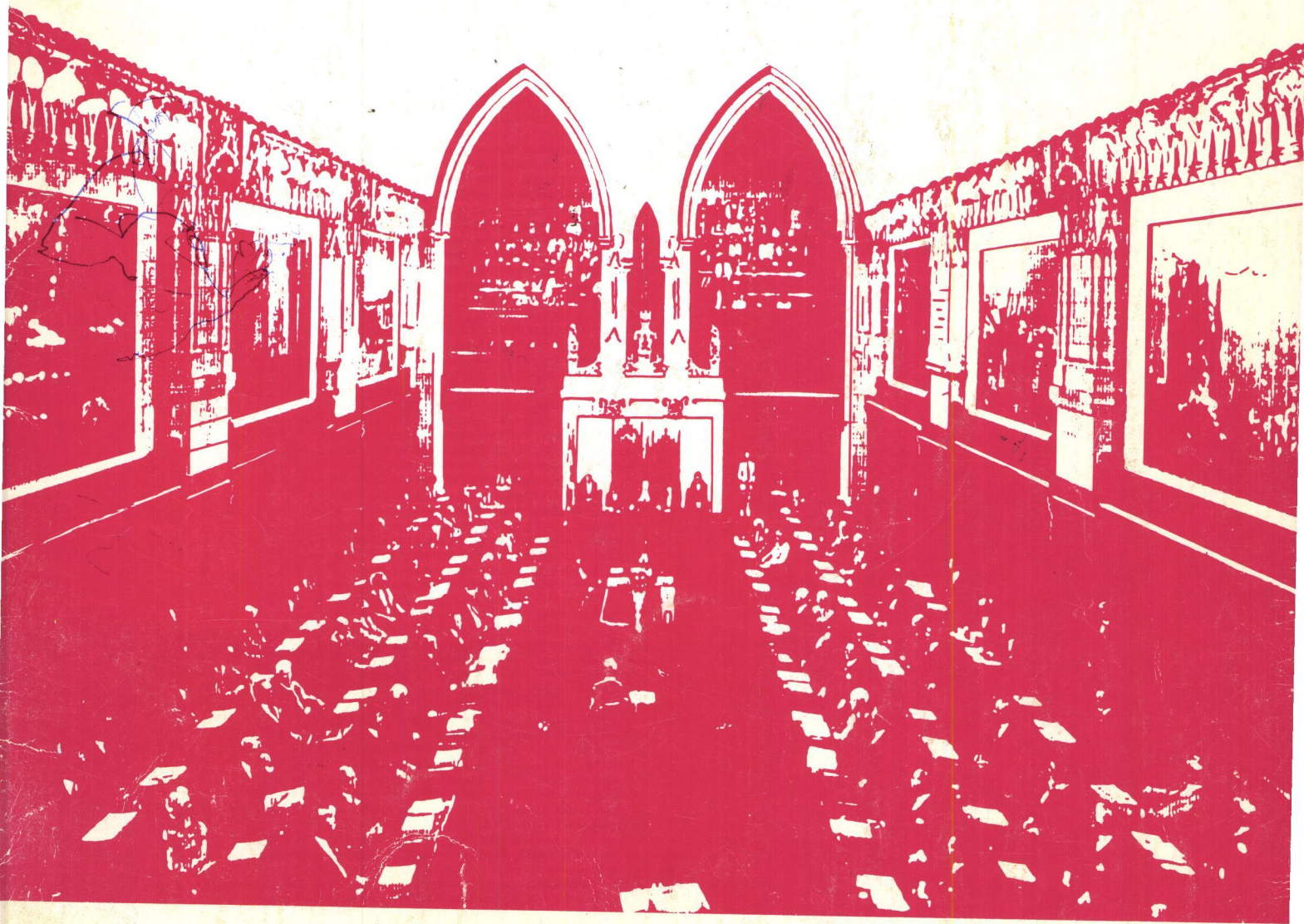


REFORM OF THE
SENATE

A DISCUSSION PAPER



The Honourable Mark MacGuigan
Minister of Justice

Canada



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Reformed Senate Should Represent Regions, Federal Government Discussion Paper Says

Better representation of Canada's regions in the Canadian Parliament should be the primary goal of Senate reform, argues a discussion paper released today by Justice Minister Mark MacGuigan.

Mr. MacGuigan presented the paper on behalf of the Government of Canada to a Special Joint Committee of the Senate and House of Commons. The Committee has been asked to study and report on Senate reform by December 1, 1983.

In presenting the discussion paper, Mr. MacGuigan emphasized the importance the federal government gives to Senate reform. "The issue of Senate reform goes to the very heart of our existence and strength as a federation", he said.

He linked Senate reform to economic renewal, saying that Canada's long-term economic competitiveness required it to make hard choices and that it had to have strong and representative political institutions for this purpose. He said Parliament must be able to speak with the "fullest possible authority" on behalf of all Canadians and, to do this, people from all parts of the country must feel that they can make their voices heard in a meaningful way.

That is why the government views regional representation as the most important role for a reformed Senate. Mr. MacGuigan made comparisons with other countries, arguing that other federations use the second chamber of their national parliament or congress more effectively for representing regional diversity. He said the Canadian Senate had not been able to play this role effectively because Senators are all appointed by the federal government.

The federal government's paper does not make any firm recommendations to the parliamentary committee, especially on the key question of how Senators should be chosen in future.

The Minister stressed the importance of the Committee's role in signalling to Canadians the importance of Senate reform and in stimulating public discussion through its planned series of public hearings across the country, scheduled for the fall. The Government wants to know what Canadians in all regions think about Senate reform, and has prepared its paper with them in mind as well as the Committee.

The Paper is intended to provide information that will help individual Canadians to participate in public discussion and to reach their own conclusions about Senate reform.

After tackling the question "Why reform the Senate?", the paper looks at such questions as "What should a reformed Senate do?"; "How should a reformed Senate be chosen?"; "What powers should a reformed Senate have?"; "How should seats in a reformed Senate be distributed?" and other related issues.

The paper states that "minor adjustments to the present method of exclusive federal appointment would not sufficiently strengthen public support for the Senate, especially as a chamber for regional representation."

The paper also says the Government favours a "weighted" distribution of Senate seats among provinces rather than equal provincial representation, because this would allow population and linguistic differences to be adequately reflected. But Mr. MacGuigan stressed that the Government has no firm position on this or any other matter to be studied by the Committee.

Because of wide interest in an elected Senate, the paper includes an annex which explains "proportional representation" and explores the different electoral results that might have been produced by a proportionally elected Senate in federal elections since 1945. The major conclusion is that the chance of any one party's gaining a majority of Senate seats would be relatively low.

However the paper argues that unless it were based on some form of proportional representation, an elected Senate would simply reproduce the current electoral distortions in the House of Commons, where the national parties now have few members from some regions. A Senate based on proportional representation could strengthen the national parties and their unifying role by ensuring that they would have representatives in the Senate from all regions.

REFORM OF THE SENATE

A DISCUSSION PAPER

Published by the Government of Canada

The Honourable Mark MacGuigan
Minister of Justice

NOTE

This paper was presented to the Special Joint Committee of the Senate and House of Commons on Senate Reform on June 16, 1983, by the Honourable Mark MacGuigan, Minister of Justice. It is published by the Government of Canada as a contribution and an encouragement to public discussion of Senate reform.

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PREFACE

“In order to protect local interests, and to prevent sectional jealousies, it was found requisite that the three great divisions into which British North America is separated should be represented in the Upper House on the principle of equality.”

—John A. Macdonald in the
Confederation Debates, 1865

When the Fathers of Confederation designed the institutions by which we Canadians have governed ourselves for more than a hundred years, they were conscious that a federation as diverse as ours needed a framework within which the regions of Canada would be reflected and reconciled. For that reason they decided that the Canadian Parliament should have two chambers: in the House of Commons, Canadians were to be represented on the basis of population; in the Senate, they would be represented on the basis of regions.

The balance between these two principles was an essential part of the agreement that made Canada possible. At the London Conference of 1866, Maritime delegates referred to it as “the very life”, “the root of the whole scheme”. “If we err”, said one, “the whole scheme will come down some day.”

The Fathers of Confederation from Quebec were equally conscious of the importance of regional representation in the Senate of Canada. As George Brown explained, “Our Lower Canada [Quebec] friends have agreed to give us representation by population in the Lower House, on the express condition that they shall have equality in the Upper House. On no other condition could we have advanced a step.”

The question of regional representation in national institutions is just as vital to Canadians today as it was a century ago. In fact, our greater regional diversity makes it more important than ever. Since John A. Macdonald spoke in the Confederation Debates, Canada has expanded westward to the Pacific, north to the Arctic, and eastward to Newfoundland. At the same time, our regional diversity has been enriched by many new cultures, new sources of wealth, and new patterns of life.

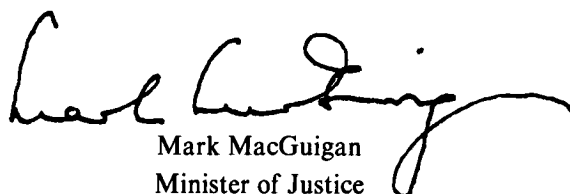
As we undertake the renewal of our Constitution, inherited from the Fathers of Confederation, Canadians must therefore be as conscious as they were of the importance of regional representation. Now that the Constitution has been patriated, and the means to amend it is in our hands, we must turn to the reform of our national political institutions to ensure that Canadians from all regions feel fully and adequately represented in them, and that Parliament can speak and act with the fullest possible authority on behalf of the whole country.

As part of this second phase of constitutional renewal, the Senate and the House of Commons of Canada have established a Special Joint Committee on Senate Reform. The Committee will hold hearings across Canada. It will listen to the views of Canadians from all parts of the country on the changes that should be made to the Senate in order to represent them and their regions better within the Parliament of Canada.

It is my personal hope that Canadians will take a strong interest in the work of the Joint Committee and will help it to reach conclusions about Senate reform that will enjoy broad support throughout the country. In order to assist both the Committee and Canadians generally, and to encourage wide public debate, the Government of Canada has prepared this discussion paper.

As the paper points out, the strengthening of our national institutions is essential if Canada is to respond to the challenges that await us in the century to come. Right now our attention is focused on economic recovery and renewal. But our long-term economic well-being will depend on our ability to become and remain competitive in world markets, and to make the hard choices that will be necessary for that purpose. We will not be able to make these choices unless our institutions are strong and Canadians accept their decisions as fair. Thus the renewal of our national political institutions is an essential part of our economic renewal, and the one must go hand in hand with the other.

I invite all Canadians to reflect on the question of Senate reform and to consider the ways in which our second chamber could contribute, as in other federations, to national solidarity and the strengthening of the national will.



Mark MacGuigan
Minister of Justice

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1. INTRODUCTION

In December, 1982, the Senate and the House of Commons established a Special Joint Committee to study reform of the Senate. The terms of reference given to the Committee asked it "to consider and report on ways by which the Senate of Canada could be reformed in order to strengthen its role in representing people from all regions of Canada and to enhance the authority of Parliament to speak and act on behalf of Canadians in all parts of the country."

These words are important. As this paper will suggest, they provide a focus for the Committee's work and a standard by which to measure the usefulness of the various proposals for Senate reform the Committee will examine.

Senate reform has been debated almost since the Senate itself was created and the debate has intensified in recent years. Since the end of the 1960s, a great variety of proposals for reform have been put forward. No doubt the Committee will review and assess all of these proposals, together with the many new ideas and suggestions it will receive over the coming months. But the Committee will only be able to take the measure of each one if it develops a clear view of the purpose for which the Senate is to be reformed, and the place of Senate reform in the renewal of the Canadian federation as a whole.

This paper is intended to provide the Joint Committee with the Government of Canada's preliminary views on these fundamental questions. In this way, the Government hopes to assist the Committee in establishing its own framework and perspective within which it will want to assess the various dimensions of Senate reform.

One of the challenges facing the Committee is to stimulate wide public debate and to develop a broad consensus among Canadians about the role that the second chamber of Parliament should play in our national life. The Government therefore hopes that this paper will be useful to individual Canadians across the country. It is intended to provide information that will enable

them to participate actively in the debate, and help them reach their own conclusions about the contribution a reformed Senate could make to the strength, unity and well-being of our country.

At this time, Canadians are striving to bring about economic recovery. Therefore, we are inclined to think of our well-being primarily in economic terms. Jobs, investment, productivity, resource development and international competitiveness are foremost in everyone's mind.

Because economic recovery is our first concern, however, we cannot afford to overlook the fundamental link between our economic well-being and the effectiveness of our political institutions. If Canada is to have coherent long-term economic policies that will allow it to continue to progress in a harshly competitive international environment, it will have to make hard choices, and such choices will have to enjoy support in all regions of the country if they are to work. In the end these are political choices, and they must be made through our national political institutions. These institutions must therefore offer adequate means for people from all parts of Canada to have their say and to have their views taken into account.

The problems before us, therefore, are not purely economic: they are also problems of political organization. The challenge is to ensure that our national institutions represent the people from all regions of Canada effectively and can act with the fullest possible authority on behalf of all Canadians. That is the next important step in the renewal of our Constitution and of our federation.

As long ago as 1968, the Government of Canada suggested three steps through which the process of constitutional renewal should pass. In *Federalism for the Future*, Prime Minister Pearson suggested the first step was a charter guaranteeing the rights of individual Canadians, including linguistic rights. The second step was the reform of national institutions in order to

ensure they were making “their most effective contribution” toward realizing the goals of our federation. Once our central institutions of government had been reviewed, Canadians would be in a better position to take decisions about the most appropriate distribution of powers. As Mr. Pearson said:

“Federalism is not just a matter of dividing up the powers of government between the federal and provincial governments in the hope of achieving an appropriate balance between the forces of unity and diversity in the nation. The division of powers is, of course, a central element of federalism, and it must be fully considered... But it should not be finally decided until the central institutions of federalism provided for in the Constitution have been re-examined.”

With the patriation of our Constitution and the adoption of a Charter of Rights and Freedoms in 1982, the first step has been completed. The Government of Canada believes that it is now time to begin the second: to strengthen the national institutions of government, beginning with the Senate of Canada, the chamber of Parliament in which Canadians were intended to be represented on the basis of regions, rather than strictly on the basis of population. In due course, we will then be able to take the third step on the path of renewal, for which the Royal Commission on the Economic Union and Development Prospects for Canada is already preparing the ground.

We need to re-examine the contribution that the Senate is making and could make to regional representation in the Parliament of Canada. We need to do so not because Senate reform is a panacea: it is not. The Senate is only one of the institutions through which we govern ourselves. But it is an institution that could help Canadians respond to the challenges we are now facing as a nation, and one that we are not using as effectively as other federations.

As the following section points out, the second chamber of the national legislature in federal countries is often an important means for representing regional diversity and for balancing the majority view expressed through the other house. Thus, it helps to reconcile the various parts of the federation to each other and to forge the national will. We need to ensure that the second chamber of our Parliament is in a position to make the same contribution to the Canadian federation. If we do not do so, we will have failed to equip ourselves with an important instrument to assist us in making the difficult choices that lie ahead.

In the Canadian context, reform of the second chamber must take account of certain fundamental circumstances. The most important is that Canada is a *parliamentary* federation. This means, among other things, that Senate reform must be approached in a spirit of respect for certain fundamental principles of parliamentary government. The Government of Canada is of the view that our national political institutions should continue to be based on such principles as cabinet solidarity and responsible government. Therefore, the government of the day should continue to owe its existence to the House of Commons alone. This means that no matter what other roles or functions the Senate may perform, it ought not to become what is called a “confidence chamber”, that is, a chamber in which the life of a government may be determined.

Canada is a federal state with two distinct orders of government, each largely autonomous within the areas of responsibility assigned to it by the Constitution. This also has significant implications for the design of a second chamber in the national Parliament, and the various options for Senate reform should be examined in the light of this constitutional reality. Likewise, federalism has consequences for the process by which Senate reform can be achieved. Basic changes to the Senate require the approval not only of the Parliament of Canada but of seven

provincial legislatures representing at least 50 per cent of the Canadian population. Thus, before such changes can be made, the federal and the provincial governments will have to discuss Senate reform and reach a sufficient measure of agreement.

Before these discussions begin, however, two prior steps are necessary. The Senate is an organic part of the Parliament of Canada and should be considered first of all in that context. Before intergovernmental discussions begin, Parliament will therefore consider its own reform and reach conclusions about the best means of strengthening its role as the primary focus of our political life as a nation.

But another step is also required. Parliament is the voice of the nation because, and only because, it represents all the people of Canada. Canadians must therefore be consulted about the future shape of their own political institutions. What role should the Senate play? What functions should it have? On what basis should Canadians be represented in the second chamber? What contribution should the Senate make to national decision-making and the formulation of the national will? These are questions on which Canadians from all parts of the country must have an opportunity to express their views.

The Special Joint Committee of the Senate and of the House of Commons is entrusted with

both of these important tasks. In the first instance, it will consult Canadians from every region, stimulate public discussion, and consider the views of groups and individuals throughout the country. On the basis of these consultations, it will then make recommendations to Parliament about the course to follow in reforming the Senate of Canada. With these recommendations in hand, and with better knowledge of the wishes of the Canadian people as a whole, the Government of Canada will then be able to undertake the necessary discussions with provincial governments.

The Joint Committee's task is a vital and historic one. In order to assist in that task, and in recognition of its importance, the Government of Canada submits the following considerations and observations. Section 2 explains at greater length why Senate reform has become an increasingly important issue in recent years. Section 3 reviews the principal functions that could be performed by a reformed Senate. Section 4 considers the various methods of selection that could be considered; section 5, the powers it might exercise; section 6, the various ways in which seats in the Senate might be distributed among the regions of Canada; and section 7, the ways in which the aboriginal peoples of Canada might be represented in the Senate. The final section offers some concluding reflections.

2. WHY REFORM THE SENATE?

Public interest in reform of the Senate is currently stronger than it has ever been. Why has Senate reform become an issue, a subject for wide discussion? This section will try to answer that question by describing the roles that second chambers perform in other countries and the roles that were intended for the Canadian Senate. Because the Senate has not been considered an effective forum for regional representation — which it was at least partly intended to be — many Canadians have wondered what reforms would allow it to perform that role better. Numerous proposals have been put forward and have generated a wide debate on Senate reform.

delayed. Unless it is combined with another role (such as regional representation), the legislative review function in modern legislatures does not normally call into question the purpose or thrust of proposed legislation, but attempts to improve it from a technical point of view.

In federal systems, the legislative review function of second chambers may be secondary to their role in providing for *representation* of the various parts of the country (states, provinces or regions) in the national legislature. Representation is often weighted in favour of the smaller units or certain minorities, in contrast to the first chamber, where representation is almost always based on population. Indeed, this difference in the basis of representation for the two houses has frequently been essential to the compromise that allowed a number of units, often rather different in nature, to join in a federation.

As will be shown in section 3, other functions can be performed by second chambers. It seems generally agreed, however, that the two functions most often associated with second chambers in federal states are legislative review and the representation of the various parts of the country on a different basis from the first or lower house. These two functions were intended for the Canadian Senate but, as will be seen, both have not been performed equally well.

2.1 Second chambers in other countries

Almost all national legislatures in the democratic world are “bicameral”: that is, they are composed of two chambers or houses. This tends to be the rule in both unitary and federal states, although among unitary states there are some notable exceptions. New Zealand, Denmark, Norway and Sweden, for example, all have unicameral national legislatures.

There is great variety in the makeup and functions of second chambers. Some are directly elected (United States, Australia, Switzerland), while others are indirectly elected by the members of other bodies (as in France and India). Still others have their members appointed by the governments of the constituent units, as in the Federal Republic of Germany, where that responsibility falls to the state (*Länder*) governments. The powers of second chambers, and the roles they perform within their respective countries, also vary significantly. These functions are discussed in section 3 but two of the most common will be mentioned briefly here.

A major function of second chambers is *legislative review*: bills coming from the other house are examined and revised, and sometimes

2.2 The Canadian Senate

The Senate is an integral part of the Canadian Parliament. All of its members become Senators by being formally summoned by the Governor General, who in practice acts on the advice of the Prime Minister. The Senate has 104 seats, which are allocated on the basis of four “divisions”. Ontario and Quebec each have 24 seats; the three Maritime provinces share 24 seats (10 each for New Brunswick and Nova Scotia, and four for Prince Edward Island), as do the four western

provinces, with six seats each. Newfoundland has six seats and the Yukon and Northwest Territories, one each. Under the Constitution, the Senate's powers over ordinary legislation, with the exception of money bills, are equal to those of the House of Commons. The Senate has only a suspensive veto (see 5.1 below) over certain constitutional amendments.

In order to understand why public attention has turned to Senate reform, we need to look at what the Fathers of Confederation expected the Senate to do. First of all, they intended that the Senate should play a legislative review role. John A. Macdonald said the Senate was to have "the sober second thought in legislation", and should not be "a mere chamber for registering the decrees of the Lower House". These assumptions were primarily based on the role of the British House of Lords at the time of Confederation.

The Fathers of Confederation did not, however, see "sober second thought" as merely a technical revising function. They agreed on a particular qualification of Senators, which was originally intended to help the Senate act as a check against the majority in the elected House of Commons. It was decided that appointees to the Senate had to possess \$4,000 worth of real property above any debts or liabilities. That qualification represented a very considerable stake in the community at the time. Its purpose was well expressed in George Etienne Cartier's words: "In order that institutions may be stable and work harmoniously there must be a power of resistance to the democratic element." That qualification has remained, unamended, since 1867 but its practical meaning has vanished.

The other major role intended for the Senate was to protect what Macdonald referred to as "sectional interests". The Fathers of Confederation laboured long over the basis of representation in the Senate, and finally agreed on an equal number of Senators for three divisions (Ontario, Quebec, and the Maritime provinces, with 24

each). Representatives of Lower Canada, later Quebec, argued strongly for such an arrangement to counterbalance the principle of representation by population for the House of Commons, where Quebec was to have 65 seats, compared to 82 for Ontario. Historians have regarded this agreement about representation in the Senate as the key that allowed the Canadian federation to be formed. As George Brown said: "Our Lower Canada friends have agreed to give us representation by population in the Lower House, on the express condition that they could have equality in the Upper House. On no other condition could we have advanced a step."

The Senate has functioned quite effectively as a house of legislative review. Senators' wide experience in a number of areas, and their relative freedom from many of the political concerns that occupy members in the House of Commons, have allowed them to examine carefully and revise the details of government legislation. In the process of reviewing legislation, Senators may criticize the policies embodied in particular bills, but in recent years the Senate has not been inclined to go so far as to block legislation approved by the House of Commons. Senators have contributed to the development of policy through the many thorough studies carried out by Senate committees. The Senate's contribution to the study of delegated legislation (regulations and statutory instruments) should also be acknowledged.

It is generally agreed that the Senate's intended role in regional representation has not been as effectively performed as its legislative review function. A major reason for this is the method of appointment. Canada is the only federation in which all members of the second chamber are appointed by the national government. The Canadian Senate is a kind of a hybrid: on the one hand, it took its name from the American Senate and its seats were allocated among regions and provinces, in partial imitation

of the American idea of representation by states. On the other hand, it was decided that Senators should be appointed by the Crown, in partial imitation of the House of Lords (some of whose members are appointed for life but the majority of whom acquire their seats by inheritance).

Appointment by the federal government alone, combined with lengthy tenure (formerly for life, now until age 75), has had two major effects. First, it has weakened the Senate's ability to represent, and to be seen to represent, the regions of Canada. Appointment may be an appropriate method of selection for a second chamber whose chief function is legislative review, and the Canadian Senate has certainly been able to play this role with considerable success. But for the second chamber to function also as a place where the various parts of a federal country are seen to be represented (and on a different basis from the first or lower house), appointment has serious drawbacks.

A good representative must be responsive to the views and interests of those being represented. During a long appointment, such responsiveness cannot always be assured. Senators are not obliged to account to their regions, and their actions as "representatives" are not put to any public test. Even if they try to play a role as regional representatives, the public may not see them in that light.

The second major problem is thus a result of the first. Because of its method of appointment, the Senate lacks the authority to exercise the substantial powers given to it by the Constitution. A political institution can possess formal or legal powers, but if the public does not think it ought to use them, these powers may not be exercised. The method of appointment and tenure of Senators perhaps reflected the spirit of the time when the Senate was established. But in a more democratic age, most Canadians have reservations about appointments to a legislative body for an almost indefinite term. As a result, the Senate

lacks public support. Because many people do not think the Senate ought to use its powers, both its capacity to make major changes in legislation and its representative function have been weakened.

2.3 Other means of regional representation

Regionalism is a major force in Canada, one that pervades many aspects of our political life, and which requires means of expression in our national institutions. Although the Senate has not played a major role in representing regional interests, these have found expression in a variety of other ways.

First of all, following a pattern established before 1867, the Cabinet has been a forum for regional representation. It is expected that the Cabinet will have at least one Minister from every province. Cabinet Ministers have often been regarded as the spokesmen and defenders of their regions, and in recent years certain formal responsibilities have been assigned to "regional Ministers". Regional representation in Cabinet has both a public and private side, and Canadians can judge the part that they see. What occurs in the privacy of Cabinet and its committees is known to few, and the practice of Cabinet solidarity means that even though differences may have emerged prior to a decision, all Ministers accept the decision once it has been taken. As a result, the extent to which various Ministers speak and act on behalf of their regions cannot always be acknowledged.

Direct relations between elected and appointed officials of the federal and provincial orders of government have also allowed the expression of regional interests at the national level. This practice, which has come to be called "executive federalism", has traditionally involved a large number of private contacts between officials of the two levels of government. Over the past two decades, however, it has become increasingly

public and political, and therefore more contentious. Ministerial meetings and First Ministers' Conferences have given provincial governments a forum in which to speak out strongly about their own views on national issues and policies. As a result, the practice of executive federalism in recent years has helped create the impression that premiers and their leading ministers are the most vocal spokesmen for regional interests.

Political parties, and especially their elected representatives, are also seen as responsible for the expression of regional viewpoints. Members of Parliament represent specific constituencies, yet they also speak on behalf of their province or region. But, as is the case with Cabinet Ministers, not all of their advocacy of regional interests can be seen by the public: a large part of it occurs behind closed doors in the party caucuses. Furthermore, political parties prefer to present a single position on an issue before the House of Commons, even though major differences (including regional ones) may have been heard in caucus. As with regional representation in Cabinet, there are limits to the extent to which MPs can be seen to advocate particular regional interests.

In addition to the fact that all aspects of regional representation in the House of Commons cannot always be seen by the public, electoral results in certain regions have made it more difficult for the major political parties to speak on behalf of all parts of the country. There have, of course, been changes in the degree of support that the parties enjoy in the different regions. But the actual degree of popular support may not be reflected in election results. This was especially noticeable following the 1979 and 1980 general elections. In the 1979 election, the Progressive Conservative party received 13.5 per cent of the Quebec vote but received only two seats out of 75, or 2.7 per cent; the Liberal party received 22.6 per cent of the vote in the four western provinces, yet won only three seats out of 77, or 3.9 per cent; the NDP gained 19 per cent of the

popular vote in the four Atlantic provinces but won only two out of 32 seats, or 6.2 per cent. In 1980 the disparity was even worse: the Progressive Conservative party won only one seat in Quebec, even though it had received 12.6 per cent of the popular vote; the Liberal party was reduced to two seats out of 77 in the West, with 23.4 per cent of the popular vote; while the NDP won no seats at all in Atlantic Canada, despite receiving 17.6 per cent of the popular vote.

The two most recent federal general elections thus produced a distorted image of the three major political parties' support across Canada, conveying the impression that no national party can speak for all parts of the country. Both the Progressive Conservative and Liberal governments had few elected representatives from certain regions or provinces. As a result, many Canadians assumed that the interests and concerns of regions or provinces that did not elect many government members (Quebec in 1979; Western Canada in 1980) could not be taken fully into account in the decision-making process in Ottawa.

For this reason, the House of Commons electoral system became a subject of public debate after the 1980 election. Various proposals were made, most of which advocated a limited form of proportional representation to help correct distortions such as those described above. There were even some preliminary talks among the political parties about whether some improvement in elected representation could be brought about at short notice, but no agreement was reached.

As the preceding discussion has shown, regional representation at the national level is carried out through a variety of means. But it can be argued that both individually and as a whole these ways of speaking for the regions are not entirely satisfactory. Regional representation in Cabinet and party caucuses is not sufficiently visible to the public eye. Federal-provincial relations are a necessary part of Canadian political life,

but they cannot substitute for adequate regional representation in national institutions. Indeed “executive federalism” tends to define regional interests in a purely provincial rather than a national context; and in so far as it leads provincial governments to act as the spokesmen for regional interests in national affairs, it may be thought to undermine the authority of the national Parliament and government.

Thus the present means for regional representation at the national level are either insufficient or have their own drawbacks. For these reasons, many Canadians are now asking whether we could not follow the example of other federations by making better use of the second chamber of the national Parliament for this purpose.

2.4 Proposals for Senate reform

The breadth of interest in Senate reform can be seen from the range of recent proposals and publications. Senate reform was a major element of constitutional proposals put forward by: the government of Quebec in its submission to the constitutional conference of 1968; the Government of Canada, in the White Papers of 1969 and 1978, and Bill C-60 of 1978; the Special Joint Committee of the Senate and the House of Commons on the Constitution in its 1972 report; the governments of British Columbia (1978) and

Alberta (1982); the Ontario Advisory Committee on Confederation (1978); the Progressive Conservative Party of Canada (1978); the Canada West Foundation (1978, 1981); the Canadian Bar Association (1978); the Pepin-Robarts Task Force on Canadian Unity (1979); La Fédération des francophones hors Québec (1979); and the Senate Standing Committee on Legal and Constitutional Affairs, in its November, 1980, report (Goldenberg-Lamontagne report).

The Senate was also a major element in the work of the Federal-Provincial Continuing Committee of Ministers on the Constitution and of its subcommittees in 1978 and 1979, and again throughout the summer of 1980. In 1980, the Quebec Liberal party published *A New Canadian Federation*, popularly known as the “Beige Paper”, which recommended an intergovernmental council that would not be part of the federal Parliament but would have some of the functions often proposed for a reformed Senate. In addition, a number of academics and leading Canadians have contributed to the debate on Senate reform through their publications and speeches.

The Committee may wish to examine both the purpose and details of these many contributions to the debate on Senate reform. It is hoped that new ideas will also come forward in the coming months, so that the Committee will benefit from the widest possible variety of proposals and viewpoints on Senate reform.

3. WHAT SHOULD A REFORMED SENATE DO?

There are a number of functions that a second chamber can play in a national legislature. The precise choice of functions and the relative weight given to each will depend on the particular geographic, sociological and political circumstances of the country in question.

Before addressing matters such as the method of selection of Senators, the powers of the Senate and the distribution of Senate seats, the Committee might well wish to resolve a fundamental question: what should be the principal functions of the second chamber of Parliament in the light of Canada's particular circumstances? The answer to this preliminary question would help resolve issues related to selection, powers and the distribution of seats.

As noted earlier, the Government believes that the basic principles of parliamentary government should continue to operate in Canada: the government of the day must remain responsible to and must retain the confidence of the House of Commons alone. As long as we retain a parliamentary form of government, the House of Commons will remain the primary locus of our democratic life and the Senate will be expected to play a complementary, not a competitive role. This also places some constraints on the options available for Senate reform.

function is no longer one of restraining the possible "excesses" of a lower house. Rather, "sober second thought" now refers to legislative review and legislative "support". This function, taken alone, does not require the second chamber to call into question the basic policies and political directions adopted by the lower house. The second chamber, when performing this function, is seen as a supporting body that provides technical review and improvement of legislation adopted by the lower house, that assists in the examination of regulations and statutory instruments and that, where appropriate, initiates legislation or conducts investigative studies.

The technical revising function of second chambers has become especially useful as government legislation has increased both in volume and complexity. Some bills are prepared quickly and for various reasons may pass rapidly through the first chamber (sometimes called the "lower house"). A "second look" is useful if errors and inconsistencies, sometimes with serious implications, are to be avoided. In unitary states, this is often the principal purpose of the second chamber. An example is the United Kingdom, where the appointed House of Lords is principally a "revising chamber", although occasionally it attempts to act in a more fundamental way as a check on the elected House of Commons.

3.1 Functions of a second chamber

With this in mind, let us examine some of the principal functions that a second chamber could fill in a democratic state in the latter part of the twentieth century.

3.1.1 Legislative review

In modern legislatures, the traditional second chamber function of "sober second thought" has been refined to one that is narrower in scope. The

3.1.2 Regional representation

An important function of second chambers in federal systems is the representation of the regions or the constituent political units *on a basis other than representation by population*. When people from various regions wish to achieve common goals while protecting regionally-based differences against the possible "tyranny of the majority", they unite in a federal, rather than a unitary, system of government. In such cases, the function of the second chamber is

to temper the will of the lower chamber by reflecting the diverse interests of the regions or units of the federation, and to provide a political check on the rule of a simple majority.

As already noted, this function has been crucial to the formation of many modern federations. This was the case when the people of the United States agreed upon a federal form of government, which came into effect in 1789. The balance between the two chambers has generally been the means by which the less populous units or certain minorities of federations have been assured that their fundamental interests would be protected. With this assurance, agreement could be reached more easily on the powers to be attributed to the two orders of government.

3.1.3 Representation and protection of minorities

In some federations, ethnic, racial, religious or linguistic groups, are geographically concentrated within the borders of the constituent political units. In such cases, the protection of the interests of minority groups might be achieved theoretically through specially weighted representation of the political units in the second chamber. Thus the French-speaking Fathers of Confederation sought equal representation in the Senate for the three original regions (Quebec, Ontario and the Maritimes) in order to balance representation by population in the House of Commons, where no guarantee for the proportion of francophone representation could be provided.

In practice, however, there may also be significant minorities within the constituent units. For example, in 1867 Quebec was divided into districts for the purposes of Senate representation in order to ensure representation of the anglophone minority in that province. Senate appointments have also been used traditionally to ensure parliamentary representation for francophone minori-

ties outside Quebec and for other ethnic or cultural minorities.

3.1.4 Intergovernmental relations

In some federations, a function of the second chamber has been to permit the legislatures or the governments of the constituent political units to participate in the exercise of legislative and executive power by the central authority. Until 1913, Senators in the United States were "indirectly" elected (elected by state legislatures) and they participated in the legislative process of Congress as well as exercising a control over certain executive acts of the President. In the Federal Republic of Germany, legislative powers are heavily concentrated at the national level while the *Länder*, or states, have a major responsibility for administering federal law. In this highly interdependent federal system, the members of the second chamber (*Bundesrat*) are chosen by the state governments and vote *en bloc* on instruction by their governments. The principal function of the second chamber in Germany is essentially an intergovernmental one, although the *Bundesrat* also plays an important role in legislative review.

3.2 Choosing and balancing the functions

A reformed Canadian Senate, like other second chambers, need not restrict itself to only one function. It could perform a variety of roles, but a balance will have to be struck among them. Some functions are not fully compatible with each other, some are less pertinent than others, and, where several functions are both compatible and pertinent, the importance or weight to be attached to each can vary.

In preparing its report, the Committee might first wish to determine which functions are appropriate for a reformed Senate in order to strengthen its role in representing the people from all regions and to enhance the authority of Parliament. Once the Committee has reached a decision on the choice of functions, it could assess the relative importance that should be attributed to each.

3.2.1 The implications of the choice and weighting of functions

Decisions taken on the choice and weighting of functions will have significant implications for other matters, such as the method of selection of Senators, the powers of the Senate and the distribution of Senate seats. If, for example, it were decided that the sole or principal function of the Senate should be “sober second thought”, then an appointed body with a long mandate for incumbents might be appropriate. If, on the other hand, it were decided that the sole function to be filled by a new Senate was an intergovernmental one, appointment of instructed delegates by governments might be considered.

If the Committee gives priority to the function of regional representation, it will need to consider how Senate seats should be distributed for that purpose. Should representation in the Senate be based on provinces or regions? If the latter, four regions or five? If provinces, should representation be tilted to favour the less populous provinces? Or should all provinces be equally represented in the Senate?

The views of the Committee on the representation and protection of minorities could also affect the distribution of seats, the method of selection and the powers of a new Senate. Should the Senate have a special role to play in the protection of language and culture? Should the linguistic minorities in each province be represented?

Should there be a double majority for the adoption of measures of special linguistic importance? Should there be special representation for Canada’s aboriginal peoples? If so, how should Senators representing them be selected?

3.2.2 Narrowing the options

While four possible functions for a second chamber in a democratic state have been identified, not all are equally pertinent to the Committee’s mandate.

The *legislative review and legislative support function* is one that has been filled effectively by the present Senate and it is one the Government of Canada would like to see preserved in a reformed Senate. However, it cannot be the sole or primary function of the Senate: if it were, there would be no need for significant constitutional change.

The function of *regional representation* is a critical element of the Committee’s mandate. The Government of Canada attaches particular importance to strengthening the role of the Senate in representing people from all regions. It looks forward to receiving the views of the Committee, and of Canadians generally, about the best way to reform the Senate so that Parliament will be able to speak and act with even greater authority on behalf of all Canadians. At the same time, a very delicate balance will have to be achieved if the Senate’s role in regional representation is to be enhanced while, at the same time, preserving the capacity of Parliament to act effectively. This question is discussed in section 5.

The *representation and protection of minorities* is a function that has been addressed by a number of groups in recent years. Proposals have dealt with the protection of the francophone minority within Canada, or the protection of the anglophone or francophone minority within each

province. More recently, representatives of Canada's aboriginal peoples have indicated interest in special representation in Parliament. The Government of Canada would wish the Committee to consider all these proposals and to assess whether they are compatible with the other functions and the character of a reformed Senate.

The function of providing a forum for *inter-governmental relations* is also one that should be examined with great care, for some options appear less compatible than others with our system of responsible parliamentary government and with our constitutional distribution of powers.

In 1978, the Government of Canada proposed the creation of a House of the Federation which would have provided a role for provincial legislatures in the selection of Senators, while respecting the basic principles of parliamentary government. Could one go further than the 1978 proposal without upsetting the balance of power between the two orders of government and without undermining the responsibility of the Government of Canada to the House of Commons?

Would an intergovernmental chamber similar to the *Bundesrat* be suitable for Canada, where (unlike the Federal Republic of Germany) the distribution of legislative powers is highly decentralized and each order of government is primarily responsible for the administration of its own programs? If provincial governments were to play a role in controlling federal activities that have a significant regional impact, should the federal government control provincial activities that affect national economic management? These questions suggest that many problems would have to be resolved if the Committee were to place a high priority on this last function.

Once the Committee has decided *what* a reformed Senate should do, it will be in a better position to determine *how* this might be achieved. Most of the rest of this paper will discuss the various elements of Senate reform and evaluate them in terms of how they might or might not permit the Senate to perform the functions referred to in this section. The method for selecting Senators will be examined first.

4. HOW SHOULD A REFORMED SENATE BE CHOSEN?

This section will consider three principal methods of selection that could be used for a reformed Senate: appointment, indirect election, and direct election.

4.1 Appointment

There are three possible forms of appointment: appointment by the federal government; appointment by both federal and provincial governments; and appointment by provincial governments.

4.1.1 Appointment by the federal government

Apart from the number allocated to each province and territory and the qualifications set out in the Constitution, no formal rules have governed how Senators are chosen. A wide variety of Canadians have been named to the Senate, and various criteria have in different cases been relevant: profession, language, religion, ethnic origin, political experience, and so on.

It would be possible to alter the present appointment method by adopting a number of clearly-defined, publicly-known, criteria for the appointment of Senators, such as guaranteed representation for certain minorities or proportional representation of the major political parties. This might improve to a small degree the public's view of the Senate. Fixed terms of, say, 10 years have also been suggested as a way of retaining the legislative review function, yet allowing a more frequent turnover in Senate membership (which might help somewhat to improve regional representation). The Government of Canada is of the view, however, that if the Senate is to be reformed, minor adjustments to the present method of exclusive federal appointment would not sufficiently strengthen public support for the Senate, especially as a chamber for regional representation.

4.1.2 Appointment by both federal and provincial governments

The method of selection closest to the present one is appointment shared by the federal and provincial governments. Two variants have been suggested:

- (1) the federal government would continue to make all appointments, but some of them would have to be from a list of candidates submitted by the government of the province or territory concerned (the 1972 report of the Special Committee on the Constitution and the 1980 Goldenberg-Lamontagne report both favoured this method, with half the appointments from provincial lists);
- (2) some of the appointments would be made directly by the provincial governments and the rest by the federal government (suggested in the 1969 White Paper, *The Constitution and the People of Canada*).

On the surface, proposals under (1), which allow provincial nominations to fill some Senate seats, appear to leave the final choice of all Senators to the federal government — for example, certain provincial nominations might be rejected. A mechanism to resolve disagreements might be necessary so that Senate seats would not be left vacant for months or longer.

However, a Senate selected in either of these ways might not be widely accepted as a chamber in which the views of the *people* of the various parts of country were represented. Whichever alternative were chosen, the method would still be *appointment* and the selection of Senators would be made by *governments*. Shared appointments would be consistent with a certain emphasis on a potential intergovernmental role for the Senate, but the popular standing of such a Senate might not be very high.

Nevertheless, shared appointments would allow a wider variety of views to be represented

in the Senate than at present. Either or both levels of government could ensure that certain minorities were represented, something which is not guaranteed under direct or indirect election. In addition, experience or particular expertise could be recognized in appointments. Such appointments could help ensure that the "legislative review" role is carried out as thoroughly as at present. "Sober second thought" could also be encouraged by longer terms than seem possible under indirect or direct election (see below, 4.4). On balance, however, it is far from clear that shared appointment would respond to the need for the people of the various regions to feel effectively represented in the Senate.

4.1.3 Appointment by provincial governments

In 1978, the British Columbia government published a detailed paper on Senate reform in which it stated that the "primary purpose of the Senate should be to institutionalize provincial or regional participation in the national law-making process". The paper proposed that the Senate be appointed entirely by the provincial governments, which is very similar to the method used for the West German *Bundesrat*. As in that country's second chamber, it was suggested that the members would hold office at the pleasure of the provincial governments and would act only on their government's instructions: they would be "instructed delegates". An absolute veto was recommended for certain matters of major federal-provincial concern and for nominations to the Supreme Court and major federal agencies and commissions. On all other matters, including legislation passed by the House of Commons, a suspensive veto was proposed.

British Columbia's paper attracted a good deal of attention at the time. A similar recommendation appeared in the 1978 report of the Canadian Bar Association's Committee on the

Constitution and in the 1979 Pepin-Robarts Task Force report. Recently, an Alberta government paper on the Senate published in August, 1982, recommended the same type of Senate.

It is plain that of the methods of selection reviewed here, total provincial appointment is most strongly associated with an emphasis on a significant *intergovernmental* role for the federal second chamber. Indeed, the actors in the second chamber would in fact become the *provincial governments*. Some proposals suggest that Premiers might lead their delegations on certain occasions; at other times, a provincial cabinet minister would assume that role.

A number of advantages are claimed for a second chamber appointed only by the provinces. The Pepin-Robarts report said that its proposed Council of the Federation "could play a major part in ensuring that the views of provincial governments are taken into account before any central action which might have an impact upon areas of legitimate provincial concern occurs." The 1982 Alberta government paper echoed this view, and supported such a reformed second chamber as "an institution which would allow for a regular and structured channel of communication between the federal and provincial governments" and for "a greater degree of federal-provincial co-ordination in the development of public policy."

These are large claims. Even if this type of reform were to improve intergovernmental communication and co-ordination (which is far from clear) the result would be a national Parliament radically different from the present one, especially if the Senate had significant powers such as an absolute veto over certain matters of major federal-provincial concern. The Senate would become less a legislative chamber than a semi-permanent intergovernmental conference. Such a reform, as the Goldenberg-Lamontagne report pointed out, "would give to the *executive branch*

of the provincial order of government suspensive and veto powers over the *legislative branch* of the federal order of government.”

It is by no means certain that Canadians would accept such a blurring of jurisdictions in their federal system of government. They accept that provincial governments have the right to act in their own areas of jurisdiction and expect that the federal government should be able to do the same. Many would agree that the provinces have the right at least to be consulted, perhaps even to participate in some decisions on matters of strong mutual concern through the normal process of federal-provincial relations. But it is arguable whether provincial participation in national decision-making should go so far as to allow their governments to become permanent participants within the national Parliament.

How would such a provincially-appointed Senate perform the other functions of a second chamber? It would offer a form of regional representation; but “regional” interests would be defined exclusively by the provincial governments, from the perspective of their own constitutional responsibilities and their own institutional self-interest. In the Parliament of Canada, it may be preferable for regional interests to be expressed by spokesmen who adopt a *national* frame of reference and who offer a wider variety of regional voices.

Legislative review would also be carried out but, again, from a particular point of view. It would probably focus less on the technical improvement of legislation or on regional interests broadly defined than on the particular concerns of provincial governments or contentious issues in federal-provincial relations.

Indeed, most of those who favour this selection method argue that it would improve federal-provincial relations and would bring about a reduction in tensions between both levels of government. But it is by no means certain that this would occur. Even if it did, the price to pay

might be too high. If it had strong powers, such a reformed second chamber could also become a permanent source of obstruction, especially if it contained a partisan majority different from that in the House of Commons. Tensions between federal and provincial governments might very well increase, and it is doubtful whether the authority of Parliament as a national institution would be enhanced. For these reasons, the Government is confident that the Committee will consider carefully whether the fundamental principles of our parliamentary federation could be preserved if the Senate were appointed entirely by provincial governments.

4.2 Indirect election

A possible method of selection for second chambers in federal systems is *indirect* election: that is, election by the legislatures of the states or provinces. American Senators were elected by state legislatures until the constitutional amendment of 1913, when direct election was adopted by all states. Members of India’s second chamber, the *Rajya Sabha*, are currently elected by the legislative assemblies of the states and “union territories”. In Switzerland, the cantons set the rules for the selection of members of the federal second chamber (Council of States). Until recently a few cantons still used indirect election, but all members are now directly elected by the voters of the cantons.

It would be possible for some members of the second chamber to be chosen by the national first chamber (this is the case in the recently-established Senate of Zimbabwe, for example). It should be noted that in a parliamentary federation, election by the legislatures, whether provincial, national or both, could amount in practice to appointment by governments, unless accompanied by a provision for proportional representation.

4.2.1 Proportional indirect election

In Canada, the power to elect Senators indirectly could be shared by provincial legislatures and the House of Commons. Indeed, the federal government proposed this selection method in Bill C-60 in 1978. Under the terms of this bill, the number of members to be elected was to be proportional to the parties' popular vote in the most recent federal election (for those chosen by the House of Commons) or provincial election (for those chosen by provincial legislatures).

Indirect election by proportional representation (whether on the basis of party standing in the legislatures and House of Commons or proportion of the popular vote) might help to improve the Senate's role as a forum for regional *representation* and would certainly provide a wider range of regional voices than the previous option. It could also help to strengthen national political parties in those regions where they are now underrepresented, thus allowing them to play a greater unifying role across the country.

However, if it did not include members elected by the Commons, a Senate based on proportional indirect election would not help to strengthen the national parties as unifying forces because these parties may be poorly or not at all represented in some provincial legislatures. Thus, under present circumstances, there might very well be few Liberal Senators from the West, and perhaps no Progressive Conservatives from Quebec (where that party does not contest provincial elections). In this case, then, the national party system would be no better off, and the Senate would be composed of representation of a wide variety of purely provincial parties. Indeed, such a Senate might even encourage the formation of purely provincial parties.

Whether or not a portion of Senators are indirectly elected by the House of Commons, the probability of a single-party majority in a second

chamber elected in this way is as low, possibly lower, than for a Senate *directly* elected by proportional representation (see 4.3). For example, the federal White Paper, *House of the Federation*, showed that in 1978 a second chamber elected as outlined in Bill C-60 would have been composed of 41 Liberal, 42 Progressive Conservative, 21 New Democrat, seven Social Credit, five Parti Québécois and two Union Nationale members.

Results like these would have consequences for the Senate's relation to the House of Commons and to the government: the party which holds a majority in the Commons would rarely do so in a Senate based on proportional indirect election. Thus the government of the day would have no assurance it would be able to get its legislative program through the second chamber. Precisely in order to avoid legislative paralysis, the ordinary legislative powers of the proposed House of the Federation were limited to a suspensive veto and were also limited by a special procedure through which an urgent bill (except one affecting federal-provincial relations or of special linguistic significance) could have been presented for immediate royal assent after a two-thirds vote of the House of Commons, even though the House of the Federation had not passed it.

How would a Senate chosen by proportional indirect election carry out the function of *legislative review*? If Senators were selected on the basis of both provincial and federal election results, membership could change fairly frequently. Frequent turnover might reduce the ability of Senators to develop technical legislative expertise through long service in the Senate. On the other hand, Senators chosen in this way would not be delegates of provincial governments and might therefore undertake legislative review with greater independence of mind than in the case of the previous option.

Although there are drawbacks to proportional indirect election with selection shared by both the

federal and provincial levels, it is an interesting option that would allow the Senate's representative role to be significantly improved by the presence of a variety of regional viewpoints.

4.3 Direct election

In the numerous reports on Senate reform that have appeared in the last decade or so, direct election has often been ignored or has not been considered acceptable. Only two of the proposals for Senate reform referred to in sub-section 2.4 recommend direct election: the report by the Fédération des francophones hors Québec and the 1981 Canada West Foundation study, *Regional Representation*.

In recent years, however, increasing attention has been given to the potential of an elected Senate for Canada. Among the Canadian public, the concept appears to enjoy strong support. In an age when governments are sometimes called remote or unresponsive, the idea of "giving people more say" in choosing who governs them is immediately appealing. Perhaps for this reason, an elected Senate scores higher than any other option in opinion polls. For example, in a nationwide poll conducted for the Canada West Foundation in autumn, 1981, 61 per cent of respondents said that if the Senate were to be reformed, it should be directly elected; 20 per cent favoured appointment by the federal and provincial governments, four per cent felt appointment should be by the federal government alone and three per cent favoured appointment by provincial governments alone.

An elected Senate would have the advantage of being able to speak directly for the *people* of the regions rather than for provincial political *parties* or *governments*. In a democratic age, greater opportunity for direct popular participation in the political process is almost always wel-

come. If the Senate made greater political participation possible for the people of the less populous regions of the country, it would no doubt strengthen the national Parliament and government in their eyes. It would also provide alternative regional spokesmen who would approach regional concerns from a broad national perspective rather than from the narrower perspective which provincial governments and parties are obliged to adopt because of their constitutional responsibilities. Thus a wider and perhaps more authentic range of regional voices would be heard throughout the country. Regional perspectives could be debated and reconciled in the Senate by spokesmen who would be directly accountable to the people of their various regions, but whose frame of reference and outlook would embrace the country as a whole.

An elected Senate could also help to compensate for the underrepresentation of national political parties in some regions of the country. It could only do this, however, if it were based on *an electoral system other than the first-past-the-post method now used for the House of Commons*. Otherwise the electoral distortions which are so apparent in the House of Commons would simply be reproduced in the Senate. Some provinces might return Senators from only one party, for example, perhaps giving the false impression that the other parties had little or no popular support there. For these reasons, those who advocate direct election of the Senate usually recommend that a system of *proportional representation* be used (this expression is discussed in Appendix 1).

A Senate elected on the basis of proportional representation would help improve the regional representation of national political parties and could therefore:

- (1) help to ensure the availability of elected Cabinet ministers from all regions, no matter which party forms the government;

- (2) help strengthen national political parties, their unifying role in the country, and the party system as a whole;
- (3) reduce the sense of unfairness created by electoral distortions and unbalanced regional representation in the House of Commons.

A Senate elected on the basis of proportional representation would allow the expression of a *variety* of viewpoints from each region within the national Parliament. Several Progressive Conservative Senators from Quebec might be elected, for example, along with Liberal colleagues; Liberal Senators from the western provinces might be elected to speak for that region, along with Progressive Conservative and New Democratic Party colleagues; and in the Atlantic provinces, NDP Senators might be elected to join Liberal and Progressive Conservative Senators from the region. Since there would be more elected spokesmen from the various regions to choose from than at present, it would also be possible to ensure a satisfactory regional balance in Cabinet at all times. No matter what party formed the national government, there would be much less risk that certain regions would feel underrepresented in the making of national policies.

Although the concept of an elected Senate may thus appear to offer many advantages, it also raises a variety of difficult questions which will require careful study. The most important of these is the impact that an elected Senate would have on the parliamentary system. Because the life of a government and its capacity to govern depend on the support of the legislature in a parliamentary system, it is essential that the lower house retain a clearly predominant role in order not to confuse the question of confidence, and in order to prevent parliamentary paralysis. If the Senate were directly elected, would it be possible to ensure that the House of Commons remains the primary focus of responsible government and that the Senate does not become a "confidence chamber"? Would an elected Senate run the risk

of paralyzing the federal government, or undermining its capacity for effective and decisive action?

Those who are most concerned that an elected Senate would become a rival rather than a complement to the House of Commons often point to the Australian constitutional crisis of 1975. The refusal of the elected Australian Senate to vote supply on that occasion, and the ensuing crisis, seem at first glance to confirm the criticism of an elected and potentially partisan Senate in a parliamentary system.

Yet while the Australian experience is instructive, it is not decisive. The constitutional deadlock of 1975 was the only occasion since the founding of the Australian Commonwealth in 1901 on which its Senate blocked supply. The Governor General's role in the constitutional crisis is still disputed, and some believe he exceeded his conventional powers. Furthermore, it would be possible to design an elected Canadian Senate with more limited powers than those of the Australian second chamber, and with none whatever to delay or refuse supply, or even to block any money bill. In addition, the fact that the Government is obliged to resign only when it lacks a majority in the *House of Commons* could be stated in the Constitution (as it was in Bill C-60 of 1978).

This does not dispose of the matter, however. For the Canadian three-party system introduces a new complication not present in Australia (where two of the three parties are joined in a permanent coalition). If, as discussed above, proportional representation were used in an elected Canadian Senate, there is a very strong chance that a single party would only rarely have a majority there. The basic principle of proportional representation is that the number of seats allotted to each party will correspond closely to its share of the popular vote. It is reasonable to assume that at least three parties will be strong contestants in federal elections in the foreseeable

future. Therefore, these parties, and perhaps others, would share the seats in an elected Senate, with a low probability of any one of them having a majority (this possible development is discussed further in Appendix 1).

The low probability that the government party would ever command a majority in an elected Senate, and the possibility that another party might occasionally have a majority in such a Senate, must both be carefully examined, especially when the Senate's powers are considered. For any government, political life would be more difficult if it lacked the assurance of majority support in the Senate for its legislation. The absence of such support could have serious consequences for stable and effective government. On the other hand, of course, it is quite possible that arrangements among parties might be arrived at, perhaps relatively informally at first; or different alliances might emerge from time to time, depending on the nature of legislation presented. In addition, partisan divisions might not always be the key influence in a reformed Senate with an important role in representing the regions: a common regional view might transcend party affiliations on certain questions.

The role that parties and partisanship would play in an elected Senate is thus another important question requiring attention. Because of the role parties play in the electoral process, and the role of party discipline in a parliamentary system, an elected Senate might well remain a chamber based primarily on partisan rather than regional concerns. Indeed Australia's unique experiment with an elected Senate in a parliamentary system might seem to confirm the likelihood of such an outcome. However, many factors influence the pattern of Australian politics and institutions, and not all of these are or need be reproduced in Canada.

One of the most important of such factors is the particular system of proportional representation that might be adopted. Obviously an elec-

toral system that allows the central party organization great control over the selection and ranking of candidates would be more likely to produce a more partisan Senate than one which left more control to individual voters. In that connection, it should be kept in mind that there are many forms of proportional representation, and there is a good deal of variation among them in the degree to which parties can influence the likelihood of their own candidates' success at the polls. Some forms, such as the party list system, allow party organizations considerable influence in the nomination process. Under other systems, such as the single transferable vote (STV), on the other hand, voters ought to have more scope to express their preference: they can weight their choices among the candidates of one party, several parties, or independent candidates. Some party list systems also allow voters to express a preference within a single party list or among the lists. And, by the same token, some STV systems (as in Australia) have been taken over by the parties, leaving individual voters little flexibility.

If Canada were to adopt a system of proportional representation for an elected Senate, the particular electoral system chosen could be designed to strengthen the role of political parties in the electoral process, and thus in the subsequent working of the Senate itself, or it could be designed to moderate the partisan character of the second chamber. This is another matter which the Joint Committee will wish to study with care.

Indeed, all features of an elected Senate deserve very careful scrutiny. A Senate elected directly by the people may seem a natural way to improve regional representation in the Parliament of Canada. But how easily could an elected Senate be grafted onto a parliamentary system without upsetting its delicate balance? How would it alter the relations between political institutions within the federal government or within the federation as a whole? How would it affect

the principles of responsible government or the capacity for effective decision-making and administration? All these are matters on which the Government looks forward to the Joint Committee's conclusions.

4.4 Tenure

The preceding discussion of the various methods of selection has referred to the length of a Senator's term, but it is useful to look at this element of Senate reform on its own. The length of terms will be partly determined by the method of selection, but in each case some degree of flexibility may be possible. Although tenure is not as important an element of Senate reform as, for example, powers, it should be noted that the length of a term will affect a Senator's outlook and the priorities he or she might choose.

It seems generally agreed that if Senators continue to be selected by *appointment* (in one way or another), their terms of office should be more limited than at present. Those who place great emphasis on the legislative review function of the second chamber are inclined to favour terms longer than one Parliament in order to attract persons of sufficient calibre to abandon other promising careers and to allow Senators to gain a degree of legislative experience and expertise, thus compensating in part for the rapid turnover in the House of Commons. The Goldenberg-Lamontagne proposals, for example, suggested terms of 10 years, renewable for further terms of five years upon recommendation of a special Senate committee. Longer terms might also encourage the independence of Senators and lessen the degree to which they can be influenced by political parties or by appointing governments.

On the other hand, those who are more interested in the Senate's role in regional representation are inclined to favour shorter terms to help ensure that Senators would express the current

outlook of their regions or provinces. The 1969 White Paper, for example, suggested shared federal-provincial appointment for six-year terms. Several proposals for exclusive *provincial appointment* recommend a term equal to the life of a provincial legislature. A longer term would be possible, however, if the provincial government simply appointed the Senators and did not see them as "instructed delegates".

For *indirect election*, it is usually assumed that a Senator's term would end when a new House of Commons or provincial legislature was elected. Because there would inevitably be changes of government at both levels and fluctuations in the relative strengths of the parties, the membership of a Senate selected in this way would change fairly frequently. An indirectly-elected Senate could thus be expected to be fairly responsive to regional views and interests, but its members might not have an opportunity to acquire the experience necessary for detailed legislative review.

If the Senate were *directly elected*, terms could coincide with the life of a provincial legislature or the federal Parliament. If the term was equal to the life of a provincial legislature, all Senators would not be elected together and the Senate's membership would thus change frequently. Simultaneous Senate-House of Commons elections, on the other hand, would probably result in fewer disruptions to the Senate's ongoing activities (and thus be more conducive to the legislative review function), and would be more consistent with the view that the Senate is a *national* second chamber with responsibilities for representing the people of the regions.

It would also be possible for Senators to be directly elected for fixed terms, in which case Senate elections would coincide with neither provincial nor House of Commons elections. In Australia, the only parliamentary federation with an elected Senate, terms are of six years, with half the Senators facing elections every three years. A

fixed term could very well be slightly longer than the normal length of a Parliament, which could encourage the legislative review function. On the other hand, Senators would not compete in elections at the same time as their colleagues in the House of Commons, thus perhaps diminishing the Senate's stature as an integral part of the national Parliament.

Within the limits imposed by each selection method, some variation may be possible. The Government believes that the Committee should look carefully at the tenure of Senators and, within those limits, determine what term would allow Senators to perform effectively the functions a reformed Senate might have.

5. WHAT POWERS SHOULD A REFORMED SENATE HAVE?

The method of selection for a reformed Senate cannot be decided in isolation from the powers it should have. What the Senate will have the power to *do* is just as important as how Senators will be *chosen*. Only the two together will determine whether a reformed Senate will be able to carry out its intended functions. Indeed, the two are very closely linked, since the Senate's *powers* will have as much influence on the public's perception of the *legitimacy* of that chamber as its method of selection.

The following contrast will help illustrate the relation between powers, method of selection and perceived legitimacy. If the Senate were directly elected, but had few powers, its legitimacy would remain low. It would be regarded as merely a "talking shop". On the other hand, extensive powers combined with a more generally acceptable method of selection than the present one might result in deadlocks with the House of Commons, since the Senate would now feel *justified* in using its strong powers. Obviously, a delicate balance must therefore be struck between the *authority* a new method of selection might allow and the formal *powers* of a reformed Senate. The Senate must have enough power to do its job and to achieve public credibility, but not so much as to prevent action where action is required.

The potential powers of a reformed Senate will be discussed under two headings: 1) powers for legislative review; and 2) other possible powers.

5.1 Powers for legislative review

Although many Senate reform proposals do not pay a great deal of attention to that chamber's future role in dealing with ordinary legislation, it is generally thought that the legislative review function will remain in some form. Most, if not all bills would still pass through the Senate and

some legislation (excluding money bills) could continue to be initiated there. It may even be that the Senate's "second look" is needed more than ever as government legislation becomes more complex and time on the floor of the House of Commons is more strictly rationed.

It remains of course to be decided how far the Senate's future powers should go beyond revising the details of legislation to deciding on the merits of the legislation itself. It is usually assumed that the Senate should retain the power to delay or to defeat government bills but, as suggested above, the extent of this power needs careful consideration and must be carefully balanced both with the Senate's own method of selection and with the principle of government responsibility to the House of Commons. Whatever form the Senate may take in future, the life of a government should still be determined by a majority in the *Commons* alone. Any attempt on the part of the *Senate* to claim that the government is constitutionally responsible to it would be confusing and unacceptable to most Canadians.

For these reasons, most recent proposals for Senate reform favour a reduction in the second chamber's formal legislative power over ordinary legislation to a suspensive veto: in other words, after the Senate rejected a bill, or failed to act, the bill could be enacted following a second passage by the House of Commons within a stipulated period. It is argued that such a suspensive veto on ordinary legislation is more in keeping with the complementary and advisory role of a second chamber in a parliamentary system.

However, a reformed Senate with greater public support would probably exercise its suspensive veto more frequently than in the past. The Senate's present absolute veto (its right to reject a bill outright) has fallen into disuse, partly because it is too blunt an instrument to be used against the elected House of Commons. A suspensive veto would allow the Senate to register its disagreement on an issue, especially one of great

concern to certain regions, and to focus public attention on it. Public opinion and internal accommodation might encourage a compromise between the two houses, but ultimately the House of Commons would have the final say.

Proposals for the *length* of a suspensive veto vary greatly. The Joint Committee of 1972 and the 1980 Goldenberg-Lamontagne report recommended a suspensive veto of six months. Bill C-60 (1978) contained a 60-day suspensive veto, although its provisions would have allowed a period of up to 120 days between the original passage of a bill by the House of Commons and the date on which it would come into effect despite a Senate veto. Because a suspensive veto would probably be used more often than an outright or absolute veto, its length is an important consideration. A relatively short suspensive veto would allow the House of Commons to override the Senate on most occasions within the same session of Parliament. A longer suspensive veto, on the other hand, could result in some legislation effectively being “killed”: the session might end and the bill would have to be reintroduced later and go through all the stages in the House of Commons once again. It should be noted that under the *Constitution Act, 1982*, the Senate already has a suspensive veto of 180 days over a number of areas of constitutional amendment.

5.2 Other possible powers for the Senate

Several proposals for Senate reform have recommended adding to that chamber’s “legislative review” role certain responsibilities in areas that are of direct concern to the provinces or regions, for example:

- approval of appointments to certain federal commissions, boards and agencies, and of appointments to the Supreme Court;
- approval of the use of the federal spending

- power in areas claimed by the provinces as within their jurisdiction;
- ratification of the use of the emergency power, declaratory power and the powers of reservation and disallowance;
- approval of legislation of linguistic significance by a special procedure, such as a majority of both English-speaking and French-speaking members;
- ratification of international treaties, notably those that affect the provinces’ responsibilities.

Any decision to give the Senate additional powers such as those listed above will depend on the roles that it would be expected to play, and to what degree. For example, it is almost certain that such additional powers would alter the Senate’s *representative* role, perhaps in a dramatic way. Senators would not only speak on ordinary legislation that affected their regions; they might have a significant influence over appointments and other actions that could be of strong interest to certain regions or provinces. Powers such as the first three of the above are often included in proposals for provincial appointment, with the implication that decisions now left to the national Parliament or Cabinet would become subject to *intergovernmental* consideration.

Whether or not a reformed Senate should have these kinds of additional powers will be subject to much debate. The Government does not now wish to express a view on whether or not such additional powers would be appropriate, but suggests the Committee consider the matter as part of its general discussion of the powers of a reformed Senate.

5.3 Deadlock-breaking mechanism

In countries with bicameral legislatures, including federal states, it is often necessary to have a

formal method for resolving a deadlock between the two houses. Such a mechanism is not as important if the second chamber has only a suspensive veto on most matters, since many of the conflicts between the two houses can be resolved by the first house approving the matter again, after the stipulated time has passed. Where the two chambers' powers are more equal, it may be more difficult to resolve such differences. The two most common deadlock-breaking mechanisms are the conference or joint committee, and a joint sitting (sometimes preceded by a double dissolution).

In the United States Congress the senior members of the relevant standing committees in each house are usually appointed to a conference committee. Meetings are most often held in secret, and any agreement is usually accepted by both houses. If no agreement can be reached, new "conferees" may be appointed. When an agreed version of the disputed measure is finally passed by both houses, it is presented to the President for signature.

In the Federal Republic of Germany, deadlocks are often resolved by the joint mediation committee. If the *Bundesrat* exercises its absolute veto, which it can use for legislation affecting the interests of the *Länder*, the bill usually dies. But for ordinary legislation, where only a suspensive veto applies, the *Bundesrat* often reaches a compromise with the *Bundestag* through the mediation committee.

The Australian constitution contains a very different sort of deadlock-breaking mechanism, known as the double dissolution (possibly followed by a joint sitting). The Australian Senate can be dissolved only when certain conditions stipulated in its constitution have been met: if, on two separate occasions at least three months apart, the Senate refuses to pass legislation passed by the House of Representatives, the Governor General may dissolve both houses simultaneously.

If an election returns a majority of the same party in both Australian houses, the conflict will almost certainly end, as indeed happened on the first two occasions the double dissolution was used (1914, 1951). In 1974, however, a Labour majority was returned in the House of Representatives but not in the Senate. The deadlock remained, thus allowing the Governor General to convene the first joint sitting in Australian history. Since the House of Representatives has twice as many members as the Senate, the party with a majority in the House can be expected to prevail at a joint sitting, as was the case in 1974.

The Canadian Constitution contains a different kind of deadlock-breaking mechanism, although it has never been used. Section 26 of the *Constitution Act, 1867*, allows for four or eight Senators to be added to the total membership, one or two from each division, although no preconditions for so doing are stated. The intention of this section was that the extra Senators could break a deadlock caused by a partisan majority in the Senate different from the majority in the House of Commons. In 1873, the Mackenzie government asked the British government to agree to summon additional Senators. The request was refused, on the ground that no serious and permanent difference requiring such intervention was shown to exist. No similar attempt was ever made again.

The Rules of the Senate and the House of Commons Standing Orders refer to conferences between the two houses. They have been very rarely used, however, and none has been held since 1947. The more common method of resolving differences is a "message" from one house to the other, often accompanied by private bargaining. The 1980 Goldenberg-Lamontagne report recommended that the provision in the Senate's rules for conferences "be broadened" and that it "become part of the normal way of dealing with differences on bills."

The American and West German experience with conference committees (or their equivalent) shows that such a method can resolve differences between two houses in a manner often acceptable to both. If a deadlock-breaking mechanism were

considered necessary, the Government would tend to favour some variation of the conference committee procedure, which already exists in the rules of the two houses.

6. HOW SHOULD SEATS IN A REFORMED SENATE BE DISTRIBUTED?

The Special Joint Committee will also need to consider the distribution of seats in a reformed Senate, and that chamber's size.

6.1 Division of seats among provinces or regions

The way Senate seats should be divided on a provincial or regional basis is an important question. Each province or region's "weight" in the Senate will be of symbolic importance to its inhabitants. But, more important, the proportion of seats assigned to each part of the country will also affect its relative *power* within the Senate. A number of different distributions have been suggested (see Table 1).

Section 2.1 noted that federal countries have not as a rule used representation by population as

the basis for dividing the seats in their second chambers among the provinces or states. Instead, federations have tended to follow one of two general principles for making this allocation: *equal representation* for each unit, or *weighted representation*.

Equal representation of the states in the federal second chamber applies in the United States and Australia. In Canada, the very great differences among the provinces have often led to the conclusion that equal provincial representation in the Senate would not suit our particular circumstances. It was rejected by the Fathers of Confederation (in favour of equal *regional* representation) and has not been recommended by any major Senate reform proposal, except for the 1981 Canada West Foundation report.

Table 1
Some recent proposals for the distribution of seats in a reformed Senate

	Present Senate	Joint Committee (1972)	Bill C-60 (1978)	Ontario Advisory Committee (1978)	Pepin-Robarts (1979)	Goldenberg-Lamontagne (1980)	Canada West Foundation (1981)	Alberta Government (1982)
Nfld.	6	6	8	2	4	8	6 - 10	4
N.S.	10	10	10	2	4	10	6 - 10	4
N.B.	10	10	10	2	4	10	6 - 10	4
P.E.I.	4	4	4	1	2	4	6 - 10	2
Quebec	24	24	24	6	12	24	6 - 10	10
Ontario	24	24	24	6	12	24	6 - 10	10
Manitoba	6	12	8	2	4	10	6 - 10	6
Sask.	6	12	8	2	4	10	6 - 10	4
Alberta	6	12	10	3	6	12	6 - 10	8
B.C.	6	12	10	4	8	12	6 - 10	8
Territories	2	4	2	0	0	2	1 or 2 each	0
TOTAL	104	103	118	30	60	126	62 - 104	60

In both the Federal Republic of Germany and India, a form of *weighted representation* exists, which favours the small states to some degree yet does not put all states on an equal footing. Several proposals for the distribution of seats in a reformed Canadian Senate (see Table 1) recommend some form of weighted representation, which would tend to favour the provinces with a smaller population more than Ontario and Quebec. Those last two provinces now have between them 48 of the Senate's 104 seats (in the 1981 census, they represented 61.8 per cent of the total Canadian population — see Table 2).

In virtually all proposals that favour weighted representation, the four Atlantic provinces are assigned more seats than they would receive strictly on the basis of population. Most of the proposals would give the western provinces a greater share of the total seats than at present (the most recent census results showed that the four western provinces constituted 28.7 per cent of the country's total population). However, the representation of the western provinces (notably British Columbia and Alberta) in the House of Commons has been increasing (see Table 2). Their recent and projected growth should also be a consideration when the distribution of Senate seats is discussed.

Other factors could be kept in mind when the distribution of seats for a reformed Senate is considered. Should representation be based on the equality of regions, as was intended in the original plan of "divisions" in the Senate? If so, should the country be divided into four regions, or perhaps five (with British Columbia as the fifth, as its government has suggested)? Should Newfoundland retain its current Senatorial status distinct from the other Atlantic provinces?

In reviewing the distribution of seats, consideration should also be given to the way in which Canadian duality ought to be reflected in the modern Senate. As already noted in section 2.2, the French-speaking Fathers of Confedera-

tion attached a great deal of importance to the design of the Senate for this purpose, and the shape of a reformed Senate will need to reflect this enduring reality.

As the preceding discussion has shown, several considerations are relevant to the distribution of seats in a reformed Senate, and the Committee will need to look at them carefully. The Government favours some form of weighted representation: this would be consistent with past practice and would allow the demographic and linguistic differences among the provinces to be taken into account. But such an approach would not necessarily be incompatible with equal representation for *regions*, however defined.

6.2 Number of Senators

A related question is the number of members that a reformed Senate should have. The size of federal second chambers varies a good deal, ranging from 100 members in the United States to 64 in Australia, and 46 and 45 in Switzerland and West Germany, respectively. The size of a reformed Canadian Senate could affect that chamber's style of deliberation and the degree to which it would be seen to represent regional and other viewpoints.

It is sometimes suggested that a smaller body encourages a less formal, more consensual, style of debate and decision-making. This may be because it is easier for the members to know each other or because fewer different opinions must be accommodated. The size of the second chamber has not been a major consideration in reports on Senate reform, but it is fair to say that those who favour appointment by provincial governments tend to favour a smaller body. For example, the Pepin-Robarts Task Force recommended a Council of the Federation of no more than 60 voting members. The 1982 Alberta government paper recommended the reformed Senate have 58 members.

Table 2
Provinces' share of population and representation in the House of Commons and the Senate

Province	Population (June 3, 1981)	Province's share of population (%)	Seats in House of Commons at present	Share of seats in House of Commons at present (%)	Seats in House of Commons after next redistri- bution	Share of seats in House of Commons after next redistribu- tion (%)	Seats in present Senate	Share of seats in present Senate (%)
Nfld.	567,681	2.3	7	2.5	8	2.6	6	5.8
N.S.	847,442	3.5	11	3.9	12	3.9	10	9.6
N.B.	696,403	2.9	10	3.5	10	3.2	10	9.6
P.E.I.	122,506	.5	4	1.4	4	1.3	4	3.8
Quebec	6,438,403	26.4	75	26.6	79	25.5	24	23.1
Ontario	8,625,107	35.4	95	33.7	105	33.9	24	23.1
Manitoba	1,026,241	4.2	14	5.0	15	4.8	6	5.8
Sask.	968,313	4.0	14	5.0	14	4.5	6	5.8
Alberta	2,237,724	9.2	21	7.4	27	8.7	6	5.8
B.C.	2,744,467	11.3	28	9.9	33	10.6	6	5.8
N.W.T.	45,741	.2	2	0.7	2	0.6	1	1.0
Yukon	23,153	.1	1	0.4	1	0.3	1	1.0
TOTAL	24,343,181	100.0	282	100.0	310	99.9*	104	100.2*

* Totals do not add to 100 per cent due to rounding.

Proposals for Senate reform that recommend a method of selection other than appointment by the provincial governments alone most often favour a larger number of members. The federal government White Paper, *House of the Federation* (1978) suggested 118 members, and stated that "the regional views expressed in the second chamber should reflect the broadest possible mix of representative groups". Under any system based on the principle of proportional representation, a larger number of views will tend to be represented from all regions as the size of the

chamber increases. This would be very important if one of the aims of Senate reform were to strengthen the representation of national political parties across the country.

In an appointed Senate a greater variety of views could also be represented in a larger chamber. Therefore, no matter what method of selection is used, if it is considered desirable to reflect the diversity of interests across the country and within regions, the Senate should not be much smaller than at present and could in fact be somewhat larger.

7. REPRESENTATION OF ABORIGINAL PEOPLES IN A REFORMED SENATE

It was suggested in section 3 that in addition to providing representation for the various units of a federation, a second chamber might also be designed to reflect the existence of certain minorities. Much recent discussion of this question has focused on proposals for the representation of Canada's aboriginal peoples in national and provincial political institutions.

The aboriginal peoples include three broad groups — Indian, Métis and Inuit — who live throughout the country, although the Inuit are concentrated in northern Canada. All three groups have long been underrepresented in national political institutions, including the Senate.

It might be possible to incorporate some mechanisms for aboriginal representation in any of the selection methods described in Section 4. Under direct election (4.3), a certain number of Senate seats might be designated for the aboriginal peoples. A special aboriginal voters' list could be prepared and votes could be aggregated on a national basis to determine who would be assigned the seats. Under such a method, the entire country would constitute one aboriginal electoral district.

Alternatively, a *number* of aboriginal Senate electoral districts could be established (each of which might return only one Senator) and their boundaries drawn to include the largest concentrations of the three groups. The aboriginal electoral districts would be superimposed on the other Senate constituencies, a method used in New Zealand to provide representation for the Maoris. A separate map for aboriginal Senate constituencies would be drawn and provincial, and possibly territorial, borders would not necessarily be the sole basis for determining their boundaries.

The selection methods described in 4.1.2 and 4.2.1 provide for the federal and provincial levels to share responsibility for choosing Senators. In a jointly-appointed Senate, the federal Government could ensure that a certain proportion of aboriginal Senators were included in its share of appointments. Provinces with significant numbers of aboriginal peoples might also select some of their share of Senators from among them. If the Senate were indirectly elected, a proportion of aboriginal Senators could be included among those chosen by the provincial legislatures, the House of Commons, or both. A similar practice could apply for a Senate appointed only by the provincial governments (4.1.3). A variation on this last method would be to reserve a small number of seats for federal Government appointments from among the aboriginal peoples.

Although it would be possible for legislatures or governments (if either were responsible for selecting Senators) to include aboriginal representatives among their share of Senators voluntarily, representatives of the aboriginal peoples have argued for a constitutional *guarantee* of a certain minimum aboriginal representation in Parliament. Indeed, this matter is one that the federal and provincial governments will be discussing with representatives of the four national aboriginal organizations in the course of the ongoing constitutional process agreed to at the March, 1983 First Ministers' Conference. In the meantime, the question of aboriginal representation in the Senate should also be considered by the Committee, especially if it is considered desirable for the Senate to reflect the existence of significant minorities in Canada.

8. CONCLUSION

Although there are many complex questions before the Special Joint Committee, it would be wrong to let the trees obscure the forest. The main issues are more limited in number. Once they have been addressed in some fashion, the Committee will have a focus for its work and a standard to apply to the many other questions that follow.

As the Introduction pointed out, and as this paper has argued, the necessary standard is suggested by the Committee's own terms of reference which, ask it "to consider and report on ways by which the Senate of Canada could be reformed in order to strengthen its role in representing people from all regions of Canada and to enhance the authority of Parliament to speak and act on behalf of Canadians in all parts of the country".

Although there are a variety of potential functions for the Senate, the Government of Canada believes that, if the second chamber of the Canadian Parliament is to help us respond to the challenges facing our country and make a contribution similar to second chambers in other federations, the role which needs the most attention at this time is the role of regional representation. Yet the strengthening of regional representation in the Senate should be undertaken, if at all, for the purpose of strengthening Parliament too, and enhancing its authority to act on behalf of Canadians in all parts of the country. However useful or appealing they might be from some other point of view, reforms which might weaken Parliament, or threaten its capacity to act, will not meet the needs of Canadians.

But who then should speak for the regions of Canada? That is the question. If the people from all regions are to be represented more effectively in a reformed Senate, how should that be done? As section 4 pointed out, there is a wide range of options to choose from, but, for the purposes of discussion, they can perhaps be reduced to three.

The representatives of the regions in the Senate could be chosen directly by the *people* of the regions through some form of election. Or, they could be chosen, in one way or another, by the provincial and federal *governments*. Or, finally, a compromise could be sought between these two principles, and regional representatives could be chosen through some form of *indirect election* involving the provincial legislatures and the House of Commons.

Each of these three broad alternatives has potential advantages and disadvantages which the Joint Committee will want to weigh carefully. It has been suggested, for example, that a Senate appointed largely if not exclusively by the provincial governments would help to harmonize relations between the federal and provincial governments, thus contributing both to national unity and to effective government. The Joint Committee will have to judge whether this suggestion has merit. Even if it has, the Committee will still have to weigh the impact of provincial control of the Senate on the effectiveness of Parliament and on the delicate balance of the federation. Would the national Parliament and Government still be able to take effective action on behalf of Canadians as a whole? Or would we run the risk of undermining the federal Government? In what way would power and authority shift to the provincial governments at the expense of the national Parliament? What new constitutional powers would have to be given to the federal Government if such a system were to work? What would be the consequence of legitimizing the provincial governments as the sole spokesmen for the people of their regions, rather than allowing a wider variety of regional voices to emerge? What would be the result of defining regional interests in a provincial rather than a national context? Is a provincially-appointed Senate compatible with the principle of distinct orders of government, each largely autonomous within its

own sphere of constitutional responsibilities? All of these are questions the Committee will want to consider.

Similarly the Committee should weigh carefully the advantages and disadvantages of an elected Senate. At first glance, a Senate chosen directly by the people of the various regions of Canada would appear to provide the most logical and attractive solution to the problem of regional representation. Yet the concept of an elected Senate also raises difficult questions. How easily can an elected Senate be grafted onto a parliamentary system? How would it be possible to ensure that the House of Commons remains the primary focus of responsible government and that the Senate does not become a "confidence chamber"? Would an elected Senate run the risk of challenging the federal Government at every turn and weakening its capacity for effective and decisive action? How would the Senate's powers have to be adjusted in order to prevent this?

As these questions indicate, almost all the issues on the Joint Committee's agenda seem to raise the question of balance in a variety of different ways: balance between the federal and provincial governments, balance between the House of Commons and the Senate, balance in representation among the regions of Canada within the Senate and within Parliament as a whole, to name only a few. One of the most difficult and yet most important questions of this kind to be addressed is the balance between the powers of the Senate and its method of selection.

Certain methods of selection would greatly enhance the legitimacy of the Senate and its ability to develop public support for its actions. It

would then become necessary to adjust the powers of the Senate in order to prevent the Senate from becoming a source of insurmountable obstruction to the House of Commons and to the federal Government. The powers of the Senate should be just strong enough for it to make its weight felt, where appropriate, but not so strong as to prevent Parliament from taking decisive action where national leadership is required.

Can this ideal balance be achieved in practice? At what point would a limitation on the powers of the Senate begin to undermine the very legitimacy and authority the new method of selection was intended to achieve? On balance, would another method of selection raise fewer problems of this kind?

Obviously the Joint Committee has a heavy agenda before it. In seeking answers to these difficult questions, however, it will have the duty and the advantage of hearing the views of Canadians from all regions and from all backgrounds and walks of life. What changes, if any, do they wish to make to their national Parliament in order to strengthen its ability to speak and act on their behalf? How and by whom do Canadians from all regions wish to be represented in the Canadian Senate? That is what the Parliament and Government of Canada now seek to know.

Governments have had their say in the past and will do so again. Parliament will have its turn, and will play a decisive role in defining the changes to be made to its own institutions. Provincial legislatures will no doubt contribute to the debate. But now it is time for the people to speak.

APPENDIX 1

PROPORTIONAL REPRESENTATION AND ITS POSSIBLE CONSEQUENCES FOR A DIRECTLY ELECTED SENATE

This Appendix explains what is meant by the expression “proportional representation” and discusses the possible consequences of a system of proportional representation for a directly elected Senate.

What is “proportional representation”?

The expression “proportional representation” is a general term used to refer to a variety of electoral systems. Nevertheless a common principle underlies the many variants: the allocation of seats corresponds relatively closely to the parties’ share of the popular vote. The various forms of proportional representation differ in the mathematical calculations used to translate votes into seats and in the range of choice offered voters. There are other differences, such as the size of electoral districts and the use of “thresholds” to exclude very small parties from the legislature.

The most widely-used form of proportional representation is the party list system. Under this method, used in most West European countries, each party puts forward a list of candidates, most often the same number as the seats to be filled. In some party list systems, voters have only one vote, which they may cast for one party’s ordered list (as in Israel). In Belgium, each voter has only one vote, which may be cast for *either* an ordered party list or for one candidate on a list. In other variations of the list system, voters may cast a “preference” vote by ordering the candidates (1, 2, 3, etc.) on a party list (this is the case in Italy, where a voter has three or four preference votes, depending on the size of the constituency).

The Federal Republic of Germany has a unique variation, called the “mixed system”. Half the members of the *Bundestag* are elected in single-member districts according to the plurality (first-past-the-post) method. The other half are elected from party lists in multi-member constituencies, so that the overall allocation of seats

corresponds closely to the parties’ relative share of the list votes. Voters have two votes, and the political parties have members elected from their lists only if they have obtained five per cent or more of the total national votes or have elected three members in the single-member districts.

Another general form of proportional representation is the single transferable vote (STV), used in the Republic of Ireland and for Australian Senate elections. Under this method, a fairly wide choice is given voters, who number their preferences for the candidates of one or more of the parties (or for independents) on the ballot paper. Observers generally agree that STV grants a less significant role to party organizations than most list systems. Under the latter systems, the order of the candidates (decided by the parties) most often influences who will be elected, whereas under the single transferable vote, voters can create their own rankings of the candidates, both for any one party or among parties. On the other hand, the allocation of seats among parties under STV is generally not as close to their proportionate share of the total vote as under party list systems.

How does a party list system work?

Under party list systems, electoral districts must return more than one member; five members for each district is considered a minimum in order to allow a relatively “proportional” result, and usually the number is higher. In order to determine how many candidates are to be elected from each political party, a mathematical calculation is performed. In the Netherlands and Israel, this calculation is made at the national level, with the entire country constituting a single electoral district. However, it is more usual for the calculation to be carried out at the electoral district level.

Table 3
Operation of d'Hondt formula

Party	Votes Received	Quotients				
		1	2	3	4	5
A	1,000	1,000*	500*	333.3*	250*	200
B	430	430*	215*	143.3	107.5	86.0
C	210	210	105	70.0	52.5	42.0
D	125	125	62.5	41.7	31.25	25.0

The mathematical calculation takes place according to a formula, of which several are in current use. The most common is called the d'Hondt formula, named after the Belgian who campaigned for proportional representation in the late nineteenth century. Under the d'Hondt formula, a series of divisions is performed on each party's results, using successive integers (1, 2, 3, 4, 5, etc.) as divisors. An example of the divisions appears in Table 3. In this case, six seats are to be filled. They are allocated to the parties in turn, on the basis of the size of the quotients (note asterisks in table). Party A therefore receives the first, second, fourth and fifth seats, while Party B is allotted the third and sixth. Party A wins four of the six seats, and Party B, two.

Another formula used to allocate seats under a list system has also taken the name of its originator, in this case the Frenchman Saint-Laguë. Instead of divisors in the series 1, 2, 3, etc., successive odd integers are used, namely 1, 3, 5, etc. In general, it is easier for a small party to win a seat under the Saint-Laguë formula than under the d'Hondt method. A larger party, on the other hand, must have more votes to obtain the same number of seats it would have been allotted by a d'Hondt calculation. Table 4 provides an example of the operation of the Saint-Laguë formula, using the same party results and number of seats as in Table 3. In this example, Party B retains the two seats it had in Table 3, Party A's representation is reduced by one, to three, and Party C gains one seat. The two for-

Table 4
Operation of Saint-Laguë formula

Party	Votes Received	Quotients				
		1	3	5	7	9
A	1,000	1,000*	333.3*	200*	142.9	111.1
B	430	430*	143.3*	86.0	61.4	47.8
C	210	210*	70.0	42.0	30.0	23.3
D	125	125	41.7	25.0	17.9	13.9

Table 5
Comparison of results of d'Hondt and Saint-Laguë formulae

Party	Votes Received	Seats to which each party is "entitled"	d'Hondt seat allocation	Saint-Laguë seat allocation
A	1,000	3.42	4	3
B	430	1.44	2	2
C	210	.72	0	1
D	125	.42	0	0

mulae are compared in Table 5. The third column in Table 5 shows the number of seats to which each party would be entitled if a perfectly proportional allocation could be made. No party can receive a fraction of a seat, and it is at least partly for that reason that formulae such as these two have been devised. In this case, the Saint-Laguë formula is generous to Party C, which had only 11.90 per cent of the total votes and yet obtains one seat out of the six. The d'Hondt formula, on the other hand, gives an advantage to the largest party, A, granting it four of the six seats for 56.66 per cent of the total votes.

The preceding examples do not exhaust the range of formulae that can be used for the mathematical calculations under a party list system. Different divisors will further affect the results, and in fact a change in only the first divisor can have a significant effect on the allocation of seats. In Norway, Sweden and Denmark, for example, a modified form of the Saint-Laguë formula is used, where the first divisor is 1.4 rather than 1.0. As a result, it is still slightly easier for a smaller party to secure its first seat than under the d'Hondt method, but it is more difficult than under the "pure" Saint-Laguë formula. In gen-

eral, countries have chosen a formula, or adapted it, to suit their own circumstances, and in some cases to favour certain parties or a certain potential outcome. Although several broad principles underlie systems of proportional representation, it is impossible to generalize about their results and their long-term consequences for a country and its political parties.

The possible results of a party list system

It has been suggested that if a directly elected Canadian Senate were favoured, a system of proportional representation should be used. In order to show what some of the results of such a system might be, several computer simulations were carried out, using past federal general election statistics. These simulations help show what might have occurred in a set of hypothetical elections based on those results under a *party list system* of proportional representation. For this purpose, it was assumed that voters would have had only one choice, namely for their preferred political party.

A second assumption in the simulations was that it is reasonable to transpose past votes for the parties' candidates into votes for the parties

themselves. In other words, it is assumed that if voters had been allowed to vote only for party lists, their votes would have divided in the same proportions, by party, as had been the case, indirectly, under the present system where the choice is among candidates with party labels. It must be acknowledged that some people are influenced by the personal qualities of certain candidates, no matter what the party affiliation is. Nevertheless, it has been shown that "party voting" is strong in Canada and has in fact tended to increase in recent elections. For the purpose of these simulations, the parties' total vote in each province was used as the basis for calculation, with the province as a whole forming one electoral district. Seats were then allocated to the parties, using the d'Hondt formula.

During the past few years, various distributions of seats for a reformed Senate have been

recommended (see section 6.1, Table 1). In order to determine whether different distributions of seats among provinces would significantly affect the overall result, and especially the chance of a one-party majority in such a hypothetical proportionally-elected Senate, four different seat distributions were used:

- (1) six seats per province
- (2) 10 seats per province
- (3) 118 seats, distributed as in Bill C-60 of 1978
- (4) 104 seats distributed as in the present Senate.

The results of the simulations for the four seat distributions, based on 1980 election statistics, are presented in Table 6. They show that under none of the distributions would any party have obtained a majority, although the Liberal party would have been the largest party in all cases but

Table 6
Results of simulated elections under party list system of proportional representation based on 1980 general election results

	(1) 6 Seats per Province			(2) 10 Seats per Province			(3) Bill C-60 (118 Seats)				(4) Present Senate (104 Seats)			
	Lib.	PC	NDP	Lib.	PC	NDP	Lib.	PC	NDP	SC*	Lib.	PC	NDP	SC*
Ontario	3	2	1	4	4	2	10	9	5	0	10	9	5	0
Quebec	5	1	0	8	1	1	18	3	2	1	18	3	2	1
Nova Scotia	3	2	1	4	4	2	4	4	2	0	4	4	2	0
New Brunswick	3	2	1	6	3	1	6	3	1	0	6	3	1	0
P.E.I.	3	3	0	5	5	0	2	2	0	0	2	2	0	0
Manitoba	2	2	2	3	4	3	2	3	3	0	2	2	2	0
British Columbia	1	3	2	2	4	4	2	4	4	0	1	3	2	0
Saskatchewan	1	3	2	2	4	4	2	3	3	0	1	3	2	0
Alberta	1	5	0	2	7	1	2	7	1	0	1	5	0	0
Newfoundland	3	2	1	5	4	1	4	3	1	0	3	2	1	0
Yukon	0	0	0	0	0	0	0	1	0	0	0	1	0	0
N.W.T.	0	0	0	0	0	0	0	0	1	0	0	0	1	0
TOTAL	25	25	10	41	40	19	52	42	23	1	48	37	18	1

* SC = Social Credit

distribution (1), where it would have tied with the Progressive Conservative party. In all cases, a combination of any two parties would have been necessary to form a majority. The Liberals and Progressive Conservatives would have had representatives from all provinces in all cases. NDP representation is higher, proportionately, than now obtains in the House of Commons, and in only a couple of provinces under each distribution would no one have been returned for that party. While the assumptions used here must be kept in mind, it appears that a Senate elected under the party list system of proportional representation could help improve the representation of those three political parties in areas where they now have few or no elected members.

It is widely acknowledged that the number of seats for each electoral district affects the "proportionality" of the results under any given system of proportional representation and the ease with which smaller parties can win seats. For example, in Table 4, Party C gained one of six seats. If there had been only five seats to be filled, Party C would have elected no one. This effect is shown to hold in these simulations. For example, compare the results for Quebec in Table 6 under distributions (1) (six seats per province) and (4) (present Senate, 24 seats for Quebec). In the former, only two parties, the Liberals and the Progressive Conservatives are represented, (five seats and one seat, respectively); in the latter, both the NDP and Social Credit gain seats (two and one, respectively) with the Liberals winning 18 and the Progressive Conservatives three.

A further set of simulations was carried out, using results from all general elections from 1945 onwards. These simulations, which employed the same assumptions and patterns of seat distribution described above, showed that on the basis of those election results, the possibility of a one-party majority in a proportionally-elected Senate would be rather low. Under distribution (1), a

one-party majority would have occurred in 1949 (Liberal) and 1958 (PC); under distributions (2) (3) and (4), inclusive, there would have been a Liberal majority in all cases in 1949 and 1953, and a Progressive Conservative majority in all cases in 1958. In all other elections, no majority would have resulted (see Table 7).

Based on these simulations, it would appear that for any given set of election results, a single-party majority is slightly less easily obtained as provincial representation approaches equality, especially if each provincial delegation is relatively small. Even under the distribution of seats in the present Senate, with 24 Senators each for Ontario and Quebec, the chance of a one-party majority is still low, even though the share of the vote going to parties other than the Liberals and Progressive Conservatives in those provinces traditionally has not been as high as, for example, in western Canada.

The single transferable vote system

The single transferable vote (STV) offers a wide range of choice to voters, who express their support for the various candidates in order of preference (1, 2, 3, etc.). In the Republic of Ireland, the party's name is printed beside each candidate. In Australian Senate elections, candidates are "grouped", usually by party, although party identification is not provided. In both countries, parties encourage voters to mark their ballots in certain ways: in the Irish Republic, voters are often urged to "plump" by expressing preferences for only one party's candidates, while in Australia (where a preference must be indicated for *every* candidate) the parties often distribute pre-marked specimen ballot papers with a suggested numbering that is to their advantage.

Table 7
Elections at which a one-party majority occurred in the “party list” election simulations described in this Appendix

	(1) 6 seats per province	(2) 10 seats per province	(3) Bill C-60 (118 seats)	(4) Present Senate (104 seats)
1945				
1949	L	L	L	L
1953		L	L	L
1957				
1958	PC	PC	PC	PC
1962				
1963				
1965				
1968				
1972				
1974				
1979				
1980				

L = majority for Liberals

PC = majority for Progressive Conservatives

The calculation of the results under STV is a complex process that cannot be completely explained here. First of all, a quota is calculated by dividing the total number of valid votes by the number of seats to be filled plus one, and adding one (this is the Droop quota, devised by an English barrister). In a five-member district, with 50,000 votes cast, the quota would thus be:

$$\frac{50,000}{6} + 1 = 8,334.33$$

Any candidate who meets the quota is declared elected. But if one or more candidates have exceeded the quota, their surplus votes are not wasted. All the second preferences of those who met the quota are then counted, and an appropriate percentage of them is transferred to the other candidates who have not yet reached the quota, in proportion to the preferences given to each of those candidates. This may bring another candi-

date above the quota. That candidate's “surpluses” are transferred, and the process repeated until the required number of candidates is elected, or until there are no more surpluses to be distributed. If the latter occurs, it is then necessary to begin eliminating candidates from the bottom of the list: the second preferences of the candidate with the lowest number of votes are transferred to the candidates for whom they were indicated. The process of elimination and additional transfers, if necessary, is repeated until the required number of candidates is elected.

The complexity of the above-described calculations is sometimes used as a criticism of the single transferable vote. It should be remembered that voters are not obliged to understand that process — they are merely asked to indicate a number of preferences among the candidates. Although the single transferable vote is much less

widely used at present than party list systems, it is often praised for the choice it offers voters and for the way it lessens the number of “wasted votes”, which are common under a simple majority system. Because voters in effect create their own ranking of candidates, the influence of party organization is generally considered to be less than under party list systems. This could be an advantage or a drawback, depending on the goals associated with any plan of Senate reform that contained a proposal for direct election.

The possible results of a single transferable vote system

The Canada West Foundation in its 1981 report simulated a series of elections to a hypothetical second chamber elected by STV. The report favoured that system because, in the authors’

view, it would encourage the independence of Senators and give less importance to “partisan considerations”. It is more difficult to simulate an election under STV than under a party list system: it is difficult to say how voters, who now have only one choice, would vote under STV, which allows them to express a number of preferences. The report acknowledges that the assumptions on which their simulations were based are “highly dubious”; the purpose was “merely to give some idea of the partisan distribution of an elected Senate”. The results of the Canada West Foundation simulation based on 10 seats per province are presented in Table 8.

Bearing in mind the difficulties associated with a simulation of an election under the single transferable vote, it would appear that relatively similar results to those of the party list elections

Table 8

Canada West Foundation simulation of a single transferable vote election based on 10 seats per province

Year	Liberals	PC	NDP	Others*
1953	57	31	11	5
1957	50	40	8	6
1958	38	53	8	5
1962	37	53	9	5
1963	42	44	10	8
1965	42	43	13	6
1968	40	47	14	3
1972	40	48	14	2
1974	42	45	15	2
1979	41	45	16	2
1980	40	44	18	2

Seats for other parties were not broken down by party.

SOURCE: *Regional Representation* (Canada West Foundation, 1981), p. 130.

described above would have been obtained. A single-party majority would have been returned on three occasions: Liberal in 1953 and Progressive Conservative in 1958 and 1962.

Conclusion

One conclusion that can be drawn from the simulations described in this Appendix is that so long as three or more political parties are relatively strong contenders across the country, it would be difficult for any one party to obtain a majority on its own in a proportionally elected Senate. Such a result is virtually axiomatic, given the assumptions that lie behind the operation of proportional representation systems. It is impossible to be more precise here, for any result will depend on the number of parties, the relative strength of each, voters' preferences and, not least, the details of a proportional representation system that might eventually be established.

The different formulae used in proportional representation systems will determine whether an advantage is given to larger or smaller parties and may influence the chances of a very small

party gaining representation. A further variation is the use of a "threshold" — a stipulated minimum percentage of votes required for a party to be allowed representation in the legislature. Thresholds, ranging from 0.67 per cent (Netherlands) to 5 per cent (West Germany) are currently in use and have prevented some very small parties from being allotted seats.

In spite of these differences among the various systems of proportional representation, it is reasonable to conclude that the use of such a system for a directly elected Senate would allow the seats allocated to political parties to correspond more closely to their share of the popular vote in all parts of the country than would be possible under the simple majority system, as is now used for the House of Commons. A variety of voices from the different regions might be heard in a Senate reformed along such lines. This arrangement would mean, however, that the chance of any one party obtaining a majority of Senate seats would be relatively low. The question of whether or not the assurance of a one-party majority is necessary is one that would have to be considered along with the other potential advantages and drawbacks of a directly elected Senate.