

of State (Federal-Provincial Relations) disclosed to the Senate last December. At present, there is no provision in the Canadian Constitution which might authorize a province to adopt a legislation making it possible for the people to choose the candidates to be appointed to the Senate. Of course, a provincial premier might suggest names. But in order to adopt such a legislation, a province would need to find the necessary power in Section 92 or some other section of the Canadian Constitution. At present, senators are appointed, just as judges are; it is not easy to see how the process for appointing judges could be changed without an amendment to the Constitution. As far as the Senate is concerned, it is not possible to do indirectly what it is not possible to do directly. That is a principle of law.

Another possible reform is that which was suggested by former Minister of Justice John Crosbie in 1986 in line with that adopted by the House of Lords of the United Kingdom in 1911 and 1949. The Senate would continue to be appointed, but its veto would no longer be suspensive. There exists an anomaly in the Canadian Constitution in this respect. Since 1982, under Section 47 of the *Constitutional Act of 1982*, the Senate enjoys a suspensive veto of only 180 days in respect of Constitutional amendments, while it still enjoys an absolute veto in all other matters.

It is surprising that they did not think of following instead in Canada the British model, when we remember that they had developed the Senate in 1864 on the model of the House of Lords! Of course, it should be emphasized that there are between our two countries major differences. While one is unitary, the other is federal. But I would not reject this solution outright. I am not saying that this is the one I prefer, but that I would not dismiss it without further study.

If the Senate remains non-elective, it could become a House of less partisan legislative counsellors whose main function would be to improve legislation originating in the House of Commons. I think here of the need to respect the Canadian Charter of Rights and Freedoms which is often mentioned in the debates on the Meech Lake Accord.

The Canadian Charter of Rights and Freedoms is very important. The Senate could have the responsibility of making sure that the constitutional rights of Canadians are protected in all legislation of Canada. This is a role that the Senate could easily give itself. We always had senators who contributed greatly to the legislative process. Appointment to the Senate for a given length of time is also an attractive proposition. Furthermore, attendance rules for senators should be much more stringent.

As far as Senate reform is concerned, there are trends. For example, in 1978 and 1979, the Canadian Bar Association and the Pepin-Robarts Commission were proposing a House of the Provinces or the Regions. Former Prime Minister Pierre Elliott Trudeau, through Bill C-78, was suggesting at the time a Senate in which half the senators would be appointed by the provinces and the other half by the federal government, making it a Chamber of the Federation. The model of the time was the German Bundesrat. However, the Bundesrat has its

own history, and the German history is not the Canadian history.

In his book entitled *L'esprit des lois*, Montesquieu warned us against loans. What is good from a legislative or an institutional point of view is not necessarily good on a personal point of view. If there is a similarity between the contexts, we have to give it some thought. If not, we have to be extra careful.

These last few years, we have heard a lot about an elected Senate, even though other possibilities have been put forward. The idea is very good, even fascinating. I do not reject it, but I think that we must be aware of the potential problems. This idea requires time and energy.

Members of the MacDonald Commission agreed that, in any case: "The Senate should continue to perform its useful role of applying basic 'sober second thought' to all legislation and of generally improving legislation."

Will we ever see Senate reform? I think so. We have to keep the doors open, to analyse all solutions. I do not reject any of them right from the start. It is true that Senate reform should not be exclusively a matter for the Senate to consider. However, honourable senators, it would be a good thing if senators started to talk about it among them.

Thank you, honourable senators.

• (1630)

Hon. Azellus Denis: Honourable senators, I have a question for the honourable senator Beaudoin. In an elected Senate, wouldn't minorities be kind of powerless. In other words, if there is an election in each province, and if the majority in one province is, for example, English speaking, then, in all probability, wouldn't only English senators be elected? Wouldn't the same be true in Quebec where, because of its francophone majority, only French Canadians would be elected to the Senate? And if so, wouldn't the French minorities outside Quebec be at a disadvantage? Secondly, what would happen to the other minorities, such as the Aborigines, the Italians, the Greeks, and all the people from other ethnic and political groups who are now represented here because senators are appointed? What would then be their chance to have a representative in the Senate?

Senator Beaudoin: Honourable senators, since the advent of the charters, the Canadian Charter of Rights and Freedoms of 1982, the Canadian Bill of Rights of 1960, and the various provincial human rights codes, perhaps it is before the courts that minorities have had the best protection in recent decades.

For instance, if we check the Supreme Court rulings issued during the 50s, 60s and since, we realize that the rights of Jehovah's Witnesses, for example, the right to equality for men and women, and the rights of aboriginal people have been duly protected by the Supreme Court. Or again, the linguistic rights of Francophones outside Quebec and of Anglophones in Quebec have been adequately upheld by the Supreme Court of Canada. I could refer to a number of Supreme Court of Canada judgments which went a long way towards protecting our minorities in Canada.