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## SENATE REFORM

Inquiry—Debate Continued

Speech by:

The Honourable Diane Bellemare

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## THE SENATE

Tuesday, September 30, 2014

[Translation]

### SENATE REFORM

#### INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Mercer, calling the attention of the Senate to Senate Reform and how the Senate and its Senators can achieve reforms and improve the function of the Senate by examining the role of Senators in their Regions

**Hon. Diane Bellemare:** Honourable senators, I would like to thank Senator Fraser for allowing me to speak to the issue of Senate reform. I should point out that debate will be adjourned in her name for the remainder of her time.

[English]

I also want to thank Senator Mercer for having initiated this inquiry.

[Translation]

Honourable senators, as I said in my previous speech, abolishing the Senate is not an option. First, it would be very difficult to meet the constitutional requirements. Second, the Senate plays an important role as a complement to the House of Commons in a representative democracy.

Modernizing the Senate is crucial to making it and other parliamentary institutions more legitimate. There are two main options for modernizing the Senate. The first, which is more demanding, would change the nature of the Senate. Senators would be elected and have shorter terms.

[English]

It is the constitutional way.

[Translation]

The second option would transform Senate practices and the role it plays. This option would not require any amendments to the Constitution. However, in pursuit of constitutional amendments, our Speaker, the Honourable Senator Kinsella, has proposed that senators speak with representatives of the legislative assemblies in their respective provinces.

This unique initiative, which has never been attempted, is promising. Because it is based on dialogue, it could make it possible to fundamentally modernize the Senate through unanimously approved constitutional amendments. It is important to point out that this initiative also has the advantage of focusing discussions with the provinces on the Senate, rather than opening up negotiations between the provinces and the federal government on peripheral issues, which in the past have derailed any process of constitutional change.

This initiative does not stop us from thinking about realistic short-term changes to our practices. As I was saying, and in the wake of what Senator Rivest just said, this is the initiative I want to talk to you about.

I will talk more specifically about the senator selection process and the exercise of veto power. These are measures to be taken to distance ourselves from partisanship, as Senator Mercer would like, and as all of us would like. What I am proposing is inspired by practices used in other senates around the world. It is also based on expert testimony summed up in the book, *Protecting Canadian Democracy*, edited by the Honourable Senator Joyal, especially that of Ronald Watts, Paul Thomas and David Smith.

[English]

In my opinion, the first issue to be tackled when addressing Senate reform must be the selection procedure for senators.

[Translation]

In the current Canadian context, having an elected Senate is on hold for now. It might see the light of day following discussions with the provinces, as Senator Kinsella proposes.

In the meantime, we might wonder how to go about improving the appointment process in order to enhance the legitimacy of the Senate in the public's eyes. According to John Stuart Mill, whom I mentioned the last time, the choice of senators has to have popular support, because the Senate is only as effective in playing its legislative role as the social support it might obtain from the public. Mill says:

An assembly which does not rest on the basis of some great power in the country is ineffectual against one which does.

The Constitution does not spell out the terms and conditions for drawing up a list of people from which the Prime Minister will select those he considers to be the best candidates. The Supreme Court, however, affirmed that senators cannot be elected without changing the Constitution.

I think we need to update the process for drawing up that list of qualified people who are relatively well known in their home provinces, making it more formal and transparent. Greater public support would legitimize the Senate.

The list of potential candidates could be drawn up by an independent commission mandated to study candidates' qualifications. Provincial and federal legislative assemblies or the commission itself could nominate candidates.

Two examples of that come to mind: the process for drawing up a short list for Supreme Court nominations and Britain's independent House of Lords Appointments Commission, which was created in 2000. That commission was created as a transition measure to enhance the legitimacy of the House of Lords until an agreement could be reached about a more complete reform involving the election of lords.

Let us begin by defining the mandate of the transitional commission, which would be to study the qualifications of proposed candidates to draw up a list of eligible candidates. The commission could also propose candidates, as the British commission does. Its website is very user-friendly and very interesting, actually.

Who should be on the commission? In the United Kingdom, the commission is made up of seven people. The chair is a university professor.

[English]

Without going into detail, I will outline for us what an independent Senate appointments commission could look like in Canada. These points will have to be expanded on, of course.

• (1550)

[Translation]

Three other members are non-partisan, and the other three are lords who were appointed by each of the three official political parties.

As in the United Kingdom, a Canadian commission could be chaired by an independent person and made up mainly of people who have no current allegiance to a political party. Without being a carbon copy of the British commission, the commission could also allow a significant amount of space for independent commissioners.

Who should appoint the commissioners? Good question. In the short term, these people could be appointed by decree of the Prime Minister after a consultation with the House of Commons and the upper chamber.

How would candidates be submitted to the commission? The candidates could come from federal and provincial legislative assemblies, as well as from the public — as it's done in the United Kingdom. In other words, aside from the candidates suggested by elected assemblies, an individual could become a candidate or suggest someone else.

We know that Alberta already has a list of candidates.

What criteria would the commission use to evaluate the candidates? It could first ensure that all of the candidates meet the qualifications, as set out in the Constitution. It could also evaluate the candidates based on other criteria, as is done in the United Kingdom for independent lords.

[English]

The British commission has established for itself seven criteria upon which to base its decision for the nomination of independent candidates: first, a record of significant achievement; second, the ability to make an effective contribution; third, the time available to ensure that the candidate can make a contribution; fourth, some understanding of the constitutional framework; fifth, integrity; sixth, a commitment to the highest standard of public life; and seventh, independence from any political party.

[Translation]

How would the commission generate the list submitted to the prime minister? It could generate a list based on an agreement made with the prime minister.

What would be the terms of an agreement to modernize the Senate?

In my opinion, this agreement could set out the ideal composition of the Senate and that is of the political and demographic reality in Canada, without, of course, changing the number of seats per region or province. It could set aside a percentage of seats for independent senators from the public, as is the case in many senates around the world. In the United Kingdom, the target number is 20 per cent of seats filled by independents. The agreement could also provide for the other seats to be allocated based on the official parties based on the

proportion of votes received during the last election. That would be a way of making the representation proportional.

It could also require that a percentage of seats be allocated to candidates nominated by the provinces. This practice would establish more formal ties between senators and their regions, which is desirable in order to better fulfil our regional role.

If, at first glance, this practice seems complicated, it really isn't, since a number of senate chambers around the world seek precisely to have a membership in the upper chamber that is representative of the population in general and of the regions.

I believe that this reform is necessary for the sake of democracy in Canada. It could be instituted quickly as a pilot project for upcoming appointments.

Without being presumptuous, if we were given permission, a special joint committee consisting of members of the Senate and MPs from the House of Commons could quickly be put to work on creating this commission.

The second issue we must address is the veto power of the upper chamber. Indeed, there is much criticism of the Senate when the majority of senators decide to oppose a government or private member's bill, although this does not happen very often.

Dear colleagues, let us take a closer look at this issue.

[English]

It is true that the Senate has absolute veto power over bills from the lower house, just as the lower house can veto bills from the Senate. Furthermore, Canada does not have a conflict resolution procedure in place. This is not the case in most senates around the world.

[Translation]

In Canada and the United States, a bill can go back and forth indefinitely between the two chambers. This can be a difficult problem to resolve, as we saw in the United States with the budget debates, and in Canada, with the free trade agreement and the introduction of the GST in the early 1990s.

In Canada, the Senate's power was deliberately enshrined in the Constitution by the Fathers of Confederation. Therefore, it cannot be changed.

Furthermore, Canada does not have a conflict resolution procedure in place. This is not the case in most senates around the world, where senates have a suspensive veto and the lower houses most often have the final say.

Dear colleagues, did you know that the powers of the House of Lords, which were similar to those of the Senate of Canada until 1911, have been cut back twice? In 1911 the House of Lords saw its veto power reduced to a suspensive veto. This change was legislated. In 1945, the suspensive veto was extended to one year, and the House of Lords could no longer reject proposals based on election promises, which is also the case in other senates around the world.

In Canada, the Senate's extremely important powers are written into the Constitution and therefore cannot be amended without the consent of the provinces. However, dear colleagues, we could agree to initiate a procedure that would entrench our powers in a clear and non-partisan way, for with great power comes great responsibility.

An agreement created by the Senate could set out the questions that Senate committees must examine and report on to the members of this chamber. Here is a list of some of the questions that committees could be responsible for answering when they analyze bills.

First of all, is the bill constitutional?

Is it in line with the constitutional division of powers between the provinces and the federal government?

Does it comply with the Charter of Rights and Freedoms?

Does the bill violate international treaties and conventions?

Does it run counter to the interests of any province or territory in particular?

Does it infringe on the rights of a minority group?

Does it unduly harm a given economic group, such as the business community, workers, farmers, artists or professionals? Have their concerns been addressed in the bill?

Was the process in the lower House democratic and did it allow for proper consultations?

Does the bill draw an outcry from the general public? Is that outcry justified? Could adjustments be made?

Is the bill well drafted? Are there language errors?

After having studied the legislation from these angles, it would be difficult to vote for or against a bill simply because we do not like it or because party allegiance requires us to do so.

**The Hon. the Speaker *pro tempore*:** Senator Bellemare, I must interrupt you. Are you asking for more time to complete your remarks?

**Senator Bellemare:** I still have a few points to make.

[*English*]

**The Hon. the Speaker *pro tempore*:** Is five minutes granted?

**Hon. Senators:** Agreed.

[*Translation*]

**Senator Bellemare:** If a bill fails to pass one of those tests, we would be justified in proposing amendments or in opposing it.

In reality, our agreement should be such that it would be very difficult to vote in a partisan way, which is what currently happens. It is very difficult to understand the logic behind the fact that nearly all of the bills before us are passed on division and according to party lines.

That isn't the case with the Supreme Court, where decisions are very often made unanimously.

• (1600)

In my opinion, this procedure would respond to the criticism made in 2007 by the former Minister of Democratic Reform that senators should, and I quote, "be accountable for the decisions they make." This would enable us to be accountable for our decisions through the committee reports we are given and through our discussions in the Senate as a whole.

To conclude, honourable senators, I'm convinced that if we were to promote the creation of a commission to nominate senators and if we were to adopt an agreement establishing criteria for studying bills in committee, the Senate would become what Canadians expect it to be: a parliamentary institution that is independent of the government, complements the House of Commons, and plays its role as the main defender of democracy and the regions. The Senate would therefore be composed of genuinely independent senators, regardless of any political allegiance. They would be protected from the petty partisan politics that is currently undermining our credibility as an institution that is accountable to the Canadians and the provincial populations whose interests we must defend over the interests of the party that appointed us.

[*English*]

Thank you, honourable senators. I invite you to comment on these subjects.

**Hon. Wilfred P. Moore:** Would Senator Bellemare take a question?

**Senator Bellemare:** Absolutely.

**Senator Moore:** Senator, thank you for your remarks. I was interested in the comments with regard to what you called the test of when a bill comes here, whether it meets certain standards and other laws. You did not mention treaties or other agreements with First Nations and indigenous peoples. Did you think about that? Would that be one of the tests that you would see used to check on the validity of a proposed bill?

[*Translation*]

**Senator Bellemare:** Dear senator, I could not say. I thought about international treaties. It is possible that this could be included, but as I said, those suggestions should be discussed by all of us so that we can determine which criteria should be included. Obviously, there are several. Perhaps when we discuss them, we'll realize that we've forgotten some criteria that should have been included, while in other cases, we will have more difficulty deciding. In fact, that would be on a list of criteria to be discussed. That was an oversight on my part.

**Hon. Serge Joyal:** Your comments raise a question that I think is fundamental to the reflection that we must have on the fact that our parliamentary system, the so-called Westminster model, is based on the adversarial debates principle. In this house, there are the blues, the reds, the yeas and the nays, and all the other colours we might have.

Since the principle traditionally works on the basis of debate with dissenting opinions, it has become the principle of the party in power — I was going to say against the opposition party or vice versa, the opposition party against the party in power.

In your reflection, were you able to consider how we could maintain the adversarial principle, with its yeas and its nays, but without expressing it in terms of the obligatory framework of political parties, meaning the party line that is always imposed on one side or the other, or that has been traditionally imposed in this fashion since the inception of the Westminster model?

Is my question sufficiently clear to show the challenge facing us right now in determining the type of chamber we want to have?

**Senator Bellemare:** Thank you for your question, Senator Joyal. Of course, this is a question that I really am not able to answer as clearly as I would like. However, what I can say is that practices, even in the United Kingdom, have evolved; there are three parties

and there are also the independents. I think it is possible to have debates with the yeas and the nays, but we need to have debates in a more modern context, which we have not done before, given the diversity and the number of political parties that we now have in Canada and around the world.

I think that a convention could help to establish criteria on the representation that we want in the Senate without changing any laws. If the Prime Minister decides to debate the issue, then that is his choice.

In Australia, for example, many political parties are represented and there are independent senators. The debates are interesting because senators have a political allegiance. They are not automatically part of the majority or minority. I think that the broad range of opinions that results is interesting because it is allowed and present in the chamber.

In short, these are issues to debate. How far can we go with these changes? I do not see why it would be a problem if we made the changes through a convention and people agree to do it.

**Hon. Jean-Claude Rivest:** To answer Senator Joyal's question, on the Council of Europe, the Canadian delegation chooses its parliamentary group so that there is confrontation. Under the model mentioned by the senator, senators could sign up as Conservatives, Liberals, centrists or socialists. It is done on the Council of Europe. We sign up as left, right or centre. It allows for confrontation.

**Hon. Joan Fraser (Deputy Leader of the Opposition):** Honourable senators, I believe Senator Bellemare said, at the beginning of her speech, that this debate would be adjourned in my name. Since she made some very interesting points, I would like to take her up on that offer.

(On motion of Senator Fraser, debate adjourned.)

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