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## *Reference re Senate Reform* and the Supreme Court of Canada's Clarification of the Constitutional Procedure for Reforming the Canadian Parliament's Upper House

Christopher Cornell

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# REFERENCE RE SENATE REFORM AND THE SUPREME COURT OF CANADA'S CLARIFICATION OF THE CONSTITUTIONAL PROCEDURE FOR REFORMING THE CANADIAN PARLIAMENT'S UPPER HOUSE

*Christopher Cornell\**

**T**HIS article provides a comprehensive overview of the contested political topic of reform of the Canadian Senate. It begins by providing brief outlines on the Senate as an institution and the history of Senate reform, including the recent history of reform under the Harper Government and in the aftermath of the Canadian Senate Expenses Scandal. It goes on to examine the Supreme Court of Canada's April 2014 decision in *Reference re Senate Reform*, which was the Court's first in-depth analysis of the post-1982 constitutional amendment process and the correct way several commonly proposed reforms to the Senate could be implemented. The article then highlights the positions of the three major Canadian political parties on Senate reform following *Reference re Senate Reform* before concluding.

## I. THE CANADIAN SENATE: A STRUCTURAL OVERVIEW

The powers, composition, and other aspects of the Canadian Senate are laid out by two of the documents that make up the Canadian Constitution, the Constitution Act, 1867 and the Constitution Act, 1982.<sup>1</sup> It is through those two documents that the Senate as an institution is governed and empowered.

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\* Christopher is a student in his final year of study at the SMU Dedman School of Law. Prior to beginning law school he earned a Bachelor of Arts from Trinity University and a Master of Letters from the University of St. Andrews. Christopher would like to thank his family, friends, and professors for their continuing support of him in his academic endeavors.

1. Constitution Act, 1867, 30 & 31 Vict., c. 3, §§ 21–36 (U.K.), *reprinted in* R.S.C. 1985, app. II, no. 5 (Can.); Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c. 11, §§ 38–47 (U.K.). Note that originally the Constitution Act, 1867 was known as the British North America Act, 1867, but it and several other British and Canadian statutes were renamed by the schedule to the Constitution Act, 1982. Constitution Act, 1982, *supra*, sch. 1.

## A. THE SENATE'S FORM AND COMPOSITION

The Senate serves as an appointed second chamber to the Canadian Parliament. In the Senate, Canada is divided up into four divisions, each represented by twenty-four senators, as well as six senators for the province of Newfoundland and Labrador and one each for the Yukon Territory, the Northwest Territories, and Nunavut—leaving the Senate with a regular total membership of 105.<sup>2</sup> Also, under the Constitution the Governor General has the right to determine that an extraordinary circumstance is present where the four divisions are in need of extra representation and recommend to the Canadian Monarch that four (one per region) or eight (two per region) additional senators be appointed.<sup>3</sup> Such appointments bring the total number of senators to 109 or 113, but that number gradually returns to 105 as vacancies from the regions are not filled until a region has less than twenty-four senators.<sup>4</sup> In practice, though, all senators are chosen by the Prime Minister and their appointment by the Governor General or the Monarch is a technical formality.<sup>5</sup>

## B. THE SENATE'S POWERS

In terms of power, the Senate has nearly the same legislative powers as the directly elected lower chamber, the House of Commons.<sup>6</sup> The differences between the chambers are that: (1) spending legislation has to originate in the House of Commons; (2) the Government is only responsible to the Commons (i.e., a no confidence vote in the Senate cannot bring down a Government); and (3) following a 1982 amendment to the Constitution, the Senate cannot vote down a constitutional amendment approved by the Commons but can merely delay it for 180 days, after which it can clear Parliament by another affirmative vote in the Commons.<sup>7</sup> While the Senate can vote down legislation approved by the Commons and in the early years after Canadian Confederation did so frequently, it has over time rarely exercised that veto.<sup>8</sup> Senators originally served for

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2. Constitution Act, 1867, *supra* note 1, § 22.

3. *Id.* § 26.

4. *See id.* § 27. The power to appoint extra senators is controversial and there have only ever been two attempts to persuade the Monarch to use it: the first, by Liberal Prime Minister, Alexander Mackenzie, in 1873, was refused by Queen Victoria; the second, by Progressive Conservative Prime Minister, Brian Mulroney, in 1990 for eight extra Senators so that he could overcome Senate opposition and implement a Goods and Services Tax, was granted by Queen Elizabeth II, 1990: Mulroney Stacks Senate to Pass the GST, CBC DIGITAL ARCHIVES (Sept. 27, 2013), <http://www.cbc.ca/archives/categories/politics/federal-politics/federal-politics-general/mulroney-stacks-senate-to-pass-the-gst.html> (for factual information see the “Did You Know?” tab, and for citation information see the “Citation” tab).

5. *See* JEAN-RODRIGUE PARÉ, SENATE REFORM IN CANADA, PRB-09-08E 1 (Aug. 17, 2009) (Can.), available at <http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0908-e.pdf>.

6. *Id.*

7. *Id.*

8. *Id.*

life,<sup>9</sup> but all senators appointed since a 1965 amendment serve until they turn seventy-five and then enter into mandatory retirement.<sup>10</sup>

### C. SENATORIAL QUALIFICATIONS

To qualify to serve in the Senate, one must be thirty years old, a subject of the Monarch (senators thus do not have to be Canadian citizens though in practice they typically are),<sup>11</sup> and live in and own \$4,000 (total net value excluding debts) of property in the province or territory he or she represents.<sup>12</sup> In the case of Quebec, the senatorial division that covers the whole province is parceled into twenty-four individual electoral divisions and Québécois senators, in addition to the regular property and residency requirements, must either live in or own \$4,000 worth of property in the electoral division they represent.<sup>13</sup> It is the above institutional structure that has led to repeated calls for reform over the last century and a half.<sup>14</sup>

## II. SENATE REFORM IN CANADA: A BACKGROUND PRIMER

Since shortly after the time of Confederation in 1867, reform (or abolishment) of the Senate has from time to time become a hot button issue in Canadian political discourse.<sup>15</sup> Since 1874, there have been a series of proposals to—amongst other things—limit lifetime appointments, allow for each provincial government to exercise some role in selecting its province’s senators or to pick them outright, have direct senatorial elections, provide for equal representation of the provinces, and to abolish the Senate altogether.<sup>16</sup>

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9. JACK STILLBORN, *SENATE REFORM: ISSUES AND RECENT DEVELOPMENTS*, PRB-07-42E 1 (Jan. 21, 2008) (Can.), available at <http://www.parl.gc.ca/Content/LOP/researchpublications/prb0742-e.pdf>.

10. ANDRÉ BARNES ET AL., *REFORMING THE SENATE OF CANADA: FREQUENTLY ASKED QUESTIONS* 6 (Sept. 12, 2011) (Can.), available at <http://www.parl.gc.ca/content/lop/researchpublications/2011-83-e.pdf>.

11. *Id.* at 13.

12. See PARÉ, *supra* note 5, at 1. The requirement that Senators own \$4,000 worth of property in the province they represent substantially limited the pool of potential Senate nominees in that body’s early days, but as the monetary value of the property requirement has not changed since 1867 inflation has made it a fairly negligible consideration, STILLBORN, *supra* note 9, at 1–2. The requirement interestingly enough came into play in 1997 when Sister Peggy Butts, a university professor and Roman Catholic nun who had taken a vow of poverty, was appointed by Liberal Prime Minister Jean Chrétien, necessitating that Butts’ religious order transfer a small parcel of land into her name so that she could overcome the property requirement and take her seat in the Senate, Canada’s Upper House: Do We Need The Senate?, *CBC NEWS* (Apr. 1998), <http://web.archive.org/web/20071016103302/http://www.cbc.ca/newsinreview/apr98/senate/consitut.htm> (accessed by searching for CBC news in the Internet Archive index).

13. See PARÉ, *supra* note 5, at 1.

14. See Barnes, *supra* note 10, at 6–7.

15. See *id.*

16. See *id.*

## A. THE PRIMARY MOTIVATIONS FOR REFORM

Advocates for reform or abolishment of the Senate frequently point to the method of selecting senators and the way senate seats are distributed as primary motivating reasons for their efforts.<sup>17</sup> Because senators are appointed by the Prime Minister and can serve for up to forty-five years, two democracy-related concerns arise. First, the institution lacks democratic legitimacy as it is appointed and senators do not have to share the views of the people they represent who in turn have no way to remove them from office.<sup>18</sup> Second, absent democratic elections, senators who are at least theoretically in Parliament to represent the interests of their provinces are under no obligation or democratic pressure to do so.<sup>19</sup> If senators were elected, then those two concerns would be largely—if not entirely—moot. But new concerns might arise as the appointment process has led the appointed Senate to possess a good proportion of female and minority representation, and the electoral campaign process might lead to a decrease in senators with specialized experiences or expertise as well as the valuable contributions they make to the parliamentary process.<sup>20</sup>

Because today senate seats are still basically distributed according to the formula laid out in 1867, the representation of provinces and territories in the Senate adheres to neither equal nor populationally-proportional representation.<sup>21</sup> This leads to a situation where some provinces and territories have more senators (and thus representation) than their proportional share of the Canadian populace to the detriment of some of the other provinces.<sup>22</sup> The disadvantaged provinces thus resent their lesser level of representation while those provinces and territories that benefit are not particularly inclined to change the status quo.<sup>23</sup>

Proponents of outright abolishment of the Senate will point to the above two reasons and will argue that Parliament itself does not need an upper chamber.<sup>24</sup> The argument that the Federal Parliament in Ottawa should be able to function with a single chamber has for decades been championed by the opposition New Democratic Party.<sup>25</sup> In support of outright abolishment, it has often pointed out that seven of the provinces used to have their own upper chambers and that by 1928 five of them had

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17. See BARNES, *supra* note 10, at 13–14.

18. *See id.*

19. *See id.*

20. *See id.* at 14.

21. *See id.* at 22–23.

22. *See id.*

23. See DAVID E. SMITH, *FEDERALISM AND THE CONSTITUTION OF CANADA* 78–79 (2010).

24. *See, e.g.*, Bonnie K. Goodman, *NDP Leader Thomas Mulcair Launches Senate Abolishment Tour in Nova Scotia*, EXAMINER.COM (Aug. 27, 2013), <http://www.examiner.com/article/ndp-leader-thomas-mulcair-launches-senate-abolishment-tour-nova-scotia>.

25. *See id.*

been abolished, with the last one closing its doors in 1969.<sup>26</sup>

### B. PREVIOUS REFORMS

Formal constitutional reforms to the Senate—though rare—have occurred in the past. These have included: (1) expansion of the Senate to accommodate new provinces and territories; (2) the 1965 constitutional amendment implementing the mandatory retirement age of seventy-five; and (3) the 1982 constitutional amendment allowing the Senate to only delay, rather than outright defeat, amendments to the Constitution.<sup>27</sup> One additional reform was judicially achieved in 1929 when the United Kingdom-based Judicial Committee of the Privy Council (Canada's then-highest court of appeals) reversed a contrary judgment by the Supreme Court of Canada and ruled that for the purposes of the Canadian Constitution, women were persons and thus eligible to be appointed to the Senate.<sup>28</sup>

### C. THE CURRENT PUSH FOR REFORM

Senate reform gained significant traction and public attention following a public expense scandal that emerged in late 2012 when one veteran Liberal Senator Mac Harb<sup>29</sup> and three Conservative Senators appointed by Harper in early 2009 (Mike Duffy, Pamela Wallin and Patrick Brazeau)<sup>30</sup> were found to have falsely billed the Senate for several thousand dollars in travel and housing expenses.<sup>31</sup> Harb paid back the money he falsely claimed and resigned in August 2013.<sup>32</sup> On November 5, 2013, Duffy, Wallin, and Brazeau were suspended from the Senate without pay but with health benefits until after the next general election in 2015.<sup>33</sup>

At nearly the same time, current Conservative Prime Minister Stephen Harper, who has for several years supported the idea of an elected Senate with fixed terms, began pushing Senate reform legislation that had been introduced into the House of Commons in 2011 that would set fixed, nine-year terms for senators and allow the provinces to hold Senate elec-

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26. *Id.*

27. See BARNES, *supra* note 10, at 6.

28. See *id.*; Edwards v. Attorney General of Canada, [1930] A.C. 124 (P.C.) (appeal taken from Can.).

29. *Senator Mac Harb Pays Back \$231,000 in Expenses, Retires*, CBC NEWS (Aug. 26, 2013, 5:52 PM), <http://www.cbc.ca/news/politics/senator-mac-harb-pays-back-231-000-in-expenses-retires-1.1308485>.

30. *Wallin, Duffy among 18 named to fill Senate seats*, CBC NEWS (Dec. 22, 2008, 7:02 PM), <http://www.cbc.ca/news/canada/wallin-duffy-among-18-named-to-fill-senate-seats-1.715239>.

31. *Timeline: Key Dates in the Evolution of the Senate Expense-Claim Controversy*, GLOBAL NEWS (Feb. 4, 2014, 2:33 PM), <http://globalnews.ca/news/568714/a-look-at-key-dates-in-the-evolution-of-the-senate-expense-claim-controversy/>.

32. *Senator Mac Harb Pays Back \$231,000 in Expenses, Retires*, *supra* note 29.

33. Andrea Janus, *Senators Vote to Oust Duffy, Brazeau and Wallin*, CTV NEWS (Nov. 5, 2013, 7:24 PM), <http://www.ctvnews.ca/politics/senators-vote-to-oust-duffy-brazeau-and-wallin-1.1528784>.

tions.<sup>34</sup> The Government of Quebec, however, sued Harper's Federal Government in 2012 on the grounds that the proposed constitutional amendments to achieve Senate reform could not be constitutionally passed by Parliament alone.<sup>35</sup>

Under the Constitution Act, 1982, Parliament can pass certain types of amendments alone, but some amendments must be passed by Parliament and the legislative assemblies of at least two-thirds of the provinces that contain at least 50 percent of the total population of Canada, and other amendments require the approval of Parliament and all of the provincial legislatures.<sup>36</sup> Quebec argued, and in October 2013 the Quebec Court of Appeal agreed, that any amendment allowing for elections or implementing fixed-length terms could not be implemented by Parliament unilaterally and had to be approved by Parliament and two-thirds of the provincial legislatures representing at least half of the population.<sup>37</sup> Questions as to how Senate reform had to be constitutionally implemented in fact led the Harper Government in 2013 to file a reference case with the Supreme Court of Canada asking for clarification as to how six frequently discussed potential reforms (including outright abolishment) would have to be implemented in accordance with the Constitution.<sup>38</sup>

### III. REFERENCE RE: SENATE REFORM AND THE PROCESS OF REMAKING THE CANADIAN SENATE

On April 25, 2014, the Supreme Court of Canada released its unanimous decision in the Harper Government's reference case, *Reference re Senate Reform*, breaking down each of the Government's questions in meticulous detail and, for the most part, ruling that Parliament cannot unilaterally make reformative changes to the Senate.<sup>39</sup> The case is also of particular importance as it represents the first time the Supreme Court has weighed in in detail on the process of amending the Constitution established by the Constitution Act, 1982.<sup>40</sup>

#### A. THE FIRST QUESTION: FIXED SENATORIAL TERMS

In its first question, the Government asked the Court if Parliament alone had the ability to reform the Senate by (1) creating fixed terms of nine years, eight years or less, or ten years or more for senators; (2) creat-

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34. The Canadian Press, *Senate Reform Canada: A Chronology of Nearly 150 Years of Proposals*, HUFFPOST POL. CAN. (Apr. 25, 2014, 3:59 PM), [http://www.huffingtonpost.ca/2014/04/25/senate-reform-canada-chronology\\_n\\_5214302.html](http://www.huffingtonpost.ca/2014/04/25/senate-reform-canada-chronology_n_5214302.html).

35. *See id.*

36. *See* Constitution Act, 1982, *supra* note 1, §§ 38–47.

37. *See* The Canadian Press, *Harper Senate Reform Bill Rejected by Quebec Appeal Court*, CBC NEWS (Oct. 24, 2013, 3:03 PM), <http://www.cbc.ca/news/politics/harper-senate-reform-bill-rejected-by-quebec-appeal-court-1.2223975>.

38. The Canadian Press, *supra* note 34.

39. Leslie MacKinnon, *Senate Reform Can't be Done by Ottawa Alone*, CBC NEWS (Apr. 25, 2014, 6:55 PM), <http://www.cbc.ca/news/politics/senate-reform-can-t-be-done-by-ottawa-alone-1.2621712>.

40. *Id.*

ing fixed terms for senators of two or three parliaments; (3) proving for renewable terms for senators; (4) limiting the terms of senators appointed after October 14, 2008; or (5) imposing limits on the terms of senators appointed before October 14, 2008.<sup>41</sup> In looking at the Government's questions regarding various types of terms for senators, the Court determined that any change to the Senate that would alter its fundamental nature or role would impose on the interests of the provinces and would thus have to be approved by both Parliament and two-thirds of the provinces representing more than 50 percent of the total Canadian populace, as laid out in section 38 of the Constitution Act, 1982.<sup>42</sup> The Court refers to this as the "7/50 procedure."<sup>43</sup>

With the above framework established, the Court then held fixed terms would fundamentally change the Senate by removing the tenure protections that currently allow senators to directly question or challenge proposals of the House of Commons and the Government without fear of loss of office.<sup>44</sup> Because the imposition of senatorial terms would be a fundamental change to the nature of the Senate, the Court determined that such a change would be subject to the 7/50 procedure.<sup>45</sup>

#### B. THE SECOND AND THIRD QUESTIONS: CONSULTATIVE SENATORIAL ELECTIONS

The Government's second question asked the Court to determine if Parliament had the authority to unilaterally enact legislation that would allow for consultative elections to be held in each province and territory to propose potential nominees for appointment to the Senate.<sup>46</sup> Similarly, the Government's third question asked if Parliament had the power to enact legislation that would allow those provincial and territorial legislatures that so desired to enact their own legislation to hold consultative elections, whereby their people could propose senatorial nominees to the Government.<sup>47</sup> The Government argued that because the changes necessary to bring about consultative elections would not necessitate any change to the text of the Constitution, they would not be constitutional amendments and thus could be done by Parliament acting alone.<sup>48</sup>

The Court disagreed and said that because consultative elections would significantly alter the Senate's "fundamental nature and role as a complementary legislative body of sober second thought," they would in fact constitute a constitutional amendment.<sup>49</sup> Because an amendment introducing consultative senate elections would be a change to the architec-

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41. Reference re Senate Reform, 2014 S.C.C. 32, para. 5 (Can.).

42. *Id.* paras. 77, 82.

43. *Id.* para. 82.

44. *Id.* paras. 78–80.

45. *Id.* para. 82.

46. *Id.* para. 5.

47. *Id.*

48. *Id.* para. 51.

49. *Id.* para. 52.



tural structure of the Constitution, the Court determined that such a change could only be implemented via the general 7/50 procedure.<sup>50</sup>

### C. THE FOURTH QUESTION: THE REPEAL OF PROPERTY QUALIFICATIONS

The government's fourth question asked if Parliament had the constitutional authority to unilaterally repeal the existing constitutional property requirements for service in the Senate.<sup>51</sup> The Court ruled that Parliament has the authority to repeal the requirement that senators have property with a net worth of \$4,000.<sup>52</sup> The court described such an amendment that "updates the constitutional framework relating to the Senate without affecting the institution's fundamental nature and role" as precisely what the framers of the Constitution Act, 1982 had in mind when they allowed the Parliament to have some unilateral control over amendments affecting Parliament and the Federal Government.<sup>53</sup> The Court further ruled that in all of the provinces but Quebec, Parliament could unilaterally repeal the requirement that senators own \$4,000 of real property in the province they represent.<sup>54</sup> Because of the way Quebec's senatorial electoral divisions are structured and provided for in the Constitution, any amendment to the real property requirements for Québécois Senators would have to be passed by both Parliament and Quebec's legislative assembly.<sup>55</sup>

### D. THE FIFTH AND SIXTH QUESTIONS: ABOLISHING THE SENATE

The Government's fifth question asked if Parliament had the power on its own to abolish the Senate by either: (1) inserting an amendment into the Constitution stating that the Senate was to be abolished; (2) changing or repealing some or all of the references to the Senate in the Constitution; or (3) by abolishing the powers of the Senate and revoking those constitutional provisions providing senatorial representation to the provinces.<sup>56</sup> The Government's sixth and final question asked the Court to determine—if it ended up concluding that Parliament could not abolish the Senate on its own—whether it could be abolished via the 7/50 procedure or if the abolishment of the Senate required the unanimous consent of all of the provinces.<sup>57</sup>

The Harper Government tried to argue that because its proposal to have Parliament abolish the Senate would only alter the powers of the Senate and the numbers of its members, then it should be constitutionally

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50. *Id.* para. 70.

51. *Id.* para. 5.

52. *Id.* para. 86.

53. *See id.* para. 90.

54. *Id.* para. 86.

55. *Id.*

56. *Id.* para. 5.

57. *See id.* para. 5.

permissible.<sup>58</sup> Alternatively, the Government argued that the correct process to abolish the Senate would be the 7/50 procedure.<sup>59</sup>

The Government's argument was outright and bluntly rejected by the Court when it declared:

We cannot accept the Attorney General's arguments. Abolition of the Senate is not merely a matter of "powers" or "members" under . . . the *Constitution Act, 1982*. Rather, abolition of the Senate would fundamentally alter our constitutional architecture—by removing the bicameral form of government that gives shape to the *Constitution Act, 1867*—and would . . . require[ ] the unanimous consent of Parliament and the provinces.<sup>60</sup>

The Court both determined that Parliament cannot abolish the Senate on its own and that the Senate cannot be abolished absent the agreement of Parliament and all of the provinces— the political realities of that unanimity requirement being that the Senate's survival for the foreseeable future is reasonably well assured.<sup>61</sup>

Through *Reference re Senate Reform*, the Supreme Court of Canada has provided a great deal of clarity and explanation on the applicability of the various mechanisms for amending the Canadian Constitution, including making clear that most changes to major constitutionally created bodies must be approved by two-thirds of the provinces, representing more than half of the Canadian populace, and that any move to abolish such a constitutional body must be approved by both Parliament and all of the provincial legislatures.<sup>62</sup>

#### IV. THE FUTURE OF SENATE REFORM IN LIGHT OF *REFERENCE RE SENATE REFORM*

Following the Supreme Court of Canada's decision in *Reference re Senate Reform*, it is not at all certain how, when, or if Senate reform will continue. On January 29, 2014, after the decision of the Quebec Court of Appeals but before the decision of the Supreme Court, in what could be considered a mini-reform, Liberal Leader Justin Trudeau removed the Liberal Senators from his party caucus and barred them from officially engaging in Liberal Party fundraising and campaigning.<sup>63</sup> Trudeau predicated his actions on the belief that by releasing Liberal Senators from their partisan political positions, they will be able to function independently of the political process and more ably devote themselves to their

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58. *Id.* para. 96.

59. *Id.*

60. *Id.* para. 97.

61. See MacKinnon, *supra* note 39.

62. See *id.*

63. See Kim Mackrael & Josh Wingrove, *What Trudeau's Liberal Caucus Shakeup Means for the Senate*, *GLOBE & MAIL* (Jan. 30, 2014, 2:26 PM), <http://www.theglobeandmail.com/news/politics/what-trudeaus-caucus-shakeup-means-for-the-senate/article16600794/>.

senatorial responsibilities.<sup>64</sup> This separation seems directed towards a gradual implementation of a senate of independent figures who are able to primarily devote themselves to the task of reviewing and enhancing the Parliamentary legislative process.<sup>65</sup> But its short term effectiveness is somewhat less pronounced as the existing Liberal Senators have simply reorganized themselves as a Senate Liberal caucus separate from the Parliamentary (i.e., House of Commons) Liberal caucus.<sup>66</sup>

Following the Supreme Court's decision Trudeau announced a reform plan that would have an informal (i.e., not entrenched in legislation or officially binding on Prime Ministers) advisory commission to vet prospective, non-partisan senators and make recommendations on appointments to the Prime Minister.<sup>67</sup> New Democratic Party Leader, Thomas Mulcair, who is himself fervently committed towards working for the outright abolishment of the Senate, attacked Trudeau's plan, claiming that the Court's opinion in the reference case indicates that it would be unconstitutional.<sup>68</sup> But several legal experts have claimed that Mulcair is mistaken and that if Trudeau's panel is merely advisory and not binding, then it passes all constitutional hurdles, raising the prospect that it might be the only viable, substantive near-term reform or change to the Senate.<sup>69</sup>

Following the Supreme Court's rejection of his government's parliamentary reform proposals, Prime Minister Stephen Harper seems to be operating under some misconceptions as to what the reference case ruling means.<sup>70</sup> Harper has publically stated that because of the Supreme Court decision in the reference case, the Federal Government is barred from initiating Senate reforms and that they must be initiated by the provinces.<sup>71</sup> The Prime Minister has also made clear that he will take any proposals for reform from the provinces seriously and voiced an opinion that absent senate reform, the institution should "as is be abolished," while stressing his belief that even that decision would be up to the provinces.<sup>72</sup> But the Prime Minister is wrong when he says that the Supreme Court barred the Federal Government from initiating reform.<sup>73</sup> Rather than restricting where a reform must be initiated, all the Court said was that any proposed reform has to have both the requisite level of provin-

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64. *See id.*

65. *See id.*

66. *See id.*

67. Joan Bryden, *Mulcair's Comments On Trudeau Senate Plan Full Of Baloney?*, HUFFPOST POL. CAN. (May 1, 2014, 2:59 PM), [http://www.huffingtonpost.ca/2014/05/01/thomas-mulcair-justin-trudeau-senate-baloney\\_n\\_5245793.html](http://www.huffingtonpost.ca/2014/05/01/thomas-mulcair-justin-trudeau-senate-baloney_n_5245793.html).

68. *Id.*

69. *Id.*

70. *See* The Canadian Press, *Senate Reform: Harper Says Issue Now In Hands of Provinces*, HUFFPOST POL. CAN. (May 1, 2014, 5:59 PM), [http://www.huffingtonpost.ca/2014/05/01/senate-reform-harper-provinces\\_n\\_5248398.html](http://www.huffingtonpost.ca/2014/05/01/senate-reform-harper-provinces_n_5248398.html).

71. *Id.*

72. *Id.*

73. *Id.*

cial and parliamentary approval.<sup>74</sup> In any case, it appears for the foreseeable future that the New Democratic Party will continue to push for abolition of the Senate; the Liberals will advocate for an advisory Senate full of non-partisan independents; and the Conservatives would like to see Senate reform but for now have passed that political hockey puck to the provinces.

## V. CONCLUSION

Reform of the Canadian Senate has been a hotly discussed topic since at least 1874, only seven years after the Senate was established at the time of Canadian Confederation.<sup>75</sup> Despite being a topic of fervent political discourse for at least 140 years, very little has been achieved in terms of genuine senatorial reform. One could even make a pretty strong case that the Senate of 2014 is—aside from some largely superficial changes—structurally identical to the Senate of 1867. The current political situation being what it is—it would appear that while small reforms such as the abolishment of senatorial property qualifications or the creation of informal appointments advisory panels might be possible for the time being, attempts to comprehensively reform the Senate will unlikely succeed while attempts to abolish the upper house will all but certainly fail. The political difficulties of altering the institutional fabric of the Senate have kept it relatively unchanged for 147 years and will likely continue to prevent any comprehensive institutional change for some time to come. That being said, the Supreme Court of Canada's decision in *Reference re Senate Reform* has, at the very least, removed the constitutional ambiguity surrounding most questions of Senate reform, making it possible for the first time for proponents and opponents of various changes to definitively plot out the constitutional requirements for implementing or blocking any proposed changes.

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74. *Id.*

75. See BARNES *supra* note 10, at 6.

