
Reflections on Canada's First Senate "Election"

by Patrick Malcolmson

On June 19, 1990 Stan Waters became Canada's first "elected" Senator. Mr. Waters' election is of more than passing or merely historical interest for a number of reasons. First, the institution of an election, as a form of advisory referendum on Senate appointments, demonstrates that demands for regional representation in the national government are powerful enough to force provincial politicians to establish new constitutional conventions. Secondly, the election of Mr. Waters raises some interesting questions about the nature of electoral politics in any future Senate elections. One wonders whether provincial support for such elections will continue unabated, given that the provincial party in power finished a distant third in the voting. Finally, Canada's first Senate election should be considered in the context of the continuing Americanization of Canadian politics. Canadians seem to be intent on buying American government on the installment plan, and the election of a Senator can be seen as another purchase.

Alberta's Senatorial Selection Act

Alberta has long been one of the most vociferous proponents of Senate reform. In 1983, the Alberta Legislative Assembly established the Select Special Committee on Upper House Reform. Its 1985 report, *Strengthening Canada: Reform of Canada's Senate* has since been the basis of the province's proposals for reform.

The Meech Lake Accord, signed in 1987 by the First Ministers of all the provinces but never ratified by all the legislative assemblies, provided for joint appointment by the federal government and the government of the province in which a vacancy occurred. The province would submit a list of satisfactory candidates, and the federal government would choose from the list. Alberta's Senate election was meant to be consistent with both the existing constitutional requirements and with the amendments that then appeared imminent. It would be a provisional reform. In addition, the Alberta government hoped it would promote future Senate

reform, in the direction of the Triple-E Senate conceived in the report.

The provincial Conservative party had worked conscientiously to make the cause of Senate reform their own, for nowhere has Senate reform been more important in provincial politics than in Alberta. However, in 1988 the then fledgling Reform Party appeared as though they might become the new champions of the cause. Worried that they might lose their advantage, the Conservatives decided to make Senate election legislation a part of the government's record and introduced the *Senatorial Selection Act* in the Alberta Legislature in February, 1989. Their fears of the Reform Party were well founded. A few weeks later, in a federal by-election, Deborah Grey was elected to the House of Commons – the Reform party had its first Member of Parliament. Soon they would have their first Senator.

In what turned out to be a pre-election throne speech, the government announced its intention to proceed with legislation that would "provide a democratic foundation for the Senate selection procedure." This bill was in fact the only legislation introduced by the government in the one day February session preceding the spring election.

The provincial election was held on March 20. The main issues in the campaign were the government's responsibility for the financial collapse of Principal Trust, financial deals with the meat packing industry, and Premier Getty's abilities as leader. Perhaps predictably, the Conservatives used the proposed Senate election in an attempt to deflect public attention from these issues. Canada's first Senate election was, then, partly the result of provincial electoral politics. Mr. Getty attempted to use the traditional "tried and true" method of winning a provincial election in Alberta – he ran against Ottawa. Senate reform was his issue. The strategy was not entirely successful, although the Conservatives would likely have fared worse without it. The Conservative majority was only slightly reduced, but their share of the popular vote declined by 7%. Premier Getty was defeated in his own riding.

The *Senatorial Selection Act*, Bill 11, was re-introduced to a new legislature on June 26, and received third

Patrick Malcolmson is a professor of political science at St. Thomas University, Fredericton, New Brunswick.

reading on August 15. Both opposition parties voted against the Bill. When the Bill received Royal Assent on August 18, the stage was finally set for Canada's first Senate election.

The *Senatorial Selection Act* was designed with the existing provisions for Senate appointments in mind. Section 8 explicitly recognizes the requirements of Section 23 of the *Constitution Act, 1867*. Those seeking election must be Canadian citizens of at least 30 years of age possessing no less than \$4,000 in real property; they must reside in the province; and they cannot hold office in either the House of Commons or the Alberta Legislative Assembly. To be nominated a person must file with the province's Chief Electoral Officer the signatures of 1500 electors and a deposit of \$4,000. (The deposit is returned if the candidate receives 1/2 as many votes as the winner.) Candidates may be endorsed by political parties or run as independents.

The winning candidate is *not* declared elected to the Senate. His or her name is to be "submitted by the Government of Alberta to the Queen's Privy Council for Canada as [a] person who may be summoned to the Senate." It is a convention of the constitution that the actual summons takes place upon the advice of the Prime Minister.

Obviously the election in Alberta did nothing more than attempt to modify this convention. The Prime Minister, it is true, would now have the advice of the people of Alberta, courtesy of Alberta's new legislation. Like all constitutional conventions, he could ignore it at his own political peril. The failure of the Meech Lake Accord changed nothing in this regard.

The Senate Election Campaign

The new legislation left the timing of any Senate elections up to the provincial government. The election could be held in conjunction with a provincial election, a by-election, or municipal elections, or held on its own. Because Bill 11 had become law in August, the government decided to hold the first election in conjunction with the municipal elections in October, 1989.

The requirements for nomination did not prove restrictive. Six candidates were nominated. In late August, Stan Waters was elected by members of the Reform Party to be their candidate. Bill Code, a lawyer well known in Alberta for having recently conducted an inquiry into the collapse of Principal Trust, was acclaimed as the nominee of the Liberal Party. Bert Brown, a long-time advocate of the Triple-E proposal for Senate reform won the nomination of the Conservative Party. The New Democrats did not run a candidate. (Ivor

Dent filed nomination papers but subsequently withdrew). In addition, Tom Sindlinger, Ken Paproski, and Gladys Taylor ran as independents. No former cabinet ministers, from either level of government ran for election, although some had suggested they would. And while two former MLA's contested the election, they both did so as independents.

At the outset, the election did not attract the voters' interest. The first all-candidates forum attracted only 20 members of the public. But subsequent forums drew larger numbers, and voter interest in the election campaign increased steadily. On election day 621,616 of a possible 1.6 million ballots were cast. This represented a respectable 40% turnout, which was 10% higher than the average turnout for municipal elections.

Ironically, one of the major issues of the campaign was the proposed "Meech Lake" amendment to the Constitution. Although the Meech Lake Accord had made the Senate election a realistic political option for the Alberta government, four of the six candidates were openly against the Accord. The Conservative Party endorsed the Accord, and their nominee Bert Brown was clearly damaged by this in the campaign.

The other main issue in the election was the federal government's proposal to institute a tax on goods and services (GST). While the provincial Conservatives were against the tax, Mr. Brown was again hurt by his affiliation with the federal Conservative party. Nowhere was the federal government's tax reform more unpopular than Alberta.

Both issues point to an interesting aspect of the election. All candidates argued that a Senator would have to be free to vote against the House of Commons. How could Mr. Brown be an effective Senator if he was a member of the party that controlled that House? The independent candidates argued that this meant that only a Senator without party affiliation could be effective. This left Mr. Brown, and to a lesser extent Mr. Code, at a clear disadvantage. Mr. Waters', however, was in the best position of all. He had all the electoral advantages of a political party. But his independence was not an issue because his party had only one seat in the House of Commons.

Finally, the popularity of the provincial Conservatives has also waned since the provincial election. Clearly, Mr. Getty's defeat had made the issue of his leadership even more pressing. And there were still the troubling afterthoughts of the provincial campaign and the Principal Trust affair. The results were not, therefore, surprising. The election was much like a typical by-election. However, it was exceptional in that – it served as a referendum on both the government in Edmonton and the one in Ottawa.

The election results were as follows:

- Waters (Reform) 259,293 (42%)
- Code (Lib) 139,809 (22.5%)
- Brown (PC) 127,638 (20.5%)
- Taylor (Ind) 38,534 (6%)
- Paproski (Ind) 30,851 (5%)
- Sindlinger (Ind) 25,491 (4%)

Stan Waters won both in the cities and in the country. He won 13 of Alberta's 16 cities. He lost Medicine Hat to Bert Brown, who lives in the area. He lost Edmonton and Fort McMurray to Bill Code. Waters won 53% of the rural vote. He polled close to 100,000 votes in Calgary, where his nearest rival (Code) polled 42,000. This oddly conformed to the existing voting pattern in provincial elections: Mr. Waters' support was strongest in the areas that traditionally support the provincial Conservatives.

In the following nine months, Premier Getty, who was returned to the legislature in a by-election pressed the Prime Minister to advise the appointment of Stan Waters to the Senate. Mr. Waters was not appointed until June, 1990. What is surprising is not that his appointment took so long, but that it happened at all. Mr. Mulroney risked setting a precedent. Senators may indeed continue to be

appointed on the basis of party and patronage. On the other hand, Ottawa may now be confronted with the advice of the people in the form of an advisory referendum on a Senate nomination.

The odds, however, appear to be in Ottawa's favour. Following the demise of the Meech Lake amendment, Premier Getty stated there would be no further Senate "elections" in Alberta. Other premiers may also look at the outcome of the Alberta election and conclude that they have more to lose than to gain in such elections. But the promise of Senate elections may be hard to resist for opposition parties – especially in Western Canada. And there is no legal reason for not continuing the Alberta practice. The Prime Minister will still be free to ignore – at his peril – the advice of the people in a province. ●



Editor's note: Senator Waters died on September 24, 1991, the very day the government introduced constitutional reform proposals for an elected Senate.