Evaluation of senate reform in canada

Canada’s national legislature is bicameral (Hicks, 2015). This means that it is composed of two legislative bodies, the lower house (House of Commons) and the upper house (Senate). Although a definitive theory of bicameralism has yet to materialize, a consensus asserting that the upper chamber provides a review, and representation function distinct from the lower chamber has emerged(Hicks, 2015). Although the degree to which the upper house fulfills these functions varies across provinces (Hicks, 2015). Like many former British colonies, Canada adopted the Westminster model of responsible parliamentary government. This model provides for an elected lower house, and an appointed upper house (Hicks, 2015). Although Canada adopted the Westminster model as the basis of our national legislature, such as Canada’s federal structure have resulted in the structure, function, and powers of the Senate differing from those of the British House of Lords (Hicks, 2015). Since Confederation, various politicians, political parties, pundits and professors have advocated in favour of reforming the Senate. These calls for Senate reform are often centered on the Senate’s democratic deficit, legitimacy, and integrity deficits (Burton & Patten, 2015). In recent years factors, such as the Senate Reform Act (Bill C-7), the *Reference re Senate Reform* , and the expenses scandal involving senators like Mike Duffy, have brought the issue of Senate reform to the forefront of Canadian political discourse (Burton & Patten, 2015). Rather than suggesting Canada abolish the senate, I am in favour of Senate reform to address the institution’s deficits by examining the required qualifications of Senate appointees, the method of selecting and appointing senators, and the distribution of seats in the Senate.

Section twenty-four of the Constitution Act of 1867 originally stipulated, “ The Governor General shall from Time to Time, in the Queen’s Name, by Instrument under the Great Seal of Canada, summon qualified Persons to the Senate; and, subject to the Provisions of this Act, every Person so summoned shall become and be a Member of the Senate and a Senator.” (Government of Canada, 2015) However, this was repealed by the Statute Law Revision Act, 1893 which stipulated, “ Such Persons shall be first summoned to the Senate as the Queen by Warrant under Her Majesty’s Royal Sign Manual thinks fit to approve, and their Names shall be inserted in the Queen’s Proclamation of Union.” (Government of Canada, 2015) Although the Constitution Act clearly establishes the Crown as the institution responsible for appointing senators, constitutional convention dictates that the prime Minster selects senate appointees by “ advising” the Crown on such appointments (Dyck & Cochrane, 2014). Although the prime minister is given substantial discretion in selecting senators, the prime minister must select Senate appointees in accordance with the qualifications stipulated in the Constitution Act of 1867. Section twenty-three of the Constitution Act outlines the qualifications of senators (Government of Canada, 2015). It requires Senate appointees to be at least thirty years of age, and to hold land in the province they represent valued at four-thousand dollars over and above rents, dues, debts, charges, mortgages, and encumbrances due or payable (Government of Canada, 2015). This section also asserts that senators must also possess real and personal property worth four-thousand dollars over and above debts and liabilities (Government of Canada, 2015). For Senators representing the province of Quebec, the Constitution Act calls for such property to be held in Quebec (Government of Canada, 2015). A

related provision in Section 31 of the Constitution Act of 1867 outlines the reasons why a senator may be dismissed, which includes bankruptcy, insolvency, benefiting from any law relating to insolvent debtors, or becoming a public defaulter (Government of Canada, 2015). This renders senators vulnerable to economic forces that could cause a decline in the value of their land and property.

These qualifications reflect the function intended for the Senate by the Fathers of Confederation (Hicks, 2015). They reasoned that such qualifications would allow them to appoint great men with unique experiences to the legislature (Hicks, 2015). In the mid nineteenth century, it was widely accepted that property ownership made for a better citizen as such individuals had a vested interest in defending the land and advancing the success of the country, at the national regional and municipal levels (Hicks, 2015). By imposing age and property qualifications for senators, the Fathers of Confederation also sought to create a more conservative legislative counterbalance to the House of Commons (Trimble, 2015). As a result of these qualifications, senators have traditionally been members of the corporate, and landowning classes, representing the interests of these classes (Trimble, 2015). Although the property qualifications no longer restrict the selection of senators to the extent they did historically, they still inhibit members of the middle and working classes from being appointed to the senate, and representing the interests of these classes (Trimble, 2015). The property qualifications also impede the selection of senators from segments of the population that have traditionally been disadvantaged, such as women, aboriginals, ethnic and religious minorities, people with

disabilities and new Canadians (Trimble, 2015). Furthermore, the age requirement bars students and young adults from being appointed to the Senate, significantly restricting the representation of their interests. Although the age and property qualifications are part of the Constitution Act, the Supreme Court confirmed in *Reference re Senate Reform* that these provisions did not require a constitutional amendment and could be changed through regular legislation (Burton &Patten, 2015). By removing the age and property qualifications for senators, the democratic, and legitimacy deficit in the Senate will be reduced as it will permit the increased representation of groups and interests that are underrepresented in the House of Commons. It is also possible that expanding the representation of the Senate will produce a Senate that is less partisan as there will be an increase in the inclination of Senators to vote according to their diverse interests rather than according to those of their political party (Burton &Patten, 2015). Removing the property requirement may also contribute to reducing the senate's legitimacy, and integrity deficits as senators may be more inclined to treat their position as a full-time job due to a reduction in the incentive to accumulate additional income and assets from positions beyond the Senate (Burton &Patten, 2015).

Currently, senators are distributed according to four regional divisions: Ontario, Quebec, the Maritime Provinces, and the West (Government of Canada, 2015). A single senator was added for each of the territories (Government of Canada, 2015). Each regional division possesses equal representation in the Senate (Government of Canada, 2015). However, the provinces are unequally represented with provinces such as Quebec and Ontario possessing twenty-four senate seats, and provinces like British

Colombia, and Newfoundland possessing six seats. Furthermore, the provinces are unequally represented within the Maritime regional division with Nova Scotia possessing ten seats and Prince Edward Island possessing four. Considering the distribution of seats in the Senate, it is evident that the Senate has the capacity to advance regional concerns, however its capacity to advance provincial concerns, particularly if they differ within a regional division, is limited (Lawson, 2005). For example, the interests of provinces of the Western regional division may differ significantly, yet they can only achieve the same level of representation as Ontario or Quebec collectively. The consensus concerning bicameral legislatures implies that the upper chamber must have a different representational purpose than the lower chamber, which is based on representation by population in Canada (Hicks, 2015). As a result, the overrepresentation of aboriginals, ethnic and religious minorities, and the populations of smaller provinces is legitimate for the Senate (Hicks, 2015). However, this is inconsistent the number of seats allocated to Ontario. The current distribution of seats, which represents provinces unequally, has led to the development of a sense of alienation in Western Canada, most notably in Alberta (Lawson, 2005). Additionally, diverging interests within provinces are often not given adequate representation at the provincial and federal levels on account of their small geographically dispersed populations, and similarities (Hicks, 2015). For example, the population of Northern Ontario, may have interests more closely resembling those of Alberta concerning the development of natural resources compared to those of the population in Southern Ontario (Hicks, 2015). Such a distribution of seats in the Senate is a great contributor to the democratic, and legitimacy deficits of the institution.

The sense of alienation and underrepresentation in Western Canada has resulted in certain individuals and groups advocating for an elected Senate with additional powers and equal representation of the provinces (Lawson, 2005). These reforms are the central elements of the Triple-E Senate proposal which advocates for an elected effective, and equal Senate (Dyck &Cochrane, 2014). This will eliminate the inequalities with regards to provincial representation in the Senate thereby reducing the senate's democratic, deficit. However, *Reference re Senate Reform* clearly stipulates that changing the number of Senate seats allocated to each region, and/or each province would require a constitutional amendment using the amending formula of the Constitution Act of 1982 (Burton &Patten, 2015). Such a reform is likely to garner widespread support from the Western Canada as it will increase their relative representation in the Senate (Hicks 2015). However, such reforms are likely to be opposed by Quebec, Ontario, and the Maritimes (Hicks 2015). Such reforms would result in Quebec and Ontario losing their relative representation in the Senate (Hicks 2015). The Maritimes will likely oppose these reforms as they may perceive them as a threat to the increased relative representation the Senate has traditionally afforded them, despite their small populations (Hicks 2015). Additional reforms that build on the idea of equal provincial representation have been proposed. These include the treatment of aboriginal peoples as a province to increase their representation in the Senate, and the division of Ontario and Quebec into separate divisions to increase representation for communities in Northern Ontario, and Quebec (Hicks 2015). An alternative to these reforms that will not require a constitutional amendment would be for the prime

minister to commit to appointing more aboriginal senators, and senators from different regions of provinces such as Ontario, and Quebec.

By adopting a legislative structure based on the Westminster model, Canada retained an appointed upper house. The reasoning behind this stems from the intentions of the Fathers of Confederation concerning the Senate's primary functions (Burton &Patten, 2015). Firstly, they intended the Senate to be complementary to the House of Commons and not its legislative rival (Burton &Patten, 2015). Secondly, they intended the Senate to review and propose improvements to legislation passed by the House of Commons (Burton &Patten, 2015). Finally, the Senate was intended to be more independent from public opinion and the short-term political considerations associated with electoral politics (Burton &Patten, 2015). These intentions are also reflected in Section twenty-nine of the Constitution Act of 1867 that permits senators to serve until the age seventy-five (Government of Canada, 2015). Although an appointed Senate facilitates these functions, the fact that senators are selected by the prime minister and appointed by the Governor General on the " advice" of the prime minister is the most significant source of the Senate's democratic, legitimacy, and integrity deficits (Burton &Patten, 2015). Because the Senate can exercise the power of amending, delaying and vetoing legislation passed by the House of Commons, the prime minister has an incentive to make partisan patronage appointments (Burton &Patten, 2015). Such appointments favour party loyalty, discipline, and congruent interests over competence, experience, diversity, and loyalties to regions or populations (Burton &Patten, 2015). Moreover, since the population cannot directly hold Senator's accountable for their actions,

through periodic elections, the consequences of unethical behaviour, and supporting interests that do not reflect the wishes of the population are lower relative to those faced by MPs (Burton &Patten, 2015). Such a process for selecting senators runs counter to the Senate's representative function (Hicks, 2015).

It is apparent that an appointed Senate has several significant advantages over an elected one. However, these advantages must be balanced with democratic, legitimacy, and integrity deficits such a selection method creates when considering Senate reform (Burton &Patten, 2015). As mentioned previously, individuals and groups, particularly from Western Canada, have advocate for an elected Senate within the Triple-E Senate proposal (Lawson, 2005). Such reforms will require a constitutional amendment according to the amending formula stipulated in the Constitution Act of 1982 according to the *Reference re Senate Reform* (Burton &Patten, 2015). Achieving such a level of federal and provincial agreement has proven challenging (Dion, 2015). However, such agreement is possible (Hicks, 2015). An alternative reform scheme that may not require a constitutional amendment calls for the formation of a non-partisan advisory panel that would recommend a short-list of potential appointees to the prime minister to consider (Dion, 2015). Another reform scheme that may not require a constitutional amendment is including input from provincial committees concerning the senators representing their province (Burton &Patten, 2015). A less formal reform scheme would be to include informed non-partisan advisors to provide input to the prime minister during the selection process (Burton &Patten, 2015). Such reforms would increase

the diversity in the Senate as well as the competence and experience levels of its membership. Combining these proposed reforms or integrating them is also possible. However, such reforms would only achieve their desired outcomes if the prime minister committed to ending partisan patronage and taking the advice of an informed non-partisan and/or provincial committee or group of advisors (Trimble, 2015).

Upon carefully examining the sources of the Senate's democratic, legitimacy, and integrity deficits, proposed, Senate reforms and the obstacles that might hinder such reforms, it is clear that Senate reform is required particularly with regards to the required qualifications of Senate appointees the method of selecting and appointing senators, and the distribution of seats in the Senate. Although *Reference re Senate Reform* has been regarded by many members of Canada's political class as making Senate reform impossible, this essay had made it clear that this is not the case (Burton &Patten, 2015). Removing the age, and property qualifications of Senate appointees through regular legislation, and action permitted by the *Reference re Senate Reform* , can contribute significantly to reducing the Senate's democratic, legitimacy, and integrity deficits. This essay has also demonstrated that there is a various means of Senate reform with differing levels of formality that will not require a constitutional amendment to implement yet could significantly reduce the deficits of the Senate. Although amending the constitution to reform the Senate in a manner like that outlined in the Triple-E senate proposal is difficult as it will require achieving a high level of provincial and federal agreement, it is not impossible. However, it will require commitment on the part of the federal and provincial executives, and legislatures as well

the Canadian citizenry to engage in a constructive, and participative dialogue concerning Senate Reform (Burton &Patten, 2015).

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