

# The Role of the Senate: Robust Regionalism or Diligent Deference?

The Senate was designed to provide “sober second thought” to bills that have passed the House of Commons. A key component of “sober second thought” is the consideration of regional interests in national policy discussions. The Founders of Confederation<sup>[1]</sup> intended the Senate to be the federal government body that is most in tune with local concerns – this is reflected in the Senate’s composition: senators are appointed in equal numbers from Canada’s regions – Ontario, Quebec, the Maritime provinces, and the western provinces.<sup>[2]</sup>

The Senate’s regional role was highlighted on May 15, 2019 when the Senate Transport Committee voted to reject Bill C-48 – known as the “oil tanker ban bill” – because Committee members felt that the bill was “grossly prejudicial to Alberta’s key industry.”<sup>[3]</sup> However, the full Senate has voted to continue with the bill despite the concerns of Alberta senators.

The Bill C-48 process has exposed differing opinions about what the Senate’s role should be in reviewing legislation that has a significant impact on a specific region. Some senators state that defending the interests of Canada’s regions is “a primary function” of the Senate.<sup>[4]</sup> Other former and current senators have raised concerns that the Senate’s role is not to kill government bills, but to carefully review and make changes to legislation if appropriate.

Since regional considerations were baked into the Senate’s design, it is understandable that senators would consider regional interests in casting their individual votes. However, the Senate was intended to provide “sober second thought” to legislation by being both a regional defender and a body that is deferential to the House of Commons – [importantly, the Senate has rarely voted to kill a government bill.](#)<sup>[5]</sup>

## The Founders' Intent

John A. Macdonald, Canada’s first Prime Minister, argued that the Senate needed to be a regional body in order to “protect local interests and to prevent sectional jealousies.”<sup>[9]</sup> Delegate George Brown, a political opponent of Macdonald, agreed. He explained that a regional Senate could have the power to prevent the House of Commons from passing legislation that was “unjust” or harmful to regional concerns.<sup>[10]</sup>

However, the Senate was not intended to be a rival body to the House of Commons. John A. Macdonald argued that senators should not deliberately “oppose what they know to be the settled opinions and wishes of the country,” as expressed by the democratically elected House of Commons.<sup>[11]</sup> Historical practice in the Senate has shown that it generally

accepts and defers to the wishes of the House of Commons.

Thus, the Founders of Confederation created the Senate to occupy a middle ground: “neither a rival to the elected representatives... nor a rubber stamp for the Government.”[\[12\]](#)

### **Robust Regionalism or Diligent Deference?**

Following the Senate Transport Committee’s recommendation to kill Bill C-48, senators have been publicly debating whether the Senate should be primarily regional or deferential. Alberta Independent Senator Paula Simons, the deciding vote in the Committee’s recommendation, acknowledged that senators must be both regionally focused and generally deferential to the House of Commons. However, regional interests led her to oppose the bill. Simons believes that senators have a constitutional duty to respect their regions, that if Bill C-48 is passed then it will erode Albertans faith in Confederation, and that her main job as senator is to defend Albertans.[\[13\]](#)

Alberta Independent Senator Elaine McCoy agrees. She describes the Senate’s role in Parliament as a “built-in safety valve to protect regional interests,” and that this function “holds our Confederation together” as the Founders intended.[\[14\]](#) The Transport Committee report, which recommended that Bill C-48 be killed, stated that the Bill would have a “ruinous effect” on Alberta’s oil sands, and that Alberta was targeted because the governing Liberal Party is not popular in the province.[\[15\]](#) Thus, the Committee believes that the Senate should place priority in defending Alberta’s regional interests.

However, not all current and former Senators agree that regional concerns should be given priority. Former Conservative Senator Hugh Segal argues that democracy is a key Constitutional value. He believes that Canadians would not be pleased if unelected senators stop the implementation of a democratic government’s promise.[\[16\]](#) Segal believes this could raise accountability concerns since senators are not elected. Further, the Representative of the Government in the Senate, Peter Harder, has stated that the role of regional interests in the Senate can be “outweighed by the responsibility to consider federal policies through the prism of national interest.”[\[17\]](#)

### **Conclusion: The Senate’s Role in the Eye of the Beholder**

Two of the central components of the Senate’s “sober second thought” in reviewing legislation are incorporating regional issues in federal policy and general deference to the elected House of Commons. The Bill C-48 process has put these roles in conflict, and they are now in the public eye.

The Senate’s history shows that the Upper Chamber will only kill a government bill in rare circumstances and it has only done so a handful of times since World War II.[\[18\]](#) Thus, the practice of deference once the House has accepted or declined amendments has generally been accepted by the Senate. If the Senate killed Bill C-48, it would be an extraordinary rejection of deference. The effect of such a move would highlight Alberta’s extreme anxiety

with the bill and bolster the Senate's regional role. While Alberta senators could regard this move as a triumph of regional concerns in legislative review, others would view the move as undemocratic.

Ultimately, it is up to individual senators to decide their votes with due regard to both regional interests and the practice of deference to the House of Commons - two of the key ingredients in "sober second thought."

[1] Senate, *Complementarity: The Constitutional Role of the Senate of Canada* by Peter Harder (Government Representative in the Senate) (12 April 2018) [Harder]. Harder uses the term "Founders of Confederation" rather than "Fathers of Confederation" to utilize gender-neutral language. A similar approach is adopted in this article.

[2] *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, s 22, reprinted in RSC 1985, Appendix II, No 5. The four "regions" of Canada according to s 22 are Ontario, Quebec, the Maritime provinces, and the western provinces. Each of these areas is provided with 24 Senate seats. Broken down by province or territory, the constitutional composition of 105 seats is: 24 senators each for Ontario and Quebec, 10 senators each for Nova Scotia and New Brunswick, 6 senators each for British Columbia, Alberta, Saskatchewan, Manitoba, and Newfoundland & Labrador, 4 senators for Prince Edward Island, and one senator each for Yukon, Northwest Territories, and Nunavut.

[3] "10:3 Podcast: How Trudeau's tanker ban bill almost broke the Senate" (27 May 2019) at 00h:19m:08s, online (podcast): *National Post* <<https://nationalpost.com/news/10-3-podcast-how-trudeaus-tanker-ban-bill-almost-broke-the-senate>>

[4] Senate, Standing Committee on Transport and Communications, *Seventeenth Report*, (June 2019) (Chair: David Tkachuk) [Committee Report].

[5] Paul G Thomas, "Comparing the Lawmaking Roles of the Senate and the House of Commons" in Serge Joyal, ed, *Protecting Canadian Democracy: The Senate You Never Knew* (Montreal & Kingston: McGill-Queen's University Press, 2003) 189 at 198 [Thomas]. For example, the Senate used its veto power in 1991 to kill a government which would have criminalized abortion.

[6] David E Smith, *The Constitution in a Hall of Mirrors: Canada at 150* (Toronto: University of Toronto Press, 2017) at 49.

[7] Harder *supra* note 1 at 8. Harder describes the incorporation of regional concerns in Parliament as necessary to "strike Canada's Confederation bargain."

[8] *Reference re Senate Reform*, 2014 SCC 32 at para 15. In contrast, the House of

Commons is elected with the proportion of seats divided based on the populations of the provinces.

[9] Sir John A Macdonald, "Speech in the Confederation Debates - February 6, 1865" (2017) at 15, online (pdf): *Macdonald-Laurier Institute* <[http://macdonaldlaurier.ca/files/pdf/MLIConfederationSeries\\_MacdonaldSpeechF\\_Web.pdf](http://macdonaldlaurier.ca/files/pdf/MLIConfederationSeries_MacdonaldSpeechF_Web.pdf)> [Macdonald].

[10] George Brown, "Speech in the Confederation Debates - February 6, 1865" (2017) at 7-8, online (pdf): *Macdonald-Laurier Institute* <[http://macdonaldlaurier.ca/files/pdf/MLIConfederationSeries\\_GBrownSpeechF\\_Web.pdf](http://macdonaldlaurier.ca/files/pdf/MLIConfederationSeries_GBrownSpeechF_Web.pdf)>.

[11] Macdonald *supra* note 9 at 18.

[12] Harder *supra* note 1 at 3.

[13] Paula Simons, "C-48 - My Very Tough Call" (16 May 2019), posted on *Paula Simons*, online: *Facebook* <[www.facebook.com/notes/paula-simons](http://www.facebook.com/notes/paula-simons)>.

[14] Elaine McCoy, "The Senate should do its job - and oppose the tanker ban," *The Globe and Mail* (31 May 2019), online: <[theglobeandmail.com/opinion/article-the-senate-should-do-its-job-and-oppose-the-tanker-ban/](http://theglobeandmail.com/opinion/article-the-senate-should-do-its-job-and-oppose-the-tanker-ban/)>

[15] Committee Report *supra* note 4.

[16] Hugh Segal, "The Senate should do its job - and respect Canadian voters," *The Globe and Mail* (22 May 2019), online: <[theglobeandmail.com/opinion/article-the-senate-should-do-its-job-and-respect-canadian-voters/](http://theglobeandmail.com/opinion/article-the-senate-should-do-its-job-and-respect-canadian-voters/)>. Segal notes that Prime Minister Trudeau promised on June 29, 2015 to regulate oil-tanker traffic if elected to government.

[17] Harder *supra* note 1 at 18.

[18] Thomas *supra* note 5.