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## THE SENATE

Origins, History and Evolution—  
Inquiry—Debate Continued

Speech by:

The Honourable Diane Bellemare

Tuesday, September 23, 2014

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[Translation]

### THE SENATE

#### ORIGINS, HISTORY AND EVOLUTION—INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Nolin, calling the attention of the Senate to its roots, the history of its origins, and its evolution.

**Hon. Diane Bellemare:** Honourable senators, I rise to speak on behalf of Senator Tannas, who has allowed me to speak to this inquiry today.

**The Hon. the Speaker *pro tempore*:** You are not speaking on behalf of Senator Tannas; you are replacing him. He has yielded his adjournment to you.

**Senator Bellemare:** Exactly. Honourable senators, it has been almost one year since the Governor General gave the last Speech from the Throne. This is what he said about the anniversary of Confederation:

The road to 2017 is a fitting time to strengthen our institutions and democratic processes. The Government continues to believe the status quo in the Senate of Canada is unacceptable. The Senate must be reformed or, as with its provincial counterparts, vanish. The Government will proceed upon receiving the advice of the Supreme Court.

The Supreme Court has now handed down its ruling. In the opinion of the highest court in Canada, the federal government cannot unilaterally change certain provisions pertaining to how the Senate functions. In its ruling, the court said:

The Senate is one of Canada's foundational political institutions. It lies at the heart of the agreements that gave birth to the Canadian federation.

It continued:

The Constitution should not be viewed as a mere collection of discrete textual provisions. It has an architecture, a basic structure.

This is why, according to the Supreme Court, introducing consultative elections for the appointment of senators and term limits requires the approval of at least seven provinces representing 50 per cent of the population, because those changes would change the Constitution's architecture.

On the matter of the abolition of the Senate, the Supreme Court ends with the following:

Abolition of the Senate would therefore fundamentally alter our constitutional architecture — by removing the bicameral form of government that gives shape to the Constitution Act, 1867 — and would amend Part V, . . .

In other words, my dear colleagues, the amending procedure.

. . . which requires the unanimous consent of Parliament and the provinces . . . .

The most recent ruling of the Supreme Court imposes stringent conditions that are difficult to meet if the Senate is to be fundamentally reformed.

Even though there have been 17 proposals for reform since 1867, is that a reason to try to abolish the Senate? That idea has also been put forward regularly since the beginnings of Confederation. Even our former colleague, the Honourable Hugh Segal, who was not in favour of abolishing the Senate, moved a motion in this chamber in 2007 about holding a Canada-wide referendum on the matter. However, even with a majority in favour of abolishing the Senate, it is not certain from a constitutional standpoint that it could be done, as former Senator Sharon Carstairs maintained in this chamber in December 2008.

[English]

In other words, if it is possible to abolish the Senate, the chance that it can happen is very low.

[Translation]

Nevertheless, the question of abolishing the Senate comes up too frequently for us to be able to dismiss it out of hand. The reasons put forward in support of abolition are always essentially the same. Among those reasons, we hear that the Senate is an archaic and undemocratic institution that blocks bills passed by a majority of the elected members of the House of Commons, the only elected chamber that represents Canadians. We hear that senators are appointed according to arbitrary criteria known only to the Prime Minister. We hear that the appointments serve only to reward those who have been of service to the party in power, which makes the Senate more a partisan institution than an independent one. We hear that senators, who are always ready to obey the orders of their respective parties, will support the interests of their party rather than properly do their duty of standing up for the interests of their province in particular and of Canada in general. Then we hear that the status that senators are given encourages them to take undue advantage of their privileges, a criticism that comes back each time a senator, or more than one senator, is accused of defrauding the system.

Is Canada's Senate so dysfunctional that it cannot be made more effective, more legitimate, and able to play the role for which the provinces created it, without amending the Constitution?

[English]

Is it possible that the Fathers of Confederation have been so wrong in the writing of the Constitution that we have to abolish the Senate? I don't think so.

[Translation]

The Senate is an important institution that must continue to protect democracy in Canada. However, the Senate needs to be reformed, and this is possible without amending the Constitution.

In this first of two speeches, I will try to answer the following question: What unique role does the upper chamber play that no

other Canadian parliamentary institution could properly carry out? I will address the issue of reforms in my second speech.

In my speech today I will share, in my own words, ideas that have already been expressed in this chamber and elsewhere. I draw some inspiration from the contributions compiled in the book *Protecting Canadian Democracy: The Senate You Never Knew*, edited by the Honourable Serge Joyal, as well as from other books and remarks made by senators during the inquiries initiated by our colleague, the Honourable Pierre Claude Nolin, and I thank him for his initiative.

My speech is also based on a book that I read cover to cover this summer, penned by John Stuart Mill and published in 1861, *Considerations on Representative Government*. As you know, Mill was an important British philosopher and political economist who greatly influenced the Fathers of Confederation, as well as many senators in the debates about abolishing the Senate.

You are no doubt wondering about the relevance of a book that is over 150 years old. In fact, Mill's observations on democracy include a vision of the future that has in fact come to pass. That reality is that the number of upper chambers around the world continues to rise, and I will expand on this a little later.

Mill very clearly explained why the Senate is the first line of defence for protecting democracy. We have heard about this quite a bit, but I would like to quote Mill on the notion of democracy. He said:

Two very different ideas are usually confounded under the name democracy. The pure idea of democracy, according to its definition, is the government of the whole people by the whole people, equally represented. Democracy, as commonly conceived and hitherto practiced, is the government of the whole people by a mere majority of the people exclusively represented.

The former is synonymous with the equality of all citizens; the latter, strangely confounded with it, is a government of privilege in favor of the numerical majority, who alone possess practically any voice in the state. This is the inevitable consequence of the manner in which the votes are now taken, to the complete disfranchisement of minorities.

In a really equal democracy, every or any section would be represented, not disproportionately, but proportionately . . . Unless they are, there is not equal government, but a government of inequality and privilege: one part of the people rule over the rest: there is a part whose fair and equal share of influence in the representation is withheld from them, contrary to all just government, but, above all, contrary to the principle of democracy, which professes equality as its very root and foundation.

• (1510)

This need to pursue pure democracy instead of relying only on the simple majority is enshrined in the Canadian Constitution and has been confirmed in a number of Supreme Court references. Why did the Fathers of Confederation insist on this point? They did so because real democracy, in which all points of view are represented, is required for our democratic institutions to be sustainable.

[English]

Colleagues, as you know, the principle of a simple majority is deceptive and, despite its fine appearances, may conceal a

dictatorship of a minority over the majority. This is made more likely as a greater number of parties run against each other. And what is worse is that, in practice, depending on how the riding boundaries are drawn, a simple majority may hand a majority government to a party that received fewer votes than the official opposition. This was the case in the 1998 Quebec provincial election.

[Translation]

These types of situations lead to public cynicism. We can see this happening now in Canada, when we look at the low voter turnout for federal and provincial elections in the past 20 years, or even just yesterday in New Brunswick. That is why John Stuart Mill advocates for proportional representation rather than the simple majority system that we have in Canada.

[English]

I repeat: This is why Mill calls for a proportional representation rather than the simple majority system we currently have in Canada.

[Translation]

An upper chamber can play an important role in defending the interests of those who are not represented by the government, thus promoting true democracy within a context of simple majority representation. The Senate can and should be the voice of political groups associated with minority causes and situations, such as environmental protection and climate change, to name but two.

[English]

This is fundamental for the vitality of our democracy. According to Mill, it is the first and most important role of the second chamber.

[Translation]

This excerpt from John Stuart Mill's book, as recently quoted by Senator Nolin, is worth repeating. It reads as follows:

The consideration which tells most, in my judgment, in favour of two Chambers . . . is the evil effect produced upon the mind of any holder of power, whether an individual or an assembly, by the consciousness of having only themselves to consult. It is important that no set of persons should, in great affairs, be able, even temporarily, to make their *sic volo* prevail without asking any one else for his consent. A majority in a single assembly, when it has assumed a permanent character — when composed of the same persons habitually acting together, and always assured of victory in their own House — easily becomes despotic and overweening, if released from the necessity of considering whether its acts will be concurred in by another constituted authority. The same reason which induced the Romans to have two consuls makes it desirable there should be two Chambers: that neither of them may be exposed to the corrupting influence of undivided power, even for the space of a single year.

In short, according to John Stuart Mill, the Senate has a major role to play in protecting a country's democracy from the exploitation of minorities by a majority of members of Parliament who are often elected by a minority of voters. The Senate carries out this role by the simple fact of its existence. Fortunately, it can do much more than just exist.

A second exclusive function of the Senate in federated countries is to protect the interests of the constituent regions or provinces in federal legislation and policies. The debates between the provinces about Canada's creation are proof that they saw the second chamber as a way to protect their interests. There never would have been a Canada without the Senate. All the experts and the Supreme Court are clear on this.

Unfortunately, the connections between the Senate and the realities of the provinces in Canada are left up to the individual senators, rather than being institutionalized in practice. For example, in many federations, including Germany, Austria and Australia, there are institutional provisions linked to the appointment process to ensure that this role is truly taken into account by the upper chamber.

In short, the Senate makes it theoretically possible to promote pure democracy and is an ideal place for protecting the interests of the provinces in federal legislation. That is important.

A third function that the lower chamber cannot properly perform is being a chamber of sober second thought. The lower chamber is too often dominated by partisanship and has neither the time nor the desire to amend its bills to reflect repeated comments from the public or major socio-economic groups or even to correct the wording in both official languages.

The Senate has often amended bills from the House of Commons in order to improve them. Since 1960, 116 bills, including 33 since 2000, introduced in the House of Commons have been amended by the upper chamber and received Royal Assent.

**The Hon. the Speaker *pro tempore*:** Is the honourable senator asking for more time to conclude her remarks?

**Senator Bellemare:** Yes, please.

**The Hon. the Speaker *pro tempore*:** Is it agreed, honourable senators, that the senator be granted five more minutes?

**Hon. Senators:** Agreed.

**Senator Bellemare:** Other bills have been rejected, including 74 in the 20th century and two since 2000. These figures clearly show that since 2000, the Senate has not often paralyzed the House of Commons, contrary to what some critics are fond of saying. Instead, the Senate makes it possible to improve the quality of legislation.

[English]

I wish now to stress that the Senate is not this ancient, antiquated institution that many contend. Quite the contrary; in fact, bicameralism is on the rise throughout the world.

[Translation]

According to documentation from the French Senate, whose various charts I will post on my website by the way, the number of senates keeps going up. Right now, there are apparently 80 worldwide. In 1900, 17 countries had an upper chamber; in 1945, 22 did; in 1980, 38; in 2000, 60; and in 2014, 80.

This confirms John Stuart Mill's vision over 150 years ago about humanity's constant pursuit of greater democracy.

In addition, as you know, with the exception of Micronesia and the United Arab Emirates, all federations, even those that adopted proportional representation, have a bicameral system.

• (1520)

Some will argue that several countries known for their living democracies, such as Scandinavian countries, have abandoned it.

I should point out that the Scandinavian countries that abolished their senates were not, and are still not, federations. Their actions can be explained by the fact that these countries chose a proportional representation model to give minorities a voice. I would like to quote from a document produced by the French senate, as follows:

One of the reasons used to explain the disappearance of bicameralism in Nordic countries is the use of proportional representation in the lower chamber in such a way that all political minorities are represented.

Moreover, in Scandinavian countries, social and economic partners often participate in political decision-making. Bills are subject to negotiation long before members of parliament pass them. The political democracy and economic democracy practiced in Scandinavian countries enable lawmakers to take into account the interests and opinions of all political and economic groups. This does not occur in Canadian political institutions.

Some will say that the provinces abolished their upper chambers. This is true. However, a province is not a federation. Their existence, at the time, was not constitutionally protected. In fact, prior to Canada's creation, councils were in place particularly to protect the rights of francophone and anglophone minorities, as Senator Chaput so ably demonstrated.

In conclusion, in the Canadian constitutional context, it is difficult to see how abolishing the Senate would improve democracy. Since Canada does not employ proportional representation, many changes would have to be made to how the House of Commons functions to protect true democracy should the Senate be abolished.

Too often we fail to address this issue. However, it is important, as demonstrated by the experience of New Zealand, which abolished its upper chamber in 1951 and had to establish a proportional representation system to solve the democratic problems within its parliamentary institutions. Is Canada prepared to implement proportional representation in the House of Commons, which would often require a coalition government? That is something to think about.

We also fail to address how provincial interests could be represented in federal legislation if the Senate were abolished. The Supreme Court cannot solve every problem, but the Senate can intervene when it comes to legislation.

In short, abolishing the Senate would cut down on the ways that Canada has to protect and promote democracy, defend the provinces' interests in federal legislation and ensure quality legislation.

That being said, in practice, the Senate could no doubt do a better job than it has in the past of carrying out its historic mandates. For that reason, reforms are needed to make the Senate more legitimate and effective, since the two go hand in hand. The Senate could also make the public more aware of what it does and why it exists.

Canada therefore has no choice but to work hard to reform the Senate in order to respond to the severe criticism that it is receiving. That will be the subject of my second speech.

Thank you for your attention, honourable senators.

[English]

**Hon. James S. Cowan (Leader of the Opposition):** I am not sure whether Senator Bellemare's time has expired or whether there is time for a question.

**The Hon. the Speaker *pro tempore*:** We still have a few minutes.

**Senator Cowan:** Thank you. I'll make my question brief. I congratulate you on your speech, senator. I think that it is a very useful contribution to what is a very useful series of debates initiated by our friend Senator Nolin.

You spoke about ways and means, without involving opening up the Constitution, that we could improve the way we do our jobs. What mechanism do you see that we could utilize to bring that about?

[Translation]

**Senator Bellemare:** That will be the subject of my second speech, but I can provide a brief overview. I think that perhaps we

will have to amend the Constitution when it comes to the appointment process. However, we need to immediately adopt transition measures, a bit like England did. I will elaborate on that: The United Kingdom adopted transition measures in 2000, and they are still in effect because the government never succeeded in changing things. I will be discussing that.

I will also talk about the role of agreement. I believe that the Senate can accomplish a great deal if senators can reach an agreement. I will therefore talk about the role of agreement as it relates to our absolute power, with respect to the other place, to reject a bill. I will also talk about a few other little things.

**Hon. Joan Fraser (Deputy Leader of the Opposition):** I am looking forward to hearing your second speech, but in the meantime, I move the adjournment of the debate.

(On motion of Senator Fraser, debate adjourned.)

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