

**Third Session - Thirty-Ninth Legislature**  
**of the**  
**Legislative Assembly of Manitoba**  
**Subcommittee**  
**on**  
**Senate Elections**

*Chairperson*  
*Ms. Erna Braun*  
*Constituency of Rossmere*

**Vol. LXI No. 1 – 6 p.m., Monday, January 26, 2009**

**MANITOBA LEGISLATIVE ASSEMBLY**  
**Thirty-Ninth Legislature**

<b>Member</b>	<b>Constituency</b>	<b>Political Affiliation</b>
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ASHTON, Steve, Hon.	Thompson	N.D.P.
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<i>Vacant</i>	Elmwood	
<i>Vacant</i>	The Pas	

**LEGISLATIVE ASSEMBLY OF MANITOBA  
THE SUBCOMMITTEE ON SENATE ELECTIONS**

**Monday, January 26, 2009**

**TIME – 6 p.m.**

**LOCATION – Steinbach, Manitoba**

**CHAIRPERSON – Ms. Erna Braun (Rossmere)**

**VICE-CHAIRPERSON – Mr. Blaine Pedersen (Carman)**

**ATTENDANCE – 7 QUORUM – 4**

*Members of the Committee present:*

Ms. Braun, Messrs. Dewar, Jennissen, Lamoureux, Martindale, Pedersen, Mrs. Rowat

**APPEARING:**

Mr. David Faurshou, MLA for Portage la Prairie

**WITNESSES:**

Mr. Louis Bernardin, Private Citizen  
Mr. Amos Wiebe, Private Citizen

**WRITTEN SUBMISSIONS:**

Gary Orsulak, Private Citizen  
Richard Kunzelman, Private Citizen  
Carolyn Garlich, Private Citizen  
Kevin Miller, Private Citizen  
Paul Thomas, Private Citizen  
Peter Chudobiak, Private Citizen  
Philip Winkless, Private Citizen  
Daryl Lucyshen, Private Citizen

**MATTERS UNDER CONSIDERATION:**

Consulting with Manitobans on Senate Elections

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**Clerk Assistant (Mr. Rick Yarish):** Good evening. Will the Subcommittee on Senate Elections please come to order.

Your first item of business is the election of a Chairperson. Are there nominations for this position?

**Mr. Doug Martindale (Burrows):** I nominate Erna Braun.

**Clerk Assistant:** Ms. Braun has been nominated. Are there any other nominations?

Hearing no other nominations, Ms. Braun, will you please take the Chair.

**Madam Chairperson:** Our next item of business is the election of a Vice-Chairperson. Are there any nominations?

**Mrs. Leanne Rowat (Minnedosa):** I nominate Mr. Pedersen.

**Madam Chairperson:** Mr. Pedersen has been nominated. Are there any further nominations?

Seeing none, Mr. Pedersen is elected Vice-Chairperson.

This meeting has been called for the purpose of consulting with Manitobans on Senate elections.

Before we begin, let me go around the table and introduce the members of the committee.

My name is Erna Braun, and I am the MLA for Rossmere.

**Mr. Martindale:** Doug Martindale, MLA for Burrows.

**Mr. Gregory Dewar (Selkirk):** Greg Dewar, MLA, Selkirk.

**Mr. Kevin Lamoureux (Inkster):** Kevin Lamoureux, MLA for Inkster.

**Mr. Gerard Jennissen (Flin Flon):** Gerard Jennissen, MLA for Flin Flon.

**Mr. Blaine Pedersen (Carman):** Blaine Pedersen, MLA for Carman.

**Mrs. Rowat:** Leanne Rowat, MLA for Minnedosa

**Madam Chairperson:** Thank you.

We have one presenter registered to speak this evening, Mr. Louis Bernardin.

How late does the committee wish to sit tonight?

**Floor Comment:** Pardon?

**Madam Chairperson:** This is for the committee still.

**Floor Comment:** Oh.

**Madam Chairperson:** How late does the committee wish to sit tonight?

**Mr. Martindale:** Well, my understanding is that we only have one person that registered. If other people come in during this presentation and our discussion, we would certainly hear them. Then I think we need to look at the time and possibly wait a few minutes in case there are latecomers, and then decide at that point how late we want to sit.

**Madam Chairperson:** Is that agreed? *[Agreed]* Thank you.

**Floor Comment:** Madame la présidente.

**Madam Chairperson:** One moment, please. We have a number of formalities we need to go through.

**Floor Comment:** Pardon?

**Madam Chairperson:** We have a number of formalities to go through before you are able to present.

**Floor Comment:** Oh, I thought you'd made them.

**Madam Chairperson:** I mentioned your name as the one presenter we have this evening.

We'll just be a minute. Thank you.

We have written submissions from the following persons. They have been received and distributed to committee members—Gary Orsulak, Richard Kunzelman, Carolyn Garlich, Kevin Miller, Professor Paul Thomas, Peter Chudobiak, Philip Winkless, Daryl Lucyshen.

Does the committee agree to have these documents appear in the *Hansard* transcript of this meeting? *[Agreed]* Thank you.

Before we proceed with presentations, we do have a number of other items to consider. I will ask for the patience of all in attendance as we deal with these housekeeping issues.

First of all, if there is anyone else in the audience who would like to make a presentation this evening, please register with the staff at the entrance of the room.

Also, for the information of all presenters, while written versions of presentations are not required, if you are going to accompany your presentation with written materials, we ask that you provide 15 copies. If you need help with photocopying, please speak to our staff.

As well, I would like to inform presenters that, in accordance with our rules and practices, a time limit of 10 minutes has been allotted for presentations, with another five minutes allowed for questions from committee members.

Also, in accordance with our rules, if a presenter is not in attendance when their name is called, they will be dropped to the bottom of the list. If the presenter is not in attendance when their name is called a second time, they will be removed from the presenters' list.

For the information of all in attendance, we do have some background material on the Senate of Canada and this committee, and it's available on the table at the entrance to this room.

Speaking in committee. Prior to proceeding with public presentations, I would like to advise members of the public regarding the process for speaking in committee. The proceedings of our meetings are recorded in order to provide a verbatim transcript. Each time someone wishes to speak, whether it be an MLA or a presenter, I first have to say the person's name. This is the signal for the *Hansard* recorder to turn the mikes on and off.

Thank you for your patience, and we will now proceed with public presentations.

**Mr. Louis Bernardin (Private Citizen):** Oui. Madame la présidente, the Chair du comité. I prepared my paper in English because I didn't think that—but I have a message for Mr. Doer before I start. He should've had a committee go around the province of Manitoba to teach, to inform the people of Manitoba what senators do, because I'm sure if I would ask for half a dozen people to stand up and tell me what the senators do, I don't think I would have much of a result.

Anyway—election of senators. The election of senators is completely the reverse of the intent of the Fathers of Confederation who established the Senate in 1867.

Clearly, its main goal was to give a sober second thought to the bills forged by the House of Commons, then streamlined by the Senate before becoming law for the Canadian people.

Without a doubt, the Senate was established to protect the rights of minorities—as an example, the Native people and other minorities.

We are not against change, but we are for change that will bring about improvement to the present system.

Further to all this, it would have to be a constitutional change, which would require the accord of all provinces, a move that otherwise would have to go to the Supreme Court of Canada.

Before getting rid of a useful institution or making a situation worse, one could attempt a compromise—as an example, for Manitoba, have three senators named by the province and three by the federal government, with a guarantee to protect minorities.

\* (18:10)

Let's not use the elected House of Commons as an example. If you ever have a chance, watch their behaviour, the present elected federal representatives at work in the House of Commons. Is this what we want, the same thing for the Senate? Thank you.

**Madam Chairperson:** Thank you for your presentation. Do members of the committee have questions for the presenter? Mr. Bernardin, would you care to stay at the mike if there are questions. Are there any questions of the committee?

**Mr. Lamoureux:** I guess, very quickly, just in your opinion then, is it better to stay with the status quo, and if there is going to be an elected Senate, is there any preferred way in which you would like to see them elected?

**Mr. Bernardin:** Well, like I was saying, you know, the method of doing that is not for me to tell them but, like I suggested, I made one suggestion that they have three from the province and three by the federal government. As far as the period of 12 years or 10 years or 15 years, it's fairly difficult to find competent people to sit in the Senate for eight, 10, 15 years and then leave the Senate and go back to their work. It's not that easy when you restrict their number of years, but I'm sure we can all find—we could all get together and find an acceptable way to appoint and elect our Senate.

**Madam Chairperson:** Mr. Lamoureux, further? Thank you. Are there any further questions?

**Mr. Jennissen:** Thank you, Mr. Bernardin. I'm just wondering, if we did go through the process of electing a Senate, how often this would happen, in your mind? Every four years? Or in conjunction with a federal election, or a provincial election? How would that mechanism work?

**Mr. Bernardin:** You could make it the same time as the House of Commons—as your ministers—if you wanted to, I don't know. I have no set idea on that. It's not up to me. I'm not a legislator, I don't think I would—I never thought of it, even. I'm sure we can find a way. But to say that we have to get rid of Senate completely, well, we can't do that. We have to have a sober second thought on all our laws.

**Mr. Dewar:** You mention that you feel the Province should appoint three. You think they should represent specific regions of the province?

**Mr. Bernardin:** Not necessarily. Not a region. As long as the person is well known and can represent everybody. It should represent everybody. It should not just represent a part of Manitoba, because if you come from the west, Brandon, and then the east is not served. When you're a senator, you have to share your responsibilities with the whole province.

**Madam Chairperson:** Thank you. Any further questions? Thank you very much for your presentation.

I will now call on Amos Wiebe. Do you have any written materials for us?

**Mr. Amos Wiebe (Private Citizen):** No, I don't.

**Madam Chairperson:** Then proceed with your presentation.

**Mr. Wiebe:** Thank you, Madam Chairperson.

I have to say I would like to congratulate the Manitoba Legislature for taking such a forward-looking approach to the issue of Senate reform. I believe it is probably one of the most important reform movements that we will see in our generation.

The Senate, which was established in 1867, was established to be appointed by the Prime Minister in conjunction—using the powers of the Governor General. What we've seen from that is a huge amount of political patronage being given to the Prime Minister's friends or friends of the party in power. And I think that having an elected Senate would certainly help to make the process more equal overall and certainly grant the normal everyday person the ability to rise to a level of senator and represent people in the second chamber, or in the Upper Chamber.

I think the main question before the committee is not should the Senate be elected—it certainly should—but what method to use to elect them. I believe that we should follow the model of the House of

Commons, except establish geographic boundaries unrelated to population at all in Manitoba. Such boundaries would be set in stone. They could be shifted time and again, but they should not be related to population at all, and within these boundaries there should perhaps be a list, a party list, with candidates' names written on the list and people being able to number their candidates and their preferences 1, 2, 3, 4 and 5. They would number their candidates and their preferences, and then the person who got the most votes for No. 1 would be elected, or if nobody got the most votes as No. 1, then it would move on to No. 2 and then so on and so forth.

This I think is called the single transferable vote. I am not quite sure on that, and I don't have the papers in front of me, but I believe that it's a system that allows for greater fluidity among the system, and it allows for more popular involvement rather than just having the parties saying these are your candidates and you have to vote for these people.

I have to stress that I do not believe that the Senate is a way to experiment with the electoral system. We should not be experimenting with proportional representation at all. I think that what that ends up giving you is proportional representation of a party and not proportional representation of the people, which I believe is an important distinction that we have to make.

I think that it's important that the committee remember that senators, while they represent geographical regions, they also represent people and that they must be elected by the people, not by the Legislature and not chosen by Cabinet or members of the Legislative Assembly.

It is very important, for the legitimacy of the Senate to be maintained and for its ability to examine legislation in the name of Canadians, that they be elected by the people, as the House of Commons is. The House of Commons derives most of its legitimacy from the people and I believe it's important to maintain that in the Senate.

I would also submit that senatorial terms be longer than the average parliamentary term, that they be set at something like six, seven, eight years with elections occurring at the six-, seven-, or eight-year mark, that they do not coincide with federal elections to keep the partisanship to a minimum. I believe that's very important, that in keeping sober second thought in the Legislature, that the party system be kept at bay when it comes to the second chamber.

With that, I'd like to end my comments, Madam Chairperson.

**Madam Chairperson:** Thank you. I have a number of speakers on my list already, Mr. Wiebe.

**Mrs. Rowat:** Thank you, Mr. Wiebe. A couple of questions for you, and I just want to congratulate you on your presentation. You obviously have a keen interest in the Senate and the process and the importance and the significance of it.

One of the things that struck me was your indication that it should be geographical, not population based. Can you explain the reasons why you believe in that strategy? Also, in your comments you talked about an eight-year term. Can you share your thoughts on whether these would be staggered or would they be unilateral across the board? Have you given it any thought in that aspect?

**Mr. Wiebe:** With regard to geographical as opposed to population, I believe that rep by pop has been achieved in the House of Commons, that it works well for the House of Commons and it has since 1867. I think that the Senate, since it is a regional body with 24 senators representing the west, 24 from Québec, 24 from Ontario, 24 from eastern Canada, that it's important to maintain the regional aspect of it instead of having a boundary shifting every 10 years by the census. It's important for continuity and it's important to maintain that stableness that has to be in the Upper Chamber.

As regards the Senate terms, I believe that whether or not they're staggered or whether or not they all coincide at the same time, the same effect is achieved, that the stability of the Senate is maintained. However, I would submit that the preferable version of that would be to have them all elected at the exact same time every eight years on the button. I just think that makes it so much easier for the voter. It makes it easier for them to understand, and that's also an important part of elections is to make sure that the voters understand what's going on to decrease voter apathy.

**Madam Chairperson:** Further? Mrs. Rowat?

**Mrs. Rowat:** Sure, one further. You had indicated geographical. Do you have a vision in your mind how that would be developed? You're saying that there be six senators. Can you indicate to me how you see that laid out in a map?

\* (18:20)

**Mr. Wiebe:** Certainly, I think that all one would have to do is take a map of Manitoba, take the area of Manitoba, divide it by six. There you go. The simplest way possible.

**Mr. Martindale:** Thank you, Mr. Wiebe, for being here tonight. So you're in favour of elected senators by a single transferable vote and six equal geographic regions in Manitoba, right?

**Mr. Wiebe:** Yes.

**Mr. Martindale:** You think it would be difficult to explain to people what the single transferable vote is and how would we go about doing that?

**Mr. Wiebe:** I think it's an issue of terminology. Political scientists sort of give this idea of the single transferable vote; it's a big nomenclature for really just a list that you write 1, 2, 3, your preferences on, which people have been doing since elementary school. I think if you explain it to people that all they have to do is they'll have a list on the ballot. You write down your preference, 1, 2, 3, 4, 5, 6, and whoever gets the most number of ones will be elected and if they don't get 50 percent plus one of the No. 1's, then you drop down to No. 2's and see how many of those carry over.

I don't think it's difficult; I think it's quite simple and I think people have been doing it since time immemorial, both in organizations, in high school and I know in elementary school, that's how we chose activities sometime; it's just preferences.

**Mr. Martindale:** And if people were ranking people starting at 1 and going down from a list, what would you think of the idea of alternating names—male, female; male, female—which would result in approximate gender parity?

**Mr. Wiebe:** I believe that the idea of gender parity is perhaps a good one, but I think it should be attained based on merit and not by design. I believe that all people are equal and they are inherently equal. Whether male or female, they should all be seen sort of with a grey cloak over themselves and when people decide who they're going to pick, it should be on the basis of absolute merit. However, staggering people male, female; male, female, I do not think change anything. People know who they like and they will number people; they'll find them on the list. So, while achieving gender parity is perhaps an admirable goal, I don't think it should be the goal of Senate reform. Senate reform should be about electing senators based on merit.

**Mr. Jennissen:** Thank you, first of all, Mr. Wiebe. That's was wonderful. A question: running these staggered elections, obviously not in conjunction with provincial or federal elections—separately—you would have to find funds to run a senatorial race, obviously. Where would that funding come from in your view and would it be under the same strictures as, let's say the provincial funding which outlaws or doesn't allow, let's say corporate donations or union donations? Would you expect the same thing to be happening in the Senate race?

**Mr. Wiebe:** I would expect Senate races to be run on the same level as any other election in order to maintain fairness. I think the funding laws that we have in place in Canada are very fair. I think it prevents corporatism; it prevents corporations being able to donate just huge amounts of money en bloc to particular candidates who support their views. That's a problem that we see in the United States many, many times, corporations being able to control senators.

So I believe that it's very important that election financing laws be equal across the board. What we can achieve Senate elections and financing by political parties that you always have, although I must suggest that that may not be ideal, but, you know, that's the system.

**Mr. Jennissen:** Yeah, one more thing. I'm a northern MLA myself and one of the criticisms often levelled at me is, well, it's white people representing Aboriginal people, because in my particular constituency, at least half of the people are Aboriginal and if there were six senators, is there some mechanism to ensure that the voice of Aboriginal people would be heard? I don't know how you would do that. I don't have an answer for this, but, in your mind, is that a legitimate direction to go in? I know gender equality would be nice. What about some of our northern people who feel they're underrepresented quite often? Would they have a special voice in at least one of the six senators we elect?

**Mr. Wiebe:** That's a difficult question to ask. I believe that the Native people have been downtrodden for many years and they have been kept down by the various policies of the Canadian government and they have not received any help in getting out of this, sort of the cycle of poverty that they find themselves in. I believe that it is up, however, to the Native community at large and not necessarily the election laws to raise them to an area

where they feel that they are truly represented and truly equal in Canada. That being said, however, I think that, if you had a senator who was representing an area of northern Manitoba, the vast majority of the voters in that area would be Aboriginal people, and if an Aboriginal person of high stature were to be elected, I think that would certainly do much, not only to raising the image on the status of the Aboriginal community in Canada, but it would also ensure that their views are represented in the highest body in the land.

**Madam Chairperson:** Before I go on to the next two committee members who have questions, we have exceeded our five-minute question period. Do I have leave of the committee to extend our question period till we conclude our questions? *[Agreed]*

Thank you. Leave is granted.

**Mr. Lamoureux:** I'm just going to ask, do you feel that senators should be limited to the number of times they can run?

**Mr. Wiebe:** That's an interesting question, and it's not one that my thought had really taken very far. I think that there is merit in doing it. It sort of prevents that idea of a career politician that people sort of don't like. It also helps to have a term limit to help ensure that new people are always coming into the system and new ideas are constantly *[inaudible]*. We all know it's a common thing that the government is a generation behind society at times, and so perhaps having Senate term limits would help that.

It's an issue really up to the greater population at large. I really don't have a view on that. I would both support it in some instances and I would be against it in some instances.

**Mr. Lamoureux:** And, finally, the issue of partisan politics you raised several times, some might suggest that maybe senators should not be allowed to carry party affiliation. What's your opinion on that?

**Mr. Wiebe:** I daresay that would be the greatest achievement of this, and I think that that would be the best route to take. Independent senators are able to conduct their business and to conduct representation without fear of party discipline or without fear of the whips or having to work within the party structure in order to get their ideas out there. So I think that that would actually be probably the ideal way to go about it, but I think the nature of the system is that there will be political parties, and they will find a way to entrench themselves in the Senate. So we have to find a way to work within that,

and that is done through longevity of the senators and sort of keeping their seniority above the members of the House of Commons.

**Mr. Dewar:** Well, thank you very much. I was interested in your comment about undermining the power of the Whip because I am the—as you know, you were the former page in the Legislature. But you mentioned that you felt that senators should all be elected at the same time. Currently, of course, they can serve as a senator until they reach the age of 75, so that means everyone will retire at a different time. So would you support a rule then that would require all the senators to basically resign at once and have a clean slate so we're able to then elect a whole new slate of senators?

**Mr. Wiebe:** I think, if we're working within those rules, it would be entirely unfair to say, well, you know, Senator X and Senator Y have hit 75, so, therefore, you, Senator who are 45, you must now all resign and then we'll have this election. I think it's important that that age limit sort of be done away with, and if somebody who's 80 gets elected to the Senate, so be it. I don't think it's fair to force every senator to resign at the same time simply because of age. I think that having terms of eight years or seven years or six years, or however many years, and having the elections just kind of start at the end of seven years or eight years or six years, whatever it is, is a much fairer way of going about it. It sort of equals the playing field for everybody.

**Madam Chairperson:** Thank you.

**Mr. David Faurshou (Portage la Prairie):** I'm listening very intently from the audience perspective, and, having arrived just a minute or so after you started, I am very curious as to your perspective on election versus appointment. I know you've spoken in length about election. I would like you to, if you could, elaborate on how you decided or how you came to the conclusion that all senators should be elected. The reason I ask this question is that I know extraordinarily talented and experienced and qualified individuals that basically would never ever put their name forward into the public arena because of the blood sport that electioneering is. If you would share your thoughts on it, I would appreciate it.

\* (18:30)

**Mr. Wiebe:** Well, I think the issue is one of legitimacy versus illegitimacy. The power of the House of Commons is derived from the people by



the fact that the people have said these are our leaders.

To have the Prime Minister in conjunction with the Governor General say, we're going to appoint this bloc of senators—recently, there were 18 senators appointed—and we're not going to ask anybody. That's an issue, for me, of legitimacy. It makes me wonder whether or not these people—they may be talented, and I do not wish the committee to think that I don't think there are untalented people in Senate. I know that they are all very intelligent people.

But I think that the people have to have a say in how the Legislature is being composed. For me, it's an issue of legitimacy. I mean, we look at the Senate; it's been called a rubber stamp. That's such a horrible thing for a legislative body to be called a rubber stamp. These people make \$100,000 a year, and all they are is a rubber stamp. That, to me, shows that there is total apathy among the population as regards this Senate. I think that, in order for the Senate to come out of that rubber stamp, and for its decisions not to be seen as incredibly controversial or issues of a constitutional crisis to emerge from the Senate voting down something, the people need to be involved, because the senators need to know that the people are behind them and they're supporting them, because they've elected them. They've given them the authority to represent them, both in the House of Commons and in the Senate. I think that the issue is one of legitimacy.

**Mr. Martindale:** Well, I think you're making a very interesting point. I would suggest that legitimacy leads to power, and that leads to very interesting questions. For example, if the 105 senators were all elected, eventually, they would feel powerful. They would have a much more legitimate mandate from the public. I think that could lead to interesting situations where you have a powerful House of Commons and a powerful Senate possibly being in conflict.

So how would you resolve that so there weren't stalemates when it comes to, say, legislation or other powers? Would you limit the power of an elected Senate, or would you somehow make sure that the House of Commons was more powerful? What would you say about that?

**Mr. Wiebe:** It's a very interesting constitutional point, indeed. You look at the House of Lords in Great Britain. It has been limited severely in its ability to block legislation of the House of

Commons. I believe that its ability to block the budget is something like 90 days, 60 days, I cannot remember, and that its ability to block common, like just everyday legislation is 180 days. Then, after that, it passes automatically.

I would submit that, if the Senate were elected, we should take the line that, perhaps, if a budget is passed by the House of Commons, perhaps the Senate can delay it for 60 days or 90 days, but then after that it will automatically pass and become law.

As regards other legislation of the government's agenda, I don't think that the Senate should be limited in its power to defeat such a thing. I think that the House of Commons is, and will forever remain, the chamber of confidence, and that should not pass the Senate in any way, shape or form. If the House of Commons passes government legislation, that the Senate defeats it is not an issue of confidence, because the House of Commons still has confidence in the government.

So I believe that's a very important point that we have to make in order to ensure that the House of Commons retains its superiority, or its traditional superiority, over the landholding class versus the popularly represented class.

**Madam Chairperson:** Thank you very much for your presentation.

**Mr. Wiebe:** Thank you.

**Madam Chairperson:** This concludes the list of presenters that I have before me.

Are there any other persons in the auditorium that wish to make a presentation? Seeing none, I think at this time I will ask leave of the committee for us to recess and consider what time we will reconvene and perhaps conclude this meeting.

Do we have leave to recess? *[Agreed]*

We have leave. Thank you.

*The committee recessed at 6:34 p.m.*

*The committee resumed at 6:59 p.m.*

**Madam Chairperson:** May I call the committee back to order, please.

For the information of the committee, you have the written submissions for Steinbach meeting January 26, '09, at your place. Please include that in your binder for future reference. That information

you have on hand, so hang on to that and keep it in your binder. Thank you.

\* (19:00)

Are there any—

**Mr. Pedersen:** Just a question. This will appear in *Hansard*. So anyone who wants to read the submissions—the written ones are entered, and then also the verbal ones will be entered in *Hansard*. When will they be able to view them on-line?

**Madam Chairperson:** Do we have leave for the Clerk to speak? [*Agreed*]

**Clerk Assistant:** You're correct. All of the written submissions, the committee agreed this evening to have them included in *Hansard*. Also, all of the verbal presentations from this evening will be included.

The turnaround time on this for a committee is generally about a week. Given the period of the year that we're in right now and *Hansard* sessional staff, I'm not completely certain how long it'll take to get them all up. But I can find that out and let you know by the next meeting for sure, or earlier if I find out.

**Madam Chairperson:** Thank you.

Are there any further presentations from the audience in the auditorium? Are there any further presentations this evening?

Seeing none, the hour being 7 o'clock, what is the will of the committee?

**An Honourable Member:** Committee rise.

**Madam Chairperson:** Committee rise? Is there agreement? [*Agreed*]

The committee will rise.

**COMMITTEE ROSE AT:** 7:01 p.m.

#### WRITTEN SUBMISSIONS PRESENTED BUT NOT READ

We are in favour of abolishing the present system of Senate and the senators should be elected by the electorate. There should be one senator for each province only. We do not need multiple senators for each province. The senators should also be elected for a specific term and not keep their seats forever. If elected, the maximum a senator may serve would be

three 4-year terms and then someone else would have run to replace that person.

Gary Orsulak

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I would favour it although I appreciate it the way it is now. E.g. Senator Carstairs replies to her mail within two weeks, unlike most members of the House of Commons who never reply, including MP Anita Neville. I would vote for Senator Carstairs for my senator if she was running.

Sincerely yours,

Richard Kunzelman

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If a Senate is to be elected it should represent people, not territory, particularly not arbitrarily designated territories like provinces. I definitely would not want to see a Senate system like that in the U.S. where all states, regardless of size, have the same number of senators.

Perhaps the most democratic way of doing it is to divide up the country into senate districts, each with roughly the same population.

The boundaries would not necessarily have to agree with provincial boundaries. Some of the districts should be clearly rural and others urban, and still others might reflect the far north. However, all people, no matter where they live should, more or less, have equal representation.

I would like to see senators elected for an 8-year term with a quarter of the Senate being elected every two years.

Carolyn Garlich

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The Senate should be abolished.

Kevin Miller

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#### I. Introduction

Contrary to the popular, negative stereotype, the Canadian Senate is not a completely useless institution. It does more valuable work than is generally recognized, including by academic scholars who have not taken the time to investigate in depth the activities and impacts of the institution and its members.

Abolition of the Senate is neither desirable nor politically feasible under the existing rules for amending the constitution.

This is not to say that the Senate could not, and should not, be improved to become a potentially more valuable part of the Canadian political system. Even the current, much maligned Senate can make a more meaningful contribution to the policy process were governments of all partisan stripes to treat the institution with more respect and to grant it the autonomy to represent alternative perspectives in the legislative process and to provide greater scrutiny of the performance of ministers and their departments.

The topic of Senate reform has been around almost since the beginning of the country. Despite numerous studies of various kinds and many different models for reform, the present Canadian Senate remains unchanged in its fundamental features from its creation back in 1867.

## II. Criticisms of the Existing Senate

The list of criticisms of the existing Senate is long and longstanding:

- appointment of Senators by the Prime Minister is seen to be an anachronism in the 21st century and robs the Senate of democratic legitimacy;
- appointments are made mainly on the basis of past or anticipated future service to the governing party;
- party loyalty overrides the representation of regional interests;
- the majority of Senators are usually unwilling to challenge the Prime Minister and cabinet on legislation spending and other executive actions;
- the Senate does not provide adequate scrutiny of the bureaucracy or do enough to uphold minority and individual rights;
- Senators are drawn disproportionately from elite backgrounds;
- Senators are overpaid and underworked;
- smaller provinces and regions are drastically overrepresented.

In short, to declare that the Senate is less than a perfect institution and suffers from a poor reputation qualifies as a gigantic understatement.

## III. Obstacles to Reform

One of the main reasons why the Senate remains unreformed is that the critics, of whom there are many, cannot agree on the aims of reform.

Over the past 150 years the aims of Senate reformers have shifted over time. They have included: acting as a check on rash actions by the popularly elected House of Commons, representing the concerns of less populous regions, especially the West, reconciling the differences between Québec and the rest of the country, protecting the rights of minorities of various kinds; bringing the voices of provincial governments more directly into the national policy process, and curbing prime-ministerial power. Designing an institution to simultaneously serve some or all of these aims, either primarily or secondarily, is not easy. Moreover, the likelihood of unforeseen consequences from any single reform or a set of reforms is a very real possibility. Proponents of Senate reform should therefore approach the task with a certain amount of humility and caution.

In addition to the disagreements over the aims of reforms, a number of other factors explain why the Senate remains unchanged:

- the reluctance of Prime Ministers to surrender patronage opportunities;
- majority governments benefit from a controllable, predictable legislative process and an elected Senate with democratic legitimacy would likely raise more challenges to proposed bills and spending;
- the House of Commons fears that an elected Senate might surpass it in political stature and influence;
- some Senators do not wish to see the Senate changed, although since 1982 the Senate has only a suspensive veto (180 days) on constitutional amendments;
- provincial governments do not see the present Senate as a great defender of their interests (federal-provincial forums of various kinds serve this purpose much better), but in the bargaining over broader constitutional changes they have sought something in return for losing ground in terms of Senate seats or in agreeing to abolition;

- finding the right formula in terms of the regional distribution of Senate seats, the bases for selecting/electing Senators and the powers to be granted to the Senate has proven to be difficult given the number of principles, aims and interests to be accommodated;
- as part of this accommodation, there is the tension between the principles of cabinet-parliamentary government and the creation of a powerful, elected Senate which could become a second "de facto" confidence Chamber and lead to constitutional deadlocks with the House of Commons.

With such a long list of obstacles, it is perhaps not surprising that fundamental reforms to the Senate have not taken place over the past 140 years.

Adoption of the Constitution Act, 1982 removed the right of the national Parliament to make fundamental changes to the Senate without provincial approval. A positive vote in seven provincial legislatures representing fifty percent of the national population would be required to abolish the Senate, to create an elected Senate to change its legislative powers (now virtually equal to the Commons) or to change the distribution of Senate seats among the provinces.

#### IV. In Defence of the Indefensible: The Case for the Present Canadian Senate?

The prevailing negative image of the Senate involves inaccuracies, omissions and exaggerations.

The Senate's original role was to complement, not to compete with, the House of Commons, which was meant to be the centre of political life in Canada.

The two original functions of the Senate were to serve as a check on the lower house and to represent regional interests in the national policy process. Over time the Senate added two additional functions: the investigation of public policy and its administration and the representation and protection of minorities and other special interests.

No one could claim with credibility that the Senate has performed these four functions adequately or well. A major reason for this, however, is the tendency for successive governments to take the Senate for granted and not to allow it to exercise independent judgments on legislation and spending or to conduct extensive scrutiny of executive actions and inactions.

In terms of its legislative review function, only occasionally has the Senate demonstrated aggressiveness in terms of challenging the government's proposal. This has usually happened when there is not a government majority in the upper house and when a major policy change is being proposed, both circumstances which happen when governments change after a longer period in office.

A little noticed role of the Senate, performed mainly by its standing and special committees, is to conduct inquiries into existing policies and programs and to provide ideas for new laws, amendments to existing laws and improvement to programs.

In terms of representation, the Senate is more a "party-dominated" institution than a regional body. However, there is more regional representation taking place in the Senate than is popularly imagined: within committees with a regional focus, within the party caucuses which Senators attend and through debates on laws affecting particular regions.

From the outset, the Senate was never seen as the main forum where regional representation would take place. The cabinet was meant to be that forum. There is, in fact, a robust system of representation through regional cabinet ministers within the national policy and administrative processes.

We have an exaggerated notion of how much the country is divided along regional lines.

An electoral system for the House of Commons which produces majority or minority governments lacking in regional balances within cabinets and caucuses contributes to the perception that some provinces/regions are perpetually excluded from national decision-making. The Senate cannot be fairly blamed for the present highly fragmented and regionalized party system, which has produced minority governments with growing regularity since the 1960's. Truly national parties must be able to appeal to all parts of the country and see it as part of their responsibility to ensure regional fairness even when governments lack representation from part of the country.

The operation of the federal system involving high-profile federal-provincial conflicts also adds to the image of pervasive regional conflict. Two comments must be made about this false perception.

First, the Senate was never meant to represent the interests of provincial governments that have numerous other forums to state the case against national actions and inactions. Rather, the Senate

exists to represent the needs and demands of provincial societies in relation to policies and administrative actions which fall within the national responsibility of the Government of Canada. This distinction between representing provincial societies rather than provincial governments is crucial to how we design a reformed Senate.

Second, there are actually relatively few issues which divide the country intensely and deeply along regional lines. I have studied the national legislative process over four decades and have found perhaps a dozen issues where the main lines of disagreement were regional rather than party-based. Second, opinion surveys over the years reveal a relative uniformity of view point on the major public policy issues regardless of the regional backgrounds of the respondents.

In summary, the Senate, its committees and individual Senators do occasionally express regional concerns, but these efforts are muted or overridden by party loyalty and/or take place in the privacy of cabinet, caucus or informal liaisons with ministers and the bureaucracy. There are, however, more important forums like the cabinet and federal-provincial arenas where regional representation takes place and it is easy to exaggerate the number of issues which see regions aligned against one another.

In terms of its legislative reviews function, the Senate is co-equal with the House of Commons, with the exception that financial legislation must originate in the lower house. While the Senate has an absolute veto over ordinary legislation, it has only a suspensive veto of 180 days over constitutional amendments. The Senate is not a confidence chamber so that the defeat of a bill, even a money bill, does not require the government to resign or to ask the Governor General for an election.

The Senate's role as a chamber of "sober second thought" has declined over the years. Loyalty to the Prime Minister who appointed them and to the governing party is a big part of the explanation. However, the tendency for all governments to forward many bills to the Senate late in a session and to insist on almost instantaneous passage is a related factor. The weak political legitimacy of the Senate as an appointed body has also made Senators reluctant to challenge bills already approved by the elected House of Commons. Finally, the drafting of legislation within the Justice department has improved, especially under the influence of the Charter of Rights and Freedoms, so there are fewer

opportunities for Senators to introduce last-minute, technical amendments.

Rather than seeking to amend legislation, most Senators recognize that greater influence is possible by investigating policy and its administration in advance of the government taking a public position. This is done through the use of standing and special committees of the Senate investigating important public policy issues. Such inquiries allow for more time to be taken and are less partisan in tone than Commons committees. Unlike royal commissions and task forces, Senators are already paid to conduct such inquiries and they stay around "to lobby" for their recommendations. Senate committees have produced some valuable reports, but unfortunately ministers and their departments have not paid enough attention to them.

Appointments to the Senate are seen by most Canadians as a form of prime-ministerial patronage. Senators are seen as overpaid and underworked. A poll in June, 2006 found that 44 percent of Canadians favoured an elected Senate and 31 percent favoured abolition. As suggested above, the Senate does more useful work than it is given credit for. Its membership includes many experienced, talented, hardworking individuals who earn their pay. The Senate has reformed its own internal structures, procedure, and rules to become a more active institution and to hold its members accountable for absenteeism. The annual operating cost of the Senate is approximately \$87 million in 2007-2008, an amount which needs to be kept in perspective compared to the overall budget of the Government of Canada of \$262 billion. For a population of 31 million, the annual cost of the Senate is under \$3 per person.

The Senate is one of the few upper houses in the western, democratic world which remains wholly appointed rather than elected. Appointments per se may not be the source of the public's disenchantment with the institution. In each batch of Senate appointments there are always several which raise public anger, just as there are others which receive praise. It should be noted that the public's judgment on the suitability of particular Senate appointments is not informed by a great deal of knowledge of the role of the Senate within the political system or of the actual activities performed by the current Senate in fulfilling that role.

As Canadian democracy has matured and citizens have become less deferential toward political

elites, it has become harder to defend an appointed upper house. The argument here is that even the much maligned existing Senate adds some value to Canadian democracy. Moreover, how seriously we regard the defects of the present Senate will determine the types of reform we favour.

#### V. Reforming the Senate: Big Bang vs. Evolution

Based upon the failure of many past attempts to introduce fundamental reforms to the Senates, it is understandable why pessimism surrounds the topic. Slow or incremental reform seems more realistic than a comprehensive approach which must successfully confront the range of obstacles listed earlier, along with the seeming tendency of the majority of Canadians to favour the constitutional status quo over another round of divisive constitutional negotiations.

Presumably this line of thinking, along with its minority status, led the Conservative Party of Canada government of Prime Minister Stephen Harper (a long-time "Triple-E" Senate enthusiast) to opt for a pragmatic, step-by-step approach to reform.

On 30 May, 2006, the Harper government introduced Bill S-4 which would limit the tenures of new Senators to eight years, while allowing existing Senators to hold their appointment until reaching the retirement age of seventy-five years. In presenting this legislation, Prime Minister Harper also indicated that he would fill future Senate vacancies by appointing individuals who had been elected in a preceding provincial election. He subsequently broke this promise in December 2008 when he appointed 18 Senators allegedly to counter a filibuster of the Senate reform bill by the Liberal majority in the Senate.

Harper also promised that the difficult issue of distribution of seats among the provinces would be addressed at a later date. Finally, he insisted that the changes he was proposing did not require the consent of provincial governments, only the passage of the bill on Senate tenure of both houses of Parliament.

Expert testimony before parliamentary committees on the Harper plan reflected the long-standing disagreements over the aims and how best to reform the Senate. Some critics argued that all the components of the reformed Senate were interrelated and proceeding in a piecemeal fashion would lead to unforeseen consequences. The failure to deal with the distribution of seats among the provinces was another major criticism. Provincial governments

were divided in their response. Alberta declared that Bill S-4 represented a good first step, Ontario and Quebec criticized the unilateral federal approach, three or four provinces favoured abolition and others were non-committal. Failure to consult the public was another complaint.

#### VI. The Triple-E Model

Even though the popularity of the Triple-E model has waned since its heyday of the 1980's and 1990's, it remains the default, starting point for most discussions of Senate reform. Accordingly, I will say a brief word about each of the three Es. Achievement of each of the three Es is difficult but establishing an "effective" Senate which is not so powerful as to create the potential for deadlock with the House of Commons is the most difficult and problematic feature of the triple E model. This means that the legislative authority assigned to the reformed Senate and the mechanism(s) used to resolve potential impasses between the two houses of Parliament are the most crucial issues to be settled.

Electing senators seems like a "political no-brainer" if the Senate is going to enjoy any kind of democratic legitimacy and credibility. The real debate is which electoral system (simple plurality, or some version of proportional representation) should be used and when Senate elections should be held (in conjunction with or separate from elections to the House of Commons or conjunction with provincial elections).

The Harper plan to have Senators elected in provincial elections is misguided in my opinion. Provincial elections focus mainly on matters within the jurisdiction of the provincial government and at times on federal-provincial disputes. Electing Senators in this context will lead them to see themselves as representatives of the provincial government, not as representatives of the various provincial communities in relation to national policy matters. In Canada's highly decentralized and organized federal system, the provincial governments do not need another channel of representation in order to represent their interests. If we do not like the idea of appointed Senators serving the Prime Minister, it would not represent a great improvement to have elected Senators serving Premiers, especially in provinces where long periods of one-party rule occur.

Electing senators at the same time and on the same simple plurality electoral system as the House of Commons would likely produce two chambers

with very similar partisan and regional composition. This would not help in terms of ensuring regional and other differences are represented within the caucus and the cabinet of the governing party. Therefore, staggered elections based on two different systems of representation are probably required to ensure that several kinds of diversity are represented within the inner circle of governing at the national level.

The second "E" of equal representation for regions and/or provinces also presents serious challenges. The wide variation in population size of the provinces makes it inappropriate, and not politically feasible, to have the same number of Senators for each province, as exists for each state in Australia and in the United States. Equality would benefit smaller provinces but would be unacceptable to the larger provinces, including Québec.

Senate representation in the House of Commons needs to be examined alongside the representation formula in the House of Commons. In both houses, the fast growing provinces like Alberta, British Columbia and Ontario are underrepresented compared to the other provinces. There is presently (December 2008) a proposal to add an additional 22 seats to the House of Commons (increasing it from 308 to 330) with Ontario (10), Alberta (5) and British Columbia (7) scheduled to gain the new seats. While Commons' representation is meant to be population based, the "rep-by-pop" principle has never been applied in a "pure manner" as is the case to a large extent in the U.S.A. It seems logical, therefore, that the Senate should not be based on "pure" provincial equality, but rather on some reasonable accommodation which balances considerations of population size and regional input.

The "effective" component of the triple E Senate model is related to the aims of reform and to value-laden judgments about what legislative powers the upper house needs to have real influence. An elected Senate with democratic legitimacy could challenge the existing constitutional convention that only the House of Commons is a "confidence chamber" where the Prime Minister and the cabinet must maintain the support of a majority of members in order to stay in office. As the example of Australia illustrates, it is not necessary to formally designate an elected Senate as a confidence chamber for it to act in this manner. Over the life of the Australian political system since 1901 there have been several constitutional crises of deadlocks or near deadlocks between the two chambers, with the Governor

General being drawn into partisan disputes when called upon to resolve matters.

In my opinion, a delicate balance must be struck between the political legitimacy an elected Senate would have and the formal powers assigned to it. There are numerous potential powers for the Senate and a variety of possible deadlock breaking mechanisms, only a few of which can be presented here.

I favour a cautious approach which does not assign such powers to the Senate as would lead to divided government and the potential for paralysis in the national policy process.

An elected Senate should complement, not compete with, the House of Commons. Any reform plan should also seek to preserve and strengthen the investigative role of Senate committees which can examine national policy issues on a longer time horizon than the House of Commons and build understanding and support for new policy approaches.

Based upon this philosophy, an elected Senate should be given the following powers:

- a six-month suspensive veto on ordinary legislation;
- a two-month suspensive veto on taxing, spending and borrowing;
- the use of conference committees with equal membership from both houses to work out disagreements over bills;
- if a particular bill is declared by a provincial legislature to damage the "fundamental interests" of the province, it could only be passed following a debate and vote in a joint sitting of the House of Commons and the Senate;
- a role for the appropriate committers of the Senate to review and to recommend nominees for appointments to national institutions;
- the enhancement of the policy investigation role of Senate committees, along with the creation of a standing committee on "Regional Affairs."

It is not possible to describe the rationale and details of all these proposals here. However, the purpose of the proposal to protect vital or fundamental interests deserves some explanation.

It responds to the past, high profile federal-provincial disputes, most notably, the ill-fated National Energy Program of the early 1980's. The proposal to have all elected representatives serving provincial societies (MLAs/MPPs/MPs and elected Senators) express their opinions and vote on a divisive issue would put tremendous pressure on a national government and parliamentarians from other parts of the country to search for an accommodation.

## VII. Manitoba's Interests and Senate Reform

The model of Senate reform proposed above will serve the interests of all Canadians, but I believe it fits particularly well with the place of Manitoba within the federal system, with the political traditions of the province and with its fundamental economics, social and political interests.

As I have written elsewhere (*Leading from the Middle*), Manitoba is in the middle of the country geographically. It is neither rich nor poor in economic terms (more like lower middle class), is engaged intensely with the leading policy issues which preoccupy the entire country (climate change, aboriginal concerns, healthcare reform, the cities agenda, French-English relations, etc.) and has a pragmatic moderate political culture. Historically, provincial governments of all partisan stripes have not been "hung up" on the constitutional division of powers, but rather have accepted the benefits of national policy leadership and federal financial transfers in order to improve the quality of life for Manitobans, with the qualification that there should be some measure of advanced consultation before the national government intervenes or withdraws from areas of provincial responsibility. In short, it is not in the interest of Manitoba to create a national legislative process which weakens the capacity of the Government of Canada to equalize opportunities for citizens in all regions.

Prediction is hazardous, but if the Canadian party system remains as fractionalized and regionalized as it presently exists, it will be difficult for any part at the national level to form a majority government. Minority and even coalition governments could become the norm. Adoption of some form of proportional representation to fill seats in the House of Commons would increase the need for inter-party negotiation to make Parliament work and to avoid frequent elections. Adding an elected Senate in which the governing party does not have a majority would create a far more complicated,

unpredictable, conflicted and perhaps unstable parliamentary process.

It could be argued that as part of the region called the West, Manitoba will benefit from the proposed additional seats in the House of Commons granted to Alberta and British Columbia and from any potential redistribution of Senate seats which also recognized the population growth in the region. This presumes, however, that a cohesive political community with shared interests exists in the West. In my opinion, regional thinking and regional collaboration among elected and bureaucratic elites within the four western provinces has declined significantly over the past two decades as the interests of the provinces diverged more than aligned. Alberta has been the most aggressive proponent of a "strong" Senate, but Manitoba should not allow that province to drive the debate on Senate reform.

I would make three final points. First, we need to recognize the limits of constitutional and institutional reform as a basis for more effective policy-making. Political parties and their leaders need to develop policies which inspire trust and confidence from citizens in all regions rather than relying mainly on institutional reforms to address the so-called "democratic deficit." Second, Senate reform will have both foreseen and unforeseen consequences. Therefore, a cautious, incremental approach seems appropriate. Finally, there is practical wisdom involved with not trying to prescribe for every possible contingency in a constitutional document, especially if the matters are highly contentious and cannot be resolved without damaging conflict.

### Sources

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Paul Thomas, "Comparing the Lawmaking Role of the Senate and the House of Commons," in Serge Joyal (ed), *Protecting Canadian Democracy: The Senate You Never Knew*. Montreal: McGill-Queens University Press, 2003, pp. 189-228.



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Paul Thomas

\* \* \*

We feel the Senate should be abolished as it serves no useful purpose.

Until the Senate is abolished it is better to have the Senators elected at their own expense than appointed.

Peter Chudobiak

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In response to the committee's request for public input on the matter of electing senators, I propose the following:

1. In the event that a change to Canada's Constitution be required in order that senators be elected, I recommend to all parties in the Manitoba Legislature that such an amendment be unanimously endorsed. We live in the 21st century, when the vast majority of our population is well educated and the need to appoint elder statesmen from the "privileged classes", i.e., the educated classes, no longer exists. I see no earthly reason why a person should be appointed to the Senate simply because of the position that person holds in society or because that person has rendered service to a particular political party. The people of Manitoba deserve a voice in the way they are represented in both houses of the Canadian Parliament, and that may only be achieved through the election of members to those houses.

2. As regards elections: In the first instance, half the senators should be elected for three years, the remainder for six years. After three years, those senators due for re-election would then run for a six year term. There would then be senatorial elections every three years, replacing or re-electing the half up for re-election.

3. Senators should be limited to no more than three terms in office, ideally only two. This is preferable in that it would reduce the feeling of entitlement that seems to pervade the appointed upper House. Senators are appointed and should be elected to serve and work for this nation of ours, not to become entitled to a position simply by being appointed or elected to it. In the same vein, they should be accountable for their absences from the House. We have the problem of a senator-appointed, not

elected—who spends more time outside Ottawa than actually earning the salary paid.

4. There should be a means of recalling a senator who fails to work satisfactorily for the people of Manitoba, or any other province, for that matter.

5. At the time of senatorial elections, I believe that all senators should be voted for by every citizen living in this province. If four are to be elected, than every voter should mark the four names he or she prefers, out of slate submitted by the chief electoral officer of those persons duly nominated according to the law and regulations.

6. Since the Senate is described as a House of "sober second thought," it may be desirable to set a minimum age for those wishing to run. It might also be desirable that persons running for senatorial office also have a minimum of five years experience in the workplace. I personally find it offensive to see persons elected to public office who have no experience of working outside the political field. The idea that a person will make a good MP or senator simply because their family has been in politics for one or two generations is abhorrent. Canada, and its provinces, must be on guard to prevent the growth of a ruling class, families that see public office as their right by name.

Philip Winkless

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FYI

I believe strongly that senators must be elected and not appointed by any level of government.

I believe that to be a truly democratic country we have the right to decide who represents us in government including the Senate.

I believe that terms should be limited and senators' duties need to be clearly outlined so that the public understands what those duties are. The terms a senator serves must be outlined and should be no more than eight years at a time although I would limit the term to six years.

The public is represented proportionally through an elected parliament but we are not truly democratically represented regionally by the Senate. I believe the Senate is the right forum to ensure regionally equal representation to allow all regions of the country to participate in a strong Canada.

I believe strongly we need to abolish the monarchy and form a republic.

Daryl Lucyshen

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