

**THE IMPLICATIONS OF ELECTIONS ON ACTIONS OF  
SENATORS AND MEMBERS OF PARLIAMENT IN CANADA**

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## **Abstract**

Elections are traditionally characterized as mechanisms capable of aligning the interests of representatives with those of voters. The absence of elections for the Canadian Senate has drawn criticism precisely because there is no mechanism to ensure the accountability of senators to the electorate. That said, the constant requirement incumbent on MPs to respond to one's constituents has positive and negative implications, as does senators' freedom from the constraints of re-election. In this paper, I show how MPs and senators operate under different conventions of party discipline and have a propensity to advance different types of private members' bills. In the Commons, the drive for re-election and the demands of party discipline motivate MPs to advance locally or regionally focused policy. In contrast, the absence of elections and greater independence from party allows senators to view policy through a more pan-Canadian lens than MPs. Thus, my data casts the absence of elections in a more optimistic light, showing that freedom from the constraints of re-election actually allows senators to serve as valuable complements to MPs. The necessities of modern democracy dictates that the people must have a hand in choosing who represents them, yet shifting to an elected Senate may not accord with the collective needs of the country.

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## 1. *Introduction*

For decades, public opinion concerning the Canadian Senate has been mainly critical. The chamber is perceived to lack legitimacy because senators do not draw their authority from the people. Bereft of popular representation, the Senate faces a dual challenge: its authority can be disputed and its role is not clearly defined.<sup>1</sup> A consensus has emerged that contends the Senate must be popularly elected to regain the public's confidence and restore the chamber's credibility. This view has inspired reform proposals calling for a popularly elected Senate.<sup>2</sup> The argument that elections would legitimize the Senate depends upon a particular conception of the relationship between representation and legitimacy, to wit, that an elected body is representative, and a representative body is in consequence a legitimate body. By this logic, an unelected Senate is unrepresentative, and therefore illegitimate. While the legitimacy of an institution is important, there is no logical basis for claiming that elections will generate legitimacy for the Senate. Thus, it is more fruitful to direct discussions about the Senate away from this hypothetical argument and towards more observable and measurable indicators of what senators do. By focusing on what senators do, this study shows how a number of institutional incentives enable unelected senators to perform unique functions that would be difficult for elected senators to perform.

This article proceeds in four parts. Following this introduction, I briefly demonstrate the problematic connection between elections and legitimacy. The subsequent section sets out my argument: I describe the institutional incentives of the Commons and the Senate, then consider how these incentives induce MPs (ministers and backbenchers alike) and senators to advance different forms of public policy. The core of my argument is that the absence of elections and greater independence from their parties allows senators to view policy through a

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<sup>1</sup> Sharman, Campbell. 2008. "Political legitimacy for an appointed Senate." *IRPP Choices*. 14 (11).

<sup>2</sup> Stilborn, Jack. 2003. "Forty years of not reforming the Senate." In *Protecting Canadian Democracy: The Senate You Never Knew*, ed. Serge Joyal. Montreal: McGill-Queen's University Press, 31-66.

more pan-Canadian lens than MPs. In contrast, the constant drive for re-election and the demands of party discipline in the Commons motivate MPs to advance locally or regionally focused policy. The third section is empirical in nature, presenting evidence that MPs and senators do, indeed, advance different forms of legislation, the former concentrating on local matters; the latter, on broader, pan-Canadian issues. This evidence comports with my assertion that senators provide a legislative service that is unique from that provided by MPs. The final section summarizes my findings and discusses the implications of these findings as they apply to the Senate reform movement. In particular, I note how it would be difficult for an elected Senate to remain as committed to pan-Canadian policy-making.

## 2. *The Problematic Connection Between Elections and Legitimacy*

The assumption that popular elections and legitimacy are intimately fused is made consistently throughout many of the early proposals for an elected Senate. The 1985 Alberta Select Committee argues that only a popularly elected Senate can “enjoy legitimacy and would be able to exercise fully the significant political and legislative powers necessary to make a valuable contribution to the Canadian Parliament.”<sup>3</sup> In a similar vein, the Beaudoin-Dobbie proposal of 1992 states, “if we wish to establish a strong and effective institution to ensure the responsiveness of the central government to regional needs, that institution needs to have the legitimacy which comes from having been chose directly by the people.”<sup>4</sup> These reports contend that elected status is a necessary precondition for the legitimate use of influence. Also implicit in these statements is that the current selection process, in which the Governor-General appoints senators on the advice of the Prime Minister, leaves senators subservient to the prime minister and by dint of that, illegitimate as representatives. Indeed, former Senator Duff Roblin has made exactly this complaint.<sup>5</sup> Thus, the argument to elect senators pivots on elections being necessary and sufficient to deliver institutional legitimacy to the Senate.

This argument rests on several contentious and even contradictory assumptions. First, it is assumed that because elections are absent in the Senate, no institutional incentives exist to align senatorial interests with the public interest. Second, given the absence of readily visible institutional incentives, senators are assumed to act entirely in their own self-interest or the interests of their party, with no regard for the electorate. These assumptions are intended to support the argument that elections are necessary and sufficient for the presence of institutional

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<sup>3</sup> Quoted in Stilborn, Jack. 2003. “Forty years of not reforming the Senate.” In *Protecting Canadian Democracy: The Senate You Never Knew*, ed. Serge Joyal. Montreal: McGill-Queen’s University Press, 34.

<sup>4</sup> Ibid.

<sup>5</sup> Roblin, Duff. 1982. “The case for an elected Senate.” *Canadian Parliamentary Review*, 6-10.



legitimacy, but the logic behind these assumptions are in conflict with one another. On one hand, the argument states that the Senate needs elections to reduce the independence of senators and create a body that the citizens view as legitimately acting in their interest. On the other hand, the argument is that elections are needed to increase the independence of senators (presumably from the prime minister or their parties) to enable them to exercise their powers more legitimately.

The claim that elections are both sufficient and necessary to generate institutional legitimacy oversimplifies the relationship between elections and legitimacy. Indeed, neither the sufficiency nor the necessity aspects of this claim are tenable. Starting with the sufficiency claim, one can observe that elections on their own cannot ensure that an institution will be considered legitimate by the electorate. For example, the popularly elected Australian Senate was regarded as a chamber of little significance throughout much of its first few decades in existence.<sup>6</sup> It has been argued that legitimacy hinges on the public's confidence in an institution not merely the institution's elective or representative nature.<sup>7</sup> The World Values Survey which provides data on public confidence in institutions shows that Canadians have less public confidence in Parliament today than in the past. The share of respondents reporting high confidence fell from 42 percent in 1982 to 38 percent in 2006.<sup>8</sup> Dion has argued that "the unpopularity of politics and politicians would be a healthy sign if it meant that the citizenry were keeping an alert and critical eye on those who govern. But it seems clear that instead it has caused a segment of the population to become cynically indifferent, to give up on everything that has anything to do with politics."<sup>9</sup> The decline in voter turnout in Canadian federal elections from 75.3 percent in 1984 to 58.8 percent in 2008 reflects the public's increasing disengagement from the political process. These data suggest that public confidence is eroding in Canada's elected House of Commons.

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<sup>6</sup> Sharman, Campbell. 2008. "Political legitimacy for an appointed Senate." *IRPP Choices*. 14 (11).

<sup>7</sup> Crozier, Michael et al. 1975. *The Crisis of Democracy*. New York: New York University Press.

<sup>8</sup> See World Values Survey, Canada, 1981-2006.

<sup>9</sup> Dion, Stephane. 1993. "Rising cynicism: Who is to blame?" *Canadian Parliamentary Review*, 33-35.

Consequently, one could argue that the Commons has lost much of its legitimacy. It appears that elections themselves are not sufficient to generate the legitimacy of an institution.

The necessity aspect of the claim is also hard to maintain. For example, a number of unelected actors and bodies in Canada enjoy broad legitimacy in the absence of popular elections, including the courts and Governors and Lieutenants-General. In 2006, the World Values Survey found that 54 percent of Canadians expressed confidence in the Canadian court system.<sup>10</sup> Given that more Canadians have confidence in an unelected court system than in an elected House of Commons, it appears that legitimacy can certainly exist independently of the representation generated through popular election. Of course, one might argue that confidence in political institutions is not a satisfactory measure of legitimacy. This is a valid counterpoint, albeit one that underlines how difficult it is to define legitimacy in a concrete and measurable fashion. If unelected actors can possess legitimacy and elected actors sometimes lack legitimacy, then clearly the claim that elections are necessary and sufficient to ensure legitimacy falls apart. If elections are neither necessary nor sufficient to produce legitimacy and there are no straightforward measures of the Senate's legitimacy, any discussion of using elections to generate legitimacy for the Senate is unlikely to be fruitful.

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<sup>10</sup> See World Values Survey, Canada, 2006.

### **3. *The Effects of Elections in the Canadian Context***

Given the unsatisfactory conceptualization of legitimacy found in many criticisms of the Senate, I introduce the concepts of input and output legitimacy. I demonstrate that the latter is more empirically useful because it is easier to observe and measure than input legitimacy.

Subsequently, I consider the Senate's output legitimacy by isolating the consequences of popular elections on parliamentarians' behaviour. By comparing senators to MPs, I show how elected senators can be expected to behave.

#### **3.1. *Input and Output Legitimacy***

Kelso contends that legitimacy is not an all-or-nothing matter, but a matter of degree. Institutions may very well possess varying degrees of legitimacy. She introduces two concepts: input legitimacy, which is concerned with the method of selection used to select members of an institution, and output legitimacy, which refers to how the public assesses the value and quality of the institution's work.<sup>11</sup> An important distinction must be made between these two concepts. Input legitimacy is reliant on the design of an institution, whereas output legitimacy relies on the substance of the institution's performance or functionality. Undoubtedly, the method used to secure input legitimacy has a significant impact on the quality of output legitimacy. Yet, as indicated above, attention remains fixed on the lack of input legitimacy in the Senate's selection process. Much less attention is paid to the substance of the Senate's output legitimacy despite the fact that senators perform many beneficial functions in Canada's parliamentary process.<sup>12</sup>

The preoccupation with input legitimacy concentrates on only one moment in a senator's career, that is, the day of appointment. Senators' output is much more empirically useful because we can monitor and measure their performance from Parliament to Parliament

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<sup>11</sup> Kelso, Alexandra. 2006. "Reforming the House of Lords: Navigating representation, democracy and legitimacy at Westminster." *Parliamentary Affairs* 59 (4), 563-581.

<sup>12</sup> Smith, David. 2003. *The Canadian Senate in Bicameral Perspective*. Toronto: University of Toronto Press.

over the duration of their careers. More specifically, we can observe if and how frequently senators deviate from their party's position, as well as the types of legislation they introduce. By examining how senators perform in their vocation, we can gain a better understanding of the utility of unelected senators.

### **3.2. *Consequences of Popular Elections on Parliamentarians' Behaviour***

A comparison of senators and MPs isolates the incentives and constraints of re-election that specifically affect the behaviour of MPs. Moreover, the comparison reveals the freedoms that appointed senators enjoy, and illuminates the possible implications of elections on senatorial behaviour. It is crucial to recognize that MPs and senators would be elected in a particularly Canadian context characterized by a parliamentary system of government that features political parties as central actors, electoral calculations dominated by regional considerations, and a high concentration of prime ministerial power.

A central aim of elections is to create incentives for representatives to be responsive to their constituents. Generally, candidates for elected office can be assumed to be self-interested, so the best feasible outcome is obtained when institutional incentives ensure that the self-interest of representatives is aligned with the public interest.<sup>13</sup> While elections do not have to be used exclusively, they have nevertheless become almost universally accepted mechanisms for aligning the interests of the candidate in solidarity with those of the voters. Accordingly, MPs develop particular motives which are salutary and inherent to the act of seeking elected office. These motives prompt them to shape their actions and policy preferences in a manner that reflects the wishes of their constituency. For example, MPs are inclined to answer mail, return phone calls, and even meet with constituents in their constituency office. Another form of constituency contact involves public appearances whereby MPs make speeches, attend ribbon cuttings, and

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<sup>13</sup> Madison, James. 1788. *Federalist Paper #51*.

other local events such as banquets, festivals and public functions. Constituents expect MPs to be responsive to their concerns and be visible in the community, so MPs must always appear locally involved and cognizant of where constituents stand on each important policy issue.<sup>14</sup> In this regard, satisfying one's constituents is necessary for re-election.

By contrast, the unelected nature of the Canadian Senate allows critics of the Senate to point to the problem of moral hazard. The potential for moral hazard stems from the fact that once a senator is appointed to the chamber there is no recourse available to remove the individual from this position. Thus, senators are not required to face the consequences of their actions and take responsibility for them. Arguments that the Senate should not have an absolute veto or that the chamber's attendance policy is too relaxed, draw credence from this line of thinking because senators can potentially abuse their veto or not attend sittings without being sanctioned. Therefore, the argument persists that the Senate must be elected to make the chamber directly accountable to the electorate.

While the drive for re-election provides incentives for MPs to remain accountable and responsive to their constituents, they must also remain aligned with their party leadership. Docherty demonstrates that many newcomers to the Commons expect to immerse themselves in grand debates and work on consequential policy initiatives, but find the reality is starkly different. Strong leadership, party discipline, caucus solidarity and the deeply ingrained rules and mores of the Commons obstruct the ability of members of parliament to represent their constituents unfailingly and interject their own beliefs and opinions into debates. At best, MPs must accept a restricted role in policy and learn to appreciate the value of constituency work.<sup>15</sup> If MPs refuse to comply with the wishes of their party, they could face discipline.

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<sup>14</sup> David Docherty. 1997. *Mr. Smith Goes to Ottawa*. Vancouver: University of British Columbia Press.

<sup>15</sup> Ibid.

While the threat of discipline exists, voluntary unity is always possible. However, there are limits to voluntary cooperation, and when these limits are reached, the Commons and Senate respond in very different ways. While the psychological pressures of party loyalty persist, party leaders may be required to use incentives or sanctions to elicit parliamentarians' loyalty. The options available to party leaders are wide-ranging, but most options are more effective in the Commons than in the Senate. For example, the opportunities for party leaders to offer personal advancement are more plentiful in the Commons. Prime ministers and party leaders can dole out as many as fifty or sixty parliamentary positions in the form of cabinet, critic, and parliamentary secretary portfolios. By contrast, there are a very limited number of parliamentary positions that can be used to placate ambitious senators. While the Speaker, Government or Opposition Leader, Deputy Leader, and Whip positions are appointed by the Prime Minister or party leader, modern cabinets tend to contain just one or two senators. This lowers senators' career expectations considerably and makes it more difficult for party leaders to use personal advancement to elicit a senators' loyalty. Another option available to party leaders in the Commons is the provision or withholding of the party leader's signature on MPs' nomination papers. This threat carries no weight in the Senate because senators do not require nomination papers; once appointed, senators can serve (with or without their party leader's approval) until they reach the age of seventy-five.

There are different implications for dissent in each chamber. In the Commons, the withholding of a party leader's signature can have a profoundly negative effect on an MP's career. Without the party leader's signature, an MP cannot use the party name on literature, signage, or the ballot, and loses access to a tremendous fund-raising resource. While dissenting MPs could run as independents in subsequent elections, incumbency offers most members a relatively weak advantage at election time. The minimal personal vote in Canada means that

even veteran members with national reputations are heavily dependent on the popularity of their leader and party.<sup>16</sup> In contrast, no such threat exists to senators given the absence of elections.

Other sanctions exist in both chambers, but they are not as detrimental to dissenting senators as they are to dissenting MPs. A former Liberal Party Senate Whip from Nova Scotia stated, “there are very few sanctions we could throw out for not supporting the team... Whips trifle with office space, attendance on trips abroad and membership on particular committees, but they don’t have the lever of signing nomination papers. We try and appeal to our caucus by building team spirit, esprit de corps, and appealing to their sense of team.”<sup>17</sup> Simply put, the lack of parliamentary positions and the absence of elections greatly depletes party leaders’ options to induce unity, which produces more independent and individualistic behaviour in the Senate. A former Liberal Party Whip from Newfoundland and Labrador states, “independence is important in the Senate... Senators want self-respect and believe they are acting for the right reasons. These are people of substance with strong personalities that don’t always conform to the party line.”<sup>18</sup> This is a much different reality than in the Commons where party leaders hold tremendous clout over the career trajectories of MPs and where remaining aligned with one’s party greatly increases one’s chance of re-election.

Accordingly, the constraints of re-election and party discipline creates a tension for MPs when deciding who to represent with their actions, their constituency or their party. With this tension in mind, party leaders must strive to find balance between the party’s preferences and those of the electorate, or risk their chances of electoral progress. The electoral calculations of party leaders tend to orient substantive policy debates around local and regional concerns. For Duverger, this orientation was a function of the single-member district electoral system, the type

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<sup>16</sup> Docherty, David. 2005. *Legislatures*. Vancouver: UBC Press, 157-160.

<sup>17</sup> I interviewed five senators with experience as Whips or party leaders in July 2010.

<sup>18</sup> Personal Communication. 24 July 2010.

of electoral system that Canada uses: “[the single member plurality electoral system] accentuates the geographical localization of opinions: one might even say that it tends to transform a national opinion... into a local opinion by allowing it to be represented only in the sections of the country in which it is strongest.”<sup>19</sup> As a result, systems with single-member districts tend to experience weaker levels of national unity due to heightened sectionalism. Cairns argues the electoral system has made sectionalism a rewarding vehicle for accumulating political support. If a party fails to gain support from a region, it takes away a major source of compromise and undermines a party’s ability to bargain. Cairns states, “the politicians’ problem of reconciling sectional particularisms is exacerbated by the system they must work through in their pursuit of power... By making all parties more sectional at the level of seats than votes it complicates the ability of parties to transcend sectionalism.”<sup>20</sup> Thus, the empirical effect of the electoral system is to overrepresent some regions and underrepresent others. This variation has created a political culture whereby parties consistently try to shore up support in regions of the country where they feel underrepresented to prevent alienating any particular region. Mintz contends that allocating campaign resources to constituencies where the difference in party support is considerable makes it unlikely to be electorally beneficial. National campaign strategies should be expected to focus on constituencies where the expected margin of votes separating the leading parties is perceived to be reasonably small.<sup>21</sup> We see these considerations employed in the convention of regional representation in cabinet. Prime ministers are under tremendous pressure to use cabinet

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<sup>19</sup> Duverger, Maurice. 1951. *Political Parties*, 383.

<sup>20</sup> Cairns, Alan. 1968. “The Electoral System and Party System in Canada, 1921- 1965.” *Canadian Journal of Political Science*, 55-80.

<sup>21</sup> Mintz, Eric. 1985. “Election campaign tours in Canada.” *Political Geography Quarterly* 4 (1), 47-54.



representation to make up for inequities and imbalances in their caucus' regional representation.<sup>22</sup>

In the past, Canada had powerful cabinet ministers who could take up the mantle of leadership in parties due to their strong regional identities and regional power bases.<sup>23</sup> These regional ministers no longer exist.<sup>24</sup> Party leaders are no longer reliant on regional members for an understanding of how government policies are being perceived regionally. Public opinion polls have become more reliable tools for party leaders, most importantly the Prime Minister. When issues are sensitive, politically explosive, or attractive to the media, parties tend to concentrate the management of these issues within the hands of the party leader and a few select advisers and bypass the cabinet's collective decision-making process. This strategy is reactive and short-sighted as it appears better suited for the immediate management of episodic public relations crises. The Prime Minister's Office and Privy Council Office have developed a strong capacity to monitor developments in government departments and keep a watchful eye on ministers and departments to minimize hazards to their government.<sup>25</sup> Comprehensive policy agendas are ignored as prime ministers pursue a handful of key objectives and push them through the system thereby creating a narrow, myopic policy focus.<sup>26</sup> The lack of a neutral

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<sup>22</sup> See Ward, Norman. 1950. *The Canadian House of Commons: Representation*. Toronto: University of Toronto Press.

<sup>23</sup> Sutherland, Sharon. 1991. "Responsible government and ministerial responsibility: every reform is its own problem." *Canadian Journal of Political Science* 24, 91-120.

<sup>24</sup> See Bakvis, Herman. 1991. *Regional Ministers: Power and Influence in the Canadian Cabinet*. Toronto: University of Toronto Press.

<sup>25</sup> In particular, the Privy Council Office has an important role to operate as an early warning system to alert prime ministers of political hazards ahead. The Clerk of the Privy Council and Deputy Ministers are known for their capacity to manage controversial issues, and diffusing situations. As the role of the media has evolved, the Clerk and Deputy Ministers have become valuable assets within the prime minister's court. See Savoie, Donald. 2005. "The Federal Government: Revisiting Court Government in Canada." In *Executive Styles in Canada*. Toronto: University of Toronto Press.

<sup>26</sup> For example, Prime Minister Mulroney bypassed cabinet in pursuing constitutional reform, the Canada-US free trade agreement, and the establishment of regional agencies. See Savoie, Donald. 2005. "The Federal Government: Revisiting Court Government in Canada." In *Executive Styles in Canada*. Toronto: University of Toronto Press.

facilitator, such as a cabinet full of influential regional ministers, results in a lack of pan-Canadian policy focus as many pressing needs with national implications receive little attention.

In sum, the Canadian context of parliamentary government presents MPs and senators with quite different institutional incentives. First, MPs have incentives to be responsive to their constituencies if they wish to be re-elected, whereas senators are not electorally responsible to an identifiable set of constituents. Second, senators are subject to fewer and weaker sanctions than MPs for dissenting from the party line. This is principally because the absence of elections greatly diminishes the impact of party discipline on senators. Third, the regional implications intrinsic of single-member district electoral systems drive political parties to cater to some areas and ignore others. Given the local and regional demands of electoral politics, actors in the Commons cannot be expected to conduct pan-Canadian public policy debates.

Each of the incentives that MPs face has positive and negative implications. For example, responsiveness to constituents is an important representative function, but at a certain point it becomes pandering. For example, it has been widely reported that the Conservative government's desire to eliminate Canada's mandatory long-gun registry is aimed at placating the party's base. Whether one thinks this policy is good or bad, the gun registry is a national project which is nevertheless being assessed through local and regional lenses as evidenced by the urban-rural split in the Liberal and NDP caucuses.<sup>27</sup> In this situation, it may be more fruitful for parliamentarians to debate the proposal to scrap the registry on its own merits considering the implications for the whole country without basing a decision solely on local desires. If the incentives MPs face have positive and negative implications, then the absence of incentives must also have positives and negatives. Since senators are unelected they are not as responsive to constituents, but they are also more independent from their parties and do not need to evaluate

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<sup>27</sup> Ibbitson, John. "Conservatives exploit urban/rural divide over long-gun registry." *The Globe and Mail*. 28 August 2010, A6.

issues from a wholly regional or local perspective, or solely on the basis of electoral calculations. As well, senators' time and energy can be used to deliberate substantive issues, whereas MPs must spend significant portions of their time in their constituency. Thus, senators have developed certain freedoms which are not available to MPs. These freedoms have a significant impact on how senators perform their duties.

#### **4. *Do Senators and MPs behave differently? Evidence on Party Discipline and Policy Orientation***

Given that senators (unlike MPs) are not reliant on a local constituency or a political party, one might expect senators to produce different outputs than MPs. There is evidence that senators vote less cohesively than MPs on substantive legislative matters and do not always adhere to their party's position. MPs would not be expected to be at variance with their party leadership in this way because they are dependent on their party for re-election. MPs are equally dependent on their constituents for re-election and as a result, can be expected to focus on local and regional issues. By concentrating on local and regional issues, MPs can respond to their constituents without being at variance with their party leadership. This logic cannot automatically be extended to senators, but the evidence demonstrates that senators are far more likely than MPs to engage in pan-Canadian rather than local or regional policymaking.

##### **4.1. *Party Discipline in the Commons and Senate***

For the purposes of observing party discipline, recorded divisions provide a strong measure since they capture how all parliamentarians vote simultaneously on an issue. There is a clear demarcation between those who vote for, and those who vote against an initiative. Moreover, on whipped votes parties can be expected to vote cohesively. A whipped vote is one where a party stakes out a particular position on an issue and encourages its members to vote in accordance with that position. Traditionally, divisions on government bills are whipped whereas many divisions on private members' bills are not.<sup>28</sup> Dissent occurs when a party does not vote cohesively, because an individual or group of individuals fails to adhere to the party position when voting. Recorded divisions isolate instances where dissent has occurred. Additionally, anecdotal evidence demonstrates how the party leadership in each chamber reacts to dissent.

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<sup>28</sup> See Chapter 4 of Christopher Kam. 2009. *Party Discipline and Parliamentary Politics*. Cambridge: Cambridge University Press.

Clearly, party discipline is markedly weaker in the Senate, which allows senators to challenge their party's position more frequently.

A number of recent examples of recorded divisions on whipped votes demonstrate that weaker party discipline operates in the Senate. For example, the third reading of Bill C-52,<sup>29</sup> resulted in a significant fissure within the Liberal caucus. In the House of Commons, the Liberals voted against the bill. However, in the Senate twenty-four Liberals supported Bill C-52 at third reading, while twenty-one voted against, and three abstained from the vote.<sup>30</sup> At this juncture, the Liberal caucus in the Senate significantly outnumbered the Conservative caucus, which would have allowed the Liberals to defeat the bill. However, senators generally do not overturn the will of elected MPs. Therefore, while Liberal senators could have abstained from the vote without threatening the bill's passage, twenty-four senators chose to vote in support of the bill instead. What is unusual about this fissure is the scale of the split. Dissent occurs in the Commons, but it generally takes the form of one or two mavericks voting against their party; you tend not to see a party split right down the middle.<sup>31</sup> Obviously, it is harder to sanction a large group than individual dissidents, but it is noteworthy that the dissident Liberal senators were not publicly sanctioned. In contrast, Conservative MP Bill Casey was promptly ejected from the Conservative Party caucus for voting against C-52. Similarly, MP Joe Comuzzi was ejected from the Liberal caucus for supporting C-52 because of the bill's provision for a cancer research centre in his Thunder Bay riding. This scale of dissent on C-52 in the Senate and the House, and the much harsher discipline imposed on dissidents in the Commons clearly shows that dissent is managed quite differently in the Commons than in the Senate.

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<sup>29</sup> Third reading of Bill C-52, An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2007, occurred on June 22, 2007.

<sup>30</sup> See Senate Journals. June 22, 2007.

<sup>31</sup> See Chapter 3 of Christopher Kam. 2009. Party Discipline and Parliamentary Politics. Cambridge: Cambridge University Press.

There are less polarizing examples of dissent. At third reading of Bill C-28,<sup>32</sup> Liberal Senators Willie Adams and Larry Campbell defied their party's position and voted in favour of the bill. Similarly on Bill C-10,<sup>33</sup> a number of dissident Liberal senators voted against the majority of their party. While the majority of the Liberal caucus in both the Senate and Commons voted with the Conservatives in support of the bill, Senators George Baker, Joan Cook, Mac Harb, and Peter Stollery voted against the bill.<sup>34</sup> These examples demonstrate that senators do in fact, vote against their parties on substantive legislative matters.

It is helpful to consider a highly visible example of party discipline to illustrate how impotent discipline is in the Senate. Senator Anne Cools was summoned to the Senate in 1984 as a Liberal, but in 2004 became critical of the Martin government's stance on same-sex marriage and crossed the floor to join the Conservative Party. However in 2007, Cools routinely voted against the Conservative Party on bills related to Senate reform, the Kyoto Protocol, and the budget, which resulted in her ultimate expulsion from the Conservative caucus. This may be the most harsh and punitive form of discipline that can be doled out to a senator, but fundamentally it changes nothing. Senator Cools has been in the Senate for many years and has never held a prominent parliamentary position. The loss of the party label did not effect her in the same way as an MP because she does not need the electoral security a party label provides nor does she require the party's endorsement to retain her membership or salary in the Senate. Moreover, the government's agenda control over speaking time is not as tight in the Senate. Thus, an independent can function more easily in the Senate than in the Commons. There was virtually no harmful effects to Senator Cools as a result of her expulsion. While she may no longer caucus

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<sup>32</sup> Third reading of Bill C-28, An Act to implement certain provisions of the budget tabled on March 19, 2007 and to implement certain provisions of the economic statement tabled in Parliament on October 30 2007, occurred on December, 13, 2007.

<sup>33</sup> Third reading of Bill C-10. An Act to implement certain provisions of the budget tabled in Parliament on January 27, 2009 and related fiscal measures, occurred on March 12, 2009.

<sup>34</sup> See Senate Journals. March 12, 2009.

with the Conservatives, it does very little to hamper her independent spirit and eliminates the constraints of party discipline altogether.

Cools' case was atypical in that party discipline was visible; it is more common for displays of senatorial independence to go unpunished. In 2002, Liberal Senator Michael Kirby criticized the Liberal government's management of the Canadian health care system following his authoring of a report urging greater private sector involvement in health care delivery. More recently, Conservative Senator Pierre Claude Nolin recommended the full decriminalization and legalization of the use marijuana in Canada, which contradicted the Conservative Party's 2006 election platform.<sup>35</sup> In 2010, Senator Nolin continued to exercise his independence by criticizing the Conservative Government's Bill S-8, An Act respecting the selection of senators. Soon after, Conservative Senator Richard Neufeld openly criticized Bill S-8. In these cases, no senator was expelled from caucus despite openly criticizing their party. By contrast, members of parliament who openly challenge party policy tend to face harsher consequences. New Democratic MP Bev Desjarlais voted against Bill C-38, which legalized same-sex marriage in Canada and conflicted with both NDP policy and the party's stated position. Desjarlais subsequently lost a nomination contest in her riding and lost as an Independent candidate in the following election. Likewise, Canadian Alliance MP Larry Spencer was removed from caucus after making contentious remarks about homosexuality which conflicted with Alliance Party policy.

This brief examination clearly indicates that party discipline is weaker in the Senate than the Commons because there are fewer sanctions for Whips and party leaders to wield. Even when parties in the Senate attempt to discipline their members, the repercussions are not of the same magnitude in comparison to the Commons. While senators regularly support the party line, they simply do not operate under the same constraints of party discipline.

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<sup>35</sup> See 2006 Conservative Party of Canada Federal Election Platform, p. 25.

#### ***4.2. Policy Orientation: A Tale of Two Private Members' Businesses***

MPs must always consider the implications of their actions on their chances for re-election. For example, it is predictable that MPs will endeavour to stake out policies and positions that resonate with their constituents. Conversely, senators are free from having to engage with issues that resonate with the electorate. This enables them to engage in deliberations on contentious or unpopular issues that do not yield immediate electoral dividends. Additionally, the presence of single-member districts forces MPs to concentrate resources on a particular geographical area whereas senators are not dependent on regional constituencies for re-election.

I demonstrate below that when engaging in private members' business, MPs tend to more regularly target their bills at local and regional audiences. This behaviour is predictable because local constituents are responsible for re-electing MPs, and hence MPs work to appease their constituents by (among other things) advancing local or regional policy concerns. One cannot make corresponding predictions about how senators will behave since the constraints of re-election are not binding on senators. In other words, the fact that a senator is free from re-election pressures does not logically imply that he or she will advance pan-Canadian rather than local or regional policy issues. Therefore, one must consider data to determine how senators behave given that they do not need to secure re-election. The data I present below indicate a significant pan-Canadian inclination in senatorial private members' business.

##### ***4.2.1. The Procedure of Private Members' Business***

Private members' business is one of the few policy venues that parliamentarians control. For this reason, how parliamentarians use private members' business is a good indicator of their policy interests. In the Commons, an MP can introduce a bill for first reading on any day during Routine Proceedings when the Speaker calls "Introduction for Private Members' Business." At this juncture, no debate occurs and the bill is automatically transferred to the List



of Private Members' Business - Items Outside the Order of Precedence. At the beginning of each Parliament, the Speaker of Commons holds a lottery to decide the order of eligible MPs on the List for the Consideration of Private Members' Business.<sup>36</sup> That list is then used to determine the Order of Precedence, which ranks the order in which MPs may present their bill for second reading. There is no restriction on how many private members' bills can be introduced for first reading by an individual MP,<sup>37</sup> but there is no possibility of a bill reaching second reading if the MP's name is not made eligible by the lottery. In the event that a Member's name becomes eligible, they must either select a single bill that has already been given first reading or waive their right to introduce legislation and have their name moved down to the List for the Consideration of Private Members' Business used to replenish the Order of Precedence. Once the Order of Precedence drops below fifteen names, the next fifteen eligible names from the lottery are added. Once a bill reaches the top of the Order of Precedence, it is debated on its general principles and is eventually be voted on. If passed, the bill progresses to the committee stage.<sup>38</sup>

The process for managing non-government business in the Senate is significantly different from that in the House. The Senate does not have a lottery equivalent to that of the Commons and there is no Order of Precedence for non-government business. On the Order Paper and Notice Paper, "Other Business" is separate from "Government Business," but all items are called each day unless a motion to adjourn is adopted before the Senate reaches the end of the Order Paper and Notice Paper or the item has not been called before the Senate reaches the time for adjournment under the Senate rules. Therefore, in the normal course of events, any item on

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<sup>36</sup> The lottery system has been used to determine the order in which MPs present their bills to the House since the 38th Parliament. The Speaker, Deputy Speaker, Ministers, and Parliamentary Secretaries are ineligible for the lottery by virtue of their offices.

<sup>37</sup> It is not uncommon to see MPs introduce multiple bills for first reading. For example, Peter Stoffer has introduced over thirty bills throughout the duration of the 40th Parliament.

<sup>38</sup> The Compendium. "Private Members' Business." *House of Commons: Procedure Online*. Web. 13 May 2010 <[http://www.parl.gc.ca/compendium/web-content/c\\_a\\_index-e.htm](http://www.parl.gc.ca/compendium/web-content/c_a_index-e.htm)>

the Order and Notice Paper can come up for debate at any sitting, unless the Senate adjourns earlier. However, if an item of “Other Business” has not been debated nor formally adjourned for fifteen successive sitting days, the item is dropped from the Order and Notice Paper.<sup>39</sup>

#### **4.2.2. Why does Private Members’ Business matter?**

The traditional literature contends that there are few electoral incentives for MPs to introduce private members’ bills. Canadian parties and election campaigns are considered to be very leader-focused with the fate of candidates resting on the party leader.<sup>40</sup> However, this assertion has been increasingly challenged by recent research. Blidook has persuasively shown that private members’ business plays a crucial role in doing preparatory work for eventual government legislation.<sup>41</sup> Koop, Loewen and Fowler have shown private members’ business confers significant electoral benefits on members of the government party. They estimate that private members’ business was pivotal in the re-election of approximately 10% of incumbents in the 2006 and 2008 elections.<sup>42</sup> Given these findings, it appears that private members’ business may matter more than initially believed.

Koop and Loewen provide a useful typology of private members’ bills (PMBs) illustrate how MPs use PMBs to target different audiences.<sup>43</sup> The first type of private members’ bill is local, which appeals to interests situated within MPs’ constituencies. For example, New Democrat MP Fin Donnelly’s Bill C-518 to require fish farms to transition to closed containment systems as opposed to farms where fish are contained in a net in the ocean. This leaves fish susceptible to sea lice infections that cause population declines which pose tremendous threats to

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<sup>39</sup> *Rules of the Senate*. Web. 13 May 2010

<[http://www.parl.gc.ca/information/about/process/senate/rules-e/senrules\\_00-e.htm](http://www.parl.gc.ca/information/about/process/senate/rules-e/senrules_00-e.htm)>

<sup>40</sup> Carty, Roland Kenneth. 2002. "The Politics of Tecumseh Corners: Canadian Political Parties as Franchise Organizations." *Canadian Journal of Political Science* 35: 723-745.

<sup>41</sup> Blidook, Kelly. 2010. "Exploring the role of ‘legislators’ in Canada: Do Members of Parliament influence policy?" *Journal of Legislative Studies*, 16 (1), 32-56.

<sup>42</sup> Koop, Royce, Loewen, Peter and James Fowler. Forthcoming.

<sup>43</sup> Koop, Royce and Loewen, Peter. Forthcoming.

the wild fisheries and aquaculture industries that many of Donnelly's constituents depend upon for their livelihood.

The second type of private members' bill appeal to particular special interests within Canadian society. Conservative MP Candice Hooppner introduced Bill C-391 to repeal the long-gun registry in Canada provides a great example of this type of bill. The bill appeals to gun and property rights interests within Canadian society, which hold that responsible and legal gun ownership should not be criminalized. The National Firearms Association and Canadian Shooting Sports Association's websites provided extensive coverage of the bill ensuring that gun and property rights advocates can monitor legislative developments. Additionally, special interest legislation could be directed exclusively at a specific population such as veterans, seniors, farmers, Aboriginals and even parliamentarians themselves.<sup>44</sup>

The third type of bill appeals to neither local nor special interests, but rather to a broad pan-Canadian interest on the basis of a pressing need identified by Members of Parliament. For example, Liberal Senator Larry Campbell introduced S-238 designed to defend the Canadian Football League from foreign infringement and protect the league's status as a cultural icon, and Liberal Senator Jerry Grafstein proposed the establishment of a Parliamentary Poet Laureate to promote the importance of literature, culture and language in Canadian society. Pan-Canadian private members' bills provide MPs with opportunities to address pressing issues not sufficiently reflected in the government's legislative agenda.

#### ***4.2.3. Different Approaches to Private Members' Business***

Equipped with Koop and Loewen's typology, I label each private members' bill introduced in the 35th to 40th Parliaments as local, special interest or pan-Canadian. I

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<sup>44</sup> In order to alleviate Colin Campbell's concerns, the text of bills and media coverage were consulted in order to determine if a bill was truly special interest and not masquerading as pan-Canadian. See Chapter 4 of Campbell, Colin. 1978. *The Canadian Senate: A Lobby From Within*. Toronto: MacMillan of Canada.

demonstrate that the institutional incentives produced by elections affect the propensity of MPs and senators to advance different types of private members' legislation.<sup>45</sup> Table 1 shows the percentage of private members' bills of each type in the Commons and Senate between 1993 and 2010. In this period, MPs in the Commons produced 380 private members' bills in total, of which 77.3 per cent were pan-Canadian in nature, 13.2 per cent were special interest, and 9.5 per cent were locally oriented. Correspondingly, senators produced 218 private members bills in total, of which 92.2 per cent were pan-Canadian, 6.0 per cent were special interest, and 1.8 per cent were local. Two things can be noted about these numbers. First, it is clear that MPs produce proportionately more local and special interest legislation than senators. In contrast, senators propose proportionately more pan-Canadian legislation. Second, the distribution of types of private members' bills is not random. A chi square test rejects the null hypothesis that the distribution of different types of private members' bills pattern in the data table is random.<sup>46</sup> This suggests that MPs and senators do not randomly table different types of private members bills.

**Table 1: Bills Debated at Second Reading, 35th to 40th Parliament**

Chamber		Local	Special Interest	Pan-Canadian
<b>House</b>	(%)	9.5	13.2	77.3
	(N)	(36)	(50)	(294)
<b>Senate</b>	(%)	1.8	6.0	92.2
	(N)	(4)	(13)	(201)

<sup>45</sup> The bills considered were based on an exogenous criterion of bills, which received debate. In the Commons, the bills considered reached second reading. As MPs can introduce an unlimited number of private members' bills at first reading, this criterion successfully captures the bills that MPs prioritize above all others. In the Senate, all bills were included due to their immediate inclusion on the Order Paper.

<sup>46</sup> Table 1 produces a chi square value of 22.674 (d.f. = 2, p = .001), handily clearing the critical value of 13.815.

Table 2 presents the distribution of private members' bills from 1993-2010 on a Parliament-by-Parliament basis. Organizing the data in this fashion shows the pattern of senators introducing proportionately more pan-Canadian private members' bills is consistent across parliaments despite the shift from majority to minority government (in the 38th Parliament) and the adoption of the lottery system for PMBs (also in the 38th Parliament). The stability of these results suggests that they are the product of relatively stable institutional forces.

**Table 2: Bills Debated at Second Reading by Parliament, 35th to 40th Parliament**

Parliament	House of Commons				Senate			
	Local	Special Interest	Pan-Canadian	Row Totals	Local	Special Interest	Pan-Canadian	Row Totals
35 <sup>th</sup> (1993-1997)	(%) (N) 4.1 (4)	14.4 (14)	81.4 (79)	<b>100.0</b> <b>(97)</b>	0.0 (0)	18.7 (3)	81.3 (13)	<b>100.0</b> <b>(16)</b>
36 <sup>th</sup> (1997-2000)	(%) (N) 13.7 (13)	11.6 (11)	74.7 (71)	<b>100.0</b> <b>(95)</b>	3.3 (1)	3.3 (1)	93.3 (28)	<b>100.0</b> <b>(30)</b>
37 <sup>th</sup> (2000-2004)	(%) (N) 3.5 (3)	15.1 (13)	81.4 (70)	<b>100.0</b> <b>(86)</b>	0.0 (0)	14.3 (6)	85.7 (36)	<b>100.0</b> <b>(42)</b>
38 <sup>th</sup> (2004-2006)	(%) (N) 21.0 (4)	5.3 (1)	73.7 (14)	<b>100.0</b> <b>(19)</b>	0.0 (0)	3.0 (1)	97.0 (32)	<b>100.0</b> <b>(33)</b>
39 <sup>th</sup> (2006-2008)	(%) (N) 13.0 (6)	10.9 (5)	76.1 (35)	<b>100.0</b> <b>(46)</b>	2.1 (1)	2.1 (1)	95.7 (45)	<b>100.0</b> <b>(46)</b>
40 <sup>th</sup> (2008-Present)	(%) (N) 16.2 (6)	16.2 (6)	65.6 (25)	<b>100.0</b> <b>(37)</b>	4.0 (2)	2.0 (1)	94.0 (47)	<b>100.0</b> <b>(50)</b>
<b>Average of Category</b>	<b>9.5</b> <b>(36)</b>	<b>13.1</b> <b>(50)</b>	<b>77.4</b> <b>(294)</b>	<b>100.0</b> <b>(380)</b>	<b>1.8</b> <b>(4)</b>	<b>6.0</b> <b>(13)</b>	<b>92.2</b> <b>(201)</b>	<b>100.0</b> <b>(218)</b>

One can use a t-test to determine if the proportion of pan-Canadian legislation in the Senate is statistically greater than that produced by the House. The null hypothesis is that the proportions of pan-Canadian legislation tabled in each chamber are equal. This hypothesis can be

rejected on the basis of the data in Table 2, however.<sup>47</sup> Therefore, it is not mere chance that the proportion of pan-Canadian bills is higher in the Senate. The difference in MPs' and senators' propensity to introduce pan-Canadian legislation is brought into even sharper relief when one considers the matter in per capita terms. After all, the Commons is nearly three times larger with 308 members to the Senate's 105 members. Per capita, MPs propose an average of 0.202 pan-Canadian private members' bills per term compared to senators' 0.322.<sup>48</sup> Therefore, while MPs do advance pan-Canadian private members' bills, senators are 1.6 times more likely to do so.

It might be argued that the coding scheme employed to obtain these results is arbitrary. After all, some bills possess ambiguous characteristics that makes their categorization more difficult. Moreover, some legislation is more symbolic in nature or has no concrete policy implications. I include these ambiguous cases above because private members' business is rife with symbolic gestures. For example, Nova Scotia Senator Gerald Comeau (who is Acadian) introduced and successfully shepherded the National Acadian Day Act through the Senate. Comeau's efforts received support within the Acadian community and because the Acadian community is not entirely concentrated in Nova Scotia, the bill was classified as pan-Canadian. Yet there are no policy implications to be derived from this legislation. This bill was a relatively simple way for Senator Comeau to demonstrate his solidarity to his constituents. Private members' bills that aim to create a special day or week of recognition for a particular cause or change the name of an electoral system are very common. but are innocuous and have no policy value. Table 3 excludes bills which are ambiguous or innocuous in nature. Under this classification, MPs in the Commons produced 286 private members' bills in total, of which 77.3

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<sup>47</sup> The table produces a t value of 5.02 (d.f. = 10, one-tailed, p = .0005), handily clearing the critical value of 4.587.

<sup>48</sup> For the Commons, the Speaker, Deputy Speaker, Cabinet Ministers and Parliamentary Secretaries are ineligible for private members' business. Therefore, these individuals were excluded from the calculations. For the Senate, only the Government Leader was excluded. There are no rules precluding Speakers, Party Leaders, or Whips from proposing private members' bills.

per cent were pan-Canadian in nature, 13.2 per cent were special interest, and 9.5 per cent were locally oriented. Correspondingly, senators produced 218 private members bills in total, of which 92.2 per cent were pan-Canadian, 6.0 per cent were special interest, and 1.8 per cent were local.

By excluding these bills, I demonstrate that even the most generous scheme against my hypothesis shows that senators are more likely to propose pan-Canadian legislation.

**Table 3: Bills Debated at Second Reading, 35th to 40th Parliament, Excluding Ambiguous and Innocuous Bills**

Parliament	House of Commons				Senate			
	Local	Special Interest	Pan-Canadian	Row Totals	Local	Special Interest	Pan-Canadian	Row Totals
35 <sup>th</sup> (%) (1993-1997) (N)	4.5 (4)	11.4 (10)	84.1 (74)	100.0 (88)	0.0 (0)	7.7 (1)	92.3 (13)	100.0 (14)
36 <sup>th</sup> (%) (1997-2000) (N)	8.0 (7)	11.4 (10)	80.6 (71)	100.0 (88)	3.8 (1)	3.8 (1)	92.3 (24)	100.0 (26)
37 <sup>th</sup> (%) (2000-2004) (N)	2.6 (2)	9.1 (7)	88.3 (68)	100.0 (77)	0.0 (0)	2.7 (1)	97.3 (36)	100.0 (37)
38 <sup>th</sup> (%) (2004-2006) (N)	11.8 (2)	5.9 (1)	82.3 (14)	100.0 (17)	0.0 (0)	3.1 (1)	96.9 (31)	100.0 (32)
39 <sup>th</sup> (%) (2006-2008) (N)	13.6 (6)	9.1 (4)	77.3 (34)	100.0 (44)	2.3 (1)	2.3 (1)	95.4 (42)	100.0 (44)
40 <sup>th</sup> (%) (2008-Present) (N)	13.9 (5)	16.7 (6)	69.4 (25)	100.0 (36)	2.2 (1)	2.2 (1)	95.6 (44)	100.0 (46)
<b>Average of Category</b>	<b>7.4 (26)</b>	<b>10.9 (38)</b>	<b>81.7 (286)</b>	<b>100.0 (350)</b>	<b>1.5 (3)</b>	<b>3.0 (6)</b>	<b>95.5 (190)</b>	<b>100.0 (199)</b>

It might be argued that different people are attracted to different chambers, but if we look at individuals who have served in both chambers, a number of examples can be pointed to which illustrate distinct changes in behaviour. For example, Senator Serge Joyal served in the Commons between 1974-1984. Over this period, Joyal successfully shepherded two private members bills through parliament that changed the name of two electoral districts and gained

royal assent. Since Joyal's appointment to the Senate in 1997, he has only introduced two private members' bills; An Act to amend the Parliamentary Employment and Staff Relations Act, and An Act to maintain the principles relating to the role of the Senate as established by the Constitution of Canada. Both of these acts have broader pan-Canadian implications than the simple renaming of electoral districts. Similarly, Senator Celine Hervieux-Payette served in the Commons between 1979-1984. During her tenure, she proposed a bill to rename her electoral district which received royal assent. Following her appointment to the Senate in 1995, she has taken up a number of legislative causes ranging from amending the Criminal Code to protect children, to establishing gender parity on the boards of Crown corporations, and altering the current investment procedures for foreign investors. It appears individuals who have served in both chambers experience behavioural changes when taking up membership in the Senate. In the Commons, MPs appear to find some value in introducing local or special interest legislation, even if just to change the name on their electoral district; senators appear to be attracted to more concrete policy issues.

Despite MPs' proclivity for introducing local and special interest legislation, it could be argued that the Commons still produces a significant amount of pan-Canadian bills. To counter this objection, it is worthwhile to examine the success rate of private members's bills in each chamber to show that the Senate is more proficient at passing pan-Canadian legislation than the Commons. Table 4 shows the raw number of bills passing third reading in each chamber, and expresses these numbers in percentage terms the success rate of bills passed out of all private members' bills of that type introduced in each parliament. Table 4 shows that senators enjoy an 18.5 percent success rate in passing pan-Canadian legislation; MPs just 10.5 percent.



**Table 4: Success Rate of Private Members' Bills passing third reading, 35th to 40th Parliaments**

Parliament	House of Commons				Senate			
	Local	Special Interest	Pan-Canadian	Success Rate of All PMB	Local	Special Interest	Pan-Canadian	Success Rate of All PMB
35 <sup>th</sup> (%) (1993-1997) (N)	25.0 (1)	14.3 (2)	8.9 (7)	<b>10.3</b> <b>(10)</b>	0.0 (0)	33.3 (1)	7.7 (1)	<b>12.5</b> <b>(2)</b>
36 <sup>th</sup> (%) (1997-2000) (N)	46.2 (6)	9.1 (1)	7.0 (5)	<b>12.6</b> <b>(12)</b>	0.0 (0)	0.0 (0)	10.7 (3)	<b>10.0</b> <b>(3)</b>
37 <sup>th</sup> (%) (2000-2004) (N)	66.7 (2)	23.1 (3)	7.1 (5)	<b>11.6</b> <b>(10)</b>	0.0 (0)	16.7 (1)	25.0 (9)	<b>23.8</b> <b>(10)</b>
38 <sup>th</sup> (%) (2004-2006) (N)	75.0 (3)	0.0 (0)	7.1 (1)	<b>23.5</b> <b>(4)</b>	0.0 (0)	0.0 (0)	18.8 (6)	<b>18.2</b> <b>(6)</b>
39 <sup>th</sup> (%) (2006-2008) (N)	16.7 (1)	80.0 (4)	34.3 (12)	<b>37.0</b> <b>(17)</b>	0.0 (0)	0.0 (0)	28.9 (13)	<b>39.4</b> <b>(13)</b>
40 <sup>th</sup> (%) (2008-Present) (N)	0.0 (0)	0.0 (0)	4.0 (1)	<b>2.8</b> <b>(1)</b>	0.0 (0)	100.0 (1)	10.6 (5)	<b>13.0</b> <b>(6)</b>
<b>Average of Category</b>	<b>36.1</b> <b>(13)</b>	<b>20.0</b> <b>(10)</b>	<b>10.5</b> <b>(31)</b>	<b>14.2</b> <b>(54)</b>	<b>0.0</b> <b>(0)</b>	<b>23.1</b> <b>(3)</b>	<b>18.5</b> <b>(37)</b>	<b>18.4</b> <b>(40)</b>

Finally, it is worthwhile to consider the nature of pan-Canadian bills that MPs and senators pass. A comparison of pan-Canadian Commons and Senate bills gives an impression that MPs' pan-Canadian bills are motivated by quite different interests than senators. Despite their nature, many MPs' pan-Canadian bills appear to be reactive and emotive responses designed to placate constituents. For example, MP Edward Fast proposed Bill C-277 (An Act to amend the Criminal Code (luring a child)) in direct response to the abduction and sexual assault of two boys in Saskatchewan. Another example is MP John Duncan's Bill C-259 (An Act to amend the Excise Tax Act (elimination of excise tax on jewellery)). Duncan's bill was tabled in response to a concerted lobbying effort by the Mining Association of Canada and the Canadian Jewellers Association. In other words, MPs appear to use pan-Canadian legislation to respond to

duress, just as they use local or special interest legislation. In many cases MPs private members' bills are designated as pan-Canadian because they relate to specific aspects of the Criminal Code or tax system. Senators appear to cover a wider swath of policy with their pan-Canadian pursuits. For example, Senator Mac Harb introduced Bill S-22, An Act to amend the Canada Elections Act (mandatory voting), in order to engage more citizens in the democratic process. Another example is Senator Pat Carney's Bill S-215, An Act to protect heritage lighthouses. These bills respond to important (albeit sometimes dry) policy issues. Of course, these observations are impressionistic - but the impression is that senators' pan-Canadian bills tend to focus on issues of public policy whereas MPs' pan-Canadian bills tend to be reactive and emotive.

## **5. Conclusion**

Elections are traditionally characterized as mechanisms capable of aligning the interests of representatives with those of voters. The absence of elections for the Canadian Senate has drawn criticism precisely because there is no mechanism to ensure the accountability of senators to the electorate. That said, the constant requirement incumbent on MPs to respond to one's constituents has positive and negative implications as does senators' freedom from the constraints of re-election. In this paper, I show how MPs and senators have a propensity to advance different types of private members' bills. In the Commons, the drive for re-election and the demands of party discipline motivate MPs to advance locally or regionally focused policy. In contrast, the absence of elections and greater independence from party allows senators to view policy through a more pan-Canadian lens than MPs. Thus, my data casts the absence of elections in a less pessimistic light, showing that freedom from the constraints of re-election actually allows senators to serve as valuable complements to MPs.

### **5.1. The Importance of Pan-Canadian Legislation**

There are three main reasons why pan-Canadian legislation holds significant value. First, pan-Canadian legislation can secure the broad coordination of policy across Canada. For example, the coordination of environmental regulations requires an overarching framework to provide clarity to Canada's jurisdictions. If provinces are working at cross-purposes on environmental issues, the central aim of the regulations may not be realized. Second, to the extent that pan-Canadian legislation avoids jurisdictional conflict and secures cooperation and coordination, it also shores up national unity. Third, pan-Canadian legislation (especially that from the Senate) often deals with issues that do not receive the attention they require. The scarcity of plenary time in the Commons combines with the government's control of the plenary agenda to limit the number of issues that can receive attention. Yet it is necessary to take time to

consider issues that are unpopular or completely absent from the political radar. A good example is the Senate's devotion to soil erosion and conservation, an issue that does not enjoy mainstream media coverage or galvanize a larger number of citizens. Nevertheless, soil erosion and conservation is an important matter with national implications. Pan-Canadian legislation has the ability to address such pressing issues even if they are not exciting. In the absence of pan-Canadian legislation, only issues that are politically salient and immediate would receive attention.

### **5.2. *The Plausible Implications of an Elected Senate***

Undoubtedly, senators' behaviour will change if they become elected. That said, any conjecture about the effects of election on senatorial behaviour is contingent on the precise nature of the electoral system that is used to elect senators. This cannot be known in advance, and the sheer volume of Senate reform proposals has generated many proposals for Senate elections. Still, it is highly likely that some factors will operate regardless of the electoral system employed.

One likely factor is that elections would be carried out on a province-by-province basis. Constitutionally, each province and territory is entitled to a specific number of Senate seats, and this can only be altered by constitutional amendment. Thus, senators would be responsible to the electors of a province (or regions within a province). This would cause senators to lose at least some of their national focus. A second likely factor is that senators would be more subject to party discipline. After all, Canada would remain a parliamentary system with highly disciplined parties. Naturally, party leaders would figure heavily in the nominations process for the Senate through the signing of nomination papers or the formulation of a party list. These two effects would likely cause senators to behave more like MPs. This would imply that the Senate's taste for pan-Canadian policy would be displaced by the policy interests of their provincial electorates

or their party leaders. It is entirely plausible that rules could be designed to offset these effects (e.g., by adopting term limits to ease the pressures of re-election), but these solutions would raise a host of other issues.<sup>49</sup>

I have argued for the reconsideration of elections as a necessary and inevitable cure for the Senate's shortcomings. First, elections are neither necessary nor sufficient to secure institutional legitimacy. Second, reform proposals cannot be fashioned based on superficial perceptions of the Senate's composition and selection. It is necessary to deeply investigate the activities and performance of senators to truly comprehend the value of their work. Third, senators perform a valuable service that complements the work of MPs. Pan-Canadian legislation is crucial to the broad coordination of policy across Canada, and embraces important yet dull issues that otherwise lack attention. This work should provide pause to those reformers who advocate for an elected Senate. The necessities of modern democracy dictates that the people must have a hand in choosing who represents them, but shifting to an elected Senate may not accord with the collective needs of the country.

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<sup>49</sup> For example, Carey demonstrates that legislators tend to shirk their duties in their final term. See Carey, John. 1998. *Term Limits and Legislative Representation*. Cambridge: Cambridge University Press.

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## CERTIFICATE OF APPROVAL - FULL BOARD

<b>PRINCIPAL INVESTIGATOR:</b> Christopher Kam	<b>INSTITUTION / DEPARTMENT:</b> UBC/Arts/Political Science	<b>UBC BREB NUMBER:</b> H10-01619
<b>INSTITUTION(S) WHERE RESEARCH WILL BE CARRIED OUT:</b>		
<small>Institution</small>	<small>Site</small>	
UBC Other locations where the research will be conducted: Interviews will be conducted over the telephone.		
<b>CO-INVESTIGATOR(S):</b> Kyle J. Attanasio		
<b>SPONSORING AGENCIES:</b> N/A		
<b>PROJECT TITLE:</b> Representational Roles of the Canadian Senate		
<b>REB MEETING DATE:</b> July 8, 2010	<b>CERTIFICATE EXPIRY DATE:</b> July 8, 2011	
<b>DOCUMENTS INCLUDED IN THIS APPROVAL:</b>		<b>DATE APPROVED:</b> July 22, 2010
<small>Document Name</small>	<small>Version</small>	<small>Date</small>
<b>Consent Forms:</b>		
ConsentFormJune23	N/A	June 23, 2010
<b>Questionnaire, Questionnaire Cover Letter, Tests:</b>		
InterviewScriptJune22	N/A	June 22, 2010
<b>Letter of Initial Contact:</b>		
ContactLetterJune22	N/A	June 22, 2010
The application for ethical review and the document(s) listed above have been reviewed and the procedures were found to be acceptable on ethical grounds for research involving human subjects.		
<p><b>Approval is issued on behalf of the Behavioural Research Ethics Board and signed electronically by one of the following:</b></p> <hr style="width: 60%; margin: 10px auto;"/> <p style="text-align: center;">           Dr. M. Judith Lynam, Chair            Dr. Ken Craig, Chair            Dr. Jim Rupert, Associate Chair            Dr. Laurie Ford, Associate Chair            Dr. Anita Ho, Associate Chair         </p>		