

# ELECTING THE SENATE IN CANADA

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*This paper explains why Canada's Senate should be elected instead of appointed. Many Canadians today are concerned that the Senate is an appointed legislative body, and not an elected one. The legislative power to amend or defeat bills should be a responsibility that is divided equally amongst all of Canada's provinces, which can also strengthen federal/provincial relationships. In any position of power, one must lead by setting a good example. Some Canadian Senators in recent history have done the opposite by committing acts of dishonesty and fraudulence. Unfair patronage appointments can lead to feelings of doubt amongst ordinary citizens, and also to feelings of hopelessness for those who have the ambition to become a politician within the federal system. Although the idea of reforming the Canadian Senate to an elected body has been formally reviewed, it is still appointed. This is a problem for earning trust as accountability can become compromised.*

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An astonishing red chamber with 105 seats is where the law makers of Canada take on the formal process of bills becoming laws. These lawmakers are called senators, who work in the upper chamber of a bicameral legislature: The Canadian Parliament in Ottawa. Senators represent regions and are responsible for revisions on bills becoming laws after Royal Assent. Sitting in the chamber and attending committee meetings are just two of many sophisticated duties carried out by Canada's Senate. The Senate may introduce, amend, or defeat a bill. Senators are appointed by the Governor General on advice of the Prime Minister. The lower chamber, referred to as the House of Commons, consists of 338 officials who are elected, not appointed. Although the current Senate is thought to be a representative body of democracy, the fact that senators are appointed and not elected poses a problem. A voice for the people requires a representative chosen by the people. Elections promote stronger connections between constituents and their representatives. People having some say with an important issue allows for a steadier balance of power. Canada should adopt an elected Senate to establish greater equality both amongst the provinces, and in general. Electing a Senate

would strengthen legitimacy and eliminate unfair patronage. This paper will discuss the role of the current Senate, and the benefits of having an elected one. A lack of equal representation amongst the provinces is unacceptable and this paper will also draw attention to benefits of equality in the political system all together. Legitimacy, and how the current Senate has compromised it, will be noted along with the importance of eliminating patronage. It is important that all Canadians have opportunities to be elected if they so desire.

The Senate, as Sir John A. Macdonald pointed out, provides a “second sober thought” on all legislation passed up by the House of Commons.<sup>1</sup> Senators attend committee meetings and sit in the upper chamber of the Canadian Parliament. Their duties also include overseeing the interests of provinces, minorities, and regions.<sup>2</sup> Along with revisions, the Standing Committee on International Economy, Budgets, and Administration points out that “Senators represent, investigate, deliberate and legislate.”<sup>3</sup> They also have the power to defeat bills, not just amend them. Elections promote the concept of democracy which the Greeks initially defined as “rule by the people.”<sup>4</sup> Canada is a representative democracy meaning that people choose someone to make governing decisions for them.<sup>5</sup> If Canada is truly democratic, then why do the decision makers of a second chamber get appointed? This question has been raised frequently and as political scientists Eric Mintz, Livianna Tossutti, and Christopher Dunn pointed out, “the unelected Senate has to approve all legislation.”<sup>6</sup> This compromises the whole idea of democracy. Voting is a way for people to put forth their input on domestic and international matters. It is commonly known that there has been a massive decline in political participation and trust in politicians. The very definition of liberal democracy, according to Mintz, Tossutti, and Dunn, states that “fair elections be held to choose those who make governing decisions.”<sup>7</sup> The idea of an appointed Senate demonstrates an imbalance of power. If democracy is to be fully effective, then senators must be elected like Members of Parliament. Senate reform is not a new concept. Ever since the Senate was created, reforming it was regularly debated.<sup>8</sup> In the 1980’s Alberta advocated a “Triple-E Senate”, meaning elected, effective, and equal. Every institution making important decisions on behalf of others should be elected to promote effectiveness and fairness.

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<sup>1</sup>Mintz, Tossutti and Dunn, *Canadian Politics*, 409-410.

<sup>2</sup>Kroft and Atkins, *The Senate Today*, 2.

<sup>3</sup>Kroft, 3.

<sup>4</sup>Mintz, Tossutti and Dunn, 5.

<sup>5</sup>Mintz, Tossutti and Dunn, 5.

<sup>6</sup>Mintz, Tossutti and Dunn, 6.

<sup>7</sup>Mintz, Tossutti and Dunn, 7.

<sup>8</sup>McGuigan, *The Government of Canada*, 1.

Senators must be elected in Canada to promote equal representation amongst the provinces. The term: federal system, was defined by Mintz, Tossutti, and Dunn as authority evenly divided.<sup>9</sup> The concept within the Senate should be no different. Elections can provide an equal number of seats for every province in Canada. This would create a stronger relationship between federal and provincial governments. Western provinces are expanding in terms of population and require an equal number of representatives in order to establish a more effective and balanced Senate.<sup>10</sup> An appointed Senate causes the problem of an imbalanced body of power. The Senate today has 105 seats divided into 5 divisions: 24 seats in the Maritimes, 24 seats in Quebec, 24 seats in Ontario, 24 seats in western provinces, and 18 seats for additional representation.<sup>11</sup> The Charlottetown Accord, a package of constitutional amendments, suggested a more effective way to balance the equation of elected senators in Canada. The number of seats would be reduced from 105 down to 62, and 6 senators elected from every province.<sup>12</sup> This amendment would have evened out two problems. The first being that senators would be elected instead of appointed. Secondly, seats would be equally distributed throughout Canada. The Charlottetown Accord, however, was defeated the same year that it was proposed.

Domination is not an ideal aspect within democratic countries. An equal and elected Senate may help to reduce quasi-federalism, which Mintz, Tossutti, and Dunn define as “a system in which the federal government dominates provincial governments.”<sup>13</sup> The Senate, as an elected body, can also help reduce Canada’s decentralized federal system. Issues regarding health care and education are the responsibility of provincial governments, although the federal government involves itself anyways.<sup>14</sup> Canadian political scientist David E. Smith commented that “critics say the Senate represents no one because it is appointed.”<sup>15</sup> An elected Senate would strengthen equality not just in politics, but also in society. Canadians prefer equality in the political system because they have the right to vote and hold office. Fairness and more opportunities are fundamental characteristics of equality that do not describe the Senate in Canada today. These characteristics are actually compromised by the qualifications needed to become a senator. To be appointed to the Senate one must have a personal net worth of \$4000.00, own \$4000.00 of equity in land within their home province, and be 30 years of age.<sup>16</sup> These eligibilities make it more difficult for notable and deserving Canadians to be considered for a

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<sup>9</sup>Mintz, Tossutti and Dunn, 324.

<sup>10</sup>Mintz, Tossutti and Dunn, 414.

<sup>11</sup>Kroft and Atkins, 8.

<sup>12</sup>Charlottetown Proposal: Draft Legal Text, 3.

<sup>13</sup>Mintz, Tossutti and Dunn, 332.

<sup>14</sup>Mintz, Tossutti and Dunn, 336.

<sup>15</sup>Smith, *The Canadian Senate*, 67.

<sup>16</sup>Kroft and Atkins, 5.

Senate appointment. Interestingly, the Senate today consists of lawyers, business people, surgeons, and political elites.<sup>17</sup> The financial pre-requisites were, most likely, not a problem for them. It is generally understood that elected Members of Parliament make a larger salary than senators and yet they have less conditions to meet than those appointed to the upper chamber. Every Canadian citizen, if over the age of 18, has the right to run to be an elected official in the House of Commons.<sup>18</sup> Everyone should also have the right to a chance at a Senate appointment, but elections would simplify this problem in the first place.

Appointing senators instead of electing them can have a negative impact on democracy. Canada is a great nation because of its reputation for helping others when and where possible. Part of being a politician should, ideally, be about helping citizens within a community. People voice their opinions and concerns about safety, health, education, and the environment and it is the duty of any politician to respond as quickly and effectively as possible. Anyone appointed to a position of considerable influence and a high level salary is less likely to be as caring or responsive, especially when those who are appointed cannot be fired. Lack of accountability is the problem. A senator that is seemingly untouchable will have greater temptation to look out only for self-interests. Elections for Canada's Senate would certainly reduce this problem, promote legitimacy, and strengthen accountability. Compromised legitimacy will lead to distrust, poor reputation, and angry, disheartened citizens. Broken promises and scandals will decrease Canada's reputation internationally. Fraudulence is illegal and completely annihilates hard earned trust. In 1990 Eric Bernston was appointed to the Senate after serving as the Deputy Premier of Saskatchewan.<sup>19</sup> After serving three consecutive terms in provincial politics and seven years in the Senate, Bernston was charged with fraud in 1997, and convicted in 1999. It was one of the biggest political scandals in Canadian history.<sup>20</sup> If people who get charged or convicted have any remorse, they will typically show the symptoms. Journalist Claire Hoy brought attention to the fact that this was not the case for Eric Bernston "who spent much of the trial sitting in court with his arms crossed in front of him, and flatly refusing any public comment, showed no emotion as the verdict was announced."<sup>21</sup> Cases of politicians looking out for their own personal interests are common and troubling. As hundreds of thousands of dollars disappear, so does the faith that Canadians have in the political system. A historical illustration of this was Senator Wilfrid Laurier McDougald. After working as a director of several corporations, including gold and

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<sup>17</sup>Kroft and Atkins, 4.

<sup>18</sup>Mintz, Tossutti and Dunn, 241.

<sup>19</sup>Hoy, *Nice Work*, 1.

<sup>20</sup>Hoy, 2.

<sup>21</sup>Hoy, 17.

coal mines, McDougald was appointed to the Senate by Prime Minister King.<sup>22</sup> This senator was linked to Deputy Minister Henry and both of them created Sterling Industrial Corp.<sup>23</sup> The ravenous greed of these two men was particularly evident as they each pocketed \$500,000.00 after selling Sterling Industrial Corp.<sup>24</sup> That sum of money can last an ordinary citizen almost a lifetime in this current day and age.

Those in political leadership roles are in positions of great power and must present a positive, reliable image. Incidents of conduct unbecoming can compromise and destroy a politician's public image. Misrepresentation through conduct unbecoming was demonstrated by Senator Patrick Brazeau. Former Member of Parliament and journalist Patrick Boyer recalls journalists advising the public of Brazeau's missed child support payments, accusations of sexual abuse, and lack of attendance from Senate committee meetings.<sup>25</sup> This senator's disgraceful conduct while in office was almost as upsetting as the criminal behaviour that he was formally charged with. As Boyer remembers, "On February 4, 2014, the RCMP laid charges against Patrick Brazeau for breach of trust and fraud."<sup>26</sup> A sense of entitlement can lead to selfish attitudes and actions. These negative features are more likely to become a problem in positions of power that are appointed and not elected. Ruthless, self-deserving behaviour amongst Canada's Senate is poorly regarded by citizens and as Boyer observed, "Many people expressed concern that a 'culture of entitlement' had taken over senators, softening their ability to work effectively and frugally."<sup>27</sup> An accurate and infamous sample of such problems was the Canadian Senate Expense Scandal which involved Mike Duffy, Mac Harb, Pamela Wallin, and Patrick Brazeau. This scandal, according to Mintz, Tossutti, and Dunn, showed Canadians how greed can be one of the main traits of an appointed senator.<sup>28</sup> Mike Duffy is a modern day example of an untrustworthy politician and in 2015, he was charged with bribery, fraudulence, and breach of trust.<sup>29</sup>

An elected Senate in Canada would help eliminate the problem of patronage. Favoritism can lead to deserving, hard-working individuals becoming disgruntled at the fact that they were the most qualified for a job, but did not get selected. Patronage, in a sense, compromises the integrity of democracy as it is a form of injustice to those who earn positions strictly through merit. It seems unusual that patronage appointments would take place in Canada, a country that has a desirable

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<sup>22</sup>Hoy, 42.

<sup>23</sup>Hoy, 43.

<sup>24</sup>Hoy, 43.

<sup>25</sup>Boyer, *Our Scandalous State*, 160.

<sup>26</sup>Boyer, 160.

<sup>27</sup>Boyer, 121.

<sup>28</sup>Mintz, Tossutti and Dunn, 409.

<sup>29</sup>Mintz, Tossutti and Dunn, 409.

reputation for fairness and equality. The Prime Minister is free to appoint to the Senate whom he, or she, prefers.<sup>30</sup> An elected Senate would be a good way to put a halt to this problem. Citizens would then be able to choose who they prefer to represent them and this would eliminate an unnecessary bias relationship between the Senate and other powerful political elites. Some of Canada's past Prime Ministers have an extensive history in making patronage appointments. An example of this was recognized by Hoy who recalled Prime Minister King setting a record of making twelve patronage appointments to the Senate in the same day.<sup>31</sup> Similarly, Prime Minister Jean Chrétien demonstrated favoritism when he made Senate appointments. Senator Leonard Marchand wanted to step down in 1996, but remained in the Senate because his good friend, Prime Minister Chrétien, convinced him to stay.<sup>32</sup> Prime Ministers have various reasons for the patronage appointments that they make. These reasons usually benefit the Prime Minister and the governing party in some way, shape, or form. The Prime Minister and the Cabinet might influence a senator to use veto powers, which are powers to reject proposed legislation.<sup>33</sup> Favoritism through patronage appointments is viewed very negatively amongst Canadians. It is simply unfair. A bias approach to anything destroys accountability which is such an important aspect of democracy. A legitimate, unbiased, elected Senate would help improve Canada's political reputation both domestically and internationally.

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<sup>30</sup>Campbell, *The Canadian Senate*, 40.

<sup>31</sup>Hoy, 74.

<sup>32</sup>Hoy, 82.

<sup>33</sup>Kroft and Atkins, 15.

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