Feature

Some Suggestions for Incremental Reform of the Senate

The provisions of the *Constitution Act, 1867* respecting the qualification and disqualification of Senators are outdated. They can be modernized without controversy and early action to accomplish that could be the impetus for Parliament and the Legislatures to address more significant aspects of Senate reform.
**Subsequent to the acceptance of this article for publication and immediately prior to publication, on March 10, 2016 Senator Dennis Glen Patterson introduced Bill S-221 and gave notice of a constitutional amendment resolution the combined effect of which, if adopted, will be to substantially effect the first three changes suggested by the author.*

Ronald Stevenson

In any discussion of Senate reform there are four givens –

First, all ten provincial legislatures will not agree to a proposal to abolish the Senate.

Second, Prime Ministers will not relinquish their constitutional prerogative and duty to advise the Governor General about who will become Senators.

Third, the six eastern provinces will not agree to any reduction in the number of Senators representing those provinces.

Fourth, the four Atlantic Provinces will not agree to removal of the Constitutional provision[1] that guarantees that no province will have fewer seats in the House of Commons than it has in the Senate. The so-called 'Senate floor' already applies to all four of those provinces[2] and will become increasingly significant to them as their populations remain static or decline while populations in other provinces continue to grow.

Whether public respect for and confidence in the Senate will be restored depends on how present and new senators conduct themselves and Senate business in the short term. Two hopeful factors are the advent of a committee to implement a non-partisan, merit-based process to advise the Prime Minister on Senate appointments and the prospect of a less partisan atmosphere in the Senate.

Neither of those reforms will address the imbalance of western representation in the Senate. As Ronald Watts wrote in *Protecting Canadian Democracy: The Senate You Never Knew*, "That some relatively populous provinces like British Columbia and Alberta have only six senators each, while the much smaller provinces of Nova Scotia and New Brunswick have substantially more with 10 senators each [is] a factor further eroding the legitimacy of the Senate in the eyes of the residents of the western provinces".[3] In the same volume Lowell Murray suggested that "The only constitutional amendment that might conceivably stand a ghost of a chance is one that would redress the underrepresentation of the western provinces in the Chamber."[4]

The number 24 figures prominently in the structure of the Senate and has a historic derivation. Because representation in the House of Commons would be based on population, Lower Canada and the Maritime Provinces insisted on equal representation in the Senate as a counterweight to the numerical advantage Ontario would have in the House of Commons.[5] The choice of 24 as the number of Senators allotted to each of the three original divisions (Ontario, Quebec and the Maritime Provinces) was probably made because in the Legislative Council of the United Province of Canada each of Lower Canada and Upper Canada had been represented by 24 Councillors. As the four western provinces became part of the federation they were given 2, 3 or 4 senators until 1915 when

Ronald Stevenson, a retired judge of the Court of Queen's Bench of New Brunswick, is a former Clerk of the New Brunswick Legislative Assembly.