Senate Reform Update

This article was written by a law student for the general public.

Recent events have sparked interest in Senate reform:

- Suspended Senators
- Mike Duffy trial, including residency and expense scandals
- Liberal leader Justin Trudeau's removal of Senator's from party caucus
- Senatorial opposition to the *Reform Act* (among other legislation)
- Low public opinion of the Senate[i]Since Confederation, countless revisions have been suggested to improve the utility of the Senate.[ii] Efforts have been stalled by the provinces' inability to agree on the distribution of senators across the provinces, the purpose of the Senate, and reluctance of the federal government to engage with stakeholders on this agenda.In 2011 the Conservative Party of Canada introduced Bill C-7, *The Senate Reform Act*.[iii]This Act was based on two former pieces of legislation: Bill C-20, the *Senate Appointment Consultations Act*[iv] and Bill C-19, *An Act to Amend the Constitution Act, 1867 (Senate tenure)*.[v] These Bills, if passed, would have established a nation-wide system through which voters would elect senators. Those elected would form a list from which the Prime Minister would then make appointments. It would also implement 8-year term appointments, rather than mandatory retirement at age 75. Questions regarding the constitutionality of issues raised in these Bills along with questions concerning, for instance, abolishing the Senate, were referred to the Supreme Court in 2013.
  In 2014, the Supreme Court of Canada issued its decision in *Reference re Senate Reform*. The Court determined that any changes to the Senate "change our Constitution's architecture" and therefore the provinces must be consulted.[vi] The federal government cannot unilaterally revise term limits, residency or property requirements, or implement mandatory nominations. In these cases, the general amending formula, or 7/50 formula, applies. Further, full abolition would require unanimous consent of the provinces.[vii]

  Reactions to this reference have varied across the country. The following is a snapshot of provincial-territorial responses to the Supreme Court's opinion:

  Jurisdiction

  Response

British Columbia

- The Government of British Columbia was supportive of the Court's decision in the *Reference*.
- According to a press release, the Government is pleased that the 7/50 amending formula would be required to change the appointment process and term limits of Senators.[viii]

Alberta

- Alberta has argued that no one province should have a veto on reform.
- Alberta is the only province to successfully elect Senate nominees and continues to prioritize the election of Senators as a principal reform.[ix]

Saskatchewan

- Premier Brad Wall has expressed his support for abolition of the Upper Chamber in the past. As such, Wall was critical of the judgment.[x]
- Following the 2014 Supreme Court reference, the Government of Saskatchewan conceded that Canadians are "indeed stuck with an anachronistic, unelected, unaccountable Senate."[xi]

Manitoba

- The Manitoba government argued prior to the reference that the federal government did not have the authority to unilaterally pursue Senate reform, including abolition.[xii]
- While there is a preference for abolition of the Senate altogether, elections are the next best option.

Ontario

- Premier Kathleen Wynne was pleased with the Supreme Court's decision. The provinces, especially Ontario, need to be consulted on any changes made to the Senate.[xiii]
- The Premier and her government believe in the existence of the Senate as a site for sober second thought. Reform is more desirable than full abolition.

Quebec

- Quebec notes that the Senate was a "fundamental component of

the federal compromise in 1867."[xiv] Any changes to the institution would require a tailored approach with the francophone province.

- Premier Philippe Couillard has stated that abolition is against the political interests of his Quebec.[xv]

Nova Scotia

- Nova Scotia argues for the necessity of a second chamber and that it should be reformed – not abolished.
- The province has no problem with the federal government repealing the property qualifications.[xvi]

New Brunswick

- New Brunswick argues that it is not within the federal government's authority to modify term limits or implement elections.[xvii]
- Similar to Nova Scotia, the province agrees the federal government is able to constitutionally repeal property qualifications.

Newfoundland/

Labrador

- According to the province's factum, the changes proposed by the federal government were fundamental and thus require provincial consultation.[xviii]

Prince Edward Island

- Prince Edward Island took the position that the federal government could not make changes to the Senate without provincial consent. As such, the province was pleased with the reference.
- Former Premier Robert Ghiz suggested that reform is not a priority following the reference.[xix]

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[i] *Most (69%) Canadians Disagree that the Senate of Canada Performs a Necessary and Useful Political Function* Ipsos Reid (2 January 2014).

[ii] Bruce Hicks, "Can a Middle Ground be Found on Senate Numbers?" (2007) 16.1 Constitutional Forum 21 at 21.

[iii] Bill C-7, *An Act respecting the selection of senators and amending the Constitution Act, 1867 in respect of Senate term limits (the "Senate Reform Act"),* 1st Sess, 41st Parl, 2011 (First reading 21 June 2011).

[iv] Bill C-20, *An Act to provide for consultations with electors on their preferences for appointments to the Senate (the "Senate Appointment Consultations Act"),* 2nd Sess, 39th Parl, 2007 (This bill did not become law before the 39th Parliament ended on 7 September 2008).

[v] Bill C-19, *An Act to amend the Constitution Act, 1867 (Senate tenure)*, 2nd Sess, 39th Parl, 2007 (Thisbill did not become law before the 39th Parliament ended on 7 September 2008).

[vi] *Reference re Senate Reform*, [2014] 1 SCR.

[vii] *Ibid*.

[viii] Ministry of Justice, Government of British Columbia, News Release, 2014JAG0109-000533, "Statement by Attorney General and Minister of Justice Suzanne Anton on the Senate reference case" (25 April 2014).

[ix] Government of Alberta, News Release, "Alberta continues to lead Senate reform efforts" (30 August 2013).

[x] Government of Saskatchewan, News Release, "Statement from Premier Brad Wall" (25 April 2014).

[xi] *Ibid*.

[xii] Government of Manitoba, News Release, "Government of Manitoba introduces motion to abolish the Senate" (26 November 2013).

[xiii] Office of the Premier, Government of Ontario, News Release, "Premier's Statement on the Supreme Court of Canada's Ruling on Senate Reform" (25 April 2014).

[xiv] *Québec's Place Within the Senate*, Intergovernmental Affairs Secretariat, Government of Quebec.

[xv] Chloe Fedio, "NDP Leader Tom Mulcair says he'll seek mandate for Senate abolition" CBC News Online (10 June 2015).

[xvi] *Reference re Senate Reform*, [2014] 1 SCR 704 (Factum Attorney General of Nova Scotia).

[xvii] *Reference re Senate Reform*, [2014] 1 SCR 704 (Factum Attorney General of New Brunswick).

[xviii] *Reference re Senate Reform*, [2014] 1 SCR 704 (Factum Attorney General of Newfoundland and Labrador).

[xix] Teresa Wright, "Senate ruling good news for P.E.I., says Ghiz" The Guardian Online (25 April 2014).