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—
Chair

The Honourable Albina Guarnieri

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• (1535)

[English]

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

Pursuant to the House order of reference of February 13, 2008, the legislative committee on Bill C-20 will resume its study of the bill.

Before I give the floor to Minister Van Loan and his officials, I would like to take a few brief minutes to deal with housekeeping matters.

Members will have received their briefing book on the bill, prepared by the Privy Council Office, so we can expect even more profound questioning of the minister.

First, as we embark on our discovery, I would like to welcome our second analyst from the Library of Parliament. His name is Jean-Rodrigue Paré.

A special thanks to the analysts who have prepared this 22-page document. It summarizes the positions adopted by many experts and politicians on provisions similar to the ones we find in Bill C-20.

Secondly, I'd like to remind members to file their witness lists with the clerk. The preliminary one can be sent to her today, and the second and more comprehensive one on Friday. The subcommittee will meet on Monday, leaving time for testimony to be prepared.

That said, I'd like to turn the floor over to Minister Van Loan, Leader of the Government in the House of Commons and Minister for Democratic Reform. He is appearing with two officials: Dan McDougall, director of operations, democratic reform; and Warren J. Newman, senior general counsel, constitutional and administrative law section.

Minister, I understand you have a statement of 10 to 15 minutes. You have the floor. Welcome.

Hon. Peter Van Loan (Leader of the Government in the House of Commons and Minister for Democratic Reform): Thank you very much, Madam Chair.

I also want to thank in particular the members of this committee, because the work you're doing on this bill is very important. It's significant that it was sent not only to a special legislative committee, indicating the importance the government places on this, but also before second reading, so that you have the fullest latitude possible in considering the important question of how to deal with how we select people to represent Canadians in the Senate, and ensuring that they do actually represent Canadians in the Senate.

The bill, of course, is Bill C-20, the Senate Appointment Consultations Act.

Our government's position has been clear on the question of the upper chamber. We believe the Senate must change. We're committed to leading that change. The bill you're studying represents one aspect of our plan to effect that change.

[Translation]

The Senate must change because it is a body that is not elected by Canadians, and therefore, not accountable to the Canadian people.

Quite simply, the Senate is an artifact of a long ago time where aristocrats and nobles wielded influence and power without being accountable.

[English]

Incredibly for an unelected institution, the Senate has powers that are nearly equal to those of the House of Commons. For example, the Senate can block legislation passed by the democratically elected House of Commons. It can compel government officials and Canadian citizens to appear before Senate committees. The Senate can propose and pass legislation and send it to the House of Commons for approval.

[Translation]

As Members of Parliament, I am sure we can all agree that it is utterly absurd for the members of the unelected, unaccountable Senate to have power nearly equal to the equal, accountable House of Parliament that we are all members of, the House of Commons.

[English]

This is not healthy for the Senate, it's not healthy for democracy in Canada, and it's not appropriate for the 21st century. That's why we introduced two bills to create a modern and accountable Senate that is consistent with modern and contemporary democratic values, principles, and traditions.

The first bill, Bill C-19, will put an end to terms of up to 45 years for senators by limiting their terms to eight years. The bill before this committee, entitled the Senate Appointment Consultations Act, is Bill C-20, and it creates a process for giving Canadians a say in who they want to represent them in the Senate by holding popular consultations with Canadians to fill vacant Senate seats.

The bill is carefully drafted to ensure that the Senate will remain a chamber of independent sober second thought and that its essential positive characteristics are maintained.

[Translation]

This legislative proposal is drafted so as not to make any changes that would require a formal constitutional amendment.

[English]

The formal legal method of selection remains unchanged. The constitutional powers of the Governor General to summon Canadians to the Senate and the conventional prerogative of the Prime Minister to recommend appointments are unaffected. The constitutionally stipulated qualifications of senators are maintained, and the consultation process can take account of whatever length of term Parliament ultimately decides to establish for senators. This legislative initiative does not change the constitutional role of the Senate as the arbiter of questions respecting the qualifications of senators.

[Translation]

This bill provides the government with the flexibility to decide whether and when to use a consultation, in how many provinces to hold a consultation during a federal or provincial election, and for how many seats, be they vacant or not. This flexibility is important. It will help to ensure that nominees are available to fill seats as they become vacant.

[English]

For the first time ever, Canadians across Canada will have a direct say in who should represent them in the Senate; however, the bill must become law before that will happen.

• (1540)

[Translation]

That is why, in a serious effort to pass this bill and achieve a modern, accountable Senate, the government asked for this bill to be sent to a special legislative committee—this committee—before second reading.

[English]

We want to work cooperatively with the opposition parties—as we did, for example, on extending the mission in Afghanistan—to bring real change, real accountability, and real progress to the Senate. It's something that Canadian people have been consistently supporting in every opinion poll taken since we formed the government—I suspect, actually, in every opinion poll that might have been taken since slightly after Confederation.

In recent public consultations on democratic reform that were completed last year, 79% of Canadians said they supported electing senators and 65% said they supported term limits for senators. The fact is that support for Senate reform is overwhelming in Canada.

[Translation]

Which is why we have consistently stated that we are open to different approaches on the details of Senate reform, but we will not compromise on one fundamental aspect: the Senate must change.

[English]

However, members of this committee should note that if change cannot happen through reform, if the Senate and establishment

interests demonstrate that they are resistant to the idea of a modern Senate, then we believe that the Senate should be abolished.

It's not our preferred route. We prefer to try to reform the Senate before we resort to abolishing it. But if those vested interests continue to use their unaccountable and illegitimate democratic powers to resist democratization and effectively block it, I believe abolition is a route that Canadians will want us to travel.

[Translation]

At the end of the day, our government is committed to modernizing the Senate to reflect the 21st century democratic principles, values and traditions of our great country.

[English]

I hope that the members of this committee will work with the government in a spirit of good faith to advance this important bill, which is overwhelmingly supported by Canadians, to help create a modern and accountable Senate.

I'd be pleased to take any questions that you have.

The Chair: Thank you, Minister.

Mr. Murphy.

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

Thank you, Minister, for appearing here today.

First, I'm a bit surprised that we're here today talking about meaningful Senate reform when the body of evidence from the Senate—based on previous bills, debates, and testimony—would indicate that there is no consensus on whether this bill is constitutionally valid or on whether it is accepted by the stakeholders, by which I mean the provinces.

In my own province of New Brunswick, it's certainly not clear that you, as the minister responsible, or the Prime Minister have spoken to Premier Graham, who is both Premier and Minister of Intergovernmental Affairs. It seems clear from the words of Danny Williams, Benoît Pelletier, and the list goes on...I don't want to talk about Ontario, because Ontario and your name don't always go hand in glove.

But the simple question is, why are we here when you, in discharging your duty as minister, have not yet had full discussions on Senate reform and this bill with your provincial counterparts?

Hon. Peter Van Loan: Well, I think it's been quite clear, when the bill and the concepts of Senate reform have been studied before, that the approach we're taking is entirely constitutional. As you're aware, if it were to be a major, wholesale change to the composition of the Senate, for example, that would require the constitutional amendment process, the 7/50 formula and the like.

This is not that kind of change. This is a change that's entirely constitutional. That's been confirmed by the strongest authorities in the area of constitutional law in Canada. Peter Hogg, who taught me tax law, who is widely seen as the senior constitutional expert in this country, believes that the bill is entirely constitutional. Patrick Monahan, who taught me contract law and gave me a better mark than Peter Hogg did, is of the view that this is entirely constitutional and appropriate.

If we were to wait to have a consensus among the provinces for how to change the Senate, the wait would be, at least so far, over 140 years. So we believe it's necessary to move forward with change that is constitutional, that is incremental, and that responds to the fundamental lack of legitimacy within the Senate right now.

I will point out that there have already been senators appointed that are the product of a popular election process. That's happened on previous occasions already. One of those, Senator Bert Brown, sits in the Senate right now. I don't know of anybody who suggests that his presence there is unconstitutional. I don't know that anybody thinks it is inappropriate. I think most people regard the fact that there is someone there who enjoys a popular mandate as something that enhances his legitimacy and the legitimacy of the overall body. I think that's how it would be perceived overall.

But I can assure you that on the fundamental question of constitutionality, it's quite clear that this bill—and our proposed incremental amendment is a modest amendment—is entirely constitutional.

• (1545)

Mr. Brian Murphy: I don't think, respectfully, that we're going to agree on the constitutionality. There are many experts on the other side. And I don't think I accept your answer as legitimate with respect to consultation with the provinces.

But let's get into the technical aspects of the bill. In my own province of New Brunswick, there are currently four members of the Senate, out of the nine that are filled, who are francophones,

[*Translation*]

Acadian or Brayon, have a French name or speak French. It is very important for our province to protect minority language rights, in particular the rights of New Brunswick's Acadians.

[*English*]

If we change and go to the mechanics of your bill—and I'm asking this question—and if there were an election/selection in the province of New Brunswick someday during either a provincial or federal election, as the bill purviews, would it be a province-wide election? And would you concede that it would probably mean, in a majority anglophone province, that there'd be very little Acadian minority protection? If that applies in New Brunswick, it might apply to a lot of minority situations with respect to Senate representation.

As you know, there's a much greater degree of female representation—in this, International Women's Week—in the Senate than in the House of Commons. How would you address the issue of minority representation, given your *carte blanche*, opening day, first-past-the-post election process?

Hon. Peter Van Loan: Well, I'd encourage you to actually read the bill, because clearly you haven't. The process laid out in the bill is not a first-past-the-post election process.

Mr. Brian Murphy: No, but it's province-wide, is it not, Minister?

Hon. Peter Van Loan: It's a province-wide, single transferable vote process, which is profoundly different from first past the post, and it results—for example, if you were dealing with a case of four vacancies—in a situation where the number of first choices you would require, or accumulated preferences, or others to drop off would be 25%, roughly a quarter of the population. So from that perspective, a minority is more secure in ensuring that its representation—can be there, if they wish to engage in group voting. I don't want to speculate on that or whether it's appropriate, whether one should go there.

The notion that a benevolent, non-democratic, unaccountable appointment of people, because it might result in increased minority representation, could equally not result in minority representation, depending on who's doing that appointment, is anathema to our democratic system. The logical extension of that argument is, shouldn't we do away with the House of Commons? Shouldn't we do away with any form of democratic representation, because we should simply come up with some format whereby we ensure each minority group has a certain amount of representation and some benevolent absolute monarch should appoint those people? That's the logical extension of that argument.

I think in this day and age people have a right, in a western democracy, to expect their democratic institutions to have a basic level of democratic function. That means the people who are being represented are actually being represented—not that some single individual decided that person would speak on behalf of hundreds of thousands or millions of people, but that those individuals, those people who are allegedly being represented, get to have a say in who represents them. It's a pretty fundamental principle of democracy. I think that when one looks around the world, the countries that have done the best job of ensuring that minorities are protected, that their rights are protected, are those very countries that function in a democratic fashion and let people have a say, because democracy works. People find a way to get along. Democracy works as a way of working out the interests between minorities and majorities, or between various minorities.

I think the track record of humanity is very strong in that regard. Almost every incident of serious persecution we've seen in this world of minorities has happened in systems where that kind of democratic function is lacking.

• (1550)

The Chair: Thank you, Minister.

[*Translation*]

You have the floor, Mr. Paquette.

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

Thank you for joining us. You noted the following in your presentation: "This legislative proposal is drafted so as not to make any changes that would require a formal constitutional amendment". You also stated that the method of selection set out in the Constitution would remain unchanged. You make a number of assertions in your presentation. However, the Government of Quebec does not appear to share your views.

Quebec's Minister of Intergovernmental Affairs, Mr. Pelletier, when commenting on bills that had preceded S-4, and C-43, which later became C-22, observed that taken together, the two bills substantially altered the balance between the House of Commons and the Senate, as well as the balance between federal and provincial institutions.

In his view—I share his opinion, obviously—the federal government and the House of Commons cannot act unilaterally to amend the Senate particulars set out in Bill C-20, because any change of this nature requires constitutional negotiations. In its submission, the Quebec government made specific mention of the Supreme Court's ruling on Parliament's jurisdiction over the Upper House and on major changes to the essential character of the Senate which cannot be made unilaterally.

Have you discussed Bill C-20 recently with the Quebec government? Has the Quebec government possibly altered its view that changes of this magnitude require constitutional negotiations between the federal and provincial governments?

Hon. Peter Van Loan: Thank you, Madam Chair.

Quebec's position on this issue and on Bill C-20 is no secret to us. It is critically important for us that Quebec have a voice in selecting the people who serve in the Senate.

[*English*]

We believe that in terms of consultation, this is a bill about consultation. This is a bill about asking Quebecers who they want representing their province in the Senate. Of course, the approach right now doesn't ask Quebecers that. A Prime Minister essentially gets to decide who will represent Quebecers, a Prime Minister who very well might not be from Quebec. In our view, we think that Quebecers will be much better served if they actually have a say.

In terms of what the Province of Quebec thinks of the appropriateness of an unelected upper house, I simply go back to what the Province of Quebec did itself. The Province of Quebec had a bicameral process. It had two houses. But in 1968 the Province of Quebec said that in the modern era, after the Quiet Revolution, where one is trying to strengthen and enhance democracy, the notion of an unelected second house was simply unacceptable. Quebec made its decision in 1968 that the day of the unelected, unaccountable upper chamber having full legislative authority was long past. That's why in 1968 that province chose to abolish its upper chamber and it now has a single chamber. I think that is a clear indication of the position of Quebec on what it thinks of the notion of an unaccountable, unelected upper chamber.

• (1555)

[*Translation*]

Mr. Pierre Paquette: If you were to poll Quebecers, you would discover that no one is losing sleep at night wondering if a public

consultation should be held to select a senator. However, you would learn that most people feel the Senate should simply be abolished and that the proposed changes will make absolutely no difference because this institution had outlived its purpose. Furthermore—and this was the opinion expressed by the Government of Quebec in its submission—the bill would alter the balance of power between the provinces and provincial and federal institutions. For that reason, constitutional negotiations are needed. We have said many times that these changes cannot be made unilaterally by the federal government and the House of Commons.

You mention that Quebec effectively did away with its legislative chamber in 1968. That is not a good example. The province of Quebec is part of a larger federation comprised of federal and provincial jurisdictions. As such, federal parliamentary institutions cannot be amended without the consent of the provinces.

The National Assembly unanimously passed a motion calling on the federal government and the Parliament of Canada not to make any changes to the Canadian Senate without the consent of the Government of Quebec and the National Assembly. This motion was forwarded to the government and as far as I know, neither the National Assembly nor the Government of Quebec has changed its position on this matter.

If the Government of Quebec opposes Bill C-20 on the grounds that constitutional negotiations are needed, along with the consent of the provinces to the proposed Senate changes, will the government be prepared to move forward if Quebec, which has been recognized as a nation within Canada, is not on board? Quebec's opposition should, in our opinion, be equal to a veto. Would you be prepared to forge ahead without Quebec's support?

[*English*]

Hon. Peter Van Loan: There are so many questions here, I don't know where to start. I'll simply go back to what I think is the core question of how Quebec is best represented in the Senate.

My view is that Quebec is certainly better represented in a Senate where Quebecers get to have a say in who represents them. There's every possibility of a government, of a Prime Minister, in this country, having a minority status position, and for example, not representing a single seat in the province of Quebec, yet that Prime Minister being the person who decides, under the current rules, who will represent Quebecers. I think that situation is one that can cause a lot more tension in the country than an alternative situation where the people of Quebec are asked who they would like to see representing them in the Senate.

I think the opportunity of a people of a province having their own say is a far superior approach than maintaining a system that's unaccountable, where they are denied a say, or frankly, right now, where the province is denied the say. Under the current law, a province doesn't get to appoint its representatives in the Senate. There is no provincial power being protected by keeping that authority solely in the hands of a Prime Minister and not having the opportunity to ask the people of that province who should represent them.

I don't see any derogation of the powers of the province. There is no effort to limit or alter this level of representation in the Senate. Instead of asking someone who, say, might be a Prime Minister from Manitoba who should be representing Quebec, we ask the people of Quebec who should be representing Quebec.

The Chair: Mr. Martin.

Mr. Pat Martin (Winnipeg Centre, NDP): Let me say first, Minister, that I'm very pleased we're dealing with this matter today. I find Bill C-19 and Bill C-20 very interesting, and I admire that your government is taking this on. You will know that in the history of my own party since the 1930s, one of the basic tenets of the CCF was to abolish the unelected Senate. That language is important. We reaffirmed that at our most recent convention in September 2006, to abolish the unelected Senate. I don't know what the opinion of my party would be if someone came up with a motion to abolish the Senate; I don't think it would be a view that is as widely held within the party.

I note that there have been 13 efforts to reform the Senate since 1900, all of which have crashed and burned after various periods of time. As a starting point, I think my party would have liked a nationwide referendum on whether we want a Senate at all. In fact, we put an opposition day motion forward to that effect recently.

Has your government contemplated a consultation of that kind in the lead-up to this legislation?

• (1600)

Hon. Peter Van Loan: Certainly I can tell you that has been contemplated and considered. What is common between the position of the government and your party is that an unelected Senate is not justifiable; a Senate that is entirely undemocratic and appointed without any accountability to the people is not acceptable in a democratic society.

Our hope, obviously, is that we can salvage the Senate by introducing a democratic element that has been absent until now by asking Canadians who they want to represent them. We think that kind of incremental improvement should be given an opportunity. We know there are some parties that don't want to see that opportunity because the Senate has served their interests very well, but I think it's difficult for anybody to seriously make the case, in the year 2008, that there is something inherently democratic about an unappointed and unaccountable Senate.

Mr. Pat Martin: There's also something very democratic about asking the people what they think. Even Hugh Segal, a Conservative senator, who everyone agrees is a very hardworking senator and probably uses his office well, says there is nothing radical about asking people what they think. He is advocating that there should be some kind of referendum.

I'm concerned that this will be the fourteenth failed effort to reform the Senate. There are people who think you're setting it up that way because it might be worth more to you at the next federal election campaign to point to the big bad parties that wouldn't let you reform the Senate. Let's put our cards on the table; that's what people are saying.

Hon. Peter Van Loan: I can assure you that our intentions to see a modernized Senate are quite sincere. But I can also assure you that if those efforts prove to be frustrated, our preference is not to go out

there and complain about it; our preference would be, if it is fully blocked, to go the path that your party indicates and ask Canadians to explore the options for abolition. Perhaps that's something that this committee, in its wisdom, can look at as well.

We've given you broad latitude by putting this here before second reading. Perhaps that whole issue is something that can be canvassed as part of your study: whether abolition is the appropriate step right now or whether reform change in terms of democratization of the Senate is an appropriate step to take. Between those, I think honest, intelligent debate could take place. I think that would be worthy work for this committee.

What I fear will happen, and I hope it won't, is that those who like an unelected, unaccountable Senate because it serves their political ends—it's a great place to pay off your buddies who have done working campaigns and so on—

Mr. Pat Martin: Let's not go too far down that road. You have Michael Fortier sitting in the unelected Senate right now, Minister.

Hon. Peter Van Loan: There's someone, again, who has, I think, a philosophy not too far from yours on the functioning of the Senate.

• (1605)

Mr. Pat Martin: That's true.

Hon. Peter Van Loan: He's made those views clear—that it has to change, that it can't continue to function in this way—and he is quite prepared to submit to an election to the House of Commons.

What I fear from this committee is that people will hide behind questions like consultation with the provinces or other specious arguments to fail to deal with the fundamental one about democracy. You can say we don't need to have elections, we don't need to be democratic, or whatever other trivial argument you can come up with.

I think democracy is a pretty fundamental question.

Mr. Pat Martin: I don't disagree.

Hon. Peter Van Loan: It's pretty fundamental in the 21st century, in 2008, whether it takes the form of democracy in the selection of senators, in recommendations of who should be representing people, or in the form of asking Canadians if they think the Senate should even continue to exist. There has to be a process where the Senate is no longer a private arrangement between a Prime Minister and whoever he or she decides to appoint to the Senate, but where it is an arrangement between the people of Canada, who are allegedly being represented there, and their representatives.

The Chair: You have a few minutes remaining that you can usurp, if you choose.

Mr. Pat Martin: I can certainly use it, thank you.

What would be the steps if you're still in government by the time this crashes and burns? What steps and what process would you take to abolish the Senate?

Hon. Peter Van Loan: That's a hypothetical question. We prefer to go down the path of trying to get incremental reform. If this committee's wisdom is that it's not something that's achievable, and this committee makes recommendations on how to proceed with asking Canadians about abolition, or if there's a suggestion out of this committee to ask Canadians which they prefer—a Senate that's elected, a Senate that doesn't exist, or the status quo—perhaps that's something this committee can suggest be put to Canadians in the form of a consultation.

I've come here, however, with the suggestion that this is a worthy incremental reform that will help to solve many of the problems with the lack of legitimacy of the Senate today. If you have, for example, better ways of electing people, if you want to use a different system from the one that's proposed in the bill, that's something worth talking about. Those things are all up for grabs.

But I think it's incumbent upon the people on this committee to wrestle with the fundamental questions and the philosophy and make real recommendations for how we can modernize a Senate that's well past its appropriate date.

The Chair: Thank you, Minister.

Mr. Lukiwski, over to you.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Thank you very much, Chair, and thank you, Minister, for being here.

I have a couple of observations and a question.

Minister, I suppose the first thing we all have to recognize here is that although we have talked about consultation with provinces and consultations with others, the really determining factor of whether any legislation gets through the committee level is how the elected representatives from each party vote on the proposed legislation—whether they gut the bill, whether they amend the bill slightly, or whether they vote up or down.

One of the benefits of this committee and of bringing it to a legislative committee is that hopefully we will be able to determine, in fairly quick fashion, the position of all of the respective parties in the House of Commons. I, for one, learned something already today, because I was always of the assumption that the New Democratic Party was in favour of abolishing the Senate per se. I don't know if nuanced position is a fair commentary or not, but to say, in Mr. Martin's comment, that they're in favour of abolishing the unelected Senate is something that I quite frankly didn't realize. In my home province of Saskatchewan, our former premier, a New Democratic premier, had been on record many times saying that their position was in favour of abolishment of the Senate, period, not the unelected Senate.

My point is that we have to first determine, I believe, to make any progress here, if this committee is going to sit a long time or a short time, what the positions of the parties represented on this committee are. I do not know yet the official position of the Liberal Party. I am hopeful to find that out. I'm not sure about the official position of the Bloc Québécois. I know now the official position of the New Democratic Party. I think your characterization of the position of the Conservative Party is quite accurate. We are looking to make fundamental changes, perhaps modest to start with, but some

fundamental changes in the democratization of the Senate. I totally agree with that.

My fear is that if we go down the path—and you mentioned it in your opening statement—of widespread consultation with the provinces in terms of allowing the provinces to hold their own consultations, we may end up in the same position as we're in right now after 140 years. I think the positions of most provinces are fairly clear because they've made comments as to their views on the Senate time and time again. Those views, of course, change from time to time with the change of political parties that govern the party of the province. I mentioned my own province of Saskatchewan, with its former NDP government in favour of abolishment. I do not know the views of the current Saskatchewan Party government on the Senate.

I would hope this committee doesn't just say, look, in total we have adequate consultation with the provinces; we really can't proceed any further. I think it would be incumbent upon this committee to engage in those consultations. After all, when studying legislation, all committees do widespread consultation with stakeholders. I would like to think this committee can engage in its own consultations with the provinces.

Having said all of that, my question to you is, can you inform this committee as to some of the views on Senate reform of the provinces you are aware of?

• (1610)

Hon. Peter Van Loan: There is a diversity of views among the provinces. You're quite right that those views and positions of the provinces tend to change following changes in election. There are a number of provinces obviously that are quite open to consultation. The Government of Nova Scotia has indicated it. The Government of Alberta actually has a law that provides for it already. A number of provinces have indicated the desire for abolition. Those include British Columbia and Manitoba, for example. The position of the others tends to be mostly in a category that they want to see the Senate change, but it needs consultation and they're not clear on what that change should be.

If you get the essence of what we're talking about here, this is consultation. I'm not familiar with any government that takes the position that a purely appointed body is preferential to a body that has a democratic element to it. I stand to be corrected on that, but that is my reading of the positions of the provinces thus far. Most have provided comments, obviously, but there have been recent changes of government and we are awaiting newer comments.

Mr. Tom Lukiwski: I don't know what the definition of consultations is, but would it be fair to say that you have a fairly good idea of each province's position on Senate reform? If that is an accurate statement, would it then be fair to say that the majority, if not all, of the provincial positions would be that there needs to be something other than the status quo, which would then allow this committee to go forward in that spirit, looking for alternatives to the status quo?

Hon. Peter Van Loan: I don't find anyone arguing that the status quo is appropriate. I stand to be corrected, but that's my reading on the positions. All of them think that some change should occur.

What's significant is that we are not looking at changes that would, for example, affect the relative levels of representation of the provinces—the say they have. Some provinces, for example, would prefer to see the provincial government have a direct say in who represents in the Senate. We think it's better to ask the people of that province. That does the trick and is more democratic. To the extent that there's a desire to see the Senate as a representative body of the regions, it ensures that the people of those regions or provinces have an opportunity to say who they want to represent them.

The Chair: Madam Fry.

Hon. Hedy Fry (Vancouver Centre, Lib.): Thank you very much, Madam Chair.

Someone was asking how the Liberals stand on this issue. I think most of us agree, because the Liberal government brought forward particular bills in the past on Senate reform.

One can't dismiss the concept of process in this, and bringing a process from a group of people who believe there should be reform of the Senate. Many of us who spoke very movingly in favour of the Charlottetown accord in the old days, as I did, certainly look at some of the triple-E reforms we talked about. The question is, how do we do this?

We know that scholars have sat on one side or the other of this debate. In 1980, the Supreme Court said that Parliament could not change the fundamental characteristics of the Senate without first getting the Senate to agree that this should be done. Then we had the 1982 Constitution Act, in which it was said that one could amend the Constitution with regard to the Senate, but there was a way of doing it. The process had to have three conditions, and I would like to add that those conditions were fulfilled in the Charlottetown accord. They said that at least two-thirds of the provinces must agree, the Senate must agree, and a minimum of 50% of the population of those provinces must agree.

When we talk about democratic change, we have to ask ourselves first and foremost whether the end justifies the means. If we don't look at what the Constitution tells us we should do, or if you want to sit on the other side and look at what the Supreme Court says we should do, then we need to have a different process. I don't believe that Parliament has it in its power to do this alone. The whole way of amending the Senate, as set out in the Constitution Act, is a good one.

My question comes back to what everyone says. We cannot—no matter how much we wish to as government—do something that is unconstitutional unless we're prepared to open up the Constitution and go into that big debate. I don't think anyone here is suggesting that; however, we can look at many different ways of electing the Senate and of achieving a new type of Senate reform that don't have to go against the constitutional amending processes.

My big question is whether this is the appropriate way to go about it. Is this legislative Bill C-20 an appropriate way? How do we go about getting two-thirds of provinces and 50% of the people to agree? How do we get the Senate to agree?

We cannot do this on our own, and that is my point. Much as I would like to see the triple-E Senate looked at, this is not the process.

My concern is that when we speak of democracy we do not do something that is fundamentally undemocratic.

● (1615)

Hon. Peter Van Loan: Of course this bill does not propose a triple-E Senate or anything of that type. The incremental change we're proposing here falls far short of the kind of change that was reflected in the agreement of the Charlottetown accord. It is a change that respects the basic constitutional cornerstones of the Senate right now and, as a result, doesn't require the provincial consultation that is contemplated by the amending formula right now. It's simply not that scope of change.

I will remind you that there has been change before to the provisions relating to the Constitution. The issue of retirement age has been introduced. That's something that affects the qualifications for membership in the Senate. That's a provision that's covered in the Constitution.

Hon. Hedy Fry: The Supreme Court actually said that could have been done. So again—

Hon. Peter Van Loan: If I could finish—

Hon. Hedy Fry: I would like to get some other questions in rather than—

Hon. Peter Van Loan: —that's the point I'm making. This amendment—

The Chair: Could we just have a little bit of pity for the translators?

Hon. Peter Van Loan: The bill that we are dealing with, that's in front of you, falls into the exact same category of a change—

Hon. Hedy Fry: Some people disagree.

Hon. Peter Van Loan: —that can be undertaken by the government, by the Parliament of Canada, without the need to resort to provincial approval to that broader constitutional amendment process. It's a very modest change, a very incremental change, and it doesn't cross into that realm.

This nice gentleman here from the Department of Justice is happy to validate that for you. I know that the Liberal Party is always very interested in the views of the Department of Justice on whether these matters are constitutional. Since that's your question—whether it's constitutional, whether it's an appropriate way to proceed—I'll simply ask him to add his comment.

Could you answer that question, Mr. Newman?

Hon. Hedy Fry: Madam Chair, may I—

The Chair: I will give you time to rebut, but can we have a little bit of pity for the translators who are trying to cope with the interjections?

Hon. Hedy Fry: Madam Chair, this is not a debate—I don't intend to rebut—but I heard what the minister said with regard to my answer. I got it. I don't need someone to continue to tell me what he says he believes. I want to ask another question.

Hon. Peter Van Loan: I thought it would help to hear from the Department of Justice on that.

Hon. Hedy Fry: This is my time.

Mr. Warren Newman (Senior General Counsel, Constitutional and Administrative Law Section, Department of Justice): I'd be happy to add, just very quickly, that this bill does not contemplate a constitutional amendment. This is not an amendment to the Constitution of Canada. It is legislation enacted in relation to the Senate, but it is not a constitutional amendment.

Even if it were framed as a constitutional amendment, under the amending processes not all constitutional amendments must be made in relation to the Senate under the 7/50 procedure, which is the general amending formula.

In fact, section 44—I hate to get technical—is the default procedure. Parliament may make laws amending the Constitution of Canada in relation to the executive government, the Senate, and the House of Commons.

Thirdly, just in terms of how we get where we want to get, we should bear in mind that were we ever to go to a 7/50 amendment, the Senate does not have an absolute veto over 7/50 amendments. So the way is not necessarily blocked entirely. The Senate has a suspensive veto, a 180-day veto.

• (1620)

Hon. Hedy Fry: Madam Chair, do I have some more time? Thanks.

What I'm trying to get at is that if we're going to say that we have circumvented the requirements because we're not making a major constitutional change with regard to that...although some people would argue that there is a fundamental change. The way the Senate will be elected and the way the Senate will work is changing the fundamental characteristics of the Senate.

But I want to ask this question. The words “democracy” and “democratic” have occurred very often in the minister's speeches—on this issue, anyway—and I think we have to think of the principle of being democratic. You cannot leave out the provinces if you're going to be democratic. This is a fundamental change to the federation and to the way that institutions of Parliament are going to be able to function. We need to ask the people, and we need to ask the provinces. This may not be constitutionally needed if you want to circumvent it, but you cannot do things and change fundamental things by stealth. You have to do it in an open and democratic manner if you truly mean that. You can't do it without the provinces. The provinces should be consulted, should come onside, should decide whether they even want to go down this road. The people should decide whether they want to go down this road.

So what I am saying is that if you're going to be democratic, let's be democratic in the sense of what government can and cannot do—and should and should not do—in a democratic manner.

The Chair: Madam Fry, do you have a quick question?

Hon. Hedy Fry: No, I wanted to get to the point that I was trying to make—namely, let's be democratic in how we do this. We can't leave the provinces out.

I don't know if the minister believes it would be democratic to leave out—

The Chair: Your time has expired, but I will give the minister a chance to reply, if he chooses.

Hon. Peter Van Loan: Very quickly again, this is a bill that is entirely within the exclusive jurisdiction under the Constitution of the Parliament of Canada. Just as we would on any other item of legislation.... And a province might have an interest in airports, a province might have an interest in a military base, but the reality is that those are matters of exclusively federal jurisdiction.

Certainly there's an opportunity to comment, but our real desire is to consult with the people of the provinces. That's what this bill is all about. Let's ask the people of the provinces who they want representing them. If you really believe that asking the people what they want is important, then you'll support the bill on that basis.

The Chair: Thank you, Minister.

We'll go to Mr. Reid.

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

I have a question, but first I want to briefly comment on the initial comments Mr. Murphy made. He made an observation that I think roughly translates as saying that we can't rely upon electorates to vote for people who aren't members of whatever the local majority population is. He gave the example of it being unlikely that New Brunswickers would vote for senators who were members of that province's francophone minority, because the province has an anglophone majority.

I just note, for the historical record, that the province did of course elect—it must be 35 or maybe 40 years ago—Louis Robichaud as premier. He of course was a member of the Acadian minority. And he actually was not a one-off in that regard, either. So this does happen.

By the same token, my colleague Mr. Lauzon, a franco-Ontarian, is in a riding that's more than half anglophone. My colleague Mr. Mark is from Dauphin—Swan River—Marquette, a riding in which the majority of the population most emphatically is not Chinese-Canadian. Brian Mulroney was elected and is of course an anglophone representing a virtually homogenous francophone riding.

So there is precedent to suggest that in democracies, people will often vote for the best representative, without regard to their ethnic or other characteristics. That's just an observation.

The question I actually have is on an entirely different matter. Mr. Newman raised an interesting constitutional issue, and that is that the government currently has two pieces of Senate-related legislation before the House of Commons. One is the matter we're dealing with now, and it's ordinary legislation. One is a proposal to have eight-year terms for senators, and that is being dealt with as a section 44 amendment.

I just wonder if we could have a brief explanation as to why one path has been chosen for one of those pieces of legislation and the other path has been chosen for the other piece of legislation.

• (1625)

Mr. Warren Newman: Sometimes this is a question of legislative drafting, but I don't think that's necessarily the case here.

In some cases, it's quite clear that one must proceed by section 44 of the Constitution Act, 1982, because one is seeking to amend textually the Constitution of Canada, that is, the Constitution Act. That is certainly the case with Bill C-19. It would effect an amendment to the very text of the Constitution Act, 1867.

In this particular case, first of all, our view is that this is not a constitutional amendment in the sense in which that is understood in the amending formula. That is, it does not purport to amend a provision of the Constitution of Canada. What it does do is take the provisions of the Constitution as a given—the formal appointing process, the summoning of senators by the Governor General, and the conventional role played by the Prime Minister—and provides a mechanism or a process by which the democratic principle can play on that choice of senators. So it is not proceeding via section 44 of the Constitution Act, 1982.

Some would argue that any organic legislation is, in a sense, constitutional in a small *c* sense. It's all part of the common law Constitution, if you will. And there are many statutes, including the Parliament of Canada Act, that have that organic character. But this is not, as I say, a constitutional amendment the way Bill C-19 is.

Mr. Scott Reid: Thank you.

This is a very brief question. Again, this is for Mr. Newman.

I got the impression from your comments earlier that it's not inconceivable that one could actually deal with this in either way, that it's possible to merge items that are constitutional and non-constitutional in the same piece of legislation. Is that correct, or did I misunderstand that?

Mr. Warren Newman: Well, it would be possible to have a bill that, as a vehicle—and it's been done in the past—proposes an amendment to the Constitution Act, 1867, that is textually, and also provides for other provisions.

In fact, if you were to look at the Nunavut Act, you would see that it has amendments that amended the Constitution Act, 1867 by adding a senator for Nunavut and representation in the House of Commons. Those were actual textual constitutional amendments. And then it went on to provide for the Government of Nunavut in the Nunavut Act.

So you can have a bill that's a vehicle for that. But this is not what has been attempted here, and I think the government's position both on this and on the previous bills, Bill S-4 and Bill C-43, is that these are independent legislative measures. They go towards a broader view of reforming the Senate, but they stand alone, and they stand on their merits to be voted up or down accordingly.

The Chair: Thank you, Mr. Reid.

Madame Guay.

[*Translation*]

Ms. Monique Guay (Rivière-du-Nord, BQ): Thank you, Madam Chair.

Earlier, Tom asked about the Bloc's position. As far as the Senate is concerned, the Bloc's position has not wavered. Bloc members believe, and will continue to believe, the Senate is an outdated institution that should be abolished.

As it is, it is very difficult to work on a bill in the House of Commons. The bill goes to committee and comes back before the House. More speeches are made. The bill is then sent back to committee where a vote is taken. Finally the bill is sent to the Senate which then goes through the exact same motions. It can destroy all of the work that has already been done. It's as if our efforts are all for naught. To our way of thinking, the Senate is an outmoded institution.

I have personally done a little experiment. I asked some Quebeckers if they knew who their local senator was. No one was able to give me the name of the senator representing the Laurentides region. Senators do not make any kind of representations and they are not required to make any. They are paid quite handsomely, just as we are. However, we must work on behalf of our constituents and do our job as Members of Parliament. We are required to be in the House at least four, and sometimes five, days a week. Senators, on the other hand, come and go as they please. As far as we are concerned, the Senate is truly a pointless institution.

There are also costs associated with the Senate. Keeping senators in business is a very costly proposition. There are 100 of them and they receive hefty salaries. This money could be put to better use. Maintaining the Senate is a useless exercise, in my opinion. That's all I wanted to say.

I agree that the provinces must be consulted. You are well aware of Quebec's position. No decision can be made without consultations. You maintain that there is no need to amend the Constitution. However, I feel that we need to take a look at the Constitution, because the federal government cannot simply change everything. If the provinces are not on side, when the next election rolls around, you are going to encounter people who will not be very happy. In my view, this approach is unnecessary and counterproductive.

You yourself said in your speech that you are prepared to abolish the Senate. I don't see how we can agree on this. You said that it could take 140 years. The debate may last another 140 years, because if the topic of discussion is the Senate, we can be sure the Senate will kill any debate. And once again, we will be left spinning our wheels. I'd like to hear your views on this matter. It's not that we want to act in bad faith. It's simply a matter of where we stand, or where Quebec stands. If you were to put Quebeckers to the test, as I said, you would be surprised by their answers.

● (1630)

Hon. Peter Van Loan: If we were to ask Quebeckers who they would want to represent them in the Senate, that would be a consultation.

[*English*]

I find it hard to believe they would be unhappy to be asked that question.

[*Translation*]

Ms. Monique Guay: I don't think so, because Quebeckers don't want a Senate in the first place.

[English]

Hon. Peter Van Loan: As for your general comments about the role the Senate plays and whether it's valid, whether it's appropriate in this day and age, I think that's a very valid position. I can respect that position. I think it would be foolish to suggest that's a view that is not widely held by many. I think, unfortunately for the Senate and for all of us who function in this Parliament, there's an attitude of disrespect towards the Senate because it lacks legitimacy. Perhaps the only solution to that is abolition. We still think the approach of fixing it is a better approach. Canadians have been asked in opinion polls, and they're of the same view.

However, support for abolition exists and appears to be growing over time: if you went back to June 2006, abolition was at 31% in an Ipsos-Reid poll and by November of last year the support for abolition had gone up to 46%. That's almost a 50% increase—over the space of two years of this government—in the number of Canadians willing to say that abolition is an alternative they would support. No doubt it is a product of how Canadians have seen the Liberal-dominated Senate conduct itself with respect to a lot of government legislation, and in particular, I think, some of the reform proposals.

That being said, there is a much larger number of Canadians prepared to support the notion of direct elections or some kind of consultation on who they would like to see representing them in the Senate. In four different polls between December 2006 and February 2008, you see a range from 63% up to 79% saying they would support changes to the Senate of that type. There are similar numbers on the question of term limits, which is the subject of the other bill.

I take from that popular indication that the one thing there is virtually no desire for is the maintenance of the Senate as it is now. People prefer, as this government does, to see it changed and reformed, but if they can't see it changed or reformed, they seem increasingly willing to consider abolition.

•(1635)

The Chair: Thank you, Minister.

We will proceed with Mr. Hill.

Hon. Jay Hill (Prince George—Peace River, CPC): Thank you, Madam Chair.

And thank you, Minister and colleagues, for appearing today on this important piece of legislation.

Perhaps I'll start with a few comments about some of the earlier questioning and comments made by some of my opposition colleagues. First of all, I think it was pointed out by you, Mr. Minister, that British Columbia's position is for abolition. That certainly wasn't always the case, and I want it on the record, since we're here today, that my home province of British Columbia did have legislation at one time to allow the province to conduct Senate elections. My understanding is that this has now expired.

But I can tell you, certainly in my constituency up in northern B. C., in the rural areas, there's a desire to see a reformed Senate, and I hope some day there will still be folks who are strongly supportive of a triple-E Senate, which is an elected, equal, and effective Senate. They would certainly dispute some of the comments being made,

especially the ones just a few moments ago by my colleague Madame Guay from Quebec, suggesting there's no value to the Senate.

When we look at this legislation, I think we need to look to the fact that those who support reforming the Senate believe there is an inherent value in having an upper house to safeguard the less populated regions of the country, especially a large, diverse country like Canada where, if you had just a single house, you'd have situations, I'm sure, where the will of the majority would override that of the less populated regions.

That's why many people, many Canadians, as you just noted in your poll, still strongly support reforming the Senate as opposed to abolishing it. I wanted that to be on the record, Madam Chair, on our opening day of deliberations.

Following the comments of Madam Fry, the other thing I wanted to note is this whole business that if we believe in democracy, why wouldn't we believe in wider consultation with provinces and all Canadians? Certainly, being an old Reformer myself, I'm not averse to that at all; in fact, I strongly support consulting widely with Canadians on this. But I think that is a smokescreen for simply more delay.

I only need point to my service of over the past almost 15 years in this place and the past prime ministers, both Chrétien and Martin, who continually refused to move on any Senate reform by saying they wouldn't do it piecemeal, and that was their code word for doing nothing.

Quite frankly, most Canadians I talk to, certainly in western Canada, certainly in my home province of British Columbia and mostly in the rural areas of those provinces, are strongly supportive of change. They want to see the Senate changed. They want to see a government, any government, get on with it and produce some legislation that changes that place.

That's why I'm supportive of this. We all admit it's a step, but I think it's an important step. That's why I would like, in whatever time I have left, Madam Chair, to turn to the minister, to comment on this whole business about piecemeal change.

It's been my understanding in the research I've done that virtually every country that has a two-house system in place—the United States, Australia, and Germany come to mind—that's how they accomplished reforming their upper chamber: piecemeal. They made incremental changes over time. They didn't just all of a sudden decide they were going to pass this constitutional change and make it equal or make it elected. It took gradual change, it took pressure from the people to force that change, and Canada has been damn slow in getting any change.

•(1640)

Hon. Peter Van Loan: Thank you for that, and again there's a lot that one could respond to there.

There's no doubt that a bicameral model is fairly common, that is, the two-chamber model. About 75 out of 213 countries have that model of two chambers. Increasingly what you see, though, is that almost every such second chamber in the world has a democratic element to it, whether you go with the American model of a senate that's elected on the same basis, or even in the United Kingdom now, with the House of Lords. There have been dramatic changes, incremental, piecemeal, to the composition of the House of Lords and how it operates. The mother ship has departed. Other Commonwealth countries like Australia have introduced democratic elements.

We appear to be, I guess, the one place in the world where we simply have been resistant to any kind of change or reform or democratization of our second chamber. That is a glaring embarrassment for a country that likes to pride itself on the world stage as a model democracy, that likes to send people to other parts of the world to tell them how to run a democracy, to show them how to be democratic. Yet they look at our model, and our folks are trying to explain away how an unelected, unaccountable, fully appointed body fits into a democracy.

I can tell you that if most emerging democracies chose to come up with a body like that in this day and age, we would probably quickly criticize it as a way of manifesting too much power in the hands of an unaccountable single leader or head of state. If we saw it in, say, a post-Soviet type of country or that kind of situation, we would find it very alarming and we would no doubt criticize it, yet it is exactly what we have here.

That's why I believe democratization is the best route. That being said, there are a lot of countries in the world that are functioning perfectly well with the unicameral system, with only one House, but in either event, the critical thing has to be that it is democratic. That's our core principle. That has to be the fundamental value that we go to in our parliamentary system.

All of us have visitors who come to see us here in the House of Commons, from our constituencies and elsewhere, and you take them around the building and then you try to explain the Senate, and we all have to deal with the jokes. We know that the senators themselves are fairly thin-skinned about it, because they themselves in their own hearts know that regardless of their abilities—and there are some very fine people there who have very strong abilities—they don't have legitimacy in the power that they exercise, in the powers that belong to them. Most people have the good sense to understand, to feel uncomfortable being given that kind of power, without any democratic accountability in what is a democratic country.

The Chair: Thank you, Minister.

Mr. Martin, over to you.

Mr. Pat Martin: Thank you, Chair.

Mr. Minister, building off what you were saying, it's not just that the Senate is undemocratic. In recent experience it's anti-democratic in that it's been undermining and stymying the democratic will of the other side of Parliament, the House of Commons.

If I could clarify one thing in the same vein as Mr. Hill, the province of Manitoba, my home province, is listed in research as favouring abolition, and I've heard Premier Gary Doer say that as

well. But by the same token, we have just recently put together a legislative committee of the provincial government to explore our options for electing our provincial senators. I don't want it to be overstated that the province of Manitoba is uncooperative in this idea of incremental reform of the Senate.

Minister, I was one of the lucky ordinary Canadians chosen in the Charlottetown accord process, when they actually put an ad in *The Globe and Mail* and asked...I was an ordinary Canadian once; I still am. I simply wrote a letter to *The Globe and Mail*, to the Government of Canada that Joe Clark had set up. What I'm getting at is that it was a consultation that was a real engagement for Canadians. There were five—six in the end—conferences across the country where they brought in ordinary Canadians, some selected the way they selected me, others from civil society, first nations groups, labour, and business. We were really seized with the issue for months and months at a time.

So I wouldn't say there's no appetite on the part of the public for a broad consultation, because in that instance the country came out. They really did. They brought their best game and they got into it.

I firmly believe that the problem with the Charlottetown accord is that we tried to take on too much at once and it collapsed under its own weight. If the Charlottetown accord had been limited to what you're putting forward in Bill C-19 and Bill C-20, I think it would have passed. We were talking about the division of power and jurisdiction, shared jurisdictions, the distribution of seats, and the way we elected senators, all at once. People's heads exploded. It just became too much, until one guy raised one feather in the province of Manitoba and said no—oh, that was Meech Lake, wasn't it? I'm mixing up my constitutional reforms here.

But if I could, in the same vein the United States gets by with two senators from Rhode Island and two senators from New York, wildly different populations. So I don't think we should agonize too much about the equal side of it at this point in time. Ours is crazy. I believe New Brunswick has ten senators, if I'm not mistaken, and Prince Edward Island has four for a population of 150,000 people. I don't know how it got so out of whack.

But the 13 failed attempts, I think, are partly because we bit off too much. So maybe with these incremental stages there is some room for optimism that we can address all those irritants that make people cry out to abolish. Maybe they can be dealt with incrementally, so that hue and cry will settle down to the point where Canadians feel this is a problem we can solve if we solve it one step at a time.

I know that's more of a comment than a question, but is there any reaction you'd like to give?

•(1645)

Hon. Peter Van Loan: I'd agree with much of what you said. I was remiss in not accurately reflecting that there has been the initiative in Manitoba that you speak of, to have a committee look at how they can go about electing senators or making recommendations on who they'd have representing them in the Senate. We consider that a positive development. I don't think that's changed the government's position. They're still bringing that to the table in the committee.

But the openness and the willingness to look at it is a positive development. It's the kind of spirit I'd encourage this committee to adopt.

The Chair: Thank you, Minister.

We will now proceed to Mr. Gourde.

[*Translation*]

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

I am pleased to speak today to the topic of Senate reform. I agree with some of what Ms. Guay said. People living in the different regions have no idea who their senator is. However, these senators have been appointed. The sole requirement for appointment is that they own land. Frankly, I don't know which senator represents my region of Chaudière-Appalaches.

An elected Senate would pose a threat to the institution. Senators would no longer feel any attachment for the institution as such. They would be accountable to the people who elected them. Their situation would be radically different. They would have to explain their role, actions and positions on bills put forward by the House of Commons, bills that the Senate could amend at any time.

In terms of Canadian representation, do you believe, Mr. Van Loan, that the regions would be better represented by an elected Senate? Perhaps communities that often are more concentrated in certain regions would have a better chance of being represented by a senator. I think they would. What do you think?

[*English*]

Hon. Peter Van Loan: I think there are probably very few places in the country where people know who their senators are. It's the nature of the institution right now, because there is no democratic element. In fact, it's probably in the more remote regions where people are more likely to know who their senators are, because they're well-known local figures. Certainly I could walk down the streets of Toronto, I'm sure, and ask a hundred people to name me a senator who was from Toronto, and I'd have a tough time getting one person to provide me an accurate answer.

From that perspective, I think it's a reflection or manifestation of the remoteness of the institution if people don't even know who represents them in the Senate. We have here parliamentarians, people who are very actively engaged in passing laws, telling us they don't know who represents them in the Senate today. Of course, in Quebec people do represent Senate constituencies; it's different from the rest of the country. But that, I think, is a profound indication of the problem.

There are a bunch of folks in the Senate, and even the most engaged, active, interested people in the political process don't know they're there. Yet senators have more power. There are far fewer of them than there are members in the House of Commons, but the body has the same power as the House of Commons, essentially. Each senator is more powerful than any member of Parliament, yet they're not accountable.

I think the connection to the people of the province, the level of representation, the familiarity, the likelihood that individuals will be sensitive to the concerns of the area they represent, all of those will be enhanced and increased if you have a system in place, as we are suggesting under Bill C-19, where people are actually asked who they want to have representing them in the Senate.

•(1650)

The Chair: Thank you, Minister.

Madam Folco, you have the floor.

[*Translation*]

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

Thank you for joining us, Mr. Van Loan. It's a pleasure to meet with you again. You stated that many people are unaware of who their senator is. That's very true. I would have to say that a great many Canadians don't know who their MP is either. Everyone in my riding knows who their senator is. If MPs don't know the name of their senator, then I'd have to say that it's up to us to do our job. This is part of our mandate.

I would like to talk about one senator in particular. I think you know where I'm going with this question. I'm talking about Senator Fortier. Since setting foot in this room, you've been going on about an unelected Senate which is not accountable to the House of Commons. And yet, your leader, the Prime Minister of Canada, himself appointed someone to the Senate who is now not only a senator, but also a minister. According to our Constitution and our traditions, a minister is accountable to the House of Commons and must answer the questions put to him by elected officials during Question Period.

Therefore, I'm having a very hard time understanding your government's position and Mr. Fortier's situation in particular, all the more so given that people say the Senate should be more representative of the people. Mr. Fortier ran for office at least once, in 2000. I should know because he ran against me in the riding of Laval—Les Îles. The voters in this riding rejected Mr. Fortier. When the last elections were called, he said that he had no intention of running as a candidate. He preferred instead to stay in the Senate.

How do you reconcile your belief that an elected Senate would be democratic with the fact that your leader appointed a person to the Senate and gave him a portfolio and that this individual sees no need to run for office, regardless of the constituency?

[English]

Hon. Peter Van Loan: Actually, Senator Fortier has made it quite clear that he is going to be running in, I believe, Vaudreuil-Soulanges in the next election. He obviously has no problem with that, and he's also made it clear that he believes we should democratize the Senate. His view is that it very much needs to change.

As for those comments, I think that's a position entirely consistent with that of the government, and one that is strengthened by his own experience, which is illuminating to all of us.

•(1655)

[Translation]

Ms. Raymonde Folco: And yet, Mr. Van Loan, anyone who serves in the Senate or the House of Commons should be a person of principle. If Senator Fortier truly believes that the Senate should be abolished, then why, first of all, did he accept this appointment and secondly why did he accept a ministerial appointment and opt to remain in the Senate? Thirdly, why is he still in the Senate to this day?

[English]

Hon. Peter Van Loan: We also have Bert Brown in the Senate. He believes in an elected Senate and was asked by Albertans, through a popular consultation that took place, to represent them there.

Ms. Raymonde Folco: I'm talking about Mr. Fortier, Mr. Van Loan.

Hon. Peter Van Loan: I know, but there were two appointments made. That's the other one—someone who was actually elected popularly. The proud tradition of our democracy is that we encourage criticism from within. The greatest changes come from within. That's how the system evolved from the one invented in 1867 to the one we have today. We've changed the rules and representation.

Ms. Raymonde Folco: Excuse me for interrupting, but there is very little time, Mr. Van Loan. My only comment, Madam Chair—

The Chair: We may need second thought here, but we can only hear one speaker at a time.

Ms. Raymonde Folco: Thank you for that answer.

I would like to add something now. Excuse me for cutting you off, Minister. I would like to say that in popular parlance people say, put your money where your mouth is. That's what I would suggest to Senator Fortier, with all due respect of course, Minister.

Hon. Peter Van Loan: Certainly that is his intention. That's what he's going to do, and he said that clearly.

Since Confederation, in probably most governments, there have been members of cabinet who have come from the Senate. What we have now is nothing new. But should Bill C-19 be introduced, and should it become the practice that all senators take office as a result of popular consultation, which would be the case within a number of years should this be adopted, then you would never again have members of the cabinet who were not the product of a democratic process. I think that would be a measure of improvement for our country all around. I think everybody agrees with that, and I hope this committee will keep it in mind in considering this proposal.

The Chair: Thank you, Minister.

Mr. Hill, over to you.

Hon. Jay Hill: Thank you, Madam Chair.

I think, in all fairness, this is an excellent discussion today and certainly a good kickoff, if I can call it that, to our deliberations about Bill C-20 and the future of the Senate.

I'm quite interested in the process that led the government to come forward with this bill. In particular, Mr. Minister, perhaps you could enlighten us as to some comments made earlier about the process for actually going about selecting senators, were this bill to come into force. You yourself were remarking earlier about how this differs from the first-past-the-post system, which most Canadians, and certainly most parliamentarians in the lower House, in our House of Commons, are familiar with.

Could you explain a bit more about the process of how this particular system, which seems on the surface to be quite complicated, came about as the preferred method in the bill and why we didn't just go with something that all Canadians are more familiar with, which would be the first-past-the-post system?

Hon. Peter Van Loan: I think that's a good question, and it's one that I hope you as a committee will be turning your minds to, because it is an important part of this bill. One of the reasons this was sent to the committee before second reading was so that you would also have an opportunity to look at that voting system and consider whether you think it appropriate or whether another alternative voting system is considered more appropriate.

I'm not going to try to explain the formula, because you have to be really smart to do that. I know that's why you're asking the question, Jay, because you understand it, but I'm not surprised that others haven't asked the question, because that would mean they would have to have worked out all the math and sorted it all out, and it is a challenge to do that.

To boil it down into its simplest aspects, the objective of the voting system here is to respect some of the unique characteristics that people say are important about the Senate, that it is a little less partisan, and by adopting a type of proportional representation, you will be diminishing the partisan nature that you have from a first-past-the-post system and it would heighten the independence of senators.

The campaign financing aspects of it, for example, would prohibit, in our proposal, the transfer of funds from a political party to a candidate—that way, again, strengthening the independence of an individual senatorial candidate. The same kind of contribution limits would apply that we have for political parties and local elements of political parties, the \$1,000 index, which is now about \$1,100 a year or event contribution. That would ensure that you didn't have a situation where a wealthy individual could buy a Senate seat or where they could, through wealthy networks, have the financing to do it, that there's a fairly level playing field with a reasonable number there. So it's trying to maintain accountability, trying to maintain that notion of independence, introducing a concept of proportionality that we haven't seen elsewhere before, and diminishing that role of political parties so that it's more the individuals we're focusing on as senators.

A single transferable vote has been used in other places. There are three national legislatures elected directly using single transferable votes today: Australia's Senate, the Irish Dáil, which is their lower house, and the Maltese House of Representatives. We of course have significant Irish, Maltese, and Australian communities in Canada that are familiar with that model.

There are others where it has been used. It's one of the options for election to the European Parliament, and it's used by, I believe, three member countries right now for their election of representatives in the European Parliament. There are some states in Australia that use it. And I could go on.

But while it's the position that the government is putting forward as the preferred approach, you might want to look at other proportional models. You might want to say the American model or our first-past-the-post model is a better approach because it's easy to understand. All these things are legitimately on the table, and they are, again, very legitimate, valid debates and discussions that can be had about which would produce the best outcome that best reflects the interests.

What's fascinating about the single transferable vote as well is that it has a different effect in a single-seat situation. Suppose you're voting on only one vacancy. Suppose you're in P.E.I. and there's only one coming up in the next 10 years and you put that to a vote. You could have multiple candidates for it. It doesn't become first past the post. It becomes a form of transferable vote, where you wait until somebody has a clear majority of transferred preferences from those who drop off. And anyone who understands leadership conventions in the old-fashioned sense understands that model. That again would be a different way of mediating those hard party lines and bringing together diverse interests in a consensus.

So it's a novel approach, and it takes a little bit of work to understand and to study, but that's the work of this committee.

• (1700)

The Chair: Thank you, Minister.

Mr. Maloney, you have the last five minutes.

Mr. John Maloney (Welland, Lib.): Thank you, Madam Chair.

I found some of the comments tonight very interesting. Mr. Lukiwski was seeking out the positions of the various parties. I don't have a position. I don't know what the position of the Liberal Party is. I'm here—and this is our first witness—to listen to the various stakeholders who have come before us, and then I will take a position.

On Madame Guay's criticisms of the Senate, quite frankly I've heard those same criticisms levelled against members of the House of Commons. Perhaps it's a lack of understanding or perhaps an ignorance of the responsibilities and functions of the Senate. I hope we'll be hearing from some senators to address that problem.

Minister, you indicated you had two legal opinions from two of your former law professors. I hope you would file these with the committee. Perhaps we could also hear from them as witnesses.

Getting back to the nuts and bolts of how this might work, when would you propose that an election would be in fact called? If it's

going to be fixed terms—whenever it's decided what those would terms be—would it be at the beginning of the year, on June 30 of a year? Do you have any thoughts on that?

• (1705)

Hon. Peter Van Loan: First, on the issue of the legal opinions, it's not I who went to these former professors of mine; they just coincidentally happened to be that. These are opinions that were derived before I was even minister responsible for this file, under my predecessor, Minister Nicholson, who is now, of course, Minister of Justice.

On the question of when the elections would occur—“consultations” is a more accurate description—that's set out in the bill. It would be a decision of the Governor in Council when a consultation would occur.

There are two options available. One is during federal general elections and the other is during a provincial election, provided there is notice posted in the *Canada Gazette* at least six months before that actual election event takes place. We don't have fixed dates; that involves a bit of speculation. But in the increasing situations where you have fixed dates, that's quite easy to deal with.

The number of spots you would elect would be up to the Governor in Council as well. The notion isn't that you would wait until there was a vacancy and then hold an election, but rather that you could hold an election for a number of seats that would create a list that would await appointment by the Governor in Council when vacancies arose. So there might already be some vacancies, but you also might elect three, four, or five members, or you might have them selected as nominees for appointment in anticipation of the vacancies that would arise in the next year or two, or, say, until the next potential general election event in that province or federally.

That format ensures that elections happen, or when they're going to be happening anyway. You have an electoral vehicle in place. You have a certain saving and minimization of costs in carrying out the consultation. The consultation can ensure that you have adequate representation on a go-forward basis in the Senate.

Mr. John Maloney: I believe you indicated that both Houses would be considered equal if this bill goes through. What would you do if there was an impasse, a logjam? How would you resolve that? It sometimes happens in the U.S. government. How would we resolve that if both Houses were equal?

Hon. Peter Van Loan: The reality is that there's no difference on that question from our situation today.

Mr. John Maloney: All right.

Hon. Peter Van Loan: If you're suggesting that somehow there is a difference from today, then you're accepting the notion that the Senate doesn't have legitimacy today. But they do have all the powers that go with that, and those same kinds of impasses can exist.

The strange situation right now is that the resolution of an impasse, as happened in 1988, is by the democratic body seeking a dissolution and going to the voters for a mandate to make it clear and put some kind of moral pressure on the appointed body. That is a bit alarming in a democracy, that an appointed body could effectively force, hamstring, or tie the hands of the duly elected body and create that kind of impasse.

If you move forward with Bill C-20, in a situation where most senators are the product of a consultation process, at least the impasse you have that creates that situation is one that has a democratic body on either side. The solution would still be the same—seeking a dissolution in the House—but at least it would be prompted by others with a legitimate basis for their mandate.

Mr. John Maloney: There has been considerable discussion about consultation with the provinces this afternoon, and whether it's good or bad or we should or shouldn't do it. You indicated that B.C. would be in favour of abolishing the Senate. Mr. Hill took some question of that. If the provinces are in fact representatives of the people who elect them, would it not also be incumbent upon us to consult with those provinces as well?

Hon. Peter Van Loan: I'm sorry, I missed the end of that question.

Mr. John Maloney: Is it not incumbent upon us, as part of our responsibilities and our mandate, to consult with the provinces on their views on the Senate?

Hon. Peter Van Loan: Of course the Prime Minister has discussed this with the premiers, and various ministers of the government do so on an ongoing basis. The positions of most of the provinces are quite well known, as I said, with the exception of some where there were recent changes. B.C. would rather abolish than reform the Senate. It's not a high priority, but that's their official position. Again, as Mr. Hill suggested, that is a change from what was the position when they had a law in the books.

This is one of the problems. We talked earlier about the Charlottetown accord and the difficulties you have achieving that kind of consensus. I can't help but conclude that those who say we have to take the smallest tiny change and subject it to a constitutional process are doing anything other than seeking excuses not to reform and modernize the Senate.

There is a bill put forward by a Liberal senator, right now in the Senate, that seeks to change the membership qualifications for the Senate, which is a change to something laid out in the Constitution. I'm unaware that anybody has engaged in any form of consultation

on that. If it's the position of the Liberal Party that this bill cannot go forward until there's been a first ministers conference and agreement of the provinces and a 7/50 formula, then you should talk to your colleague over at the Senate about that bill. That bill, being pursued by a Liberal, is being done on the exact same basis as this bill.

• (1710)

Mr. John Maloney: Perhaps that discussion is for another day.

The Chair: Thank you, Mr. Maloney. Do you have one last short question?

Mr. John Maloney: In your presentation you indicated that members of the committee should note that if change cannot happen through reform, then the Senate should be abolished.

I have a question, perhaps to Mr. Newman. Would that require a constitutional change, if the desire of the government were to abolish the Senate?

Mr. Warren Newman: The minister would certainly be competent to answer that, but yes, it would require a constitutional amendment to abolish the Senate.

Mr. John Maloney: Thank you.

The Chair: That will have to be the last word.

I'd like to thank the minister and the witnesses for enhancing our discussions today.

I'd like to especially thank the minister, because I understand you had to rearrange your schedule to appear today.

Hon. Peter Van Loan: If I could, I do want to thank the committee again. Thank you for the opportunity to appear and for the respectful fashion under which I think this was conducted. I hope the committee will continue to do its work on this very important priority in the same vein.

The Chair: Thank you, Minister.

This committee will meet next Wednesday.

The meeting is adjourned.

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