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Becoming a Senator: When and How it Occurs

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Andre Barnes

Law and Government Division
Parliamentary Information and Research Service

Becoming a Senator: When and How it Occurs
(In Brief)

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CONTENTS

| | | |
|---|--|---|
| 1 | INTRODUCTION..... | 1 |
| 2 | STATUTORY BASIS FOR DETERMINING WHEN A PERSON BECOMES A SENATOR | 1 |
| 3 | PROCESS OF BECOMING A SENATOR | 2 |

BECOMING A SENATOR: WHEN AND HOW IT OCCURS

1 INTRODUCTION

This paper will review how the date on which a person can be said to have become a senator is determined. It will also examine the process by which the Governor General summons a senator to the Senate.

2 STATUTORY BASIS FOR DETERMINING WHEN A PERSON BECOMES A SENATOR

There is no statutory prescription of a decisive date on which a person can be said to have become a senator. Section 24 of the *Constitution Act, 1867* prescribes the summons of a senator as follows:

The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon qualified Persons to the Senate; and, subject to the Provisions of this Act, every Person so summoned shall become and be a Member of the Senate and a Senator.

It is clear that no date is mentioned in this description. Instead, section 24 simply sets out how a person is summoned to the Senate, without stipulating the date on which this should occur. The summons "in the Queen's name by Instrument under the Great Seal of Canada," which in practice is the summons by letters patent, confers on an individual the title and role of senator provided that the person is qualified under the provisions listed in the *Constitution Act, 1867*.

Further reference to the assumption of a place in the Senate is found in section 128 of the *Constitution Act, 1867*. It states that a member of the Senate, prior to assuming his or her seat, must take and subscribe before the Governor General, or some person authorized by him or her (in recent practice, this duty has been granted to the Clerk of the Senate), the Oath of Allegiance and Declaration of Qualification contained in the Fifth Schedule of the *Constitution Act, 1867*. However, the language of this section (i.e., "Every Member of the Senate ... shall before taking his [or her] seat therein take and subscribe ... the Oath of Allegiance") is a clear statement that the person is considered a senator before taking his or her Senate seat, with the Oath of Allegiance and the Declaration of Qualification merely conferring the right of the senator to be seated in the Senate Chamber.

It is worth noting, though, that the Declaration of Qualification reads as follows:

I, A.B., do declare and testify, that I am by Law duly qualified to be appointed a Member of the Senate of Canada ...

This passage implies that the person making the declaration has not yet been appointed to the Senate. However, in accordance with section 128 of the *Constitution Act, 1867* and historical practice, the date on which a senator takes his or her Oath of

Allegiance and Declaration of Qualification is not considered the date on which he or she was deemed to have become a member of the Senate.

Lastly, section 55(2) of the *Parliament of Canada Act*, under the rubric of “commencement of membership” states:

For the purposes of this section, a person shall be deemed to have become a member of the Senate on the day on which the person is summoned to the Senate ...

While this section stands in agreement with section 24 of the *Constitution Act, 1867*, it is important to note that section 55(2) specifically indicates that its provisions are for the purposes of the section only.

3 PROCESS OF BECOMING A SENATOR

The process of becoming a senator begins when an individual is approached by the prime minister and asked to serve. The manner in which one is contacted by the prime minister appears to vary and is nowhere officially prescribed. Once the individual gives the prime minister his or her consent, the Prime Minister’s Office (PMO) contacts the Privy Council Office (PCO), which prepares an Order in Council known as an Instrument of Advice, certifying the appointment.

This Instrument of Advice requires the prime minister’s signature. It also employs the term “summons” to refer to the appointment of the individual to the Senate and contains the date on which the document was signed. The signed Instrument of Advice is transmitted to the Governor General.

At this point, under recent practice, the appointment of the senator is made public by the PMO through a news release. The date on the Instrument of Advice, as well as the public communication of the appointment, usually fall on the same day, regardless of whether Parliament is sitting. It is also possible, however, that the PMO news release will stipulate that the appointment is to begin on a future date, given in the release.

The distribution by the Governor General of the Instrument of Advice is limited; copies are sent to the Office of the Registrar General of Canada and the Clerk of the Senate only. The Registrar’s Office, located within Industry Canada, prepares the “summons by letters patent” or the “commission of appointment,” which is a parchment paper in large format containing the Great Seal of Canada.¹ It is this document that is read in the Senate Chamber during the ceremony in which the senator takes the Oath of Allegiance and Declaration of Qualification, and becomes eligible to take his or her seat (section 128 of the *Constitution Act, 1867*).

The summons by letters patent or commission of appointment also employs the term “summons” in reference to the appointment to the Senate. It is inscribed with the date found on the Instrument of Advice. Historically, this date has been employed as the date on which an individual has been considered summoned to be a member of the Senate and a senator.

NOTES

1. Each time a new Governor General is installed in Canada, he or she is solemnly charged with custody of the Great Seal of Canada as representative of the Crown. Although the Governor General has formal custody of the seal, its actual custodian is the Registrar General of Canada, whose incumbent is the Minister of Industry.