House of Commons
CANADA

Legislative Committee on Bill C-20

CC20 • NUMBER 009 • 2nd SESSION • 39th PARLIAMENT

EVIDENCE

Wednesday, June 4, 2008

Chair

The Honourable Albina Guarnieri

Legislative Committee on Bill C-20

Wednesday, June 4, 2008

● (1600)

[*English*]

The Chair (Hon. Albina Guarnieri (Mississauga East—Cooksville, Lib.)): Seeing quorum, I call the meeting to order.

Pursuant to our order of reference of February 13, 2008, we will continue our study of Bill C-20.

[*Translation*]

Today we are fortunate to welcome a witness who knows Ottawa very well.

Benoît Pelletier was associate dean and professor of the year at the University of Ottawa Law Faculty, where he obtained a master's in law. He then obtained his PhD from the Université de Paris in 1996. Mr. Pelletier is the Minister of Canadian Intergovernmental Affairs for the province of Quebec. He is also responsible for Indian Affairs and appropriately, the reform of democratic institutions.

Thank you for your patience. We had to hold a vote today and that is why we are starting a little bit late. That being said, I would like to invite Minister Pelletier to make his comments.

The floor is yours.

Mr. Benoît Pelletier (Minister, Canadian Intergovernmental Affairs, Government of Québec): Thank you, Madam Chair.

Ladies and gentlemen, members of the committee, I will first of all introduce you to the person accompanying me, Mr. Jean-Guy Côté, who is the political attaché in my Quebec City office.

I will begin by thanking you for your invitation to take part in the work of your committee in its deliberations on Bill C-20. I will repeat what I said in 2007 when I stood before a senatorial committee—the Government of Quebec does not usually appear before a federal parliamentary forum unless exceptional circumstances warrant it, as is the case today. This is the third time Quebec has come before the Parliament of Canada to express its opinion on the measures put forward by the federal government to reform the Senate.

Quebec presented its viewpoint at a sitting of the Special Senate Committee on Senate Reform in the autumn of 2006, and in a brief submitted in May 2007 to the Standing Senate Committee on Legal and Constitutional Affairs. Quebec's positions are thus well known. We demanded the withdrawal of Bill C-43, today's Bill C-20, by which the federal government would introduce an electoral system applicable to the selection of senators. We also demanded the suspension of proceedings on Bill S-4, now Bill C-19, concerning the tenure of senators. These two measures are presented separately but are indeed components of a single initiative.

For the Government of Quebec, however, transformation of the fundamental features of the Senate is not a matter of ordinary statutes. It is a fully constitutional issue that therefore begs recourse to multilateral procedures of constitutional amendment.

It is perfectly clear to Quebec that the federal government's underlying intention in these bills is to do indirectly what it cannot do directly, namely, to transform the method of selecting senators and, by extension, transform the nature and role of the Senate which, since 1867, has been an appointing chamber of legislative sober second thought.

It seems equally clear to us that the system envisaged in Bill C-20 is electoral in purpose and effect. We have noted that, during the committee's works, it has been pointed out that Bill C-20 had been "carefully drafted" to comply with the Constitution. But the Constitution is more than form. It is more than drafting techniques. It goes to the very heart and nature of things and to the very purpose of rules that govern our society.

Constitutional jurisprudence was quick to emphasize the importance of going beyond form and appearance in assessing the constitutionality of power-sharing measures. The formalist approach was rejected. The courts had the wisdom to recognize that subtle wording can sometimes be tantamount to concealment. They made the pith and substance of the rules of law the centrepiece of constitutional logic.

As I see it, this legal tradition applies just as aptly to the limits of unilateral federal jurisdiction in institutional matters in relation to the multilateral procedures of constitutional amendments. What counts are the purpose, subject and effect of this bill, and not the care taken in drafting it or the ingenuity of the notions involved, such as consultative election as a means of appointment, a notion that appears to have no precedent.

The Government of Quebec maintains that the purpose of Bill C-20 is, beyond a doubt, to transform the method of selecting senators. This is the clear intent of the federal government. The system considered in the bill is not workable or viable unless it is electoral. Otherwise, how does one ask citizens to stand as candidates and campaign throughout the province, with the personal and financial commitments that candidacy entails? How does one justify the involvement of Elections Canada and the use of public resources for a complex voting process that must comply with all the requirements of an electoral system, and ask citizens to exercise their right to vote and to cast a ballot? What is there to prevent candidates from considering themselves and from being considered as elected directly by the population, taking into account the recourse to universal suffrage?

● (1605)

The notion of consultation, therefore, strikes us as artificial. If, after such a process, there is a pool of candidates, as certain federal representatives have put it, that would be a pool of elected persons and this does not change the fundamental impact of the bill on the nature of the Senate. Even if the seats for which these persons have been elected are not all available immediately, these persons would have been chosen by voters through universal suffrage. The idea of a pool does not mitigate the consequences of the institutional change that is sought through this bill.

In my previous interventions, I touched on the link between sections 42 and 43 of the Constitution Act, 1982 and the Supreme Court's 1979 Reference on the Upper House. Further to this opinion that gave rise to the principle of the exclusion of the fundamental features, or essential characteristics, of the Senate from unilateral federal jurisdiction, the framers of the Constitution expressly specified certain exceptions to the federal jurisdiction under today's section 44, including the method of selecting senators, the powers of the Senate, and regional representation, incidentally, three closely interconnected elements in terms of institutional balance and architecture.

With the framework of current debates on the federal bills, some have questioned the contemporary relevance of the Reference on the Upper House. We reiterate that this Supreme Court opinion is just as relevant now as it was then. Constitutional protection of the fundamental features of the Senate is enshrined in the Constitution through the exceptions laid out in section 42 and, in addition to these exceptions, through the required use of the 7/50 general procedure under section 38 of the Constitution Act, 1982.

The federal compromise at the basis of Canada's political system is expressed in the fundamental features of the federal institutions created in 1867. In its original mandate, by virtue of the regional distribution of senatorial seats, the Senate was designed to be a forum for representing the interests of the components of the federation within federal institutions.

For Quebec, those interests take on special meaning in relation to its national identity. Bill C-20 also raises concerns about the francophone presence in the Senate and the role of this chamber regarding the Canadian duality, a point emphasized in the brief presented to this committee by the Fédération des communautés francophones et acadienne du Canada. The Government of Quebec agrees with this position.

The Senate also fulfils the role of providing sober second thought with regard to the legislation submitted by the House of Commons. This role is reflected in the powers of the Senate, which has to approve every piece of federal legislation. As we know, the manner in which the Senate exercises these prerogatives is largely inflected by the fact that it is an appointment chamber.

Bill C-20 would very likely encourage the Senate to make concrete use of the many powers still available to it, even though there are no mechanisms for resolving a potential deadlock between the two chambers. We were taken aback by the argument that Bill C-20's drawbacks are seen by some as a means, in some ways positive, of destabilizing the status quo, of triggering change. We do not think it is possible to embark upon such fundamental constitutional change in this way, without taking into account the complex connections between the various fundamental features of the institutions concerned.

The Senate exists in a complex and coherent constitutional environment that is tied to considerations underlying the federal compact and the balance of intergovernmental relations. The federal government's current bills are not mere experiments or pilot projects. Were they to be implemented, they could lead to sweeping political changes which we cannot safely assume would be easily adjusted or rectified should the need to do so arise, especially if there were to be unexpected consequences.

● (1610)

What we can foresee, however, are possible impacts of an elected Senate on the balance of intergovernmental relations, without improvement in the defence of provincial interests by the Upper Chamber. The new senators would in all likelihood be less effective in representing provincial interests, for they would tend to integrate with the political dynamic proper to the federal scene, in particular, the dynamic of the federal political parties, even if certain variations on the Australian model, the template for the federal government, have been written into to Bill C-20. Here the comparison is with the Australian Senate, an institution in which partisan polarization is particularly prevalent.

What we should be examining is the impact of the electoral system advocated by the federal government on the basic constitutional mission of the Canadian Senate. When the issue is viewed from this angle, it seems obvious that partisanship within the Upper Chamber would intensify.

The provinces have a direct interest in the unilateral changes the federal government proposes to make to the Senate. The argument to the effect that the process of constitutional amendment is too demanding has no place in a federal system in which constitutionalism and the rule of law are recognized as basic principles. It is an untenable argument in a federal system in which the purpose of more complex procedures for constitutional amendment is to ensure that minority interests are taken into account when fundamental constitutional elements are at issue. Consideration of minority interests is of particular importance for the Quebec nation, given its situation within Canada.

The future of the Senate, and changes to its fundamental features, cannot be envisaged outside of the constitutional context to which it belongs, one of constitutional changes in which the provinces are called upon to share the exercise of constituent authority.

It is odd indeed that we have to engage in a procedural debate on a subject as patently constitutional as the nature and role of the Senate and that we are here to demand that the provinces be part of the process.

The provinces must be participants in reforms pertaining to the fundamental features of federal institutions. Quebec is not averse to the idea of modernizing the Senate. It is aware that its federative partners have certain aspirations in this regard. Naturally, it is interested in the question of the role of the Senate within the federal system, and, notably, that of closer relations between the provinces and the Upper House. But a single Parliament cannot monopolize this undertaking of institutional modernization.

In concluding, allow us to reiterate before this committee the message expressed unanimously by the National Assembly of Quebec in its May 16, 2007 resolution. Bill C-20, which the federal government is attempting to present as a minor amendment over which the federal Parliament would have exclusive jurisdiction, in fact masks an in-depth change in the nature and role of the Senate. Under no pretext whatsoever does such a reform lend itself to unilateral action by the federal government. The provinces, and Quebec in particular, cannot be excluded from fundamental debates concerning the evolution of the Canadian federation.

Thank you.

● (1615)

The Chair: Thank you, Mr. Minister.

We will now begin the question period.

Ms. Folco.

Ms. Raymonde Folco (Laval—Les Îles, Lib.): Thank you, Madam Chair.

Mr. Minister, you had promised us a presentation that would be vigorous, unequivocal, lucid and clear. I must admit that it is all of these things.

Several committee members noted to what extent the process that is being proposed to us would neglect or could forget minorities. I do not mean only the linguistic minorities on a numerical basis—Quebec within Canada—but also the other francophones and the other Canadian minorities, especially people in rural regions who have little chance of being elected in any province that has large urban centres.

As the Minister for Intergovernmental Affairs, you represent the Quebec government before the committee. Could you explain to us what the Quebec government would do if ever Bill C-20 were adopted by the House of Commons and then sent to the Senate? How would the Quebec government react? What kind of role could be played by the Quebec government and the other provincial and territorial governments? I am not asking you to speak on their behalf, but could you give us a picture of what might happen?

Mr. Benoît Pelletier: Thank you.

First, you are quite right in stressing the Senate's important role regarding the use of the French language in the Canadian Parliament.

Of course, the Senate has a historical role regarding the presentation of Canada's linguistic duality, with the presence of two official languages, French and English, as both languages are used in many federal institutions, especially in the Senate. This is something very important for us, especially as francophones and Acadians all over Canada are afraid that if the Senate were to be reformed in the sense set forth by Bill C-20, it would eventually reduce the number of representatives of these francophones in the Canadian Parliament. This would necessarily be a setback for the use of the French language at the federal level of governance.

Moreover, we must emphasize the importance of the Senate for Quebec and for Quebec's representation within the Canadian Parliament. We all know that the Quebec population is not growing rapidly or vigorously enough, which means that Quebec will see its political weight reduced little by little in the Canadian House of Commons, where proportional representation is applied. This is one more reason to ensure that Quebec be well represented in the Senate, that its interests be well served and that we are dealing with a reliable institution that plays an effective role in the Canadian political system. In fact, the Senate can, to a certain extent, mitigate this decrease of Quebec's political weight in the House of Commons, because of Quebec's large share of the Canadian population as a whole.

For us, these are not trifling matters. We are discussing extremely important subjects. Far be it from us to neglect the Senate as an institution fundamental to the Canadian federal system, and especially, I repeat, the role of French on the one hand, and on the other hand, Quebec's specific role in the Canadian Parliament.

That being said, our most fervent wish is that the Canadian government decide on its own to abandon this project, which has taken shape as Bill C-20. If, for some reason or another, it does not intend to abandon it, we hope that it will call upon Canada's Supreme Court to deal with the entire set of issues regarding the constitutional or unconstitutional nature of this bill. Because we are raising issues with the constitutionality of this bill, because certain experts are raising issues about the constitutionality of this bill, it would be wise, I repeat, for the Canadian government to abandon this project. This would be our preferred option, whereby it would address Canada's Supreme Court to get an opinion on the constitutional or unconstitutional nature of this bill.

In my opinion, it is not sufficient to believe that it is constitutional or to believe that it is unconstitutional. In a reform as far-reaching as this one, it would have to be approved by the courts.

Up to now, Quebec reacted strongly to these federal initiatives by tabling two briefs, and I am appearing for the second time on behalf of the Quebec government. I can tell you that if the Canadian government decided to go ahead, the Quebec government would examine all possible scenarios. However, we have not made any firm decisions at this time.

Simply put, we do not see how the Canadian government could do without putting the constitutionality issue before Canada's Supreme Court, given the major impact of any attempt to launch a reform that would ultimately be declared unconstitutional.

● (1620)

The Chair: Thank you. Are you done?

Ms. Raymonde Folco: Yes, that was the gist of my question. I wanted it on the record.

The Chair: Mr. Paquette, the floor is yours.

Mr. Pierre Paquette (Joliette, BQ): Thank you, Madam Chair.

Minister, thank you for coming to testify before the committee.

First of all, I understood from your presentation that, in your view the C-20 will modify essential characteristics of the Senate indirectly since the government—as the government leader said in his presentation—cannot make those changes directly. It is therefore tempting to make them indirectly by putting together a bill which in its opinion does not require constitutional debate to be reopened.

Second, you pointed out that this would result in profound changes to the federal compromise, in which the Senate plays the role of counterweight, as you clearly explained in your preceding answer. Thus, in your view, this is clearly a constitutional issue that would require the federal government to enter into negotiations with Quebec and the provinces so that the changes could be made.??

My first question is this: Did the federal government consult the government of Quebec before introducing Bill C-20?

Mr. Benoît Pelletier: No, it did not. When we saw the first Bill, S-4, which was introduced in the Senate, we arrived at some idea of what might follow. We were not consulted on the content of the second bill introduced, and that bill in fact confirmed what we feared. We feared that Bill S-4, which dealt with the terms of senators, would not be an isolated piece of legislation but would be part of a more comprehensive operation. In fact, that comprehensive operation was confirmed by the introduction of Bill C-20.

Mr. Pierre Paquette: In your opinion, not only would Bill C-20 require the government to enter into constitutional negotiations, but also Bill C-19, in fact all the more so. Bill C-19 limits the term of senators to eight years. Both bills would make significant changes to essential characteristics of the Senate.

Mr. Benoît Pelletier: The two bills are part of the same operation, in our view. If there had only been Bill S-4... At the time, the Government of Quebec had indicated not that it necessarily agreed but that it was at least prepared to tolerate Bill S-4. But when the operation became further developed and took shape in Bill C-43, which then became Bill C-20, we began to envisage its scope. And it is exactly what we feared. Our prognosis was very accurate.

● (1625)

Mr. Pierre Paquette: Does the Government of Quebec not find it somewhat paradoxical to see the government introduce Bill C-19, which is on the length of senator's terms, only a few months after the House of Commons recognized Quebec as a nation? We said that Quebec's political weight was threatened by demographic changes. Quebec was not consulted, and moreover Bill C-20 is being put to us as a step towards the democratization of federal institutions. We are told that Quebeckers would be directly consulted for such things as making a selection amongst the group of potential senators, and yet the federal government does not want to consult the government of Quebec on the process to be implemented.

I must tell you—and I am sure you have noticed— that the leader of the government always refuses to talk about the Government of Quebec, but always talks about Quebeckers in his answer on Bill C-20 and the future of Senate reform.

Don't you find it somewhat paradoxical that we hear them talking about democratization when they are refusing to consult Quebec and the provinces on this matter?

Mr. Benoît Pelletier: I will tell you that we are aware of the will to modernize the Senate that is being manifested across Canada, and to some extent we subscribe to that. The Government of Quebec is not against modernizing the Senate. We say that, if the Senate is to be modernized in a way that affects its fundamental characteristics, that modernization has to be carried out in accordance with established rules. And those rules are constitutional rules. In other words, we are demanding respect for the Constitution of Canada.

Our arguments are based on a premise which we consider to be well-founded and not challengeable. The Senate as such is not a strictly federal institution, or a federal institution in its strictest sense. It is a federal-provincial institution. The Supreme Court said so in 1980. It is an institution that is close to the very core of the federal compromise achieved in 1867, which was federal-provincial in nature, and thus cannot have its essential characteristics modified unilaterally by the Government of Canada. It is as simple as that.

Even if a legal or constitutional expert told me that the 1980 decision no longer applied because the amendment procedures established in 1982 have superseded them, I would still say that the decision contained the following observation: when Canada was created in 1867—I am not talking about 1980 here—the existence of the Senate was one of the conditions Quebec imposed in order to come into the Canadian federal compromise. The same held for the Atlantic provinces. This is a historical fact. Even if it was concluded that the 1980 reference no longer applied, historical reality cannot be reviewed or revised. The Senate is a federal-provincial institution in its essential nature.

That brings us to the second question. Are the bills we have before us substantive enough for us to say that they modify essential characteristics of the Senate? If we conclude that bills C-20 and C-19 do not affect essential characteristics of the Senate, then the federal government's unilateral powers would most likely apply.

If, however, we were to conclude that the bills do indeed modify essential characteristics of the Senate and are substantive, then the rules of procedure for multilateral decisions on modification would perforce have to apply.

This is a bill that will basically change the nature of the Senate gradually, and over time transform it into an elected chamber. Thus, I believe that it is attempting to modify an essential characteristic of the Senate. That is the conclusion I reach. The more we change things, the more multilateral constitutional amendment procedures have to apply.

● (1630)

Mr. Pierre Paquette: I must say that some 80% of constitutional experts who appeared before this committee have held the same views as yourself. Only a very small minority of constitutional experts have said that Bill C-20 is not constitutional in scope. I believe that Quebec's position has been very clearly established.

I believe that Quebec has always made one demand—it would like to designate Quebec senators. Does the Government of Quebec still maintain that demand?

Mr. Benoît Pelletier: Yes. Among all the constitutional models available for Senate reform, we would like one that would eventually transform it into a chamber of the provinces. Originally, the Senate was supposed to be a chamber of provinces, or a regional chamber. It has never really been that, since senators were appointed by the Governor General on recommendations put forward by the Prime Minister of Canada.

We would like the Senate to become a provincial chamber, and the best way of achieving that end would be for senators to be designated by the provinces themselves.

The Chair: Thank you. Unfortunately, you have gone past your time.

Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Madam Chair.

Minister, was the vote taken in May of last year unanimous? Can you say that the two other parties in the Quebec National Assembly hold the same position as the one you have expressed today?

Mr. Benoît Pelletier: I don't know. I just know that all parties have unanimously demanded that Bill C-20 be withdrawn, and that consideration of Bill C-19 be suspended. The reasons for that demand may be different. I don't want to say that all parties are unanimous in their arguments or their reasons, but I don't want to say the opposite either.

Opposition parties in Quebec's National Assembly have never expressed any reservations about presentations I have made in the past on this issue. No one has ever disagreed, or said that my arguments were incorrect, or that I was taking the wrong approach. That has never happened.

Mr. Joe Comartin: I would like to come back to the answers you gave Ms. Folco. Am I right in believing that the Province of Quebec is ready to go to the Supreme Court of Canada to determine whether this bill is constitutional?

Mr. Benoît Pelletier: It would be premature to say so with any certainty at this time. That is one option which is being considered, but no decision has yet been made. It would seem much wiser for the Government of Canada itself to ask the Supreme Court of Canada directly whether its bill is constitutional. I would consider that a much wiser avenue to take, and I would consider it even wiser of them to withdraw the bill completely, since in our opinion the bill is unconstitutional.

Mr. Joe Comartin: Has the province of Quebec initiated discussions with other provinces on modernizing the Senate? Have you had any meetings with other provinces on the issue?

Mr. Benoît Pelletier: Not officially. There have been exchanges of views. The provinces do not all take Quebec's position. For example, Ontario would be in favour of abolishing the Senate, which is not a position we take. On the contrary, as I said at the outset, we consider the Senate as an institution to be important in maintaining balance in the federation. We are very far from demanding that the Senate as such be abolished.

I'm not in a position to say to what extent other provinces share Quebec's point of view. But in my opinion that takes nothing away from our initiative, which is the following—one province, Quebec, is demanding that the constitutionality of this bill be verified. That is the basis of our initiative. We believe that there are unconstitutional aspects to this federal bill. In my opinion, in the context of our federation that is a serious allegation. It goes without saying that it cannot be taken lightly.

● (1635)

Mr. Joe Comartin: Thank you for being here. Those are my questions.

The Chair: Thank you.

Mr. Gourde.

Mr. Jacques Gourde (Lotbinière—Chutes-de-la-Chaudière, CPC): Thank you, Madam Chair.

Mr. Pelletier, thank you for being here today. Your comments have been very interesting.

What are the fears of the Government of Quebec with respect to modernization of the Senate? You talked about them a little earlier, but is there anything you would like to add?

Mr. Benoît Pelletier: First, as I just said, our objective would certainly be to see the Senate become a chamber of the provinces. Now it is very clear that even if, pursuant to the constitutional rules, we were to elect senators for the first time—in a hypothetical case where a constitutional debate would be ultimately followed by electing senators through federal elections—we would most certainly be deviating from our objective of having a chamber of the provinces. This would no doubt strengthen federal democracy. This might even strengthen central power, because we would have two chambers, both of them claiming democratic legitimacy. Nevertheless, the provinces, or at least Quebec, would be far from their objective, which is to change the Senate into a chamber of the provinces. We are afraid that this might be the outcome of this entire attempt to reform and modernize the Senate.

Nonetheless, we strongly support a debate on Senate reform. We understand the ambitions and expectations of some provinces, and other partners in the federation, as well as the expectations of quite a few Canadians who are apparently hoping for some kind of modernization, and there are even many Canadians who want to democratize the Senate. I think that any decisions regarding this must be made pursuant to established constitutional rules. We have nothing against a debate except that, let me repeat, as far as we are concerned, the objective is to establish a chamber of the provinces.

Mr. Jacques Gourde: Regarding the chamber of the provinces, you said a while ago that history has shown that the Fathers of Confederation had wanted the Senate to represent the provinces.

How could we choose senators to represent the provinces?

Mr. Benoît Pelletier: For example, the Meech Lake Accord, which was proposed by a Conservative government, let us not forget, proposed, among other things, that senators should be elected or appointed by provincial legislative assemblies. This might be a mechanism to consider.

Mr. Jacques Gourde: In this way, we would not have any constitutional problems?

Mr. Benoît Pelletier: The powers of the Senate should also be reviewed. We cannot allow a Senate that has been transformed into a chamber of the provinces to have an absolute power of veto on the adoption of federal bills. This would really have to be a suspensive veto rather than an absolute veto.

At this time, we are facing the same problem with Bill C-20, on a more or less short-term basis. Let us suppose that the bill is adopted and that the Senate, bit by bit, is transformed into an elected chamber. This Senate would claim its democratic legitimacy, and then we'll have to settle the entire issue of relations between the Senate and the House of Commons. The Senate's powers could indeed be challenged, in such a situation. There would be two chambers, both claiming democratic legitimacy. Some senators might even claim more legitimacy due to the fact that they have been elected by an entire province.

These issues must not be taken lightly. These are fundamental issues facing federal parliamentarians. Those who are sitting in the House of Commons should get to work on this issue on a more or less long-term basis.

Mr. Jacques Gourde: The powers of the Senate could be interpreted in another way.

● (1640)

Mr. Benoît Pelletier: Excuse me?

Mr. Jacques Gourde: If the situation that you described were to arise, should the constitutional powers of the Senate be negotiated between the House of Commons and the Senate?

Mr. Benoît Pelletier: It is extremely clear that if you wish to amend the powers of the Senate, a constitutional amendment is essential. This is set out in section 42 of the Constitution Act, 1982. Unless there is some nuance that I am not thinking about at this moment, a multilateral constitutional amendment would be quite unavoidable.

Mr. Jacques Gourde: The position of the Government of Quebec seems quite clear with regard to the Senate. You are prepared to modernize the Senate. If another political party were to come to power... We know that the Bloc's position is to abolish the Senate. Does the Parti Québécois want to unilaterally abolish the Senate?

Mr. Benoît Pelletier: I cannot remember whether the PQ has ever publicly stated its position, but I wouldn't be surprised if the PQ takes the same position as the Bloc Québécois. I say this with reservations, because I have not been able to verify this recently.

Mr. Jacques Gourde: So all the political parties in Quebec have not reached a consensus on modernizing the Senate.

Mr. Benoît Pelletier: History shows that unanimity is impossible when it comes to constitutional amendments or the reform of Canadian institutions. Can the political parties reach a consensus, even two of the three parties? I don't know. Is there a consensus among the public? It is possible.

I do not under estimate the difficulty of the constitutional amendment mechanism. However, we did not introduce Bill C-20. This bill presents a problem that affects us and to which we are reacting. I cannot say that these are easy issues or ones that elicit great public interest, particularly not in June.

The Chair: Thank you.

Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you, Madam Chair.

Mr. Minister, thank you for coming. I am from New Brunswick and I am proud to be a neighbour of the beautiful province of Quebec. We also share a historic link as partners in Confederation, with Ontario and Nova Scotia.

I agree when you say that the Senate is an important historical element for these four provinces, who were the first provinces. Furthermore, since I represent an Acadian community, I can tell you that it's extremely important to protect the linguistic rights of francophones.

I have several questions for you with regard to your province's position. First, it's clear that you want the government to scrap this bill. Second, if the federal government does not scrap it, your government intends to appeal to the Supreme Court. However, I am not sure I understand the third point the Government of Quebec has made.

In the event that your government would not appeal to the Supreme Court, would you prefer Quebec to appeal to the Quebec Court of Appeal to get a ruling on this bill's constitutionality? Is that Quebec's position? Or is it too early to say?

Mr. Benoît Pelletier: It's too early because there has been no ruling in Quebec, but we are looking at the possibility of appealing to the Court of Appeal and then to the Supreme Court of Canada. There has not been a ruling on this issue, but anyone familiar with this matter knows full well that the government must consider that possibility.

I repeat that it would be much wiser, in our opinion, for the Government of Canada itself, if it still intends to move forward with Bill C-20, to ask the Supreme Court to rule on its constitutionality. I think that this would be the wisest approach. Furthermore, we are also taking action by making our position clear to federal parliamentarians, who will have a role to play in passing Bill C-20.

● (1645)

Mr. Brian Murphy: I find that fascinating. I read about a senator who said that you intended to fight this bill at the Supreme Court level. Perhaps Senator Brown misinterpreted your sentiments, but he said it was impossible for the Province of Quebec to—

[*English*]

in English, “mount a court challenge for something that's going on in Saskatchewan or British Columbia”.

[*Translation*]

Do you intend to appeal to the Supreme Court or another court to ask for changes to be made to legislation in Saskatchewan, British Columbia, Alberta and New Brunswick? Is that the purpose of your appearance before this committee?

Mr. Benoît Pelletier: We haven't got that far, but we are aware of this new reality, in other words provincial legislation being passed to elect senators. Obviously, we are studying the consequences of all of those initiatives, but we are not at that point in our analysis where we are able to take a position on those specific issues. I cannot then confirm that we will ask the courts to rule on all those questions.

Mr. Brian Murphy: A resolution adopted by the Quebec National Assembly last November states the following:

> [...] that the National Assembly of Quebec reaffirm to the federal government and to the Parliament of Canada that no modification to the Canadian Senate may be carried out without the consent of the Government of Quebec [...]

What exactly do the words "no modification to the Canadian Senate" mean? Does this refer to changes to the number seats or the colour of the walls or, is it clear, in your opinion, that this refers to essential issues related to the nature of the Senate?

Mr. Benoît Pelletier: Clearly, this motion was inspired by the Upper House Reference of 1980. Obviously, we are referring to amendments to the essential characteristics of the Senate. To this end, we defer to the Upper House Reference, which is inspired by common sense. The Supreme Court stated that if it was a matter of changing the paint colour and this did not entail many consequences, the decision could probably be made under Ottawa's unilateral amending powers, but if it was a matter of making significant changes to the House, provincial consent would be required. Why? Because the House in question does not belong solely to Ottawa: it belongs to the provinces as well.

The Chair: Thank you, minister.

Mr. Moore.

[*English*]

Mr. Rob Moore (Fundy Royal, CPC): Thank you, Madam Chair.

Thank you for taking the time to be with us here today, Minister.

What do you think of the current process by which senators are appointed right now? Are you satisfied with it? Do you think it's serving Quebeckers and all Canadians well? What is your assessment of the current process?

Mr. Benoît Pelletier: I think the current process has some value. It brought to the Senate many prominent people, people who have served the country and people who are an asset for the federal Parliament. So there is some value, in my view, in the current appointment process.

At the same time, if you want to change the method of selecting senators, then it is clear that you get into something that needs a constitutional amendment. I'm not even saying this is the case with Bill C-20, because it's very subtle. What I'm saying, though, is that it is substantial enough so that it affects the fundamental features of the Senate, and for that reason the reforms should be done through a formal and multilateral constitutional amendment.

● (1650)

Mr. Rob Moore: Minister, I think you've indicated that you prefer a system of consultation, if there's a change to the method, which directly involves the National Assembly of Quebec. Can you perhaps explain to the committee why you prefer that members of the national assembly of politicians that have been elected to the National Assembly of Quebec would be consulted, but not the people of Quebec in general, or the people in other jurisdictions in general?

Mr. Benoît Pelletier: First of all, if there were a change in order to change the Senate into a house of the provinces, let me tell you that it would be a major change. It probably would require discussions with all the provinces—I'm sure of that—and the federal government too.

Is it a reason for not pursuing that objective? No, but at the same time it is very complex. If you do so, you will have to also affect or change the powers of the Senate. As I said earlier, you would require a suspensive veto instead of an absolute veto, which is the current case for the Senate. It's a substantial change, but it is what we would prefer: we would prefer that the Senate would become a house of the provinces and that the representatives of the provinces in the Senate would be designated by the legislative assemblies in the provinces. I'm not saying that these people would be elected provincially themselves, but they would be representatives of the legislative assemblies in the provinces.

Do you know why I would champion that idea of a house of the provinces? It's because I think the provinces should have a better say with regard to the future of Canada. They should have a better say with regard to the evolution of the Canadian federation. In order for them to have a better say, I think one of the options is to change the Senate into a house of the provinces, but this is a major change. It would be a major change.

Mr. Rob Moore: You made a comment, and I appreciated it, not that it applies directly to this situation. It was that just because something is difficult to do is not necessarily a reason not to try to do it—to try to do something positive to change something.

You've mentioned and given your opinion on the constitutional aspects of this bill, particularly the constitutionality of the bill. We've had here at the committee Professor Peter Hogg, who, as you know, is a leading constitutional expert. He says that the bill complies fully with the Constitution and that in his opinion the bill is in fact constitutional. In light of his opinion that the bill is constitutional and in light of the....

There are varied opinions. You mentioned that some political parties and even some provinces are of the opinion that the Senate should be completely abolished; that's out there. Some people, perhaps with vested interests, believe that for one reason or another the Senate should stay exactly as it is; there is that element out there.

But most Canadians and most people from coast to coast, I would suggest, are not 100% satisfied with the status quo. They feel there should be more input, more democratic input. I also take into account your comment that just because something is difficult is not a reason not to try to proceed with change. What is your reaction, then, to this goal that we proceed with something that gives more democratic input and democratic legitimacy to the Senate, while also weighing the finding from a leading constitutional expert that what we're proposing is in fact fully constitutional?

● (1655)

Mr. Benoît Pelletier: I know that even among the experts there are many points of view. So I ask you, isn't that a reason for clarifying everything and making sure that we do not make any mistakes? That's the bottom line.

As I said, some experts do pretend that the reference of 1980 of the Supreme Court of Canada on the upper house does not apply any more. They pretend that it was replaced by section 42 or section 44 of the Constitution Act, 1982. They look at the bill and say it does not fit within section 42, so it must fit within section 44. But what about section 38, the residual amendment procedure? Why wouldn't that residual amendment procedure apply when a bill affects a fundamental feature of the Senate that is not mentioned in section 42? If it's a fundamental feature and it's not mentioned in section 42, it should not be within section 44; it should be somewhere else. If it's not in section 44 and it's not in section 42, it must be in section 38.

I did not see a commentary that was made in favour of Bill C-20 that could not, on some aspects at least, be put into question. For that reason, I invite you to be extremely cautious, extremely prudent with that matter. Even if the objectives that you, being the federal government, are pursuing might be extremely legitimate, there is a constitutional process in Canada that must be respected. At some point, what you see here is a province that asks for a verification of respect of the Constitution to which it adhered in 1867.

The Chair: Thank you, Minister.

We'll go back to Mr. Paquette.

[*Translation*]

Mr. Pierre Paquette: You reminded us earlier of a demand that Quebec has been making for quite some time now, which is that the provinces be empowered to appoint their senators themselves, to ensure that the Senate is a place that represents the provinces.

We questioned the Prime Minister about this and he responded that he was not in favour of replacing federal patronage with provincial patronage.

How do you react to that statement, which borders on populism? In my opinion, it demonstrates the hard line the Prime Minister is taking with regard to the way he sees Senate reform.

Mr. Benoît Pelletier: In my opinion, Canada could well do with a provincial house that is completely viable and useful, as is the case in other federations throughout the world. In some respects—and I want to be clear that this is in some respects and not entirely—we could use the German model as an example, as it has proven its merits over the years. However, we would need to make various changes to that model, so as to avoid various perverse effects that this model created in Germany.

Furthermore, I want to repeat the importance for Quebec of the Senate. I am not saying this lightly. Quebec feels that the Senate plays an important role with regard to ensuring the balance within the federation.

● (1700)

Mr. Pierre Paquette: If there is to be any Senate reform, the provinces and Quebec must be consulted. Regardless of the changes made, I am convinced that for Quebec, it is an issue of some kind of counterbalance to its presence in the House of Commons.

Earlier on, I read what Mr. Harper was saying about the idea of turning the Senate into a House of the provinces. We clearly sense that the Harper government—and this was also the case with Mr. Van Loan when he came to testify—considers that Bills C-19 and C-20 are a take-it-or-leave-it proposition, in the sense that if they are not passed, they will work to abolish the Senate.

Do you believe that that kind of statement, which in my opinion is almost blackmail, holds water? Should we really be concerned that the federal government, the Conservative Party, could decide unilaterally to abolish the Senate? Is this a credible threat? This would forcibly result in a new round of constitutional negotiations.

Mr. Benoît Pelletier: I think even more experts will tell you that this could only be done under a multilateral constitutional change process. The Constitution already sets out, in section 42, that you cannot touch the powers of the Senate without using the 7/50 formula. If you eliminate all powers, a fortiori, this procedure applies. There are even some experts who claim that in such a case, one would have to evoke section 41, because you would be changing the process for constitutional amendment, which gives the Senate certain powers, a suspensive veto as far as certain constitutional amendments are concerned. Therefore, in all honesty, it seems absolutely unthinkable to me that the Senate could be unilaterally abolished.

Mr. Pierre Paquette: I can assure you that the Bloc Québécois feels that Bills C-19 and C-20 are unacceptable, and that it would be the torch bearer of the consensus of the National Assembly.

I would like to ask you a question that is somewhat peripheral, but that nevertheless is linked to the subject. Mr. Harper and the Conservative government are spending a great deal of energy to reform the Senate through Bills C-19 and C-20. With this vision, they are trying to make any change at all in order to relaunch the debate on Senate reform.

Would it be better for the Conservative government to deploy as much if not more energy in an effort to settle the problem of the federal government's spending powers in areas of Quebec and the other provinces' jurisdictions? As you know, the Minister of Finance and the Prime Minister have announced a bill several times that has yet to be tabled. For the moment, there is some control and they do not have to answer to anyone.

In the short term, should the priority not be to work on attainable goals, such as the elimination of the federal government's powers of expenditure in areas of provincial and Quebec jurisdiction?

Mr. Benoît Pelletier: The Government of Quebec's priority was not Senate reform. It became an issue for us under the circumstances, of course. We have already stated that our priority was to limit the federal spending power in the jurisdictions of Quebec and the provinces. That is our government's stated position.

The Government of Canada has a comprehensive perspective. It sees the demands of the western provinces and must also deal with the interests of several partners, which is perfectly legitimate. It felt that it should make Senate reform an issue. I do not challenge that choice in and of itself, and I do not even question the motivations behind it. However, this must be done within the established rules, which are of a constitutional nature.

Within that context, we have our own priorities, and the Government of Canada has a pan-Canadian perspective of course. I am well aware of the fact that several provinces are asking for a modernization of the Senate. We are not taking this position to annoy them, but to remind them of the importance of respecting the federal compromise of 1867, of respecting the current Constitution and of respecting the role of the provinces within the Canadian federal system.

Mr. Pierre Paquette: Thank you.

● (1705)

The Chair: Thank you.

[*English*]

Mr. Preston, were you on the list?

Mr. Joe Preston (Elgin—Middlesex—London, CPC): I'll give it a shot. I may not have the full time.

I've been spending time at this committee listening to many experts. I thank you for coming today and for sharing the views of your province, Minister. I think it's exciting to hear them and to gather all the information we can gather on this issue.

Many of the people who have come here—and you've joined, somewhat, the chorus—tell us how hard it would be to do what we're attempting to do here, and that's make the Senate something different from what it is today. Is it worth doing? I keep hearing how hard it's going to be. I'm one that likes to grab on to a challenge and say yes, let's do it. If it's worth doing, it's probably because it is hard to do. What's your opinion on that? You keep saying that it's easy to throw the roadblocks in the way of Senate reform or have the change in the Senate we'd like to see. Is it worth doing?

Mr. Benoît Pelletier: I think it is worth trying to improve the Canadian federation. It could be done through different means. Some of these means are constitutional per se, others are not. It all depends.

In the case of our government, in 2003, when we formed the government in Quebec, we decided to work at building a stronger Quebec within a stronger Canada through non-constitutional means. I think we have succeeded pretty well in doing so. Many other things still have to be done in that regard, but we are proud of our success.

At the same time, I should recall, because I said some things can be done without a constitutional amendment and some others cannot be done without such an amendment, that it happens that when the Constitution must apply, the Constitution must apply. The Constitution is like a contract among partners. We feel that at some point, for a fundamental question, that contract should be respected.

One of the values of the current situation, as Mr. Paquette has suggested, is that it certainly revitalizes the debate concerning an institution that maybe we did not talk enough about during the last years and that might have deserved more attention on our part. That debate is very sane, and we are part of that debate. This is why I'm here today. It's worth continuing, trying to improve the federation, respecting the Constitution, respecting the provinces, and making sure that finally we get institutions in which all the provinces and all Canadians recognize themselves. They see themselves. They adhere to it. What concerns us is the adhesion of Quebec to the reform of Canadian federalism seems to be extremely important.

Mr. Joe Preston: You mentioned there, and you said earlier, that you understand Canadians want greater democratization, that it's something Canadians may be reaching for. I agree with something else you said, that perhaps we've left this topic for too long, and it wasn't something that was talked about. We've gone since 1867 to where we are today, and I'm not sure many Canadians say the Senate they currently have matches their views of what democracy is, or where Canada should be. In my mind, we have to get there. I guess the question is, do we take one large jump at it or do we take small bites? They say the best way to eat an elephant is one bite at a time. Is Bill C-20 one of the bites along the way?

● (1710)

Mr. Benoît Pelletier: The end result is that you have eaten an elephant. That's the end result.

Mr. Joe Preston: I may have been accused of doing that before.

Mr. Benoît Pelletier: It is very wise then, very subtle. But is it constitutional? I don't think so. Why would someone be allowed to do indirectly what that person cannot do directly?

In our case, even if it is very subtle, it is important enough for getting a reaction, for bringing us to reacting to the situation and saying that it goes too far. This is something that in our view needs a formal constitutional amendment. That's the point.

At the same time, I know what the aspirations of many people are. I know that. In our society, the Constitution is above everything, and that Constitution should be respected. There are things that we can do together, without the need for a constitutional amendment. We are ready to do so. We are ready to participate in a Canadian project. But when we feel that the Constitution applies, we need to show respect to that Constitution.

If we accept that piecemeal approach, that one-bite-at-a-time approach, what will be next? Will it be the distribution of powers between the federal government and the provinces? Would it be the Supreme Court of Canada? What would be next? At some point there are different things that we cannot accept, because the consequence in the long term would be too damaging to the Canadian federation.

The Chair: Thank you, Minister.

Madame Folco, you have the last round of questions.

[*Translation*]

Ms. Raymonde Folco: Thank you, Madam Chair.

Mr. Minister, Bill C-20, as it is presented, provides for electing senators on a provincial basis, and, it seems to me, also under the aegis and the control of the federal government, because it says, among other things, that the elections to the second chamber—let us call it the Senate—could take place at the same time as the elections to the House of Commons, in each province and according to standards set by the federal government. This is one of the possibilities that the bill provides. The federal government determines the number of electors and the federal government, or at least the Prime Minister, would also choose, from among the elected senators, the persons whose names would then be proposed to the Governor General.

Thus, I think that this provides an interesting combination of procedures. However, I am digressing. Given the fact that the federal level seems to be in control of electing senators to the chamber of the provinces, would you envisage giving a much bigger role to the provinces in electing candidates to the Senate in each province, as Alberta did, for example, during the two past elections it held for senators?

Mr. Benoît Pelletier: This is not a scenario that we are envisaging, because we do not want to authorize a process which, in our opinion, would eventually transform the Senate's mandate by progressively transforming the institution into an elected chamber, without applying any formal constitutional amendment procedures. Therefore, this is not a scenario that we are considering.

If we want to find out what the true pith and substance of Bill C-20 is and what its basic principles are, we are faced with heaps of measures, including the participation of the Chief Electoral Officer, along with rules for counting ballots, electoral expenditures etc. We are obviously dealing with an electoral bill.

Even if we are told that this is meant for consulting the people, it does not, in my opinion, change the basic nature of the bill in any way. Pursuant to Bill C-20, we could tell someone to stand for election in a province, to tour the province while defending his points of view and opinions, and to try to catch the interest of the population—

● (1715)

Ms. Raymonde Folco: Oh no, not a platform, Mr. Minister.

Mr. Benoît Pelletier: I did not use that term.

So, we would tell a person to try to attract favourable public attention, to incur electoral expenditures, to participate in elections, and ultimately, Canada's Prime Minister could say that he prefers some other person who has not been through the electoral test. We are also told that the Prime Minister will keep his discretionary power, that he will always be the one to make recommendations to the governor in council.

Frankly, when the question is put so bluntly, I think that the conclusion is easy to come to.

The Chair: Have you finished, Ms. Folco? Thank you.

I want to thank the minister for sharing his knowledge with all Canadians and for having clarified to us his views regarding Senate reform.

[*English*]

I'm sure, Minister, you felt that you were at a discovery meeting of some pending legal battle, given the questions being posed to you today. Thank you for your patience today.

We have a point of order by Mr. Reid.

I'm going to suspend the meeting for a few minutes so we can bid farewell to our guest. We will come back in two minutes.

Thank you.

● _____ (Pause) _____ ●

● (1720)

The Chair: We'll resume the meeting.

Mr. Reid.

Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC): Thank you, Chair.

I had a point of order. It relates to our invitation to Bill Boyd, the minister responsible for Senate reform in Saskatchewan. My understanding is that an invitation was made by the committee to Mr. Boyd, and my understanding is also that if that invitation were to be renewed, he would be able to come here. I know that there had been some discussion of the fact that he hadn't been here, and I think that may have been the consequence of some kind of communication failure. I won't speculate as to exactly of what type that would be.

I know when I spoke to you earlier today about this, you indicated you were a bit surprised. My understanding is they had not been aware of the invitation until it was too late to actually come, so I suspect there's just been some kind of lapse, and we can all imagine what these things are. We all know what happens with e-mails and so on, or, for that matter, telephone messages. At any rate, if that could be renewed, I think we stand a very good chance of getting Mr. Boyd here.

The Chair: If I could just clarify the situation, there's no question about reissuing an invitation to have the Saskatchewan representative appear. My understanding is that there's a long litany of correspondence with them dating back to March 27.

Maybe it's time we had a steering committee at which we could review the list of witnesses so no one feels there are any surprises on the list. My understanding is it's in accordance with what was determined at that initial meeting. It came as somewhat of a surprise to me when the Saskatchewan representative cancelled on us.

Is there any discussion?

Mr. Murphy.

Mr. Brian Murphy: I would just like to say that I do think it's time we had a subcommittee meeting on witnesses. Obviously there's no objection to hearing from anyone who now wants to come if there was some mix-up. Feel free to blame the politicians. We're okay with that.

The Chair: It's always the politicians' fault, absolutely.

Would you like to have the steering committee before we go to summer recess, or after? What would be more convenient for the steering committee members?

Mr. Brian Murphy: My suggestion, Madam Chair, would be to meet before we break, knowing that we're coming back, as the calendar says, in September and not proroguing.

The Chair: So we could have one on Monday then. Is that agreed?

Mr. Scott Reid: Sure. What time is that normally at?

The Chair: It's usually after question period. That's been the timeframe that is convenient for most members. Is that agreed?

Mr. Scott Reid: Absolutely.

The Chair: You're welcome, Mr. Reid, to look at the notes. There's a litany of notes that my clerk has shown me on that correspondence.

Mr. Scott Reid: Actually, that would be very helpful. I appreciate that.

The Chair: Thank you.

The meeting is adjourned.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

Also available on the Parliament of Canada Web Site at the following address:
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :
http://www.parl.gc.ca
