House of Commons since it moved to selection of its Speaker by secret ballot, and suggested that this was a change which should be brought to the Senate.

***It is my belief that the Senate will gain in independence and dignity with the election of its Speaker by secret ballot. For that reason I introduced a Private Members' Bill to amend the Constitution in relation to the method of selection of Speaker of the Senate.***

As I pointed out when I spoke in support of this Bill on second reading, its presentation is not a reflection in any way on the incumbent Speaker or any past Speaker. It is

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*Senator Oliver was appointed to the Senate in 1990. He is currently Chair of the Senate Standing Committee on Agriculture and Forestry.*

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my hope that this change will improve the image and effectiveness of the Office, while still maintaining the traditions that have been with us since Confederation.<sup>1</sup>

An elected Speaker should be able to exercise the independence needed in a mature legislative chamber. Election, by secret ballot, should reinforce the notion that the Speaker is not the servant of the Prime Minister, of the government, or of the opposition – but the Speaker serves the Senate. Election also places considerable responsibility on the shoulders of Senators and distributes responsibility for the functioning of the Senate among all member of the Upper House.

### **Historical Development of the Speakership**

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The Speakership is an office of great antiquity almost as old as Parliament itself. Speakers originally were chosen by their colleagues to be spokespersons in presenting grievances and petitions to the King. This practice seems to date from 1376.

Over many years in Great Britain the position evolved gradually acquiring the function of presiding official. However, it was not until 1728 that Arthur Onslow began to reshape the Speakership – moving away from partisanship and to a more impartial arbiter of proceedings and debate in the Commons. He severed his political associations, renounced the lucrative office of treasurer of the Navy which had come to be regarded as a perquisite of the Speakership. He set the pattern as a non-partisan – being able to decide questions of procedure impartially, above the political fray.

In Canada during the early years after Confederation, the Speaker of the House of Commons was definitely regarded as a partisan. However, as time went on the impartiality of the office became more firmly established despite identification of the Speaker with the governing political party. On only two occasions was the Speaker from a party other than that of the Prime Minister. Speaker Lemieux under Prime Minister Meighen in 1926 was a Liberal, and Speaker Jerome under Prime Minister Clark in 1979, was also a Liberal, while in both cases the Prime Minister was from the Conservative party.

The practice for selection of the Speaker in the House of Commons, prior to the 1985 changes, was for the Prime Minister to nominate after consultation with the Leader of the Opposition. The nomination was usually seconded by the Leader of the Opposition and then endorsed unanimously by the House. But it was a hollow procedure in that the House had no choice and there was no debate.

One of the important steps in the evolution of the Speakership was the abolition of appeals of Speaker rul-

ings. It meant, thereafter, a Speaker could rule on a procedural controversy according to the strict merits of the case. This move strengthened the impartiality and independence of the Speaker.

Throughout the 1960s and 1970s, there was a movement to establish a permanent Speaker for the Commons. One suggestion was to do this by setting aside a special constituency – Parliament Hill in which only the Speaker would run. This was advanced to attempt to ensure continuity in the office and to elevate the non-partisan role of the Speaker.

In the 1980s, the movement for significant reform gathered steam especially in light of a unanimous Procedure Committee report in 1982 which declared “the Speaker” belongs to the House, not to government or the Opposition”. The Committee went on to express a desire to see the independent nature of the office enhanced, in part, by removing the nomination process from the control of the Prime Minister.

In 1985, the Special Committee on Reform of the House of Commons chaired by James McGrath recommended:

The Speaker belongs to the House, not to the Government or the Opposition. Although the servant of the House, the Speaker is expected to show leadership in promoting and safeguarding the interests of the House and its members. Decisions of the chair may not be appealed except by way of a substantive motion. The Speaker thus enjoys the full trust and confidence of the House without which no incumbent would be able to discharge the onerous duties. Thanks to the successive Speakers who have occupied the Chair of the House of Commons, the Canadian speakership has developed a tradition of impartiality and devotion to duty of which we can all be proud.

This Report was adopted and the Commons Rules were changed to provide for a secret ballot. I believe it can be safely concluded that these changes to the Speakership of the House of Commons have fundamentally changed the nature of the office.

### **The Speaker of the Senate**

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The office of Speaker of the Senate was modelled on the British office of the Lord Chancellor – who is Speaker ex-officio of the House of Lords. With the real appointing power in the hands of the Prime Minister, the Speaker or at least the office of the Speaker, is a partisan one.<sup>2</sup>

After Confederation, the Speaker of the Senate would only intervene in debate when called upon by a Senator. However, reforms introduced in 1906, elevated the Senate Speaker to the same role as the Speaker of the House. The new, 1906, Rule which is still found in the *Senate Rules of Order* states: “The Speaker shall preserve order

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and decorum, and shall decide points of order, subject to an appeal to the Senate.”

The effect of this Rule and further Rule changes in 1991, as well as the influence of the changing role of the Speaker in the House of Commons has resulted in a Senate Speaker who rarely speaks in debate and again only rarely votes on a Bill or motion before the Senate.

Unfortunately, while we may try to make the argument that the role has become less partisan – the Speaker usually only exercises the right to vote when the vote is acknowledged beforehand to be quite close.

### Other Jurisdictions with Elected Speakers

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Other Commonwealth countries have adopted the practice of electing the Speaker of their legislature. For example, the Australian Senate has been electing its speaker by secret ballot since 1901. The Speaker receives a three-year mandate through a secret ballot of all Senators. In 1937, Australia’s lower house, the House Representatives began electing its Speaker. Other legislatures in Canada have also determined that their Speakers should be selected by secret ballot. Ontario did so in 1990; Saskatchewan in 1991; Alberta in 1993; with British Columbia and New Brunswick following in 1994. Quebec was the most recent jurisdiction to provide in its rules for a secret ballot if there is more than one candidate for the Speakership.

***The Senate may wish to have its Speaker chair the Standing Committee on Internal Economy, Budgets and Administration. This would, of course, enhance the administrative responsibilities of the Speaker.***

It is my position that the Senate should join with these other legislatures and move forward in electing its own Speaker by secret ballot. An additional reform which would compliment the election of a Speaker would be the removal of the ability to appeal a Speaker’s ruling to the whole Senate. Removal of this Rule would enhance the authority and credibility of the Speaker – freeing the Speaker to deal solely with the merits of the arguments before him or her, rather than being concerned with partisan politics. My proposal for an elected Speaker removes the Speaker’s right to participate in debate and to

vote, other than to break a tie vote. This, again, is in keeping with the theory of an elected, non-partisan speaker.

In the future, the Senate may wish to consider modelling the administrative role of the Senate Speaker on that of the Speaker of the House of Commons. In the House, the Speaker plays a major role as Chair of the Board of Internal Economy.

### Amendment Procedure

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While Bill S-16 is an amendment to the Constitution of Canada, I believe it is an amendment which rightly falls within the purview of Section 44 of the *Constitution Act, 1982* – being an amendment that need only be passed by Parliament alone to be effective. Bill S-16 is an amendment relating exclusively to the executive government of Canada, or the Senate and the House of Commons and is, therefore, within the scope of Section 44.

Some may argue that any change to the Senate is a change which affects the provinces especially if it seems to affect the powers of the Senate. I believe the better view is based on the 1979 Supreme Court Decision in the reference relating to the Upper House. This is a change which does “change the essential character of the Senate. The change suggested by Bill S-16 does not, in my opinion, go to the root of the Confederation bargain that established the Senate as a counter-weight to the House of Commons.

The changes to the method of selection of the Speaker of the Senate contained in Bill S-16, if implemented, will have a profound effect on the Speakership and the Senate itself. It will enhance the Speaker’s independence, neutrality, credibility and respect. As the sponsor of Bill S-16, I am convinced that this is a natural first step in bringing fundamental reform to the Senate of Canada.

### Notes

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1. Before Confederation the Legislative Council, predecessor the Senate, had the power to select its own Speaker. In 1868 a resolution for an elected Speaker was introduced in the Senate by Senator Letelier de St. Just. Many other Senators favoured the motion but there was a consensus that it would be premature to change the 1867 Constitution until it had been tested over a number of years. See *Senate Debates*, May 6, 1868, pp. 248-254.
2. See W.F. Dawson, “The Speaker of the Senate of Canada”, *The Table*, vol 38 (1969) pp. 20-32.