

Electing Alberta SENATORS



SENATE REFORM STEP #2: MOVING FROM PRECEDENT TO PRACTICE

INTRODUCTION

In October 1989, Canadians watched while Albertans went to the polls to elect their first Senator. Now is the time to turn this ground-breaking *precedent* into *practice*. More than any other province, Alberta has championed the cause of Senate reform. When reform of the Senate was added to the constitutional agenda in the 1980s, it was because Alberta put it there. When the Meech Lake Accord briefly opened the door a crack, it was Alberta that rudely forced the door open by electing a Senate nominee that Prime Minister Mulroney was eventually embarrassed into appointing. When the Charlottetown process widened the agenda, it was Alberta's leadership that placed Senate reform back on the table, and it was Alberta's firmness that kept a recognizable shadow of the *Triple-E* in the package that eventually emerged. When a Senate vacancy unexpectedly occurred in 1997, it was Alberta that again raised the issue of a second Senatorial election.

Prime Minister Chrétien's hasty appointment to fill the most recent Alberta vacancy in the Senate shows that the door opened by Meech Lake has been slammed shut and securely locked. The current federal government does not look kindly on the notion of reopening the debate over reform of the Senate. Is this the end of the matter? Is reform of the Senate dead – blocked because Ottawa is simply unwilling to take the first step? *Perhaps not.*

RE-THINKING THE PROBLEM

Alberta's position is that Canada needs a *Triple-E* Senate. First, *equal* means that every province should have the same number of Senators. Second, *elected* means that Senators are chosen directly by the people of the province and thus accountable to those who elected them. Third, *effective* means that Senators need the ability to exercise sufficient powers to represent and protect the interests of the citizens of their province within the national policy process. On these criteria, the current Senate is a *Triple-Zero* Senate which scores poorly on all counts:

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- 1) Canadian provinces do not have an equal number of Senators. The larger provinces have more Senators than smaller provinces, which effectively defeats the purpose of the Senate. In a properly functioning federal system, the lower house of Parliament represents citizens *equally* based on population (representation by population) and the upper house must represent citizens *equally* based on region (regional representation). The only “regions” in Canada of political or social significance are provinces;
- 2) All Senators are currently appointed on a patronage basis by the Prime Minister alone. Because Senators are guaranteed their seat until age 75, they are not even accountable to the Prime Minister who appointed them, and certainly not the citizens who pay their salaries and whom they purport to represent; and
- 3) Senators only exercise significant leverage over the policy process on those very rare and brief occasions when a recently elected government finds itself facing a Senate containing a majority of members appointed by the outgoing government. This situation can only last for so long. Eventually, death and retirement will create enough vacancies for the new government to appoint its loyalists to control the upper chamber.

Measured against the *Triple-E* ideal, Canadians are certainly not getting much for their money. From an Alberta perspective, there are three things wrong with the Senate:

- 1) Alberta does not have enough Senators. Because the Senate has 104 members, equality means that Alberta is entitled to ten Senators – four more than the six she now has.
- 2) None of Alberta’s Senators are elected, and as a result, none of her Senators are accountable to Albertans.
- 3) No Alberta Senator has much power to use on behalf of Alberta or her citizens.

RE-THINKING THE ANSWER

For the longest time, reform of the Senate has been frustrated by the inability of Canadians and their governments to arrive at a mutually agreeable set of changes to the Constitution. Since the selection, the number, and the role of Senators is specified in the Constitution, no reform of that institution will occur without first amending the Constitution itself.

But this alone is no reason for Albertans – or any Canadians for that matter – to continue suffering with outdated, ineffective, unequal and unelected representation in the Senate. Put simply, why couldn’t Albertans choose their “missing” Senators in the appropriate way and send them off to Ottawa? Since these individuals would not legally or constitutionally be “members of the Senate of Canada” the innovation would have to be highlighted by giving them a different name – “*Alberta Senators.*”

FIGURE 1: ALBERTA SENATORS VS. EXISTING SENATORS

	CURRENT SENATORS	ALBERTA SENATORS
DESCRIPTION	A TRIPLE-ZERO SENATE	USING THE TRIPLE-E IDEAL FOR ALBERTANS
ELECTED	ZERO All of the current Senators are appointed by the Prime Minister of the day.	SOME At least some of Alberta’s Senators would be elected.
EQUALITY	ZERO Large provinces (ON, PQ) and small (NS, NB) have more Senators than any western province.	MORE EQUAL Alberta’s total number of Senators would approach one-tenth of the Senate.
EFFECTIVENESS	ZERO Very rarely do Senators have any significant impact on policy issues.	MORE EFFECTIVE Alberta Senators will be held accountable to the citizens of Alberta and the Legislature.

WHAT GOOD WOULD ALL THIS DO?

If Alberta has to wait for Ottawa to make the first move or even to give its permission, Albertans will likely have to wait forever to elect their Senators. Only a strong provincial initiative will get the ball rolling on Senate reform. Electing *Alberta Senators* now would clearly and strongly highlight the absurdity of the existing Senate – the only elected Senators in the country are the only ones who cannot speak on the floor of the Senate. The fact that the *Alberta Senators* would probably be the most visibly active of the Senators would underline and reinforce this absurdity.

At a minimum, the next time an Alberta Senate vacancy occurred, there would be some popularly elected individuals with practical experience in the affairs of the Senate, creating an appointment pool the Prime Minister could not ignore without significant embarrassment. At the maximum, especially if some other provinces followed suit, the elected Senators outside the chamber would begin to constitute a “parallel structure” of greater legitimacy (and newsworthiness) than the official one, creating momentum toward meaningful reform of the antiquated institution.

HOW MANY SENATORS SHOULD BE CHOSEN?

The Senate has just over a hundred members, and Alberta is one of ten provinces, so according to the obvious math, there should be ten Senators from Alberta (*see Figure 2*). Since the province has only six Senators now, Albertans are really missing four Senators. Albertans could elect all four at once, or elect two right away and two more down the road to create overlapping rather than simultaneous terms. The point remains, however, that four is the solid number that makes the point for “*equality*” just as the act of voting makes the point for “*elected*.”

The transparency of this logic leaves room on the bandwagon for the other three Western provinces, each of whom is similarly “missing” four Senators. The same is not true, however, of provinces like Nova Scotia and New Brunswick (which already have ten Senators) or Ontario (with 24 Senators). These provinces do not have a “Senatorial deficit.” In these provinces, the argument would have to be based on the more explicitly subversive idea of a “parallel” Senate.

FIGURE 2: SENATORIAL SURPLUSES AND DEFICITS

Province	Provincial Population (1997)	Members of Parliament	Current Senate (Triple-0)	Senate Reform (Triple-E)	Senate Surplus (Deficit)
BRITISH COLUMBIA	3,933,300	34	6	10	(4)
ALBERTA	2,847,000	26	6	10	(4)
SASKATCHEWAN	1,023,500	14	6	10	(4)
MANITOBA	1,145,200	14	6	10	(4)
ONTARIO	11,407,700	103	24	10	14
QUEBEC	7,419,900	75	24	10	14
NOVA SCOTIA	947,900	11	10	10	0
NEW BRUNSWICK	762,000	10	10	10	0
NEWFOUNDLAND	563,600	7	6	10	(4)
PEI	137,200	4	4	10	(6)

SIX OF CANADA'S TEN PROVINCES HAVE A "SENATORIAL DEFICIT." THIS MEANS THEY HAVE LESS SENATORS THAN THEY SHOULD UNDER THE TRIPLE-E SENATE IDEAL. TWO PROVINCES HAVE THE RIGHT AMOUNT OF SENATORS AND TWO HAVE A "SENATORIAL SURPLUS" – TOO MANY SENATORS.

HOW SHOULD THE SENATORS BE CHOSEN?

Obviously, the *Alberta Senators* should be chosen by direct election by the voters of Alberta. This could either be done on a stand-alone basis or timed to coincide with the triennial municipal elections held on the third Monday in October of every third year. By “piggybacking” Senate elections on top of municipal elections, the costs to the taxpayer can be drastically reduced, and the risk of a low voter turnout is lessened as well. However, this is just an “insurance policy” that would likely prove unnecessary since the past “Alberta Senator Election” attracted the popular imagination and drew exciting candidates.

HOW LONG SHOULD THEY SERVE?

To keep the ball rolling and to make the accountability both visible and effective, it would be best to elect *Alberta Senators* for six-year terms – double the time between the province-wide municipal elections – with two Senators coming up for election and/or re-election every three years. This could be started off in one of two ways: 1) two *Alberta Senators* could be elected in 1998 and another two in 2001; or 2) four *Alberta Senators* could be elected in 1998, with two serving a six-year term and the other two a three-year term.

WHAT WOULD ALBERTA SENATORS DO?

Although *Alberta Senators* would not legally be members of the Senate, because they were elected by Albertans and are accountable to them, *Alberta Senators* would likely do more than our “regular” Senators. For example, *Alberta Senators* could be based in Alberta House and be instructed to conduct themselves as much like Senators as possible without the formal status. As such, they would attend sessions of the Senate and sit in the visitors’ gallery. *Alberta Senators* would make submissions to the appropriate Senate committees, scrutinize legislation and comment on its implications for Alberta and Albertans. This would have to be done through press releases and press conferences rather than through debate in the Senate chamber, but it might be all the more effective and visible for this fact.

Most importantly, *Alberta Senators* would have to report to the people of Alberta on a regular basis, and the formal highlight (but by no means the full substance) of this accountability could be an annual report to the provincial Legislature. One of the things that elected *Alberta Senators* could report on would be the performance of the “other Senators” from Alberta – the first time that such accountability has ever existed!

GROUNDHOG DAY ON PARLIAMENT HILL



Cartoon used by permission of Vance Rodewalt

SENATORS ARE
APPOINTED BY THE
PRIME MINISTER ALONE.
BECAUSE THEY ARE
GUARANTEED THEIR SEAT
UNTIL THE AGE OF 75,
THEY ARE NOT EVEN
ACCOUNTABLE TO THE
PRIME MINISTER WHO
APPOINTED THEM.
SINCE SENATORS ARE
NOT ELECTED, THEY
CERTAINLY AREN'T
ACCOUNTABLE TO THE
CITIZENS THEY PURPORT
TO REPRESENT.

Obviously, the full job description of Alberta Senators would have to be more fully detailed in legislation, along with the terms for their accountability. After discussing the matter in a process that provides for public input, Albertans and the Legislature could surely arrive at a very detailed job description for their *Alberta Senators*.

WHO WOULD PAY FOR ALBERTA SENATORS?

The same people who pay for “their share” of the existing Senate – the taxpayers of Alberta. Alberta already contributes about 12% of total federal revenue, so Albertans already pay the salaries of 12% of all the Senators although only 6% of them “represent” Albertans. If the new Senators took their job seriously, it would be good value for the money, and certainly better value than Albertans get now. There would also be some modest operational costs. The rule in the “real” Senate is that every two Senators share one secretary, and there would be some travel between Alberta and Ottawa. The *Alberta Senators* would also need some office space. Most of these costs are modest, and in the case of the office space, the costs are limited as Alberta has maintained an office in Ottawa since 1935.

WHAT COULD GO WRONG?

No venture into uncharted territory is without risks. It could be that no candidates of worth materialize – but this seems unlikely, if only because all provincial parties have a strong interest in making sure this does not happen. It could be that the “wrong” kind of people get elected – people who equate the job title “Senator” with the performance of an Andrew Thompson rather than a Stan Waters or a Joyce Fairbairn. But the work of gaining the nomination and campaigning seems a strong disincentive, and in any event it would only take two or three conscientious individuals with a strong feeling of Alberta’s interests and some flair for the dramatic to keep the pressure up.

Another risk is that *Alberta Senators* could get drawn into the partisan manoeuvrings of the major parties within Parliament. However, this risk will only occur if *Alberta Senators* are successful – if they have built up their own positions and established the credibility of their challenge to the existing Senate. Otherwise, they will have little to contribute to their party colleagues.

Another risk is that *Alberta Senators* would only be a “seven-day wonder” that the media would soon lose interest in and that no other province would choose to emulate. But

whether the *Alberta Senators* are deemed “successful” or not, the investment is relatively small for a potentially much larger pay-off for more meaningful Senate reform in the future. At the very least, there is still value for money in a more visible mechanism for keeping a watching brief on Ottawa and reporting back to the Legislature.

WOULD IT BE CONSTITUTIONAL AND LEGAL?

It is hard to see why not. For 60 years, Alberta has had paid officials in Ottawa keeping an eye on federal politics and reporting back to the provincial government. This proposal amounts to little more than letting the voters elect these people instead of having the government appoint them. It is certainly not illegal for individuals to regularly attend Senate sittings, make frequent submissions to Senate committees, or hold press conferences to give their opinion on government legislation.

Nor can Ottawa claim any patent on the term “Senator” as long as Alberta’s elected Senators are referred to as “*Alberta Senators*” rather than members of the Senate of Canada. In fact, for decades the Universities Acts of most provinces have created within each university a group of



people who sit on a “Senate” and are rightly called “Senators.” This has never been questioned. Clearly, Ottawa would not be happy about this, but they could do nothing about it.

WHAT KIND OF ELECTORAL SYSTEM?

There are several ways to translate Albertans’ votes into *Alberta Senator* positions:

1) *Divide the province into electoral divisions, each electing one Senator on a “first-past-the-post” basis.*

This is the system with which most people are familiar. But the population distribution in the province – roughly one third in Edmonton, one third in Calgary, and one third everywhere else – makes the drawing of these electoral boundaries unusually difficult. More importantly, the “first past the post” favours the larger parties at the expense of the smaller parties, and this could translate into a one party sweep. This would be a less convincing demonstration of the desired impact of Senate reform since the Senate needs more voices, not fewer. It would also be less newsworthy on an ongoing basis than if Senators were chosen through a system providing broader and more balanced representation.

2) *Divide the province into one or two constituencies and have each elect several Senators using first-past-the-post (split multi-member electoral system).*

Before the reforms of the 1960s, most federal elections involved a small number of two or three-member seats, each voter having as many votes as there were members to be elected. Almost invariably, all the successful candidates came from the same party and they received almost identical votes. In practical terms, this system is even more likely to generate a one-party sweep (unless a single exceptionally popular candidate like a Wayne Gretzky were to run) and could foreshadow similar sweeps by a single party in subsequent elections. This tendency could be offset by “plumping” – allowing voters to give more than one of their votes to a single candidate – but this would unnecessarily complicate a process that should be kept as simple as possible.

3) *Use some form of Proportional Representation (PR) where voters register the choice of a party, and seats are allocated to parties in direct proportion to their share of the popular vote.*

This is the most widely used of all the world’s electoral systems, and there are literally dozens of variants that can be fine-tuned in many different ways. The traditional advantage of PR is that party representation mirrors the popular vote. If half of the votes cast are cast for Conservatives, the Conservatives will get half of the positions. The disadvantage of PR is that it can lead to fragmentation of representation – one *Alberta Senator* from each party. However, a number of variants are available to limit the downside. For example, using the “largest average” variant over the “largest remainder” variant helps prevent fragmentation. Using the “flexible list” system instead of the “party list” system will help limit the domination of the campaign by faceless party elites. However, it must be kept in mind that this type of electoral system has no North American roots. It is highly vulnerable to attack, with opponents arguing that PR is a rigid party-dominated system rather than a voter-driven system.

4) *Use the entire province as one constituency and employ the Alternative Vote system (as it was called when Alberta used it until 1955) or the Single Transferable Vote (STV).*

This electoral system is known the world over as the best way to accurately translate voters’ electoral choices into legislative positions. The voter is given one ballot and is required to rank order their preferences (using 1 for first choice, 2 for second choice, 3 for third, etc.) instead of simply marking an X beside one or more names. The candidates are elected when they obtain a specific number of votes – a quota. The quota is determined by dividing the total number of valid ballots cast by the number of candidates to be elected plus one. For example, if 1,000,000 ballots were cast in an election to choose four *Alberta Senators*, the quota would be 200,000 votes (one million divided by four positions plus one additional position).

In this example, any candidate who received 200,000 first preference votes (i.e. all the 1’s on the ballots) would be automatically elected. Those candidates not receiving an adequate number of first preference votes to meet the quota would then have added to their existing total the second preference votes on the ballots of those who had already exceeded the quota. Candidates who exceed the quota with these “transferred votes” are then declared elected. If all positions are still not filled with the transfer of these votes, the candidate receiving the fewest number of first preference votes is eliminated and his or her second preference votes are transferred to candidates still in the race. This process continues until all the positions have been filled.

The attraction of the STV is that it allows voters to rank as many candidates as they wish in order of preference, and it makes it very likely that the highest (but not necessarily the top) choices of each voter will contribute *directly* to the result. Unlike PR systems, STV does not force voters to pack their choices within parties. Voters can give their highest ranking to women candidates, Ukrainian candidates, or Edmonton candidates, etc. However, if some voters do vote primarily along party lines, STV will simply allocate seats proportionally among the parties.

The main drawback to STV is that the vote-counting process is complex. However, in today's computer age, it is not unduly so. More important, the *action* of voting is not complex at all – voters simply need to indicate a simple ranking. The Alternative Vote has been tried in Alberta and is part of the province's electoral tradition, being used in some rural constituencies between 1926 and 1955. If voters could manage the Alternative Vote system in the past, surely they can do so today.

The novelty factor of using STV, on balance, can possibly work out as either a plus or a minus. If four *Alberta Senators* were to be elected at once, STV would virtually *guarantee* that at least two but up to three parties would share the four seats. It would also make it easy to decide who served the shorter terms – those receiving fewer first preference votes would face the electorate sooner. The advantages of STV were discovered and debated in New Zealand, which recently adopted an Alternative Vote system after a national referendum on the subject, and has already held their first general election using this system.

ISN'T CONSTITUTIONAL CHANGE A MATTER OF NATIONAL BUSINESS, THE PRODUCT OF A NATIONAL PROCESS?

Ultimately, yes. Alberta would not be amending the Canadian Constitution or even its own Constitution, but simply pursuing a particular policy through unusual means within the existing Constitution. But, even if formal constitutional change requires a national mandate, it is still true that the initiative for change can be taken by a provincial government. For example, United States Senators were not always selected by the direct popular votes of the citizens of their state. Until the beginning of this century, U.S. Senators were chosen by a vote of the members of the state Legislature. But growing popular agitation for a more democratic procedure led the Legislatures of some states – initially Oregon, but gradually some others as well – to allow the voters to make their choices for them. After a brief period when some Senators were directly elected by the general public and others indirectly elected by state Legislatures, the U.S. Constitution was amended to provide for the direct election of all Senators. This Alberta plan is in some sense a subtle variation of the “Oregon option.”

THE STAN WATERS STORY

APRIL 30, 1987

Prime Minister Brian Mulroney and the ten provincial premiers meet at Meech Lake and arrive at a tentative agreement on a set of constitutional amendments. The changes come to be known as the “Meech Lake Accord.”

JUNE 3, 1987

The Meech Lake Accord is formally signed by Prime Minister Brian Mulroney and the ten provincial premiers. The Accord includes a section which states that future appointments to the Senate will be made from a list provided by the government of the province from which the vacancy has occurred.

AUGUST 1989

Premier Don Getty introduces in the Legislature a bill providing for the election of a Senator to replace Senator Martha Bielish who retires.

OCTOBER 16, 1989

Albertans vote for a Senator in conjunction with the municipal elections occurring throughout the province. Mr. Stan Waters, a member of the Reform Party and a retired businessman and former military officer, wins the election with 207,800 votes. Premier Getty sends a list to the Prime Minister with one name on it – Stan Waters.

OCTOBER 1989 TO JUNE 1990

Prime Minister Brian Mulroney delays appointing Mr. Waters to the Senate. Premier Getty threatens to withdraw Alberta's support for the Meech Lake Accord unless Waters is appointed.

JUNE 11, 1990

Prime Minister Mulroney appoints Stan Waters to the Senate with the agreement that no further Senate elections will be held for at least five years.

SEPTEMBER 1991

Senator Waters, Canada's first elected Senator, passes away after battling cancer.

MYTHS ABOUT ELECTING ALBERTA SENATORS

MYTH #1

"ALBERTA SENATORS WON'T HAVE ANYTHING TO DO"

Although many people wonder what the current Senators do, Alberta Senators will have to live up to a legislated job description and will be directly accountable to the people and the Legislature of Alberta.

MYTH #2

"ALBERTA SENATORS WILL COST TOO MUCH MONEY"

The current Senate costs a lot of money and doesn't do very much. In comparison, Alberta Senators will give value for money because they will have a clearly defined job and a formal mode of accountability.

MYTH #3

"ELECTING ALBERTA SENATORS IS FOOLISH AND POINTLESS"

This is what people say to defend the status quo, which boasts absentee Senators and no regional input into national policy. Electing Alberta Senators is a practical alternative to the status quo with a real potential for more meaningful change in the future.

MYTH #4

"ELECTING ALBERTA SENATORS IS UNCONSTITUTIONAL"

If Ottawa's hockey team can call its players "The Ottawa Senators" then Alberta can call the elected officials it sends to Ottawa to keep an eye on the national policy process "Alberta Senators."

MYTH #5

"ONLY THE FEDERAL GOVERNMENT CAN TAKE THE LEAD"

While only a national process can formally change the structures of the national government, it is appropriate for a province to take the lead. In the US, the state of Oregon took the initiative in directly electing Senators.

MYTH #6

"ELECTING ALBERTA SENATORS IS JUST A GIMMICK"

Electing Alberta Senators is a way of proving that the existing Senate is absurd and dysfunctional. It highlights what a better Senate would look like and what it would do. It is not a "gimmick" but a practical demonstration.

MYTH #7

"NO ONE WILL RUN IN THE ELECTION"

That was said in 1989, when Alberta held its first Senate election. But, excellent candidates came forward to wage a spirited campaign. There is no reason to think that 1998 would fail to develop a comparable contest. Alberta has many citizens who would be proud to run.

MYTH #8

"NO ONE WILL BOTHER VOTING FOR A SENATOR"

That too was said in 1989, yet hundreds of thousands of Albertans cast their vote for Canada's first elected Senator. Citizens will always respond to the opportunity for meaningful participation.

CONCLUSIONS: WHY ELECT ALBERTA SENATORS?

- 1) Electing *Alberta Senators* would seize the initiative on Senate reform by doing something proactive and imaginative rather than simply debating the concept and waiting, waiting, and waiting for Ottawa to move.
- 2) Electing *Alberta Senators* would "put our money where our mouth is" by showing Ottawa that Alberta is serious about Senate reform.
- 3) Electing *Alberta Senators* provides an initiative that other provinces could emulate, creating momentum and growing pressure for reform of the Senate.
- 4) Electing *Alberta Senators* would "un-demonize" the notion of Senate reform by giving it a day-to day practicality, placing in Ottawa a set of individuals commenting on federal legislation in a regionally responsive way.
- 5) Electing *Alberta Senators* is an effective, constructive and positive response to the recent debate across Canada concerning the accountability of Senators. In the wake of scandalous Senatorial attendance records, electing a contingent of *Alberta Senators* reinforces Alberta's reputation as a responsive, forward-thinking and innovative partner of the Canadian Confederation. ■