



Office of  
The Prime Minister / Cabinet du  
Premier Ministre

Mr. Carter  
Mr. Mackinnon  
Mr. Hayes  
Mr. Taylor

Apr. 11/79

CONFIDENTIAL

April 11th, 1979.

CONFIDENTIAL

May 22, 1979

*Handwritten initials: JED, MJK*

MEMORANDUM FOR THE PRIME MINISTER

From: Mary E. Macdonald

Re: Your memorandum for the Prime Minister  
April 11, 1979

"The desirability of proposing an  
elected Senate for Canada"

The Prime Minister has commented as follows:

"I rather agree. But this should not be  
raised during the elections."

Background

In the work we, in the FPRO, developed under your direction in 1977 and 1978, we advocated an elected second chamber to replace the Senate. The Committee of Ministers were worried about the "selection" or "indirect election" version that was included in Bill C-42. The essence of the consideration in the meetings of the Ad Hoc Committee is summarized in a memorandum of February 13th, 1978:

*Handwritten initials: M. E. M.*

(a) The Cabinet Document proposed a directly-elected Senate, elected on the occasion of provincial general elections, with a three-month suspensive veto, with seats distributed to give West and Atlantic slightly more than Quebec and Ontario, and with an "auxiliary Senate" composed equally of French

FPRO = BRFP  
R. G. ROBERTSON

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Hon. Marc Lalonde  
Hon. John Reid  
Mr. Tassé  
Mr. Strayer  
Mr. Pitfield  
Mr. Coutts  
Mr. Rabinovitch  
Miss Macdonald

Mr. Carter  
Mr. Tellier  
Mr. Gwyn  
Mr. MacKinnon  
Mr. Hayes  
Mr. Taylor

CONFIDENTIAL

April 11th, 1979.

MEMORANDUM FOR THE PRIME MINISTER:

The desirability of proposing an elected  
Senate for Canada

I have been thinking about the plan you intend to put forward for action on the constitution immediately after the election. Essentially what you will be seeking is a mandate to move on that plan so as to get over the blockade created by the need to get unanimous consent from the provinces. It seems to me that, in addition to the items we have discussed and which are covered in my memorandum of April 6th, there is one other possibility that you might want to consider proposing now - an elected second chamber.

Background

In the work we, in the FPRO, developed under your direction in 1977 and 1978, we advocated an elected second chamber to replace the Senate. The Ad Hoc Committee of Ministers were worried about it and opted instead for the "selection" or "indirect election" version that was included in Bill C-60. The essence of the consideration in the meetings of the Ad Hoc Committee is summarized in a memorandum of February 15th, 1978:

"(a) The Cabinet Document proposed a directly-elected Senate, elected on the occasion of provincial general elections, with a three-month suspensive veto, with seats distributed to give West and Atlantic slightly more than Quebec and Ontario, and with an "auxiliary Senate" composed equally of French

and English-speaking Senators and having an outright veto over language and ancillary legislation.

"(b) Most Ministers envisaged serious problems with any major change in the Senate; only two unequivocally favoured such a change, and only one of those two unequivocally favoured direct election. However, of those opposed to a major change some would favour direct election to any other method. No one supported direct election on the occasion of provincial general elections. Opinions were sharply divided (generally French-speaking versus English-speaking) on the need for an "auxiliary Senate" with equal representation of the two language groups.

"(c) Two options as to selection received most support:

- (i) direct election of half of the Senate at each federal election; and
- (ii) "selection" by legislatures and House of Commons (following consultation by the government concerned with other party leaders): half by the House of Commons, and half by the provincial legislatures. The selection of Senators would reflect party strength as well as linguistic and other minorities."

The "selection" version of a reformed Senate, which we called the "House of the Federation", has received no support. I think it must be regarded as dead. The kind of second chamber that has received a fair bit of support is something based on the German bundesrat - a "House of the Provinces" or "Council of the Provinces" advocated in

differing detail by some provincial governments, the Progressive Conservative Party, the Task Force on Canadian Unity, the Ontario Advisory Committee on Confederation, the Canadian Bar Association, and others. This idea would provide a second chamber comprised usually of 100% provincial appointees, of the political persuasion of the provincial government appointing each group and with terms of election to coincide with the term in office of each provincial government. A House of the Provinces is bound to be attractive to most provincial governments and if no popular mandate is gained for something else, the House of the Provinces will almost certainly carry the day sooner or later.

The House of the Provinces concept runs quite contrary to many of the principles and objectives the government considered to be important for an effective new second chamber. The main objective had been to establish a chamber in which the people of the different regions would be represented in a way that would ensure free and unhibited expression of views as held in the regions on a basis roughly proportional to the popular support for those views in each region. The House of the Provinces would represent provincial governments, not people; the views expressed would be those of the provincial governments and there would be no proportionality of views whatever.

I would like to suggest to you that the only chance to achieve the objectives that were agreed upon by the government, and which underlay the House of the Federation, is to advocate an elected second chamber and to do it now in the hope that a popular mandate for it can be secured. It will not be supported by present power-centres - provincial governments, the House of Commons, the Senate or perhaps even the federal Cabinet. All are afraid of a new body that can claim to derive power from the people and that may, therefore, threaten their own power.

The nature of an elected Senate

In early 1978, we considered several versions of an elected Senate. As indicated in (b) at the top of page 2, the Ad Hoc Committee of Ministers was particularly concerned about a version that would have election for the Senate coincide with each provincial election. They also felt the provinces would oppose such a version as it would draw federal parties and federal arguments into provincial elections.

As you will see from the extract from the note of February 15th, 1978, the version that got most support was one where Senate elections would coincide with federal general elections - half the Senate being elected at each federal election. I think there are many arguments against this version:

1. It would put the Senate elections entirely into the federal general election context. In that sense, it would reduce the chance to get any considerations except those of the immediate federal election into consideration.
2. It would mean clear control by the federal parties and reduce any chance of having more "provincial" parties or considerations involved in the contest.
3. It would link the terms of Senators to the term of a federal government and thus reduce the chance of getting really independent views and untrammelled reflection of regional concerns.

All of these things are important if the objective is to get a Senate that will be, and will be seen to be, a genuinely independent forum for the expression of regional views, without the domination or dictate of federal governments or federal political parties.

The alternative to elections that coincide with federal elections would be election for a fixed term - six years - with 50% being elected every three years. This would achieve a long enough term to be attractive to good people; independence from the fortunes of any and all governments; and complete separation of Senate elections from federal elections. It would provide a means of "mid-term" expression of public views without putting the life of a government at stake. The purely independent Senate elections would give it a status of its own and might well mean (depending on the electoral system) that agencies other than federal political parties would become active in trying to elect people to represent their regional and special views.

Ministers in the Ad Hoc Committee were concerned about proportional representation. However, there is no other way of being sure of achieving the objective of a balanced representation of views. Moreover, we went for proportional representation in the House of the Federation and it would be hard to explain why the principle was being abandoned.

It would require some study to determine what means of proportional representation would be best. The Australian Senate does not work in the way we have in mind because their system of proportional election puts a stifling control into the hands of the federal political parties. A system like it would achieve nothing in "renewing" the centre of our government with more regional, free and genuinely representative views.

Ministers were also concerned about an elected Senate claiming power to withdraw confidence from a government, of it withholding supply as was done in Australia and of it otherwise rivalling the House of Commons. I think that none of these fears is necessarily well-founded. They simply

require appropriate constitutional provisions about the powers of the second chamber. It should have only a very short suspensive veto over supply and money bills - possibly seven calendar days for supply and thirty calendar days for money bills. It should be made specific that its votes cannot be regarded as votes of non-confidence. Its veto on legislation should be suspensive only in the case of matters that are designated as essential for the program of a government. The limitations in these areas of power could be compensated by special powers of the kind contemplated in Bill C-60 for the House of the Federation - confirmation of certain appointments, safeguarding matters of "special linguistic significance", reviewing the activity of agencies of special importance to regions, etc.

In summary, a plan for an elected Senate might involve:

1. Direct election on one of two bases:
  - (a) at the time of federal elections, with half the Senators being elected at each federal election; or
  - (b) for a fixed term of six years, with half the Senators being elected every three years.
  
2. Election to be on a proportional representation basis, with each province being a single constituency except in the case of Ontario and Quebec, which would each be divided into two constituencies of equal numbers of Senators. (This would mean, except in the case of P.E.I., "constituencies" electing about five or six Senators at each election, which would permit reasonable proportionality.)

Note: It would be important not to become involved in details as to how proportional representation would work. There are

many systems: each with its own advantages and defects. We should try to establish the one most likely to ensure that the views of the people of all regions are represented in proportions as close as possible to the extent to which they are held in each region. It would also be important not to get into details of the numbers of Senators at this time. There are many views, and any proposal is wide open to attack.

3. The powers of the Senate to be drawn in such a way as to ensure that it could not rival the House of Commons but would rather be a forum for the effective and free expression of regional views and the protection of regional interests in the composition and activity of agencies important to regions.

#### Probable reaction to an elected Senate

The provincial governments can be expected to be opposed, especially to a Senate that would be elected on the occasion of federal general elections.

Senators will be opposed. In this connection you may wish to see the attached memorandum of February 28th, 1978, about discussions at that time in a week-end meeting of the Liberal Party.

The public reaction might well be positive. I had some indication of this on the week-end in discussions with Stanley C. Roberts, the President of the Canada West Foundation. According to him, his Foundation held day-long seminars in 1978 on the question of the Senate - two in each of the four western provinces and one in each of the two Territories. This year they held six more seminars on the same subject but broke off the series when the federal election

was called. At the seminars - sixteen in all - they had over 500 people drawn from all parts of the west. Roberts tells me that the various proposals for second chambers were discussed and that the only one that secured any significant support was the proposal for an elected Senate. The support for it was virtually unanimous. As Roberts put it: everyone is for it except the politicians.

Roberts is also inclined to put this reform very high among those that could be made to give the west the sense that it can be heard in Ottawa. He does not think that most westerners want a weak central government: they want something that will permit the west to be heard, to influence appointments and to influence the policies of regulatory and other agencies that affect them and their interests.

#### Capacity to achieve an elected Senate

Jim Hurley has made a point that may be important. An elected Senate, unless it was tied to provincial elections, would not require any provincial action. Our House of the Federation would have: so would a House of the Provinces - in each case provincial governments would have to act in order to fill the seats in the House. If the Supreme Court upholds Parliament's power to reform the Senate, it may qualify it to the effect that Parliament could not do it alone if the manner of change affected any right or privilege of a province. In short, a change to an elected Senate might not require the agreement of provincial governments - especially if it appeared to have a popular mandate behind it - but other forms of change might be dependent on such agreement.

#### Conclusion

I think an elected Senate is the only way of avoiding a bundesrat which, with the great powers our provinces enjoy, would seriously

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weaken the operation of federal governments in Canada for the future. I do not think an elected Senate is likely to emerge unless a popular mandate for it is secured.

Liberal Party Congress If you think it would be well to put the proposal forward, you might want to refer to it in your letter to the Premiers (if you decide to send it). The logic in mentioning it would be that it, like the change in the position on the declaratory power with respect to resources, would be a major change and might, therefore, be expected to be mentioned to the Premiers in some formal way.

resolutions  
Congress  
will not  
speak to  
Williams.

You might want to discuss this with your colleagues in the Cabinet if you are going to discuss other parts of your constitutional plan with them.

A resolution has been put forward calling for the Senate be reformed to allow for the direct election of senators, with each region having an equal number of senators. Eugene Forsey led the attack against the proposal and substituted instead a resolution calling for provincial representation in the appointment procedure for the Senate.

R.G.R.

The workshop defeated the proposal for an elected Senate (although 150 out of the 400 participants were in favour). The Forsey proposal carried. However, Blair Williams led an attack against the Forsey resolution in the plenary session on Sunday. It was defeated. No other proposal was brought forward, although there was a general proposal calling for the reform of institutions in the constitutional sessions.

Williams said that he was disheartened by what appeared to be a real lack of willingness to reform federal institutions. He thought that the Ontario wing of the party was particularly unwilling to move. Apparently, his views were shared by three of the Western delegates.

Agv. 6179

S E C R E T

February 28, 1978

MEMORANDUM FOR MR. J.A. HAYES

c.c. Mr. F.A.G. Carter

Liberal Party Congress: Resolutions on the Senate

You asked me to discover, if possible, what resolutions were adopted by the Liberal Party at its congress over the last weekend. The final resolutions will not be available for some time yet, but I did speak to Brian Flemming, Anne-Marie Kelly and Blair Williams.

It appears that there was a strong representation of senators at the workshop studying the reform of institutions. A resolution had been put forward asking that the Senate be reformed to allow for the direct election of senators, with each region having an equal number of senators. Eugene Forsey led the attack against the proposal and substituted instead a resolution calling for provincial involvement in the appointment procedure for the Senate of Canada.

The workshop defeated the proposal for an elected Senate (although 150 out of the 400 participants were in favour). The Forsey proposal carried. However, Blair Williams led an attack against the Forsey resolution in the plenary session on Sunday. It was defeated. No other proposal was brought forward, although there was a general proposal calling for the reform of institutions in the constitutional sessions.

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Gordon Gibson, Nick Taylor and Lloyd Axworthy, who gave a press conference at the end of the Congress that, according to Williams, criticized the general conservatism of the party.

Williams said that he felt the Senate should be reformed either to replace the Federal-Provincial First Ministers Conference or to provide a logical extension to it. He is in favour of either of two formulas: a House of the Provinces along the West German model (but with federal participation) or a directly elected Senate.

*James Ross Hurley*  
James Ross Hurley

The Prime Minister has commented as follows:

(a) page 4, point (a) The Supreme Court. "The question of the Court would be in any way be settled definitively for all time"

"I agree"

(b) page 5, point (2) The fourth stage. "We rejected the possibility of limiting the referendum just to the provinces in question"

"I agree"

(c) page 5, point (3) The fourth stage. "We finally concluded that a full national referendum in all cases was probably best"

"This would create expense, sound and fury in a province (or regions) which had agreed ... In essence, you are probably right though, for the 1st stage; we could try the regional referendums first in Stage 2 (A)."