



Recent Publications and Documents

STRENGTHENING CANADA, REFORM OF CANADA'S SENATE, Report of the Alberta Select Special Committee on Upper House Reform, Edmonton, March 1985, 263 p.

The report of a committee of the Alberta Legislature is a new variation on a theme that has been very popular since 1980, the idea of a Senate elected by universal suffrage. It does, however, have a few original twists which might serve to reopen debate on an option which the most recent general election at first seemed to have placed on the backburners.

The idea of a popularly elected Senate is open to two main criticisms. Advocates of a strong federal government worry about possible conflicts between two houses elected by the people and the consequences such conflicts would have on the operation of the Parliament of Canada. Advocates of provincial autonomy argue that senatorial elections would be conducted by federal parties, producing federal party politicians rather than regional representatives. In spite of the hopes or fears of both groups, an elected Senate is a rather popular idea with the Canadian public. Various governments have tried to come up with versions which would satisfy their particular preoccupations. At the federal level Senator Royce Frith, the Molgat-Cosgrove Special Joint Committee and Mr. Gordon Robertson, among others, have come up with models that suit the federal perspective. The Alberta Committee, chaired by Mr. Dennis Anderson, MLA, has modified these models and adapted them to the Alberta perspective.

According to the report the Senate would consist of 64 members, six from each province and two from each territory. One of the most interesting innovations would be to provide for the election of half the Senators from each jurisdiction at the same time as the provincial or territorial election. This would give the provincial political parties a better opportunity to orient the debate and to play a larger role in the selection of candidates. Senators elected in such a way would likely

behave more as regional than federal representatives: at least that seems to be the hope of the committee.

These Senators would hold office for the duration of two provincial legislatures however long or short that may be. They would represent the whole entire province rather than specific constituencies. The "first past the post" electoral system would be used just as it is today, but within huge six-Member or two-Member districts. In rejecting the idea of proportional electoral systems the Committee confirms the unpopularity of the idea among Canadian legislators in general. Coming after the Molgat-Cosgrove, report which rejected proportional representation, and the reactions to the report of the Commission on Electoral Representation in Quebec, proportional representation would not appear to have a bright future in this country, despite the popularity it maintains in academic circles and among certain senior public officials.

The powers of the new institution would be inversely proportional to the importance of legislation it is studying. Thus the Senate would enjoy no right of veto over supply (the lesson of Australia appears to have been noted in this regard). Money or taxation bills, would have to be considered within 90 days and the Senate would have in this area a veto that could be overruled by a simple majority of the House of Commons. As far as other laws are concerned the Senate would have 180 days to come to a decision and its veto could only be overridden by a majority in the House that was larger, in percentage terms than that which blocked the bill in the Senate. Furthermore any change affecting English and French would require a double majority: that is a majority of all Senators and a majority of French Speaking Senators or English Speaking Senators "depending on the issue."

The internal organization of the chamber would be such as to guarantee its independence from federal political parties. Senators would be physically seated in provincial delegations, regardless of any party affiliation. Control of the agenda would no longer reside with the Leader of the Government and Leader of the Opposition (such positions would be

abolished). Instead there would be a Senate Executive Council composed of the Speaker of the Senate and the Chairman of each provincial delegation. A place on this Committee would be the highest political honour a Senator could aspire to since no Senator would be eligible to sit in the Cabinet.

The Alberta Committee made a number of recommendations on related matters. Periodic First Ministers' Conferences should be provided in the Constitution and the Prime Ministers ought to ratify by majority vote appointments to the Supreme Court as well as any use of federal government's emergency powers (except in wartime). The existing powers of reservation and disallowance would be abolished.

The length of the volume might lead one to expect that it contains a well developed argument to support its conclusion. However, a demanding reader may be somewhat disappointed in this regard. Four-fifths of the text consists of descriptive studies prepared by the Research Branch of the Legislature Library and the report itself is really about fifty pages long, a text some could find surprisingly brief for a Committee which worked during fifteen months. More importantly, one is left with the impression that several serious objections to the proposed new Senate were not dealt with or even mentioned in passing.

One example is the very innovative idea of electing Senators at each provincial election. Every provincial election would require half of a province's delegation to campaign for a month or so. Would the Senate continue to meet during this period? What would happen if three of four provinces held elections at the same time? Either the Senate would continue to sit notwithstanding certain members engaged in election campaigning, with the risk that decisions unfavourable to the provinces represented by the absent Senators (and every vote could be crucial to a region in an Assembly of 64 members) or the Senate would have to adjourn during all elections, a solution that would confine it to frequent periods of inactivity. In 1982 alone there were 6 provincial or territorial elections which would have prevented the Senate from sitting 5 of

the 12 months of the year. There is nothing in the report to indicate that the committee even considered this problem.

Another problem is the question of the double majority on linguistic matters. The committee proposes to give to each linguistic group a right to veto over changes that might affect its language. It does not seem to take into account that changes to language law can affect *both* language groups. In fact most amendments are likely to fall into that category. In such a case the committee offers no explicit guidance on the procedure to be followed. Nor does it indicate if the veto power in these cases is absolute or not. "Do those weaknesses give an indication of the consideration the Committee gave to this issue?"

A number of minor factual errors are also to be found in the text. For example on page 41 the report says "The power of the Governor-in-Council to disallow provincial legislation within two years...is seen by the Committee to be antiquated and unnecessary." In fact sections 56 and 90 of the Constitutional Act (1867) make it clear that disallowance of provincial laws must be made within *one* and not two years. The latter delay applied to the disallowance of federal acts by the British government. Perhaps by inadvertance the committee emphasized its own argument, that this power is so old and so little used, even those who object to it have difficulty in describing it correctly.

On the whole the report deserves high marks for originality. It contains

several bold suggestions, notably on the internal organization of the Senate. The committee has also reflected quite faithfully the viewpoints of the majority of witnesses it heard in public sittings. Its report is living proof of the fascination the triple E's (Elected, Equal, Effective) hold for the public of the province. The authors also noted honestly the lack of support for their model outside their own province (p. 13). The future will reveal whether the quality of the report and the force of its arguments will overcome.

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