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Chair

The Honourable Albina Guarnieri

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• (1545)

[English]

The Chair (Hon. Albina Guarnieri (Mississauga East—Cooksville, Lib.)): Pursuant to its order of reference of Wednesday, February 13, 2008, the committee will resume its study of Bill C-20, an Act to provide for consultations with electors on their preferences for appointments to the Senate.

I am delighted to see that our members have joined us today for what is probably our last meeting until the fall. I'm sure many of you thought we'd be recessed by now, but we could not go to the summer without hearing from one witness who is more engaged on the topic that this committee has been charged with studying.

Senator Bert Brown was appointed to the Senate after competing in three Senate elections in Alberta. He has also been involved in the debate on electing senators for more than 20 years. He has even ploughed the concept of Senate reform into the Alberta landscape with his tractor, I'm told.

I think we're all looking forward to your insight, sir. Please begin.

Senator Bert Brown (Alberta, CPC): Thank you very much, Madam Chair.

It is interesting that you mentioned that it's been over 20 years. It's been almost exactly 20 years since I appeared before a committee of the House of Commons, a joint committee of the House of Commons and the Senate, 20 years ago. Interestingly enough, the subject is the same as it was 20 years ago.

Without further adieu, with your permission, I'll go ahead with my presentation, which will take about 10 minutes. I didn't know our chair would be "Madam Chair" when I wrote this up, so you'll have to forgive me, I hope. But I'm very pleased to be here today.

I have attached copies in English and French of my statement, "The Case for Initiating Senate Reform", which I've been presenting to the premiers of the provinces and territories as we have met with them over the past few months. I thought it was only fair that this committee hear exactly what I've been giving the premiers of the country as I've toured since the beginning of January.

The points for Senate reform will take about 10 minutes to go through. I am prepared to answer any questions you may have on the points, as well as on my thoughts on Bill C-20 and its constitutionality and/or possible amendments that might make it more attractive to all parties in the House of Commons.

Support for Senate reform in the public polls is now 79% for the election of future senators—and that's Canada-wide.

For the first time in history, Canada has a prime minister publicly committed to the election of senators.

Real Senate reform can benefit every province, large and small, as well as minority interests within provinces.

Reform of the Senate is an important enough issue of long-standing interest to Canadians to warrant the focus of the provincial legislatures on it as a single issue.

The call from the western provinces for a triple-E Senate was never meant as an attack on central Canada or Atlantic Canada, but a desire for a real voice and real vote in Canada's upper house.

The Meech Lake accord failed because it didn't address the desires of provinces outside of central Canada.

The Charlottetown accord was rejected by the majority of Canadians and the majority of the provinces because it tried to address too many issues under one blanket constitutional proposal.

The Federation of the Provinces is a worthwhile sounding board for the concerns of premiers, but because it convenes only a few times a year, it has no ongoing input into federal legislation.

Only an elected Senate in session, in conjunction with the House of Commons, can be capable of providing continuous input into the proposed federal legislation, backed up with a vote and, if necessary, a veto by a majority of provincially elected representatives.

A reformed Senate could have prevented past majority governments from taking Canada to the brink of financial disaster. Our nation needs a counterbalance to federal parties that pursue party interests by buying votes on a national credit card.

Only a reformed Senate can prevent any future return to a single federal party putting its interests ahead of the national interests.

Senate reform does not require a constitutional amendment. Alberta has held three senatorial elections, and the winners of two of these elections have been appointed without constitutional change.

The only requirements for a prime minister to appoint elected senators have always existed. They are: a prime minister committed to respecting provincial Senate election results, and provinces willing to hold senatorial elections.

There are 14 existing Senate vacancies in seven provinces and one territory. Before 2008 ends, there will be 17 vacancies in eight provinces and one territory. As of yesterday, Senator Gill spent his last day in the Senate, so there are already 15.

If a number of provincial legislatures grasp this historic opportunity, they can have elected representatives to protect and forward their interests in the upper house daily.

It is possible to have a majority of elected senators within less than eight years, simply by filling naturally occurring retirement vacancies with provincially elected representatives.

That timeframe provides the provincial governments with eight years to discuss and agree upon the necessary conditions for a stand-alone amendment to the Constitution for, first, the change in numerical representation in the Senate by province. Whether those numbers are half of equal numbers to the large provinces, three-quarters of equality, or full equality, the provinces will have to decide. The second condition would require an agreement on an override for the House of Commons to assuage the fears of those who oppose an elected Senate with veto powers.

The provinces and their leaders have a time-limited opportunity with a willing prime minister and a huge majority of Canadians who want to democratize their Senate for the 21st century.

In conclusion, Mr. Chairman, I have read some of the testimonies of previous individuals and panels who have spoken to Bill C-20. My committee and I find ourselves in agreement with most of the recommendations of Vincent Pouliot of the Centre for the Study of Responsible Government.

Mr. Pouliot recommends that the Chief Electoral Officer be charged to ensure that nominees qualify to be senators as set out by section 23 of the Constitution Act. That would also have to include a clause on page 7 of the Constitution. The phrase "political party", he recommends, should be changed to read "provincial political party". Bill C-20 should permit the provinces to determine otherwise how they wish to be represented in the Senate. For example, Quebec will, in the beginning, want to elect their future senators through the votes of their National Assembly. That was their position during the Charlottetown negotiations when I was there, and I assume it still is the same.

We agree with the above.

Very recently we were asked for an override provision that would permit the House of Commons to retain supremacy over an elected Senate with a majority opposed to a bill of the Commons. In consultation with Dr. David Elton, professor emeritus, political scientist, and others, we developed what I have named the "Elton override". It is simplicity itself as well as brief in form.

When the Commons approves a bill and sends it to the Senate, which finds a majority of senators voting opposed, the bill would be sent back to the Commons immediately. Thereafter, the Commons would want a bill to become law and be unaltered. The Commons would send it back to the Senate by the same vote, not more or less, but by a simple majority.

The Senate must then vote a majority of its members, including seven provinces out of 10, representing 50% of the population. The

timeline for this second Senate vote would be very short, possibly one month or 12 sitting Senate days.

Such an extraordinary majority as the Elton override requires from the Senate justifies the powers now existing in the Senate to remain in a reformed, elected, and more equally represented Senate of the future. The new Senate would truly be the House of the Provinces.

Thank you, Madam Chairman.

• (1550)

The Chair: Thank you, Senator.

We'll begin with our first round of questions.

Mr. Murphy.

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

Your comments are here. I've read them and listened to them. I know you've been around to a number of the provinces and you have spoken to a number of officials. We've read about that as well.

In your remarks and in your brief, you say that for the first time Canada has a prime minister publicly committed to the election of senators. I want to be clear. Have you talked to the Prime Minister, and has he said to you and in public that he is committed to the election of senators?

I say that because this bill is couched in terms of the selection of senators. Even Peter Hogg suggests that is the reason it is constitutional, because it is a selection that is subject to the Prime Minister's prerogative to accept or not.

The implication of your remark, sir, is that the Prime Minister has committed to the election of senators, and that the selection, which is the word used in Bill C-20, is in fact an election that the Prime Minister must respect. Is that your view of things?

Senator Bert Brown: It's almost my view of things.

Let me clarify, first of all, that I have known the Prime Minister for over 20 years, I guess. He and I were guest speakers in Winnipeg when the Reform Party was founded. I should tell you that the triple-E committee has never been politically affiliated as a committee. We have introduced this idea to every political party in every province in the country over the last 20-some years.

To go back to your original question about whether the Prime Minister is committed to the idea of election of senators, I would have to answer with an unqualified yes, because he has told me that himself, but it is a time-limited offer to the premiers. If they hold Senate elections, he will recognize the outcome of those elections. I've had numerous conversations with the Prime Minister on this issue, and I wouldn't pretend that the Prime Minister and I are in lockstep on everything. When you ask questions on this bill, you'll discover that we do not agree on absolutely everything, but we do agree on electing future senators and allowing the provinces the timeframe necessary to decide what they would like to do about a constitutional amendment.

The proof that the Prime Minister is committed to Senate elections is my own appointment.

•(1555)

Mr. Brian Murphy: The second question I have relates to your Elton override, something new for me in reading it. It appears there are a number of words missing, but the gist of it is that if a Commons bill is approved and sent to the Senate and a majority of the senators oppose it, it shall be sent back to the Commons immediately, and if the Commons wants to pass it again, the Commons sends it back to the Senate by the same vote, not more or less, but a simple majority.

My first question on that would be, what does that mean? Second, if the Senate again approves it, does it then become law?

Senator Bert Brown: I realize it's very precise right now, the way it is, and you're right about some of the words that were typed up. What the override would do would be to allow the Senate to retain the powers it now has. I'm sure you probably know the Senate has an absolute veto over anything coming out of the House of Commons, including a budget. It doesn't exercise that power. It sometimes threatens to do so, but it never exercises it for the simple reason that the media and the public have told them they're not legitimate because they're not elected.

To go back to your exact question, the way it would work is that if the Commons passes a bill and sends it to the Senate, the Senate would be able to alter, amend, or veto it if it couldn't meet the ultimate test of the override.

The first test of the override is for the Senate to find that it has a majority of senators from the provinces. And if it has a majority who are opposed or wish to alter the bill, then they would vote that way and it would be immediately sent back to the House of Commons. The purpose behind that is to give the House of Commons a pause, to say that while this bill may be popular with your party and your leader, it is not popular with a majority of the elected senators.

The second part of that would be that in order for the Senate to actually exercise its rights, amendment or veto, it would have to show that it had a majority of the elected representatives in the Senate constituting seven provinces out of 10, representing 50% of the population or more. That means that central Canada would not alone be able to override, but also the Senate would need to have at least one of the central provinces plus five other provinces.

So it's an extraordinary override, an extraordinarily high bar, if you will, to overcome. But at that point, the author of the override feels that it would be the simplest thing to do, and it would also be a very clear message to the House of Commons that the bill is in serious trouble, because seven provinces out of 10 and 50% of the population would want to alter it or veto it. If they could do that, the bill doesn't have to be a confidence bill of any kind.

It could simply be that the government would say it's obvious that there's as much opposition, say, to this as there was to the GST—if you remember it when it was first introduced—and they would be able to make the government either accept an amendment or simply let the bill go and redraft it, draft it to something they thought was more acceptable to the public.

Mr. Brian Murphy: I will get back to the idea of the competing houses in my next set of questions, but briefly on that, have you ventured to get an opinion as to whether this override would require

a constitutional amendment? That's probably a simple “yes” or “no”, because that's all the time I have left anyway.

•(1600)

Senator Bert Brown: Yes, we believe anything other than electing senators by their provinces and having them accepted by the Prime Minister would require a constitutional amendment at some point.

Mr. Brian Murphy: The Elton amendment override, would it require a constitutional amendment?

Senator Bert Brown: I believe so. It would be part of the package of deciding what the representation would be and what power should be left with the Senate. We went through that discussion in the Charlottetown accord negotiations a long time ago.

The Chair: Thank you, Senator.

Monsieur Paquette, vous avez la parole.

[Translation]

Mr. Pierre Paquette (Joliette, BQ): Senator, thank you very much for giving us your thoughts on Bill C-20.

This somewhat follows on from the question you were asked previously. I notice that some aspects of your document deal with Bill C-20 but that others go much further. For example, you are proposing that provinces are represented equally. That goes much further than anything in Bill C-20 and probably requires a fairly substantial constitutional amendment.

Then you say: "Senate reform does not require a constitutional amendment!" I imagine that you are referring to Bill C-20. Then you write: "Alberta has held three senatorial elections and the winners of two of those elections have been appointed without constitutional change." That is true, of course, but it means that you are arguing for the status quo. There is no need for Bill C-20 if you are able to show that Alberta has elected three candidates and that the Prime Minister has chosen two of them to be senators.

Could you clarify that? When you say that Senate reform does not require a constitutional amendment, I imagine that you are referring to Bill C-20.

If Alberta was able to provide the Prime Minister with three elected candidates, two of whom are now in the Senate, that means that we do not need Bill C-20 to extend the same practice to any provinces that want it.

[English]

Senator Bert Brown: Yes, you're correct in your assumption about Bill C-20. While I support it, and while the committee I chair supports the idea of Bill C-20 for electing senators, we're not in lockstep with the Prime Minister on the bill in terms of our suggestion of the possibility of two six-year terms for being re-elected.

We felt that the one single term was not popular with the existing Senate and that it would take away the power of the ballot box. If you have an election for one term and then you don't re-elect them, you lose any ability for the people of the province that elected them to come and say, "Hey, if you want to be re-elected, you need to listen carefully to what we want you to do and how we want you to represent us in the Senate."

The other part of your question was about a constitutional requirement. We are looking at Senate reform now, having been through both Meech Lake and Charlottetown. We're looking at Senate reform as a staircase, and you don't go from the bottom to the top of the staircase in one step. You take steps.

What we're proposing is the first step; that is, to accept the fact that the Prime Minister is very much committed to democratically chosen senators. He is not constitutionally bound to the outcome, however. It would only be his political word that would bind him, and we're hoping to take advantage of that and let as many provinces elect senators as they want. Politically, he would be committed to accept the outcome of those elections.

We're not suggesting that he is constitutionally bound by an election. We're suggesting that this is an elective process, and politically, the tie would be pretty strong.

[Translation]

Mr. Pierre Paquette: Further on, you say: "that provinces are willing to hold senatorial elections". In your document, you also say that, in Quebec, there was Benoît Pelletier, two weeks ago, advocating that the provincial governments choose senators themselves, or, as you suggest in your text, the Assemblée nationale.

When you propose that provinces be willing to elect senators, are you talking about a public election, or in provincial legislatures, or could it vary from province to province?

•(1605)

[English]

Senator Bert Brown: Well, our first choice there would be....

Excuse me, Madam Chair, am I supposed to address my answers through you or am I just supposed to speak to...?

The Chair: You are, but I think you're doing just fine.

Senator Bert Brown: Okay. I'm sorry.

[Translation]

Mr. Pierre Paquette: Everything goes through her, but, in fact,...

[English]

Senator Bert Brown: I should have asked about the protocol before I spoke, and I apologize to you.

The Chair: You're doing just fine. I don't want you to lose your train of thought. It's an interesting discussion.

Senator Bert Brown: Thank you.

I have served on some committees in the Senate for a number of months now, and we don't go through the chair, so I apologize.

To answer your question, sir, you were mentioning Quebec. We went through the negotiations in Charlottetown in 1992, and during those negotiations we reached an agreement on a triple-E Senate. All

provinces agreed on equal representation in the Senate. All provinces agreed on having elections, except the Province of Quebec wanted to elect them from the members of their National Assembly. That's why we included this in the brief. We anticipated that's what Minister Pelletier would want, so we put it in there.

I have to say I have not met with Quebec yet, but there is going to be a convention at the end of July, and I hope we'll get to meet with Minister Pelletier at that time.

[Translation]

Mr. Pierre Paquette: I have one more question. You mention Vincent Pouliot, from the Center for the Study of Responsible Government, and the fact that he recommends that the term "political party" be replaced by the term "provincial political party".

Could you explain what the advantage of that would be? Personally, I believe that, at federal level, it is very likely that the Conservative Party would like to have its counterpart, though not perhaps as structured a party as in the House of Commons. It would certainly want senators with a conservative outlook and the Liberals would certainly want senators with a liberal outlook. So a party may perhaps have more provincial sections, but it would actually reflect the reality of party composition at federal level. So could you explain what would be gained by using the term "provincial political party"?

[English]

Senator Bert Brown: I thank you very much for the question.

We think the words "provincial political party" are extremely important, because that's the way the Alberta legislation was designed. Interestingly enough, the people who were designing it at the time wanted to prevent the Reform Party from running candidates, so they said it had to be a provincial political party, not realizing you could form a provincial political party with 1,500 signatures.

But the one thing that we believe would make the disconnect between the federal parties and the Senate is who would sign the nomination. I would not want anyone to believe that the Prime Minister is in lockstep with us on this opinion. In fact, he would probably prefer them to be elected federally.

I should make the statement here that in the mandate he has given me to speak to the provinces, I speak to the premiers and/or their representatives, but I do not speak for them. I also do not speak for the Prime Minister; I speak to him. There is a major distinction there, and I don't want anyone to think otherwise. In other words, I carry the message of Senate reform as I've done for 20 years.

I think the majority of Canadians are in favour of some kind of democratically reformed Senate. We are now down to 14 people: a willing Prime Minister who would appoint elected senators, and 13 premiers who will have a chance to decide whether they want to hold democratic elections or not.

The Prime Minister will make the final decision as to whether he will respect provincial political parties as representatives being elected to the Senate, which he already has in my case, and did in Stan Waters' case, who was the first elected senator. He will make that decision, and I don't want anyone to think I'm speaking for him.

• (1610)

The Chair: Thank you.

Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): I'll pass, Madam Chair, thank you.

The Chair: Thank you.

Mr. Reid.

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

Thank you, Senator Brown, for coming and being a witness here. I think it's an understatement to say you're a patient man. It's been a very long time that you've been involved in this.

I joined the Reform Party back in 1991, and you'd already been involved in writing on this subject for a number of years at that time.

I wanted to get your view on a couple of things that have come up in our discussions.

We've had, of course, a number of witnesses here already, and there's been some talk among some of the witnesses about the danger of having elected senators, whether they're elected directly or whether, as the bill proposes, they're pre-selected in terms of advice or recommendation to the Prime Minister, who can then advise the Governor General—whatever the case. The thought is that the electoral process will cause senators to become more partisan, whereas they are currently less partisan than their opposite numbers in the House of Commons, that is to say the MPs.

I'm just wondering if you find the Senate to be less partisan than the House of Commons.

Senator Bert Brown: Madam Chair, to answer that question I have to say quite honestly that the only surprise I've had in being in the Senate since October is that they are, if anything, more partisan than the House of Commons. That surprised me. In fact, from conversations with some of the existing senators—and I will not name any, because I do not believe in criticizing individual senators—right now I'd have to say that they consider themselves to be the opposition to the government, which puzzles me because I think in the House of Commons there are three parties that are in opposition to the government right now. So I don't know why they would be.

When I investigated this with some of the parliamentary librarians, I found that they were not the opposition to the government some years ago; they were more of a sober second thought. But right now, I believe honestly that the Senate is controlled by the two leaders of the government in that other place—as we're allowed to refer to it. I believe they control the Senate.

Mr. Scott Reid: Thank you for that.

I have to admit that confirms an impression I've had as well, that the Senate is a pretty partisan place already.

I wanted to ask you as well about a piece of proposed legislation that has come up through the Senate. It's now been passed by the Senate, and I believe Mr. Murphy is intending to sponsor it in the House of Commons when it makes its entry there—Bill S-224. That's the bill that would require, after a Senate seat falls vacant, the

Prime Minister to propose a qualified replacement essentially within six months.

Maybe I'll just tell you what my assessment of this bill is. I think if this bill goes forward and is passed, it will have the effect of killing any opportunity either to reform the Senate, to elect it, or even, as a practical matter, to try to work on getting rid of it, as the New Democrats propose, simply because it's going to push the government into filling all those vacancies. And they're going to be given a choice. They can fill them with Conservatives, in which case the Prime Minister will be forced to engage in the same partisan process and will be attacked as a hypocrite and so on, and will be forced to defend that position, or they'll have to appoint it with some mixture of Conservatives and Liberals, given the fact that the New Democrats and Bloc are presumably going to be unwilling to provide candidates. So it seems to me this is intended to effectively derail any move to democratize the Senate.

I wonder if you share my assessment or if you have a different assessment of the bill.

• (1615)

Senator Bert Brown: Yes, through the chair again, Mr. Reid, I actually wrote a brief amendment to Bill S-224, suggesting that instead of forcing the vacancies to be filled on a specific timetable, they be filled after a consultative process with the provinces, making it as simple as I could while still reaching out to democracy.

I guess the one thing I'd say about Bill S-224 is that if it reaches approval in both Houses, I'm not sure it can be enforced. I went to the parliamentary library, which I found to be my biggest source of information since I've come here, and found that there have been vacancies as long as eight years. Manitoba actually holds the record. There have been a number of them at seven years and there have been many at six. There have been, I think, some down at 405 days, less than two years, but precedence is what runs our Constitution in many ways. The reason I say that is that there's no constitutional reference for the Prime Minister to appoint senators. It's the Governor General, if I may try to quote word for word:

The Governor General shall from time to time...summon qualified persons to serve in the Senate...

—to represent the provinces in the following numbers, and it goes on to list all those.

But I don't hold much more hope out for S-224 than I do for Bill C-20 in its current form. I think if we could talk about the fact that senators would like to accommodate something in terms of a 12-year maximum term and we could accommodate democracy by having an amendment that would allow for two six-year terms, we would have something spectacular for this country.

Mr. Scott Reid: Thank you.

Do I still have some time, Madam Chair?

The Chair: You have time for one very short question.

Mr. Scott Reid: Thank you. I will be very, very brief then.

On the Elton amendment that you talked about, I hadn't seen this before, but I've seen similar ideas at joint sittings, that kind of thing. I have a technical question.

It talks about a majority of members, of senators from each province. Most of the provinces have an even number of representatives in their contingent to the Senate—6 from Alberta right now, for example, 10 from Nova Scotia, 4 from P.E.I., 24 from Ontario. So do you mean 50% of the senators, or do you mean 50% plus one of the senators from each province? In other words, under current representation, if you have 10 from a province, do you have to have 6 voting in favour? That makes a significant difference to how tough a hurdle this is to overcome.

Senator Bert Brown: Again, through the chair, the reason you haven't heard about the Elton override is that it's only about a month old. The Prime Minister actually told me some time ago that he wanted to be sure that the House of Commons' supremacy would rule in the end, and in a struggle to find out how we might accomplish that, I had Senator Hugh Segal look up the British acts of parliament, 1911 to 1945. I've read some pretty boring stuff, but 48 pages of what the British tried to do with the House of Lords is enough to make you go brain-dead. So I went back to Dr. David Elton because he has been my chief mentor. We've had constitutional advisors across Canada, but Dr. Elton has been the first and the steadiest. So I went to him with the problem and after a couple or three weeks he came up with what's called the Elton override.

To answer your question specifically, the first vote would be a simple majority of the Senate. In other words, Ontario and Quebec could alone decide that the representatives from those two provinces could send it back to the House of Commons. And if the House wanted to pursue the bill and revote it, then the override becomes part of the Senate, not the House of Commons. In order to exercise the override, they have to show they have a majority of elected representatives from seven provinces out of 10, representing 50% of the population.

That's an override that is about as strong as you can get, but if you have a House of Commons that ignores an override like that, then the bill should probably fail.

• (1620)

The Chair: Thank you, sir.

Madam Fry.

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

I want to thank the senator for presenting to us today. You made some important points.

I want to ask about a couple of things you said in your presentation, just to clarify them a little. On your second page you talked about "a reformed Senate could have prevented past majority governments from taking Canada to the brink of financial disaster". But in your Elton override, you suggested that if the Commons doesn't like the way the Senate voted, it could send back its bill.

As you well know, any bills that dealt with financial disaster would have been confidence bills in the House of Commons and in the government of the day, so the government would obviously have sent it back if the Senate voted against it. You would then have an impasse, and the Senate, according to the Elton override, in effect would not have any ability to stop that, whatever you thought would have been detrimental financial bills.

Those two things don't seem to support each other; they seem to be contradictory. Perhaps you can explain that to me.

Second, you use the words "That new Senate would truly be the House of the Provinces" in the Elton override. Is that really what we're trying to do? Are we trying to create another series of provincial governments that will then have the ability to control the federal government and the House of Commons in the way it behaves?

We have seen quite often that provinces are very distinct and very different in the way they see things. Would that not infringe on the mandate and the jurisdiction of the federal government in so many ways if these senators are the "House of the Provinces", as you put it? That's the second question.

On the final question, you said this is all possible where you have "a Prime Minister committed to respecting provincial Senate election results". But what about a Prime Minister committed to respecting, first and foremost, the Constitution? I think there is such a sleight of hand in this bill that in many ways it fundamentally disrespects the Constitution.

Those are the three things I wanted to put to you, and I would like to hear your responses to them.

Senator Bert Brown: Through the chair, I'd like to answer your questions in reverse order if I may.

The House of the Provinces being the Senate I think is a solution to many of the problems this country has had. The provinces, under the Constitution Act itself, or the law of sovereignty over health care, education, social services, manpower, a number of those...these are very reminiscent of the problems Quebec has had with the federal government of the past. They have, by themselves, almost caused a couple of referendums for separation.

The reason I passed this picture around was so you would understand that our committee is totally committed to keeping this country together. That was plowed into the grain fields of Alberta in 1992, three weeks before the last referendum. That was our response to a request to go to Montreal and take part in holding that gigantic flag. We wanted to do something. This ended up in a lot of the newspapers in Quebec—on the front page. That's why I sent it to you.

That's our purpose, to accommodate all the provinces. They have the power under the Constitution for health care, social services, manpower, a number of those things, and we want them to have input into the government while legislation is being passed, not fighting legislation they don't like after it has been passed.

• (1625)

Hon. Hedy Fry: Mr. Brown, the effect of that would be to have the provinces override the federal government's decisions on specific issues that are of federal jurisdiction alone. The federal government never attempts, and has never attempted, to override provincial jurisdiction, but instead negotiates with provinces in certain areas, and that's why the social union was created, as a way to deal with that.

In other words, what this would suggest is that instead of having a federal government and a House of Commons, we should just have the provinces with provincial parliaments, which would therefore rule the country together. That would be the effect; I'm not saying that's what you are suggesting, but that's what the effect would be, really, because the Senate has the ability to override or deny House of Commons bills. So I would see this creating that very negative effect on the federal government and federal jurisdiction.

The Chair: Ms. Fry, your time has expired, but I think we should allow Senator Brown to answer your questions.

Senator Bert Brown: Thank you, Madam Chair.

On that point, I would have to strongly disagree with you, for the simple reason that I have been witness to a summons by the Prime Minister of the day to deal with health care. All of the premiers were at the meeting. It was on television. The Prime Minister said that each premier would have five minutes to speak on the subject. When it came to the Premier of Alberta, coincidentally they were already handing out a document. Before the premier could finish his speech, the Prime Minister said, "Take it or leave it", and walked out of the room. The Premier of Alberta went to a casino.

That is just one of the problems.

You asked in your earlier question about why we said this country came to the brink of disaster in terms of economics. That was back in 1981-82, when we were already carrying a huge debt. I can't quote it exactly, but it was in the neighbourhood of \$550 billion, and headed for \$680 billion. We were accumulating a debt at \$9 billion a month. The man who created this override actually came to me and told me that we were within 18 months of the IMF telling us how to run this country. I don't blame that result on any one political party because the accumulation of that debt spanned two political parties that were leaders and prime ministers of this country.

Mr. Elton's questions were: How do we stop this? How do we make people understand that a prime minister with a majority government has unlimited powers? There is no constitutional limitation on the powers of a prime minister other than a revolt by his cabinet. Cabinet people very seldom revolt if they have children in college, or if they like a chauffeured car, or if they have plans to become a minister or a parliamentary secretary, or whatever.

In the House of Commons right now, regardless of the political affiliation of the Prime Minister—I don't want to be seen as picking one party over the other—you have the potential of any prime minister, past or future, taking this country down the road to places no one wants to go, but no one can get it stopped. Once the debt began to accumulate and got to \$9 billion a month, it was impossible to turn the economic ship of state around before we added another \$300 billion to the debt. As a consequence, the country went through an awful lot of machinations to get to where we are now, which I understand is just now below \$500 billion.

When I talked to the provincial government in Alberta about it, I asked the treasury to run the figures at a \$5 billion retirement per year at 5%. That amounted to \$2.78 trillion to pay off the national debt at that time.

I don't know of a better way to answer why we need a Senate that can exercise the interests of the provinces, and not only have a voice

and have amending ability, but also ultimately have a veto. It doesn't have to be a confidence motion. One thing the Senate doesn't have now is the ability to introduce bills to spend a lot of money. They do have the power to veto them; they just don't exercise it.

● (1630)

The Chair: Thank you, Senator Brown.

Mr. Lukiwski.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Thank you, Senator, for being here.

I'd like to very quickly get a clarification on a question asked earlier by my colleague Mr. Reid, and that's on the Elton override.

He asked this question. With a 7/50 plan, since there are an even number of senators in each province, does this override then mean that if, say, a province has ten senators, they need six senators to vote in favour? Or does it mean the total amount of Senate votes cast has to be including 50% of the major provinces plus one? That does change the numbers quite significantly.

Senator Bert Brown: We have not gone into that depth of detail on the override, but I can tell you it implies that there must be a majority of senators from each of the seven provinces out of ten, and they have to represent.... So it doesn't matter how many senators you have. If you have six, you need four to have a majority.

Mr. Tom Lukiwski: That was the question, because you could conceivably have a majority of Senate votes, including provinces, representing at least 50% of the population. You could have five Senate votes from a province that had ten Senate seats, but eight out of ten in another province. At the end of the day you would have more than your required votes. So seven of the provinces that vote need to have simple majorities.

Senator Bert Brown: Yes. Of all the papers we went through when we asked Senator Segal to look up things, this was the most simple. The Parliament acts of Britain of 1911 and 1945 simply didn't work. They were too complicated and didn't have a time limitation that would prevent the House of Lords from just delaying accepting a bill until Parliament had prorogued, the parliamentary session was over, or whatever.

It has to be finite and definite.

● (1635)

Mr. Tom Lukiwski: Thank you.

The Chair: Thank you.

Mr. Moore.

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

Thank you, Senator Brown.

There's one thing we haven't touched on today. We've heard about some of the comments from different premiers, provinces, and parties, and you're probably in a better position to answer this than most people. What are you hearing from everyday Canadians on the issue of changes to the Senate? We've all probably heard, to one degree or another, in our own ridings as members of Parliament that Canadians should have some input on who rules—that's how they put it sometimes—or governs them, especially when you consider some of the powers that our Senate has.

Believe it or not, I think we've gone through this discussion today without really talking about what you hear from people, Canadians, voters, on this issue about whether or not there's a desire to have some input into who governs them.

Senator Bert Brown: Through the chair again, Madam Chair, to answer your question specifically, the committee has never ever held a poll, but very early on in our work, which would have been probably about the third year of our work—we will be celebrating our 25th anniversary on August 13 of this year—Maclean's/Decima actually called us and asked if we would like to do a poll on how many people in Canada support a triple-E Senate. We said we would, and they said it would cost \$100,000. We never had a budget that even gets close to \$100,000, and nobody that works for the committee, except for a secretary, ever gets paid anything, so they said they would just include it with their regular poll.

And they've done it for many years. I think the first poll was right around 55%. That was Canada-wide. I think it was a Crop poll that gave us 79%. Mike Duffy, one week after the election of the current Prime Minister, did an informal poll on CTV and just asked the question, "Would you like to elect your senators, yes or no?" and it was 83.1%. We were flabbergasted. The last poll that took place in Calgary with Sun Media was 93%.

That's all I can tell you about what Canadians want, in terms of democracy. When you get into the details of how much power they want to have and everything else, I think that's why you need your provincial legislatures to gather for the purpose of a stand-alone amendment. They each need to discuss it the way they did in Charlottetown. I spent five days in the Pearson Building during Charlottetown, and we were discussing this issue with Premier Harcourt and his group, Premier Getty and his group, Premier Devine and his group, Premier Filmon and his group, and Premier Clyde Wells. We were amazed when we got Premier Rae, who was then premier of Ontario, to agree to equality. That was directly from a question of Premier Filmon. When Premier Rae said that Ontario had gotten into trouble giving away Senate seats with Peterson in Meech Lake, so they were not going to do that again, Premier Filmon, as I remember, said, that some pigs were more equal than others, and that's when we got equality.

Mr. Rob Moore: Senator, we've had this issue come up before as well. In light of what seems to be—with some of these polls, including the one you've included—overwhelming support for our having some kind of democratic input from Canadians, on the principle that Canadians should have democratic input into their institutions, would you let maybe the lack of achieving a perfect consensus or perfection in legislation be a roadblock to our advancing the will of Canadians to have some input? We've had some witnesses appear who seemed to be suggesting that unless it's a

perfect situation or a perfect formula, we mustn't do anything. If it's not perfect, we can't do anything. Anyone who's experienced a bit of life knows that nothing is perfect.

I'm wondering what your take is on that. Do you look at that as a roadblock—that if we can't achieve perfection, then we shouldn't move this agenda forward at all?

● (1640)

Senator Bert Brown: Through the chair again, no, I do not look at anything as a roadblock. I've been with this for a long time, so there have been all kinds of suggestions by all kinds of experts and pundits and people, and we're seeing them again as I go public with some of the discussions with the premiers.

I think it comes down to what I said. I think we should explore democracy in the Senate, and then it will take five to eight years to have a majority of senators who are elected, with vacancies occurring naturally as senators reach the age of 75. We have, as I said, 15 as of yesterday. We'll have 17 by the end of this year, and we will have 29 by the end of 2009. If we have elections to fill all of those vacancies, it will take five to eight years before you have a majority. That's five to eight years to find out whether people like me are even worthy of being in the Senate, whether we're better in any way than anyone else.

I don't want to infer again that there's anything wrong with the individuals in the Senate. There are some sterling people there. There is Dr. Keon, who's just been put in the Medical Hall of Fame and cares more than anybody I've met about young Canadians, poverty, and children, and this kind of thing. I serve on his committee, and I'm absolutely overwhelmed by his intellect and his commitment. I won't go on to try to name a whole lot of senators from there, because I'll end up leaving somebody behind. I just isolated him because he's recently been put in the hall of fame.

Mr. Rob Moore: Thank you.

The Chair: Thank you.

Mr. Murphy.

Mr. Brian Murphy: I wanted to get back, because my time ran out, to envisioning what would happen with an elected Senate and how those elected senators like yourself would feel. They would feel, I suppose, that they've been selected by the people to represent the people's interest, along the lines of what Rob Moore was saying. That sounds good. Canadians would accept that; I'm sure of it.

But on the House of Commons side, we have that already. We have people elected by the people. With this Bill C-20, in fact, I might argue that in my province of New Brunswick and Rob Moore's province of New Brunswick, each senator might have a bigger mandate—that is by votes—than each of us because their riding is the whole province of New Brunswick. So they might even feel more engorged with power, if you will. Then we come here with an elected Senate—say the senators from New Brunswick and the MPs from New Brunswick—and we're battling over a bill, let's say. The Constitution is not going to change with Bill C-20, so we will have, in fact, gridlock between the two houses with no mechanism to resolve that.

The words you spoke with respect to the Prime Minister's wish that the House of Commons maintain supremacy, while well-meaning on your part—and I take you as an honest, straightforward man who's been devoted to the cause for so long—seem hollow. The Prime Minister said to you that the House of Commons shall be supreme, yet the bill doesn't attempt to affect that, probably can't affect that without some sort of constitutional change. So is Bill C-20 just a waste of time? You believe—I think you do, and I can get your answer on this—that the House of Commons should be supreme to the Senate. Yet, if both houses are elected, I'll tell you, practically, I would think that elected senators might feel as powerful as elected MPs and in the fullness of time there might be quite a little fight over who has more power. The Constitution does not say the House of Commons is supreme.

If the Prime Minister meant what he said to you, I don't know why his Minister for Democratic Reform, the government House leader, didn't say that when he introduced this bill. I don't know why he didn't say that gridlock will not be an issue because we intend the House of Commons to be supreme. What are your comments on that?

• (1645)

Senator Bert Brown: My comment would be that it would take me, Madam Chair, back to.... I think I'm still failing here; I should be calling you the Honourable Madam Chair.

The Chair: I'm more interested in the flow of the discussion, so don't worry about it.

Senator Bert Brown: Thank you.

I think first of all that the kind of Senate we're looking for is the Australian Senate. They thought they had a constitutional crisis because at one time—they had an equal number of senators, all elected, per state in Australia—they came to a point where there was a deadlock over something. And I don't know the specifics of the bill—I don't think it was the budget—but they got away with it because they just simply met and said, okay, we have to solve this problem; we don't want to dissolve the government and create a constitutional crisis.

That's why we came up with the override, to prevent that. If you have time, think about the override with one other condition: that the people elected to the Senate would represent provincial political parties. The reason we fought so hard for that is because there are other parties that are not now represented in the Senate, or in the House of Commons for that matter. The Parti Québécois would be

able to run in Canada for the Senate. The B.C.—help me out; they were in power at—

Mr. Brian Murphy: Yes, the Saskatchewan Party, etc.

Senator Bert Brown: Yes, the Saskatchewan Party. Good. Thank you. I was stalled there for a minute.

There is a party in Quebec that comes back to power every once in a while too, not just the NDP, but also the Credit Party something.... Pardon?

The Clerk of the Committee (Mr. James M. Latimer): *Action démocratique?*

Senator Bert Brown: No, I'm talking about British Columbia.

The Chair: Social Credit.

Senator Bert Brown: Yes, the Social Credit Party. Thank you very much. I'm sorry, I have a lot of things going through my mind.

If you had that many different parties and you were required to get your majority from that many different parties, the point we try to make is that that would be something very significant in the minds of not only people in one province, but in two or three provinces, and all the different political stripes. Included in there would be independents, because any time you hold an election, you have to let people run as independent as well.

I know I'm very excited about the Elton override, because I've read a lot of other things that are very complicated, but I really do believe this is the answer to maintaining the supremacy of the House of Commons and at the same time giving extreme influence to the Senate with the powers it now has.

Let me just close that statement by saying this much: I don't see the Senate vetoing a lot of bills, period. I see them amending some. I see them talking to the MPs of the day in the cafeteria and the hallways, which I think they do now, to say, "We're finding a lot of resistance across the board on this particular bill; why don't you amend it before we have to amend it?" Or whatever.

If you remember the GST, it was the first time I ever saw the Senate exercise real power. When it was introduced at 11%, there was a big outcry against...I think Mulroney was the Prime Minister at the time. All the MPs who were in power were called and threatened by their own constituents, "If you do this 11% stuff, we're going to vote against you in the next election."

He dropped it to 9%, reintroduced it, and told his members of Parliament to sit down and shut up, and he went forward with it. The people of Canada went to the senators, started phoning them, calling them, faxing them, and did everything they could to oppose the GST at 9%. The Senate held the first filibuster that I have ever heard of. They were blowing kazoos in the Senate chamber, and one guy was reading recipes. This is all in the Hansard; you can find it if you have a mind to.

Then Prime Minister Brian Mulroney appointed eight extraordinary senators for the first time in the history of that clause in the Constitution. It allows two extraordinary senators per region so that a Senate that is trying to be obstructionist can be overcome by a majority of that party. He exercised that privilege, and he passed it at 7%—but he had lowered it another 2%.

• (1650)

The Chair: Thank you.

Mr. Gourde.

[Translation]

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

I would like to thank Senator Brown and congratulate him for his lifelong work, and especially his work in the last 20 years, in promoting an elected Senate. I am sure that if Quebec one day gets on board and elects senators, we will one day see a member, or former member, of the Bloc elected to the Senate.

Senator, do you feel a lot of reluctance from your Senate colleagues to an elected Senate at the moment?

[English]

Senator Bert Brown: Yes, there is a lot of hesitation on the other side of the aisle. On my side of the aisle, I don't think there's an absolute majority of all the senators who are labelled "Conservative". But I'm treated with respect. I'm not vilified. I don't feel that the others on the other side of the aisle are my enemies or anything like that. I feel quite comfortable, at least at this point. If I get too successful, my popularity won't continue.

I think one thing that everyone worries about is that elected senators will somehow come prancing in there and say, "We're elected, and you guys are nothing." I don't think you're going to see that happen.

[Translation]

Mr. Jacques Gourde: Of course, in an elected Senate, candidates for the position of Senator would have to stand for election.

Do you think that this is why some present senators hesitate? Perhaps Liberal senators would find it harder than being appointed. Being appointed is quite easy. You get appointed, no problem. But if you have to get elected, you have to go through a campaign and actually be known in the province.

[English]

Senator Bert Brown: Through the chair again, we don't envision the senators of the day being an enemy in any way. We've told a number of them that the first person from any province to resign and run would probably be elected in a landslide. Secondly, we are not trying to force any of them out, period.

We just want to fill vacancies. And the reason for that is that we want the Canadian people to have a timeframe to observe the work of elected senators and to see whether they think... The only reason I know to have an election is that if you don't like the work that your member is doing for you, then you don't vote for them another time. I think that's the fundamental of democracy. I know that you people all live with that fact. You face an election every so often, and right

now it's very tenuous as to whether there's going to be an election next week or next month, or whether it'll be next year.

But we also believe in fixed elections. We've said that we'd like to see senators elected for a six-year term, so that they wouldn't interfere with MPs' elections, most of the time. And if they are elected by the provinces, they definitely won't, because there are about three provinces per year who hold provincial elections, in which they can hold their senate elections at the same time.

• (1655)

Mr. Jacques Gourde: Thank you very much.

The Chair: Mr. Reid, you have the last round of questions.

Mr. Scott Reid: Thank you very much, Madam Chair.

Senator, you've been talking about some changes that would necessarily involve a constitutional amendment using the 7/50 formula. And I would not dispute with you in any way that the kinds of things you're proposing—incorporating some provision like the Elton override, for example, or changes to the numbers of senators from each province—require an amendment under the 7/50 formula.

We've had some witnesses here who have suggested that this is the appropriate way to go with all Senate amendments of any sort, including the modest ones being contemplated in Bill C-19 and Bill C-20.

This gives me an opportunity to give a little editorial—which you're free to comment on when I finish—as to why it can be problematic turning to the provinces for their consent on these things.

Occasionally one of our witnesses will cite the way in which other countries have amended their constitutions. The Australians, for example, require the support of a majority of the states, so that's four out of six states. The Swiss require a majority of the cantons, and also a majority of the population. The Americans, of course, require the support of three-fourths of the states.

But in the Swiss and Australian cases, it's really the people of the states who decide the referendum. And in the case of the United States, just the very fact that there are so many states precludes what happens here in Canada, which is that you effectively are looking for the support of those individual premiers who, effectively, under our system, are elected dictators of their provinces, just as our prime minister is an elected dictator here, thanks to the strength of the party discipline in our system.

The consequence is that we can find ourselves being treated to the kind of thing we saw occur under the Meech Lake accord, and particularly the Charlottetown accord, where you essentially have them acting as feudal barons, horse-trading back and forth—"I will give you this provision if you give me that provision", etc. Before you know it, you've created a cancerous growth like the Charlottetown accord, which effectively includes every imaginable provision—and the Senate is merely one part of this great tumour of a constitutional amendment you now have before you.

I worry very much that we would be unable to get the consent of the majority of the premiers, or of the seven premiers, representing half the population, without moving off the Senate and onto other topics. This fills me with some alarm.

I wonder if you have the same kinds of concerns—or perhaps you don't?

Senator Bert Brown: Yes, through the Honourable Madam Chair, I do not have concerns at all, because I've been through the process once, in Charlottetown, and we didn't have seven provinces out of ten; we had ten out of ten. We even had the territorials—there were only two territorial governments at the time.

The reason I don't have a problem is because we're asking for a stand-alone constitutional amendment. There have been two of them in this country, that I know of. There may have been more. There was one in Newfoundland over the separation of churches, and there was one in Quebec for the separation of bilingualism. They were both stand-alone constitutional amendments. Nobody asked that they bring in Aunt Martha to the Constitution, from any province. They all signed; they all agreed.

We can give them a five- to eight-year timeframe for seeing this thing evolve, and say, "Okay, you have a deadline coming up here. We're not exactly sure what it is, but you probably don't want to have an elected Senate that has a majority if you haven't dealt with representation and the powers."

That's why we look at this as a staircase, with this being the first step, and it's a warning.

The reason we don't worry about premiers—and this is not an insult to premiers, it's just a fact of life—is that we've been through 59 premiers in this country since we started Senate reform.

● (1700)

Mr. Scott Reid: Thank you.

The Chair: Are you finished with your questions?

Mr. Scott Reid: Yes, thank you.

The Chair: I'd like to thank our witness for his unique insights and experiences. Your talk of the Charlottetown accord certainly brought me down memory lane, since I was a member of that special committee studying the accord. So thank you, sir, for appearing.

I'd like to thank all members of the committee for their participation.

Seeing that this is the last meeting before the fall, I'd like to give special thanks to our clerk and our analyst, who have steered us, always with their good counsel, on the right course. Thank you all.

The meeting is adjourned.

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