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Memorandum

To: Prime Minister
From: Patrick Rogers, Ben Perrin
CC: Nigel Wright, Joanne McNamara, Ray Novak, Chris Woodcock
Date: February 18, 2013
Re: Senate Residency Issue

This memo does not respond to a PCO note.

Your office is working with Senate leadership to bring an end to concerns regarding the constitutional residency of some of our Senators. This constitutional residency issue is separate but connected to the expenses issues surrounding Senators Duffy and Wallin. On Thursday, CTV ran a story questioning the residency of Senator Patterson.

Your office has worked with Senator Duffy on a plan for him to return money that he incorrectly collected when he declared his long time home in Kanata as a secondary residence for expenses. This plan with Senator Duffy is contingent on his ability to remain a Senator from PEI.

In coming to a conclusion on this issue, it is fundamental to us that all three Senators be deemed residents of the provinces they were appointed from in terms of the Constitution. Any proposed solution from the Senate leadership that has involved any of our Senators being put in jeopardy of having their constitutional residency questioned has been ruled out.

Residency

Citing section 33 of the *Constitution Act, 1867*¹ we believe that the Senate should define the issue of residency in a way that makes clear that all current Senators are residents from their appointed provinces.

We believe that the best way to accomplish defining residency in a way that leaves all of our Senators legitimate representatives is to set the definition of residency around whether the Senator is able to sufficiently demonstrate their

¹ Section 33 provides "If any Question arises respecting the Qualification of a Senator or a Vacancy in the Senate the same shall be heard and determined by the Senate.

ability to represent his or her province of appointment through his or her personal connection to that province. (see attached memo)

Based on conversations with Senate leadership we believe this can happen two different ways.

1) Traditional Committee Process

The Senate leadership proposes that that the Committee on Rules, Procedures and the Rights of Parliament be authorized by a Senate motion to define residency for the purposes of the Section 31 of the *Constitution Act, 1867*.

This process would see the committee sit for at a minimum of two weeks with public meetings, hearing from constitutional experts, and continuing to generate news on the issue. Coming up with the definition however, would only be part one. The second part would require the committee to deem all Senators residents of their province of appointment. This second part would likely require more meetings of the committee with individual Senators in order to deem them residents under this new test.

We believe that the process the timing of briefing Senate Caucus, giving notice of the motion in the Senate, striking the study in the committee, hearing from witnesses, defining the term residency, hearing Senators testify at committee, finalizing a report back to the Senate, and voting on the report in the Senate could take three weeks or longer.

2) Senate motion

Your office believes that what takes several steps in the traditional committee process could take one step in the Senate. We suggest that the Senate debate a motion declaring that with reference to subsection 23(5) of the *Constitution Act, 1867*, all current Senators are residents of their province of the appointment due to their current demonstrable representation to their appointed provinces.

We believe that this motion could be debated and cloture used as necessary to generate a vote within the Senate chamber, without a word of the debate ever being televised. Going forward, any time that the constitutional residency of a Senator is questioned, the traditional committee process could take place, using the motion and the debate described above as helpful definitions.

This option suffers from one major drawback. At this time, we cannot guarantee that Senator LeBreton would support what will be seen by some as the vandalizing of the process and traditions of the Senate. We cannot hope to get

this plan through our Caucus let alone the Senate, without buy in from her and other key Senators.