

THE SENATE



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CANADA

Special Senate Committee on Senate Reform

Report on

**The motion to amend the Constitution of Canada
(western regional representation in the Senate)**

Chair

The Honourable Daniel Hays

Deputy Chair

The Honourable W. David Angus

October 2006

Special Senate Committee on Senate Reform

Report on

**The motion to amend the Constitution of Canada
(western regional representation in the Senate)**

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39th Parliament, 1st Session

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NOTE: In this report, the testimony received by witnesses printed in the *Proceedings of the Special Senate Committee on Senate Reform* will be hereinafter referred to only by issue number and page number within the text, e.g. (1:89).

ORDERS OF REFERENCE

Extract from the *Journals of the Senate*, Wednesday, June 21, 2006:

The Honourable Senator Fraser moved, seconded by the Honourable Senator Cook:

That a Special Senate Committee be appointed to undertake a comprehensive review of the Senate Reform or any other related matter referred to it by the Senate;

That, notwithstanding rule 85(1)(b), the Special Committee comprise ten members namely the Honourable Senators Adams, Austin, P.C., Bacon, Baker, P.C., Banks, Biron, Andreychuk, Angus, Carney, P.C. and Murray, P.C., and that four members constitute a quorum;

That, pursuant to Rule 95(3)(a), the Committee be authorized to meet during periods that the Senate stands adjourned for a period exceeding one week;

That the Committee have power to send for persons, papers and records, to examine witnesses, to report from time to time and to print such papers and evidence from day to day as may be ordered by the Committee;

That the Committee have power to engage the services of such counsel and technical, clerical, and other personnel as may be necessary for the purpose of its examination and consideration of such bills and subject-matters of bills as are referred to it;

That the Committee be authorized to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings; and

That the Committee submit its final report no later than September 28, 2006.

After debate,

The question being put on the motion, it was adopted.

Extract from the *Journals of the Senate* of Wednesday, September 27, 2006:

The Honourable Senator Hays moved, seconded by the Honourable Senator Fraser:

That, notwithstanding the Order of the Senate adopted on Wednesday, June 21, 2006, the date for the Special Senate Committee on Senate Reform to submit its final report be extended from September 28, 2006 to October 26, 2006.

After debate,

The question being put on the motion, it was adopted.

Extract from the *Journals of the Senate* of Wednesday, June 28, 2006:

Resuming debate on the motion of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Austin, P.C.:

That

Whereas an amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by resolutions of the Senate and House of Commons and of the legislative assemblies of the provinces as provided for in section 38 of the Constitution Act, 1982;

And whereas it is desirable to amend the Constitution of Canada to provide for a better balance of western regional representation in the Senate;

And whereas it is desirable that the 24 seats in the Senate currently representing the division of the western provinces be distributed among the prairie provinces of Manitoba, Saskatchewan, and Alberta, and that British Columbia be made a separate division represented by 12 Senators;

Now, therefore, the Senate resolves that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by Her Excellency the Governor General under the Great Seal of Canada in accordance with the schedule hereto.

SCHEDULE

AMENDMENT TO THE CONSTITUTION OF CANADA

1. Sections 21 and 22 of the Constitution Act, 1867 are replaced by the following:

"21. The Senate shall, subject to the Provisions of this Act, consist of One hundred and seventeen Members, who shall be styled Senators.

22. In relation to the Constitution of the Senate, Canada shall be deemed to consist of Five Divisions:

1. Ontario;

2. Quebec;

3. The Maritime Provinces, Nova Scotia and New Brunswick, and Prince Edward Island;

4. The Prairie Provinces of Manitoba, Saskatchewan, and Alberta;

5. British Columbia;

which Five Divisions shall (subject to the Provisions of this Act) be represented in the Senate as follows: Ontario by Twenty-four Senators; Quebec by Twenty-four Senators; the Maritime Provinces and Prince Edward Island by Twenty-four Senators, Ten thereof representing Nova Scotia, Ten thereof representing New Brunswick, and Four thereof representing Prince Edward Island; the Prairie Provinces by Twenty-four Senators, Seven thereof representing Manitoba, Seven thereof representing Saskatchewan, and Ten thereof representing Alberta; British Columbia by Twelve Senators; Newfoundland and Labrador shall be entitled to be represented in the Senate by Six Senators; Yukon, the Northwest Territories and Nunavut shall be entitled to be represented in the Senate by One Senator each.

In the Case of Quebec, each of the Twenty-four Senators representing that Province shall be appointed for One of the Twenty-four Electoral Divisions of Lower Canada specified in Schedule A. to Chapter One of the Consolidated Statutes of Canada."

2. Sections 26 to 28 of the Act are replaced by the following:

"26. If at any Time on the Recommendation of the Governor General the Queen thinks fit to direct that Five or Ten Members be added to the Senate, the Governor General may by Summons to Five or Ten qualified

Persons (as the Case may be), representing equally the Five Divisions of Canada, add to the Senate accordingly.

27. In case of such Addition being at any Time made, the Governor General shall not summon any Person to the Senate, except on a further like Direction by the Queen on the like Recommendation, to represent one of the Five Divisions until such Division is represented by Twenty-four Senators or, in the case of British Columbia, Twelve Senators, and no more.

28. The Number of Senators shall not at any Time exceed One hundred and twenty-seven."

CITATION

3. This Amendment may be cited as the Constitution Amendment, [year of proclamation] (western provincial representation in the Senate).

After debate,

The Honourable Senator Murray, P.C. moved, seconded by the Honourable Senator Austin, P.C., that the question be referred to the Special Senate Committee on Senate Reform.

After debate,

The question being put on the motion, it was adopted on division.

Paul C. Bélisle
Clerk of the Senate

Special Senate Committee on Senate Reform

The Honourable Daniel Hays, Chair

The Honourable W. David Angus, Deputy Chair

The Honourable Senators:

Jack Austin, P.C.

Maria Chaput

Gerald J. Comeau

Dennis Dawson

Elizabeth Hubley

Jim Munson

Lowell Murray, P.C.

Hugh Segal

David Tkachuk

Charlie Watt

Note: Senators Marjory LeBreton, P.C. (or Gerald J. Comeau) and Daniel Hays (or Joan Fraser) are members *ex officio*.

Other Senators who participated in the work of the Committee :

The Honourable Senators: Downe, Fairbairn, P.C., Fraser, Harb, LeBreton, P.C., Losier-Cool, Prud'homme, P.C. and Tardif

Original Members agreed to by Motion of the Senate :

The Honourable Senators: Adams, Austin, P.C., Bacon, Baker, P.C., Banks, Biron, Andreychuk, Angus, Carney, P.C. and Murray, P.C.

INTRODUCTION

On June 21, 2006, the Senate established the Special Senate Committee on Senate Reform. The motion proposing the Committee was moved by Senator Joan Fraser and seconded by Senator Joan Cook, and provided that the Committee submit its final report no later than September 28, 2006. On September 27, 2006, the Senate agreed to extend the reporting date to October 26, 2006.

The motion establishing the Committee provided that it “...undertake a comprehensive review of Senate reform, or any other matter referred to the Committee by the Senate.” Two specific matters were subsequently referred, and have provided the focus for the work reflected in this report. They are:

- The subject-matter of Bill S-4, An Act to amend the Constitution Act, 1867. The bill would require new senators to be appointed for eight year terms (the retirement age of 75 would continue to apply to existing senators). The bill was introduced by the Government in the Senate on May 30, 2006 and referred to this Committee on June 28.
- A motion of Senator Murray, seconded by Senator Austin, that the *Constitution Act, 1867* be amended to recognize British Columbia and the Prairie provinces as regions to be separately represented in the Senate. The number of seats representing each province would be as follows: British Columbia – 12 (from 6), Alberta – 10 (from 6), Saskatchewan – 7 (from 6), and Manitoba – 7 (from 6), for a new total of 117 senators (from 105). The motion was moved on June 27, 2006 and referred to this Committee on June 28.

Bill S-4 and the Murray/Austin motion deal with unrelated characteristics of the Senate, and are therefore being treated in separate reports. This report provides findings and conclusions that senators may wish to take into account in their deliberations on the Murray/Austin motion.

In order to make the most efficient use of the expert witnesses who have appeared before the Committee, hearings addressed both sets of issues simultaneously. These hearings focussed on the issues raised by Bill S-4 and the Murray/Austin motion, rather than revisiting the much broader range of Senate reform and related constitutional issues that have been considered, in some cases repeatedly, over the years. This report, like the discussions we had with our witnesses, does not seek to revisit the multiple issues that have been explored in previous parliamentary studies of Senate reform. Rather, this earlier work is used as a point of departure for focussed attention to the issues raised in the Murray/Austin motion, along with a limited number of issues directly related to them.

Members of the Committee would like to express their thanks to Prime Minister Stephen Harper, government officials and other expert witnesses who appeared before the Committee during hearings held in the week of September 4, 2006, and the week of September 18 (for a complete list of witnesses, see Appendix A). We also thank those who submitted written briefs for our consideration. The briefs and advice received by the

Committee have been immensely helpful to members, as will be evident throughout this report.

BACKGROUND

The June 27 motion proposes that the *Constitution Act, 1867* be amended to recognize British Columbia and the Prairie provinces as regions to be separately represented in the Senate. The Senate would thus represent five regions, as well as the three territories. The motion also proposes that 12 seats be added to the Senate, and that they be distributed among British Columbia and the Prairie Provinces. Finally, the motion proposes that s. 26 of the *Constitution Act, 1867*, which provides for the appointment of 4 or 8 additional senators representing the existing regions, be amended to reflect the five region model, and provide for the appointment of 5 or 10 additional senators.

The proposed number and distribution of seats (compared with existing population percentages and seats) is outlined on the following table:

**The Distribution of Canada’s Population, Existing Senate Seats,
and Proposed Senate Seats**

	Percent of Population	Current Seats	Percent of Seats	Proposed Change	Proposal	Percent of Seats
B.C.	13.2	6	5.7%	+6	12	10.3%
Alberta	10.1	6	5.7%	+4	10	8.5%
Sask.	3.1	6	5.7%	+1	7	6%
Man.	3.6	6	5.7%	+1	7	6%
Ontario	38.9	24	22.8%	No change	24	20.5%
Quebec	23.5	24	22.8%	No change	24	20.5%
N.B.	2.3	10	9.5%	No change	10	8.5%
N.S.	2.9	10	9.5%	No change	10	8.5%
Nfld. & Labrador	1.6	6	5.7%	No change	6	5.1%
P.E.I.	0.4	4	3.8%	No change	4	3.4%
Nunavut	0.1	1	0.95%	No change	1	0.85%
N.W.T.	0.1	1	0.95%	No change	1	0.85%
Yukon	0.1	1	0.95%	No change	1	0.85%
TOTAL	100	105	100	+12	117	100

The motion recognizes that changes to the number of Senate seats representing a province would require a constitutional amendment ratified according to the requirements of Section 38 of the *Constitution Act, 1982*. This amending procedure requires ratification by the Senate, the House of Commons and the legislative assemblies of at

least two-thirds of the provinces having at least fifty percent of the population of all the provinces (the “7/50” rule).

The number and distribution of Senate seats have been altered, from time to time, since 1867.¹ Most of these changes increased the size of the Senate as new provinces were added to the federation, starting with 2 senators for Manitoba in 1870, 3 senators for British Columbia in 1871, and 4 senators for Prince Edward Island in 1873. In 1887, the territory then known as the Northwest Territories was given 2 seats in the Senate and, in 1905, the newly-created provinces of Alberta and Saskatchewan were given 4 seats each.

Changes in the number of seats assigned to provinces already represented also occurred, in some cases reflecting the addition of new provinces. In 1873, the addition of Prince Edward Island triggered reductions in the number of seats for Nova Scotia and New Brunswick from 12 to 10, as provided in s. 147 of *Constitution Act, 1867*. Following the decennial censuses of 1881 and 1891, the number of seats given to Manitoba was increased, and in 1903 (just before most of the population of what was then the Northwest Territories became residents of Alberta or Saskatchewan), the territorial seats were increased to 4. By 1905, changes reflecting the creation of new provinces, along with changes responding to population growth, had increased the size of the Senate from its original 72 seats to 87 seats.

In 1915 the most significant change (either before or since) occurred: the *Constitution Act, 1915* created a fourth division – the West – with 24 seats, bringing the total to 96. Upon entry into the federation in 1949, Newfoundland and Labrador was assigned 6 seats. Most recently, 2 seats were added for the Northwest Territories and the Yukon in 1975, along with a seat for the newly-created territory of Nunavut in 1999.

The need for increases in the proportion of seats assigned to the Western provinces has been a consistent theme in parliamentary and royal commission Senate reform proposals since the 1970’s. Major proposals since 1984 have all proposed substantial increases in Western representation. The following table reviews the distributions proposed by parliamentary committees and royal commissions over this period.

¹ See Parliament of Canada website, Senate representation – provinces and territories (http://www.parl.gc.ca/common/AboutParl_index.asp?Language=E#S).

Parliamentary Committee and Royal Commission Proposals: 1972-1992

	Molgat-McGuigan 1972	Pepin-Robarts 1979	Lamontagne 1980	Molgat-Cosgrove 1984	Macdonald Commission 1985	Alberta Committee 1982	Beaudoin-Dobbie 1992
B.C.	12	8	12	12	12	6	18 / 12
Alberta	12	6	12	12	12	6	18 / 12
Sask.	12	4	10	12	12	6	12 / 8
Man.	12	4	10	12	12	6	12 / 8
Ontario	24	12	24	24	24	6	30 / 20
Quebec	24	12	24	24	24	6	30 / 20
N.S.	10	4	10	12	12	6	10 / 8
N.B.	10	4	10	12	12	6	10 / 8
Nfld.	6	4	8	12	12	6	7 / 6
P.E.I.	4	2	8	6	6	6	4 / 4
N.W.T.	2	0	1	4	4	2	2 / 2
Yukon	2	0	1	2	2	2	1 / 1
TOTAL	130	60	126	144	144	64	154 / 109
Total Western	48	22	44	48	48	24	60 / 40
Percent Western	37%	37%	35%	33%	33%	38%	39% / 37%

Although these proposals were made at different times, they all responded to the same long-term reality. Populations in the West, notably British Columbia and Alberta, have grown at well above that national average rate for most of the period since World War II, reflecting economic expansion in these provinces, and high levels of immigration. Today, just over 30% of Canada's population lives in the Western provinces, while the number of senators representing these provinces remains fixed at 24; or 22.8% of senators.

As concerns about the adequacy of Western representation in the Senate emerged, British Columbia also began to voice a related, but more specific, concern. Since at least 1971, British Columbia has called for constitutional recognition as a region (the modern term for the "divisions" for which the Constitution Act, 1867 provides representation in the Senate). In 1978, British Columbia released constitutional proposals that provided a relatively extensive argument for this position. The proposal argued that the four divisions represented in the Senate since 1915 had come to be seriously out of step with reality, which was that Canada had evolved into a country composed of five distinct regions, the fifth being British Columbia. "Region" was understood as an area consisting of one or more provinces that possesses unique concerns that require articulation at the

federal level, as well as a population base large enough to warrant separate representation.

Describing British Columbia as “Canada’s Pacific region,” the proposal claimed that there had long existed a unique pacific economy, characterized by growing size and significance in Canada, and a distinctive geography, economic base, trade patterns, and unusually wide cyclical swings between high and low rates of unemployment. The proposal also outlined a range of distinctive demographic and cultural characteristics, noting a relatively high proportion of Asian immigrants, an unusually strong organized labour movement, a unique “frontier” political culture, and social support programs adapted to the needs of the economy and population. As a result, British Columbia possessed distinctive public policy needs, reflecting the importance of maritime issues (boundaries, the fishery), international trade, transportation and natural resources. It was portrayed as a unique and rapidly growing region, whose circumstances required effective representation at the national level.

On November 29, 1995, legislation was tabled in the House requiring that a constitutional amendment subject to the s. 38 (“7/50”) amending procedure obtain the support of all regions before a federal minister could propose its ratification in the House of Commons. Bill C-110, an Act Respecting Constitutional Amendments, reflected a four-region model, but was amended by the government at Report Stage debate to recognize British Columbia as a separate region. The arguments brought forward at that time are broadly reflective of earlier claims. According to Minister Rock, who was the sponsor of the bill, the change responded “...to the need for realistic reflection of British Columbia's status as a specific region of Canada. British Columbia is one of the most rapidly growing provinces with 12 per cent of the country's population and almost 42 per cent of the population of the western provinces. ...Beyond this the province's economy and its position on the Pacific make it different from the provinces in the prairies. ...The government has concluded that the arguments favouring recognition of British Columbia, its size, its population, its contribution to the Canadian economy and its Pacific positioning, were compelling.”(*House of Commons Debates*, Dec. 11, 1995)

It is noteworthy that the requirements of this Act need not apply to ratification of the proposal contained in the Murray/Austin motion even though, as noted above, it will require ratification according to the procedure in s. 38 of the *Constitution Act, 1982*. If the Senate adopts the resolution proposed in the motion, a resolution to amend the Constitution will have been placed before the federal and provincial legislatures without the direct involvement of any federal minister. A resolution moved in the House of Commons by someone other than a minister and passed, and also passed by seven provincial legislatures representing 50% of the population, would then be sufficient to achieve ratification.

WHAT THE COMMITTEE HEARD

Witnesses provided the Committee with information and expert opinion on three issues relating to the Murray/Austin motion. These are: the need for changes in Western

representation (and the appropriateness of the numbers of seats proposed for each Western province); the issue of whether British Columbia should be accorded the status of a region, and broader considerations of politics and process relating to this motion.

Increased Seats for the West

Witnesses before the Committee generally agreed that the number of seats assigned to Western provinces in the existing Senate is too low. Richard Simeon, William Lyon Mackenzie King Visiting Professor of Canadian Studies, Weatherhead Centre for International Affairs, Harvard University, argued that bringing the distribution of Senate seats into line with the distribution of the population, and population trends, is "...obviously long overdue, and greatly to be desired."(4:60) He described the motion (as well as Bill S-4) as a modest, incremental and desirable reform. Philip Resnick, Professor, Political Science, University of British Columbia, supported the proposal as "less than perfect, but a step in the right direction."(3:28) While a Bundesrat-style "large/medium/small" province distribution would be ideal, the certainty of opposition from small provinces to seat reductions makes the distribution proposed be best available response to a significant problem: "The fact remains that British Columbia and Alberta, with their burgeoning populations and red-hot provincial economies, are grossly under-represented in a Senate whose regional composition dates back to the railway era."(*brief, p. 4*) C.E.S. (Ned) Franks, Professor Emeritus, Queen's University, also stressed the need for change, noting that both British Columbia and Alberta have a larger population than all of the Atlantic provinces, yet retain a combined total of only 12 seats compared to the 30 possessed by the Atlantic provinces.(1:29) Andrew Heard, Associate Professor, Political Science Department, Simon Fraser University, argued that the Senate has become "...a symbol of this institutional exclusion and under-representation," and commended senators Murray and Austin for doing all Canadians a great service with their motion.(3:39)

The main difference among supportive witnesses was over whether the proposal goes far enough to redress imbalances. Prime Minister Harper, who appeared before the Committee primarily to comment on Bill S-4, expressed sympathy for the objectives of the motion, but suggested that it may not go far enough even to satisfy provinces it would benefit, such as Saskatchewan and Manitoba, which would remain underrepresented in comparison to Atlantic provinces such as Nova Scotia. Peter McCormick, Chair, Department of Political Science, University of Lethbridge, who advised the Committee that his students find the current distribution of Senate seats to be laughably incoherent, indicated that the proposal would probably cause them to "...laugh even harder," because it is "...a dog's breakfast of numbers that can only be explained sequentially because they do not make any sense coming in the front door."(4:17) Having said this, he commended the proposal, as an incremental first step in addressing concerns of the West.

Roderic Beaujot, Professor, Sociology, University of Western Ontario, provided the Committee with extensive historical data, as well as population projections, demonstrating the gradual increase in the proportion of Canada's population that lives in the West. The proportion of Canada's population living in the four Western provinces has increased from 25.6% in 1915, to 30% by 2005. While Manitoba and Saskatchewan

have declined during this period (proportionally), Alberta has grown from 5.8% to 10.1% of the national population, and British Columbia has grown even more dramatically, from 5.5% of Canada's population to 13.2%. Forecasts to 2031 project that these two provinces will grow by 27.3% and 29.3% respectively, along with Ontario, well above the national average projected population growth of 20.9%. Manitoba is projected to grow at 15.1%, and Saskatchewan is projected to decline by 1.8% while projections for the Atlantic provinces, which are often used a basis for comparison, range from 8% (Prince Edward Island) to a decline of 2% (Newfoundland and Labrador).²

A contrary view was expressed by David E. Smith, Professor Emeritus, University of Saskatchewan. He questioned the view that discontent with Canada's political system is linked to the number of seats in the Senate possessed by the provinces in which residents are not contented. He argued that such a linkage is unlikely because the Senate does not make public policy. In any case, attention to the need to reflect the distribution of Canada's population in Parliament would need to include the House of Commons, which also fails to reflect the principle of representation by population. (*brief, p. 5*) A second objection to the proposal was outlined by John Whyte, Senior Policy Fellow, Saskatchewan Institute of Public Policy, who reminded the Committee that the need to preserve something close to Quebec's traditional 25% legislative representation had been a major source of discussion during the Charlottetown negotiations, and portrayed this as a continuing sensitivity. He argued that the total number of senators should not exceed 108, with Quebec retaining its existing 24. (4:55) A cautionary note about the receptivity of provinces whose proportion of seats would be diluted by the proposal was also sounded by Stephen Allan Scott, Professor Emeritus, Faculty of Law, McGill University. (5:67)

The challenge posed by the need for agreement by at least seven provinces to changes affecting the distribution of seats was readily apparent in the positions taken by the three provincial governments whose representatives appeared before the Committee. None supported the motion. Furthermore, the reasons for opposing it differed substantially.

Ontario's Minister of Intergovernmental Affairs and Minister Responsible for Democratic Renewal, the Hon. Marie Bountrogianni, argued that constitutional change was not a priority for Ontarians, and called on senators not to proceed with the motion. She went on to argue that Ontario's first preference would be abolition, but that under-representation in the Senate would need to be addressed if, contrary to Ontario's priorities, the issue of Senate reform is pursued at all. (5:50)

The Hon. Benoît Pelletier, Minister Responsible for Canadian Intergovernmental Affairs, Government of Quebec, indicated broad receptivity to discussions of Senate reform by that government. While reaffirming Quebec's traditional opposition to any change which would reduce its existing proportion of seats in the Senate, he noted that Quebec remains open to proposals that are consistent with its objectives.

² Brief submitted by Roderick Beaujot, 3 September 2006, Tables 2 and 6.

The third provincial representative appearing before the Committee was the Hon. Gary Mar, Minister of International and Intergovernmental Relations of Alberta. He reaffirmed Alberta's longstanding adherence to the Triple "E" model for Senate reform, including the equal representation of provinces. Alberta thus does not support the motion, although Mr. Mar noted that Alberta has been flexible in constitutional negotiations in the past, and remains "...willing to compromise, but we would have to see the direction in which things are going in order to be able to come to that firm conclusion."(3:68)

The Committee also received letters from representatives of two provinces and one territory in response to its invitation to all jurisdictions to contribute views. Newfoundland and Labrador Premier the Hon. Danny Williams raised general concerns about an incremental approach to reform, and argued that changes to the representation of some provinces should only be made on the basis of attention to the perspectives of all provinces, and in the context of a comprehensive review of the Senate. Saskatchewan Minister of Government Relations the Hon. Harry Van Mulligen refrained from comment on the motion specifically, but generally rejected incremental reform and indicated support for an elected, effective and representative Senate. He called for a process that engages Canadians in a dialogue that would define a purpose for comprehensive reform. Premier of the Northwest Territories the Hon. Joe Handley thanked the Committee for its interest, but indicated Senate reform is not a priority of his government at this time.

British Columbia: A Region?

Prof. Beaujot provided the Committee with a discussion of the demographic dimension of regionalism, noting that demographers frequently employ a distinction between Coastal and Prairie regions.(1:66-69) Demographers also view the North as a region on its own, and increased representation for such a region would, in practice, strengthen the representation of aboriginal peoples.(1:84) He also noted that a mountain region (British Columbia and Alberta) could be justified(1:79), and pointed out that the differences between rural and urban interests are in some ways more pronounced than those of the traditional geographic regions and, in response to a question, agreed that communities of interest that are not geographically based could also usefully be represented in the Senate.(1:75)

Several witnesses opposed the creation of a British Columbia region. Prof. Smith argued that there is an historical basis for distinguishing between British Columbia and a Prairie region, reflecting perceptions that prevailed during the period when the federal government controlled natural resources in the prairie provinces. This ended, however, in 1930. During the post-World War II period, the progressive urbanization of all of the Western provinces, along with shared and trans-boundary issues on which Western provincial governments increasingly work together, make the idea of a separate British Columbia senatorial region, in Prof. Smith's view, "...antique and unrooted in current Western economic and organizational practices."(brief, p. 5) Prof. McCormick was even more blunt, arguing that the attempt to base Senate representation on regional groupings was one of three key errors made by the Fathers of Confederation when they created the Senate, and that the concept of "region" is yesterday's language, serving only to create

first-class and second-class provinces. In his words: "...regionalism is dead while the provinces live."*(4:13)* Prof. Franks also questioned whether the concept of "region" remains useful as a basis for distributing Senate seats. He suggested that they could simply be assigned on a provincial basis.

Other witnesses supported the continuation of a regional basis for representation in the Senate. Gerald Baier, Canadian Bicentennial Visiting Professor, MacMillan Centre for International and Area Studies, Yale University, argued that the Senate has contributed to the quiet accommodation of regional interests by means of deliberative activity that also involves the representation of the national interest, and praised the motion as "... a step in the right direction."*(3:35 and brief p. 6)* Prof. Heard also affirmed the value of a regional basis for representation, arguing that the proliferation of regions could culminate in every province being a region and representation by population on a provincial basis, which is what is achieved in the House of Commons.*(3:50)*

The positions of the provincial government whose representatives appeared before the Committee were closely related to their positions on the distribution of Senate seats. The Alberta position, as outlined by Mr. Mar, is that the relative homogeneity of the regions may have made regions an appropriate basis for representation in 1867, but in the Canada of today representation of regions has become archaic. Representation should focus on provinces, because each individual province has "...evolved in its own distinct way, with unique priorities, interests, concerns and goals."*(3:63)* For Quebec, which is both a province and a region, the distinction is of limited importance; either way, any eventual reform needs to reflect the interests of Quebec, Canadian duality, and the interests of minorities.*(5:85)* Ontario did not single out the concept of regional representation in its general opposition to the motion.

Next Steps and Related Issues

Witnesses differed with respect to the likelihood that the required number of provinces might agree to a resolution based on this motion, thus enabling the Constitution to be amended. Prime Minister Harper indicated that the allocation of seats has proven to be an extremely contentious political issue in the past, and that the government wishes to build momentum by focussing on more readily achievable reforms at this time.*(2:15)* Prof. Franks was more overtly sceptical, reminding the Committee that political imperatives have tended to broaden the scope of constitutional initiatives in the past, increasing the stakes and simultaneously creating insurmountable barriers to success. He suggested there are no grounds for supposing that this dynamic has changed.*(1:36)* Prof. Resnick also voiced scepticism about the likelihood of achieving change, in the absence of strong public support expressed at election time.

Leslie Seidle, Senior Research Associate, Institution for Research on Public Policy, was less dismissive of the possibility of success. He suggested that a national discussion on the Senate and the purposes which should guide reform may be timely, and that current provincial positions could well change in the course of deliberative discussion.*(1:48)*

Of the three provinces whose representatives appeared before the Committee, Quebec and Alberta indicated a willingness to participate in discussions relating to constitutional

change. Ontario's position was more ambiguous. While that province does not support constitutional discussions at this time, the Minister indicated support for either abolition or increased Ontario representation should such talks occur, which suggests a willingness to participate in any future discussions.

Few witnesses proposed a broadening of the motion to include other issues. However, Prof. Baier argued that consideration of the number of senators might usefully be broadened to include a look at section 26 of the *Constitution Act, 1867*. It enables the Prime Minister to cause the appointment of 4 or 8 additional senators (and was intended as a means to increase support for the government in the Senate when the two Houses are at risk of deadlock). Prof. Baier suggested this provision puts the credibility of the Senate at risk, and called for its removal.

OBSERVATIONS AND CONCLUSIONS

The deliberations of the Committee, and discussions with its expert witnesses, have identified four key tests that have guided Committee members concerning the subject-matter of the Murray/Austin motion. The tests are:

- (1) Are the proposed increases in the number of seats for British Columbia from 6 to 12, for Alberta from 6 to 10, and for Saskatchewan and Manitoba from 6 to 7 each, fair and reasonable, both for residents of these provinces and for other Canadians?
- (2) Do British Columbia, and the provinces of Alberta, Saskatchewan and Manitoba together, qualify for regional status, for the purpose of Senate representation?
- (3) Is there a reasonable probability that, as required by the Constitution, seven provinces representing at least 50% of the population will ratify this proposal, along with the federal Parliament or, at a minimum, that discussion of the proposal will contribute constructively to constitutional progress?
- (4) Are there any matters linked to the proposal sufficiently to require the proposal to be broadened to include them?

Immediately below, we provide an overview of Committee findings and conclusions related to these tests, which we believe senators may find useful as they consider the motion.

The Proposed Distribution of Seats

When he spoke on behalf of his motion in the Senate Chamber on June 27, 2006, Senator Murray argued, centrally, that a serious representational imbalance has arisen within the Senate as population growth in British Columbia and the Western provinces has continued, while their numbers of seats have been unchanged since 1915. He noted that this rigidity contrasts with the practise that prevailed before 1915, when the distribution of seats was altered on a number of occasions to reflect either the creation of new provinces in the West, or population growth in these provinces (these changes are detailed in the Background section of this report). In seconding the motion, Senator Austin argued that it does not attempt to impose a principle of representation by

population upon the stronger representation for minority regions that the Senate was created to provide. Rather, the proposal would provide a more equitable representation of the less populated provinces, with mid-size allotments of seats going to the mid-sized provinces of Alberta and British Columbia.

Our witnesses broadly supported an increase in seats for, especially, Alberta and British Columbia. This reflected a general recognition that population growth in these provinces has made their current representation seriously inequitable. The fact that Alberta and British Columbia each have larger populations than the Atlantic provinces combined, yet only 6 seats each compared to the 30 currently held by Atlantic Canada, is an especially vivid illustration of this problem. In the view of most members of the Committee, action to increase Western representation is long overdue.

The proposal would involve a moderate step in the direction of fairness for Western Canadians. British Columbia, with 13.2% of Canada's population, would move from having 5.7% of Senate seats to 10.3%. Alberta, at 10.1% of the population, would move from 5.7% of seats to 8.5%. Saskatchewan and Alberta, with populations slightly larger than New Brunswick and Nova Scotia, would each move to 6% of Senate seats, closer to the 8.5% that would represent each of the two Atlantic provinces. What is proposed, therefore, is not a redistribution so extreme that it would radically disturb the pattern of existing Senate representation but, instead, an incremental adjustment to demographic realities that should be acceptable to all fair-minded Canadians. Indeed the 30.8% of Senate seats being proposed is significantly below the average 35.8% proposed in the earlier parliamentary committee and commission studies overviewed in the Background section of this report.

The major objections to the proposed seat distribution were that: (a) it does not go far enough, (b) Senate seats are not a serious cause of Western alienation, and the distribution of House of Commons seats requires attention also, and (c) that the proposal would dilute the representation of other regions to an extent that may not be acceptable.

In the Committee's view, these concerns warrant serious attention. However, for most Committee members, they do not provide a persuasive reason for rejecting the motion, and doing nothing. A more radical redistribution (such as equality of the provinces), or other changes such as redistribution in the House of Commons, may be appropriate in the context of comprehensive reform, but that is not what is contemplated in this proposal. What is sought, instead, is incremental improvement that can be achieved more readily, in the short term. In our view, this is what is needed in the area of regional representation.

According to most Westerners, Senate representation is at least a symbolic issue, and therefore requires change. Even if it were not an issue, it is still, in the Committee's view, such an obvious inequity that reform is clearly needed. Indeed, the time to make such changes is precisely when the emotional temperature surrounding them is low, and reform will be perceived by Canadians as a principled response to inequity, rather than a response to crisis, or merely a reactive attempt to give oil to the wheel with the loudest squeak.

Finally, with respect to the third objection, the dilution of representation for Quebec and other provinces was raised as a concern by several witnesses. As well, one Committee member argued strongly that representation by population is not the purpose of the Senate, which was intended to provide special representation to the smaller provinces to counter-balance the effect of representation by population in the House of Commons. According to this argument, any dilution of the representation of the smallest provinces, notably Prince Edward Island because of its exceptional smallness, poses a significant concern. Other Committee members agreed that this concern warrants attention, but felt the proposed dilution is extremely modest, and does not undermine the distinctive representation provided by the Senate. The change being proposed would reduce the 22.8% of existing seats representing Quebec and Ontario each to 20% for each of these provinces, which also retain preponderant representation in the House of Commons. Similarly, the smallest provinces retain disproportionately large representation, in line with the purpose of the Senate. For example, Prince Edward Island represents only 0.4% of the population, but would retain 3.4% of the seats in the Senate (down from 3.8% in the existing Senate).

Two Regions: British Columbia and the Prairie Provinces

In his June 27 remarks, Senator Murray argued that British Columbia is a distinctive fifth region of Canada, noting that this status was recognized by the Government of Canada in the mid-nineties, when legislation requiring the government to obtain regional consent to future constitutional changes falling under the “7/50” procedure was amended by the government to recognize British Columbia as a separate region.

The proposal to recognize British Columbia as a fifth region appeared to be inoffensive to most of our expert witnesses, and attracted limited attention. The most extensive attention came from critics of continued use of the concept, who argued (a) that integration among the Western provinces provides no valid basis for recognition of British Columbia as a region on its own, and (b) that the concept of “region” itself has become irrelevant to the realities of the federation today, where identities and representational needs are defined in terms of provinces.

In the view of the Committee, objections to the proposal based on the irrelevance or unsuitability of regional representation to Canadian realities rest on a false contrast that has never been reflected in Canadian constitutional practice. Senate representation has never been allocated in complete disregard of provinces, or provincial populations (or, more recently, territories). On the contrary, it has always been based on these units, within the context of a regional balance that helps to ensure fair and equitable representation for areas of the country with smaller populations, irrespective of whether those populations are divided into numerous small provinces, or dispersed across provinces that are relatively less numerous, as a result of being territorially larger.

The result, in Senate representation, has been a unique Canadian balance that takes population size, geographical size, political identity and commonality of interest into account, without the rigidity that would apply to any strictly-applied formula for

allocating seats. The concept of “region” remains useful in this balance, as a way of recognizing distinctive representational needs in combination with significant concentrations of population and economic weight while, as the assignment of seats to the three territories demonstrates, not precluding responsiveness to other needs.

Based on the role of the concept of region outlined above, Committee members believe that the recognition of British Columbia as a fifth region needs to be assessed in conjunction with the recognition of the Prairie provinces as a region, as well as on its own. Recognition of two regions in the West responds to the fact that population growth, especially in Alberta and British Columbia, has made these provinces middle tier provinces within the Canadian federation. As minority provinces, compared with Quebec and Ontario, they continue to require heightened representation but, at the same time, the current populations and economic weight of Alberta and British Columbia call for representation beyond that of provinces in Atlantic Canada. Considered on its own, the demographic and economic distinctiveness of British Columbia provides ample reason for regional status, as was recognized by Parliament in the mid-nineties (in regional ratification legislation outlined in “Background,” above).

Contributing to Progress

The positions taken by the three provinces whose representatives appeared before this Committee indicate that some provincial governments are less than receptive to the proposed changes at this time. However, the Committee wishes to note that representatives of both Alberta and Quebec did not reject the proposal out of hand, and affirmed their readiness to participate in constitutional discussions with an open mind. We think this is an important signal, since both of these provinces continue to adhere to longstanding positions that would appear to preclude agreement to the increases in seats proposed in the motion (Alberta continues to champion equal seats for all provinces, as part of the Triple “E” reform program, and Quebec has traditionally opposed any change that would reduce its existing proportion of seats in the Senate). We believe these provinces have sent an important, and extremely positive, signal both about their own response to the subject-matter of this motion, and their perceptions concerning public attitudes within their jurisdictions. The emotional and political landscape of the federation has evolved significantly since the collapse of comprehensive reform initiatives in the early nineties. Now, a decade and a half later, a more constructive spirit prevails, and prospects for productive discussion are stronger.

The Committee cannot predict what might occur in constitutional talks prompted by this motion. It is worth remembering, however, that even under the adverse conditions that prevailed in the early nineties, governments including that of Quebec did succeed in agreeing on the Charlottetown Accord, which proposed reforms to the Senate in conjunction with other changes. As noted above, even Ontario did not close the door on participation along with the other provinces in constitutional discussions, and Committee members believe that, should such talks occur, the fact that Ontarians share a general interest with other Canadians in constitutional progress would ultimately be reflected in the comportment of the Ontario government.

The motion, if passed and forwarded to the federal and provincial governments and legislatures, would formally launch the amendment ratification process established by the Constitution, with its three-year ratification deadline and consequent pressures. However, aside from the precise wording of this motion, there would also be the opportunity for discussion that is open-ended, deliberative and unconstrained by external deadlines. A number of the expert witnesses who appeared before us have called for exploratory discussions to take the pulse of Canadians and explore the possibility of consensus about the broader issues of Senate reform. In the view of the Committee, it is now time for such explorations to begin, and the proposal for increased Western representation set out in the motion provides an excellent initial focus.

Other Matters

One witness suggested the motion might be amended to propose the removal from the *Constitution Act, 1867* of s. 26, rather than its amendment (as proposed in the motion) to 5 or 10 additional senators. The argument was that this provision puts the credibility of the Senate at risk, presumably because a Prime Minister can appoint groups of government supporters to (in some cases) overcome opposition to government measures. We believe that as long as the Senate is an appointed body, s. 26 provides a needed ultimate resort to Prime Ministers faced with opposition majorities in the Senate, and presents no greater danger to the Senate's credibility than would protracted conflict between the Senate and the elected House of Commons, in these circumstances. If the Senate becomes an elected body then we agree, section 26 would no longer serve a useful purpose, and should be removed as a house-keeping measure. The appropriate time to do this, however, would be once an electoral system has been put in place.

The other proposal considered during the course of our hearings was made by one of our members, and supported by several. It was argued that representation of the first inhabitants of Nunavik, in northern Quebec, is not ensured by the distribution of seats in the existing Senate, and representation of other minorities, such as the coastal peoples and official languages communities is also not ensured. The challenge of ensuring that these voices are heard, as well as those of the far larger populations in the constitutionally recognized regions, was strongly communicated to the Committee. Guaranteed representation to the inhabitants of Nunavik, the coastal peoples and the official languages communities was therefore advocated.

The Committee agreed with the objective of the proposal. Action is clearly needed in order to rectify the lack of formal representation of the first inhabitants of Nunavik, and is already overdue. This unacceptable situation dates from 1912, when the boundaries of Quebec were extended to include this territory, but the boundaries of the 24 senatorial divisions of Quebec were not adjusted to include the lands now known as Nunavik. Members of the Committee believe that an exploration of the appropriate means (and applicable amending procedure) to address this issue is now high on the list of unfinished constitutional business in Canada, and should receive priority attention from the governments involved.

We also believe that the effectiveness of the Senate in representing minorities can be enhanced through attention to the design of the process for selecting senators (See the Committee's report on the subject-matter of Bill S-4). These requirements can thus continue to be reflected in appointments by Prime Ministers of Canada, and should be incorporated within any future election process developed as a basis for the selection of senators. In addition to avoiding potentially large complexities relating to the distribution of seats among minorities, this approach does not require ratification by provincial governments, and could permit flexibility of representation, as the requirements of minorities evolve.

Conclusion

The population growth forecasts the Committee obtained from Prof. Beaujot, one of Canada's foremost demographers, suggest that the problem of inadequate Western representation in the Senate is not going to fix itself. By 2031, the population of British Columbia will have increased by 29.3% and that of Alberta by 27.3%, while growth in Atlantic Canada is projected to lag the national average growth of 20.9%. Unless something is done, current inequities in Senate representation will become steadily more severe over the next 25 years.

The motion proposed by Senator Murray, and seconded by Senator Austin, provides a moderate and reasonable response to this challenge. The proposed distribution of seats would enable the Senate to more fairly represent all Canadians, consistent with the heightened representation of minority regions and other minorities that is fundamental to its purpose. It would also contribute significantly to the credibility of the Senate among the residents and governments of the Western provinces, and build the goodwill that is an essential basis for broader constitutional progress. With these considerations in mind:

Although Committee members are not unanimous, most support the June 27 motion of Senator Murray, seconded by Senator Austin, and urge senators representing all regions of Canada to support the motion, so as to give governments and legislatures across Canada a starting point for providing the West with equitable representation in Canada's Senate.

APPENDIX A – WITNESSES (in order of appearance)

Wednesday, September 6, 2006

C.E.S. (Ned) Franks, Professor Emeritus, Queen’s University

Leslie Seidle, Senior Research Associate, Institute for Research on Public Policy

Janet Ajzenstat, Professor Emeritus, Political Science, McMaster University

Roderic Beaujot, Professor, Sociology, University of Western Ontario

Thursday, September 7, 2006

The Right Honourable Stephen Harper, P.C., M.P., Prime Minister of Canada

Privy Council Office

Matthew King, Assistant Secretary to Cabinet, Legislation and House Planning

Dan McDougall, Director of Operations, Legislation and House Planning

Department of Justice Canada

Warren J. Newman, General Counsel, Constitutional and Administrative Law Section

Tuesday, September 19, 2006

Roger Gibbins, President and CEO, Canada West Foundation

Gerald Baier, Canadian Bicentennial Visiting Professor, MacMillan Centre for International and Area Studies, Yale University

Philip Resnick, Professor, Political Science, University of British Columbia (by videoconference)

Andrew Heard, Associate Professor, Political Science Department, Simon Fraser University

The Honourable Gary Mar, Minister of International and Intergovernmental Relations, Government of Alberta

Wednesday, September 20, 2006

Peter McCormick, Chair, Department of Political Science, University of Lethbridge

Gordon Gibson, Senior Fellow in Canadian Studies, Fraser Institute

Peter Hogg, Scholar in Residence, Blake, Cassels and Graydon

John Whyte, Senior Policy Fellow, Saskatchewan Institute of Public Policy

Richard Simeon, William Lyon Mackenzie King Visiting Professor of Canadian Studies, Weatherhead Centre for International Affairs, Harvard University (by videoconference)

David E. Smith, Professor Emeritus, University of Saskatchewan

Daniel Pellerin, Visiting Assistant Professor, Political Science Department, Colgate University

Thursday, September 21, 2006

Patrick J. Monahan, Dean, Osgoode Hall Law School

The Honourable Gérald-A. Beaudoin, Professor Emeritus, Faculty of Law, University of Ottawa and former Senator

Gérald R. Tremblay, Partner, McCarthy, Tétrault.

The Honourable Marie Bountrogianni, Minister of Intergovernmental Affairs and Minister Responsible for Democratic Renewal, Government of Ontario

Stephen Allan Scott, Professor Emeritus, Faculty of Law, McGill University

The Honourable Benoit Pelletier, Minister responsible for Canadian Intergovernmental Affairs, Francophones within Canada, the Agreement on Internal Trade, the Reform of Democratic Institutions and Access to Information, Government of Quebec

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Professor Guy Tremblay, Université Laval
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