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# Referendum on the Future of the Senate: A Round Table

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by Senators Hugh Segal, Bert Brown, Lowell Murray and Sharon Carstairs

*In October 2007, a motion introduced in the Senate called for a national referendum in which Canadians would be asked whether the Senate should be abolished. The following extracts are taken from speeches for and against this motion.*



**Senator Hugh Segal (October 30, 2007):** Let me offer one quotation from Senator Joyal's *Protecting Canadian Democracy: The Senate You Never Knew*, in support of the proposition:

The Senate is likely the least admired and least well known of our national political institutions. Its work attracts neither the interest of the media, the respect of elected politicians, the sympathy of the public, nor even the curiosity of academia. How paradoxical that very few Canadians have an understanding of the history, role, and operations of the Senate, and yet everyone seems to have an opinion on the institution.

I agree with my friend's comments regarding the outside view of the Senate, and I believe that this motion, if successful, will go a long way in not only educating the public about our role here but also towards legitimizing an institution that has often come under attack without any clear understanding of its function or merits.

Yes, it could also result in its abolition but, after years of "negotiating," "attempts at reforming" and seemingly endless "discussions," perhaps the time has come to allow the electorate to weigh in and settle the question politicians of all affiliations have been unable to answer since Confederation itself.

In a democracy, specifically in the key working elements of its responsible government, respect must be tied in some way to legitimacy. While questioning "legitimacy" of long established democratic institutions is usually the tactic of those seeking a more radical reform, the passage of time does not, in and of itself, confer de

facto legitimacy, and seems a particularly undemocratic way of moving forward. The purpose of my motion regarding a referendum question put to the Canadian people is to focus squarely on the legitimacy issue.

There are many differences between Canada, Iraq and Afghanistan, too numerous to mention. One difference, however, relating to the basic law under which each seeks to govern itself is that those who negotiated the content of the respective basic laws in Iraq and Afghanistan over the last decade saw those constitutions put to the test in a popular referendum in which there was a high voter turnout. A referendum never happened in the Canada of the 1860s, which is not surprising. There was no universal suffrage at that time. There was not even a secret ballot. It is not surprising it did not happen then.

The *British North America Act* was never sanctioned by a popular referendum in which Canadians had the chance to legitimize the work of the Fathers of Confederation.

Today, after 39 federal elections and approximately 300 provincial and territorial elections since 1867, surely we can say that the elected assemblies that make our laws have been legitimized by millions of voters on numerous occasions. What is more, Canadians voted against constitutional change in the 1992 referendum on the Charlottetown Accord. We can therefore conclude that there has been some public input, which strengthens the legitimacy argument. But it would be going too far to include the unelected Senate in this circle of legitimacy.

Except in Alberta, which elected Stan Waters in the 1980s and Senator Bert Brown, Canadians have never voted in any way to legitimize an unelected upper house, which has potentially huge legislative powers.

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The present government of Canada deserves some credit for attempting to address this legitimacy question through proposals in the House to consult the public on Senate vacancies before appointments are made, and to shorten terms, an effort launched in this place in a previous session. In this regard, Prime Minister Harper follows in a long and noble line of federal leaders who have attempted Senate reform. Since 1867, Liberals and Conservatives, there have been 17 proposals at Senate reform and not one has succeeded.

Surely, in a democracy, the more fundamental question is: Should the Senate exist at all? Is a second chamber, as presently constructed, necessary for the democratic governance of a modern Canada? Many democracies operate with only one chamber. While existing governments, legislators, public servants and constitutional scholars should have a say, as should every member of this place, is it not only appropriate that those people are consulted? Surely the people in an open and single question referendum also have the right to participate in this decision.

To make fundamental changes to our system of government, the Crown, Parliament, or the regular election cycle, the current amendment formula requires the consent of all provincial legislatures and the Parliament of Canada. It must be unanimous.

***Such a referendum would allow us to avoid another cycle of reform contortions until we knew whether Canadians actually wanted the Senate itself to continue in any way.***

*Senator Hugh Segal*

In the design of any referendum on the abolition or maintenance of the Senate, it would be of immense value if Ottawa and the provinces would simply agree that Ottawa would sign onto an amendment if 50-per-cent-plus-one majority of Canadians voted for abolition. Any premier would sign on for an amendment if 50-per-cent-plus-one majority of the people in his or her province voted for abolition as well.

The late-night, never-ending First Ministers' conferences where deals might be struck or broken, and constitutional amendments might be lost or won, would be unnecessary. Such a 50-per-cent-plus-one agreement would simply be a formula that embraces the rather dramatic notion that governments work for the people, even on issues of constitutional legitimacy, or perhaps, especially on these issues, as opposed to the other way around.

As a member of the Senate, I share the view of many that the Senate, as an institution, and many who have served within it, have done outstanding work for their country. Surely, without the legitimacy of a public and democratic expression relative to the Senate's existence itself, this work is, while interesting and even compelling, a little bit beside the point. There are wonderful, hard-working economists and social policy advisers who laboured for years in the Kremlin. Mother Russia was their only concern. They did good work, they were elected by no one in particular and they had no democratic legitimacy. Doing good work does not constitute, *de facto*, democratic legitimacy.

The Senate's existence via constitutional agreement in the 1860s has forced prime ministers to fill it. Many of those people who have been appointed from partisan or other careers have served with distinction, but those historical facts do not equal legitimacy. They reflect constitutional reality not particularly impacted by any legitimacy except the passage of time, surely a weak proxy for democratic legitimacy conveyed by the people through exercising of their democratic franchise.

Many of those who insist that we still need a Senate — and I am one of them — and even those who claim that an appointed Senate is better than an elected Senate, say that senators have as much legitimacy as judges, who are also appointed by the duly elected government. I submit that there is a huge difference. Judges are appointed to interpret the laws on a case-by-case basis. Senators get to change the law, make law and refine or reject laws sent to it by an elected House of Commons.

The illegitimacy of that status quo emerges from two realities, of which the government to date has tried to address only one. Canadians have no say in who sits in the Senate, and Canadians have never had a say as to whether we need a Senate.

In the most recent U.K. government proposal on reform of the Lords, a review of second chambers across the democratic world concluded that Canada's Senate was the most theoretically powerful of any in the entire world. Surely, it is the spirit of constitutional coherence and stability that we face the issue of legitimacy straight up. Canadians surely have the right to answer a simple question directly. A decent referendum period with a clear question and ample time for information, discussion and debate would facilitate such a response.

We do not need to recreate the wheel. In 1992, the Conservative government presented to Parliament, and Parliament passed, the *Referendum Act*, which authorizes the Governor-in-Council, in the public interest, to obtain by means of a referendum the opinion of electors on any question relating to the Constitution of Canada. With lit-

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tle fuss, it could be presented to Parliament by the present administration facilitating a referendum on the abolition of the Senate. Perhaps, circumstances willing, this work can be done before the next election.

A simple question — do you want to maintain or abolish Canada's second chamber of Parliament — could be put. The abolitionists can make their case over a period of some weeks. Those in favour of a second chamber, of which I would be one, reformed or otherwise, could make their case as well. There would be regional, demographic and other subsections to the debate, but we would have faced, as a country, the essence of the legitimacy question. For those colleagues across the way and on my own side who have talked about the wording of the question, let us follow the mechanics. If this motion were to pass, and the request went to the Governor-in-Council, the government would have decided to bring in the referendum legislation in which, if they used the 1992 model, Parliament would decide on the wording of the question. Thus, for colleagues on both sides who might be concerned about the wording of the question — some have asked me why the question should not be abolition or reform — there would be ample time for that debate.

If Canadians voted to abolish in sufficient number and with a majority, nationally and in each province, then our leaders would have clear direction to act. If they did not vote thus, then the Senate would have the basic legitimacy required to justify the effort. If the option of abolition were presented, and Canadians were to choose not to take it in sufficient number in a way that obviates and makes easy the amendment, then that would constitute a public consultation and the public would have spoken on the Senate of Canada.

Serving senators who support this proposal, and admittedly there might not be many, might be asked: How can you serve in a Senate that you feel is illegitimate? I do not feel that the Senate is illegitimate but we have a chance to seek legitimacy and have the question put to the public of Canada in an open referendum. As to why those of us who might favour that referendum are still enthusiastic about serving in this place, I, and others, would say: When asked by a prime minister, duly elected under our system to take on a task for the country, one would have to be pretty self-important to say, no. When one takes an oath of service and signs it, one has a duty to serve the institution as it exists to one's best ability.

Surely, that obligation does not imply disengagement from the democratic imperative of legitimacy — and democratic participation in the architecture of legitimacy. The motion I propose will afford parliamentarians a broad opportunity to reflect on the issue and contribute

their own perspectives. Should a similar motion be introduced in the House, the debate would be enjoined more broadly still. While I would vote against abolition for reasons that relate to both the need for a chamber that reflects regional and provincial interest and some careful assessment of quickly and often badly drafted federal laws too often passed by the House too quickly, my vote is but one amongst our fellow citizens. My opposition to abolition does not weaken in any way my deeply held belief that Canadians should decide something they have never been allowed to decide before.

One of the core premises of the development of responsible government in Canada is the process of evolution. To be relevant and engaged, all aspects of our democratic institutions must be open to reflection, public scrutiny and public sanction. The Canadian Senate, venerable, thoughtful, constructive and often nonpartisan as it may be, cannot be outside the circle of democratic responsibility.



**Senator Bert Brown (November 13, 2007):** I will speak against this motion to abolish the Senate if a majority of Canadians, in a referendum, wish to do so.

I am not opposed because it took 24 years of work to get here and my tenure in this chamber has so far been less than two weeks. Rather my opposition takes two forms. The last time I witnessed a referendum in Canada, it was not a binding referendum. It is likely not possible for a government to enact a binding referendum; it would be like asking victims to supply the rope for their own hanging.

Over the past generation, many polls have been conducted on whether Canadians want their senators elected. The first polls gave a simple majority to the "yes" side. Only months ago, the polls were 79 per cent for the "yes" side. Brad Wall brought the province of Saskatchewan to the "yes" side the morning of November 8 with his recommendation to elect senators to future vacancies. That is my first point against the motion.

Second, the most compelling reason for this chamber to continue to exist even in its present state is the real fear of future prime ministers with a real majority in the House of Commons: There are no constitutional limitations on the powers of a prime minister with a majority in that other place. While Canadians appear to be increasingly pleased with the current government and its prime minister, Senate reform, when it takes place, is for the next century or two. It is not for the tenure of any current government.

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Since World War II, we have witnessed governments of numerous parties that were a direct cause of a debt of \$680 billion accumulated over a generation. This country will have paid \$2.78 trillion by the time that debt is retired. That is after 25 years at 5 per cent interest and payments of \$5 billion over those years.

At the end of the debt and deficit increases in 1993, this country was less than 18 months from having the International Monetary Fund tell us what we could and could not do with our federal taxes.

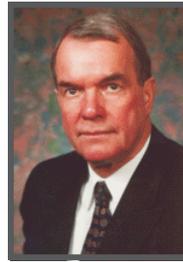
***I believe that the function a future senator can play is as an effective counterbalance to the other place. A counterbalance with a legitimate vote to protect our country against future internal threats more than justifies the Senate's cost. For that reason I oppose the abolition of this chamber by referendum or any other means.***

*Senator Bert Brown*

I want to speak about loyalty and party discipline. I was honoured to place a wreath at the regimental war museum in Calgary November 11 on behalf of the Government of Canada. I believe the cause of World War II to be blind loyalty to, first, the National Socialist German Workers' Party, also known as the Nazi Party of Germany; second, the same blind loyalty to the National Fascist Party of Italy; and, finally, a Japanese emperor who believed he was a god. His subjects believed him and gave them their blind loyalty and trust. As a result of those blind loyalties to parties and to a religion, we, the human race, killed 50 million people.

In 1993, I was commissioned by the Canada West Foundation to interview former and current MLAs across Canada and former and current MPs, and my conclusions were published in the 1993-94 summer edition of the *Canadian Parliamentary Review*. Since then, I have not changed my belief that unquestioning blind loyalty to any philosophy or leader is the most dangerous thing that can happen in a democracy.

I believe that this chamber's best service to this country will occur when elected senators truly represent the wishes of the people of their home provinces, not the political philosophy of past prime ministers. Blind, unquestioning allegiance in politics or religion may again move us to problems within Canada and abroad.



**Senator Lowell Murray (November 28, 2007):** If this motion were passed, it would constitute advice to the government; however, as we all know, it would not be binding on the government. Even if the government were to take the advice of the Senate and hold the referendum on abolition, the referendum result would be non-binding.

The government would still have to institute the process of constitutional amendment with the provinces.

The following questions then arise: Why bother with the motion? Why support Senator Segal's motion? First, abolition is clearly one of the options being considered by the government. The Leader of the Government in the House of Commons and Minister for Democratic Reform made that clear several times in his speech in the House of Commons at second reading of Bill C-19 on November 16, 2007.

Second, two Senate reform proposals sponsored by the government — Bill C-19, on term limits; and Bill C-20, on elections — are going nowhere, and the government knows they are going nowhere. Quite apart from the hurdle of getting those two bills through two Houses of Parliament in which the government is in a minority position, at least three provinces have made their view abundantly clear that one or the other or both of those bills are ultra vires the competence of the federal Parliament acting alone.

Premier Charest and Premier McGuinty have reiterated their position on that point, and they have served notice that they would challenge in court if Parliament were to pass those bills. What does that mean? In the courts of at least three provinces that I am aware of, New Brunswick, Quebec and Ontario, the challenges would wend their ways and ultimately come to the Supreme Court of Canada for final adjudication. If the government were serious about proceeding with government reform at this time, they could save a great deal of time, money and trouble by referring Bill C-19 and Bill C-20 to the Supreme Court of Canada now, which they should do.

The government could follow an alternative, with a constitutional amendment in mind: The government could draft a succinct model of Senate reform and ask Canadians, through a referendum, to pronounce on it. If the government's succinct model of Senate reform were to receive the support of enough voters in enough provinces, the Prime Minister could walk into a meeting of first ministers with a very strong hand indeed.

In my opinion, coming up with a succinct model of Senate reform would not be as complicated as it might

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appear to be on the surface. The government has already crunched two of the issues: First, they want an eight-year term for future senators, which they would probably make renewable in the case of an elected Senate; and second, it is fair to say that, notwithstanding this consultative election contained in Bill C-20, Mr. Harper's strong preference would be for direct election of senators. Those two issues have been crunched as far as the government is concerned, and its position is clear.

The first of two other elements that they would have to come up with is representation, for which there is not an infinity of options before the government. They could come up with some reasonable balance of regional or provincial representation in the Senate. The second element is the question of powers. There again, the government would not need to draft a lengthy blueprint of powers. The main issue the government would have to address in the form of a referendum question is the relationship of the Senate to the House of Commons and whether the Senate would have an absolute veto or a suspensive veto. The main issue is whether the House of Commons would have primacy at the end of the day. That would lend itself to a succinct question on a referendum balance.

The government is doing none of those things. I am not embarrassed at all to express the view that the federal government is ragging the puck on Senate reform. They are going on ad infinitum and, instead of taking a direct approach, they are taking an indirect, circuitous and devious approach that will end at a dead end, which they well know.

One option would be for one of the provinces to concentrate our minds by passing a proposed constitutional amendment for abolition and then start the clock ticking. Senator Segal's proposed referendum on abolition might not be anyone's first choice, but it would move us off dead centre and in a straight line. As well, it would get the attention of the country on the issue in a concrete way.

With all the loose talk that has been heard on Senate reform and the Senate, it is time to focus on first principles. We need the benefit of a thorough discussion on whether Canada wants a unicameral or bicameral Parliament. Does Canada need a Senate? Does Canada need any kind of Senate? Those who vote for abolition perhaps will have been persuaded by one or more of the following arguments: First, many other democratic countries have unicameral Parliaments. I know that most federations have bicameral Parliaments, but in none of those federations, certainly not in the United States, Australia or Germany, does the constituent parts — the provinces or states — have the constitutional and fiscal powers that

our provinces have. A strong argument can be made that those states need an upper house at the centre to represent their interests and that ours do not need that.

Second, experience, sadly including fairly recent experience, shows that party solidarity almost always trumps the regional role in respect of legislative votes in this place.

Third, many of our provinces had bicameral legislatures and all of them have abolished their upper houses. In many of those provinces, in particular the bigger ones, there are still regional and other minority tensions. However, no one suggests that any of those provinces should recreate their upper houses as a way of reconciling or resolving those tensions.

Fourth, Canadians are over-governed already. We could save some money by doing away with the Senate.

Fifth, the many non-governmental organizations, policy advocacy groups, cultural and linguistic organizations, professional and occupational groups, and think tanks, all of whom now participate in the policy development and the legislative process and do so with the active encouragement of government and political parties, have become much more prominent and influential in setting the national agenda than the Senate is.

Sixth, our 25 years of experience with the *Canadian Charter of Rights and Freedoms* has made the Senate's role in protecting minority rights rather marginal.

Seventh, the existence at both the federal and provincial levels of various ombudsmen, human rights commissions, appeal boards, complaints committees and so forth provides a much better recourse for citizens and a redress for injustice and the capacity to overturn arbitrary decisions of government.

Eighth, the increasing tendency in the House of Commons to amend bills there, even under majority governments, and the growing practice of referring bills to committees in the House of Commons after first reading are overtaking the Senate as a revising chamber.

Ninth, a second chamber, whether its members are appointed, elected by proportional representation or on the basis of provincial or regional balance, contradicts the basic democratic principle of representation by population and to the extent it does so would be undemocratic.

Tenth, all efforts to achieve a reformed Senate having failed, it is better to abolish the present body and rebuild it from the beginning.

In a referendum campaign, some will argue that abolition of the Senate would be preferable to the status quo. That is the position of the government, as stated several times by Mr. Van Loan. Others will argue that abolition would be preferable to some of the more exotic models of

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a reformed Senate, models that would paralyze the federal government and deadlock the federal Parliament. That has been my position.

Others, while opposed to the status quo, will also oppose abolition of the present Senate. Keep it to reform it, they say. Others in favour of a new Senate argue, as I have suggested, that the only path to reform is on the ashes of the present Senate, so abolish it and start over. Others will argue that a second chamber, as a check on the power of the executive government and of the House of Commons, is so essential that even a body as imperfect as our present Senate is better than unicameralism.

***I am not making myself the advocate of any of these arguments. However, the people of Canada need to hear them and hear the counter-arguments of those who hold that Canada needs a bicameral Parliament.***

*Senator Lowell Murray*

I say there is nothing to fear from trusting to the judgment of the people. Let us pass Senator Segal's motion and give the government and the country something to think about.



**Senator Sharon Carstairs (December 11, 2007):** In my view, the most regressive thing a politician can do is to raise an expectation that is not deliverable. This is exactly what this motion proposes.

Canadians would be asked to vote on a referendum to abolish the Senate; but the expectation in the minds of most Canadians would be that if the majority of Canadians voted to abolish the Senate, then the Senate would indeed be abolished. However, this would not be the case.

The Senate could not be abolished without a constitutional amendment, and we all know how difficult such an amendment would be. Therefore, an expectation that has been set up in the minds of the citizens of this country is dashed, resulting in even greater disillusionment of the citizenry and further cynicism.

This motion by Senator Segal goes one step further in the development of cynicism because the person who proposes the motion does not even believe in his own motion. He has indicated that he would vote no. For me,

this proposal is the ultimate in cynicism. Therefore, I believe we should vote a resounding no to this motion.

There is only one solution to Senate reform. That is for the Prime Minister of this country to show leadership. Leadership on behalf of the Prime Minister would manifest itself in calling a first ministers meeting of all the premiers of the provinces and territories to discuss Senate reform because without their support, a constitutional amendment is not possible.

It is when they have come to an agreement that a referendum should occur. The people of Canada should be given a proposal on Senate reform and then given the right to vote it up or down.

I know that the reaction of the honourable senator who has proposed this motion is that we have tried this approach but it did not work. For the sake of historical accuracy, that is not true.

Canadians have never been given the option to vote only on Senate reform. They have had a proposal that included many aspects of constitutional reform and voters voted against far more than one of the propositions. Yes, some voted against Senate reform but far more voted against changes to electoral reform, in particular in British Columbia; others voted for the further decentralization of the nation, which was certainly my vote; still others because it did not go far enough; and last but not least, many voted, no, because they did not like the government of the day, which proposed a massive change in the way Canada was to be governed.

***This chamber has been effective but there is always room for improvement. I would like the premiers and the Prime Minister to discuss the proposition of non-renewable terms, and 12 to 13 years is appropriate.***

*Senator Sharon Carstairs*

Canadians did not reject Senate reform. They rejected a massive package of reforms on the way Canada was to be governed. We do not know how they would have voted had there been a choice only on Senate reform. They deserve the right to make a choice about this institution and this institution alone.

What are some of the questions that the premiers and the Prime Minister should discuss? The first should be the distribution of seats. Should we go to the American model and recognize all provinces as equal and, therefore, entitled to exactly the same number of seats? Should

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they re-examine our present regional representation and question whether the numbers need some adjustment? I favour the second option.

Clearly, the west suffers a significant disadvantage. I would recognize British Columbia as a new region and allow their number of seats to grow gradually to the full 24 seats for their region when the population of British Columbia equals the population of the region of Quebec. I would make a further adjustment that would allow the Prairie region to grow to 30 seats under a provision that would state, if a region represented more than one province, then that region would have 30 seats, thereby equalizing the seats of the Atlantic and the Prairie regions.

As to the elected nature of the Senate, a debate must begin with a discussion on how powerful they want the Senate of Canada to be. If senators in Canada are to be elected in a manner similar to members of the House of Commons, then the discussion of powers is critical. Do we want a chamber of sober second thought or do we want a chamber more powerful than the House of Commons? There are 110 seats in the Province of Ontario — the present proposal, and 24 senators. Which parliamentarians will be more powerful? I suggest, honourable

senators, that the 24 senators, if elected, will be more powerful than 110 members of Parliament. I favour an indirect election process with names coming forward from the legislatures of the provinces and territories. The number of names must reflect the gender and ethnic diversity of the province and, therefore, the numbers proposed must exceed the number of vacancies. The names should be vetted through the legislatures and should require the support of all parties represented in the legislatures. The Prime Minister would then have the choice to select from these names to ensure broad representation in this place.

Other issues require debate. Should senators all sit as independent senators with no caucus loyalty? Should the Speaker of the Senate be elected? Should the Senate be totally gender balanced? Should the Senate have a special role to protect linguistic minorities? Should higher votes be required for legislation that limits minority rights? Should the Senate have quota numbers with respect to First Nations people? Many other questions probably should be debated and examined. I have given a few this afternoon.