Round Table on Senate Reform

by Hon. Gary Mar, MLA; Hon. Marie Bountrogianni, MPP; and Hon. Benoît Pelletier, MNA

On May 30, 2006, the Government introduced Bill S-4 which would introduce an eight-year tenure for new Senators instead of the present provision which allows Senators to remain in office until age 75. A Special Senate Committee, chaired by Senators Dan Hays and David Angus, was established in June 2006 to consider this Bill as well as a motion by Senators Jack Austin and Lowell Murray increasing Western Canada's numbers of seats. On September 7, 2006, Prime Minister Stephen Harper appeared before the Special Committee. This was the first time a sitting Prime Minister has appeared before a Senate Committee. Subsequently, Ministers from three provinces testified before the committee on the issue of Senate Reform. Gary Mar is the Minister of International and Inter-governmental Reform of the Government of Alberta, Marie Bountrogianni is Minister of Intergovernmental Affairs and Minister Responsible for Democratic Renewal, Government of Ontario, and Benoît Pelletier is Minister responsible for Canadian Intergovernmental Affairs for the Government of Quebec. The following is an extract from their testimony before the Senate Committee.

Gary Mar, Alberta (September 19, 2006): Alberta's position is very clear and for over a quarter of century we have strongly supported reform of the Senate. Over those years, there have been many committees, reports and papers devoted to the subject. Virtually all of them have come to the same conclusion that Canada's Senate needs to be reformed.

Albertans want to see a Triple-E Senate; that is, an elected Senate with equal provincial representation and effective powers to fulfil its historical mandate of representing provincial interests. This position has its roots in the recommendation of the Alberta Select Special Committee on Senate Reform. In 1985, all parties of the Legislative Assembly of the Province of Alberta approved the committee's recommendations. On two other occasions, in 1987 and in 2002, the legislative assembly endorsed the committee's recommendations. Albertans' desire and support for comprehensive Senate reform remains strong today.

In June 1989, Alberta took a significant step in pushing for Senate reform when the Alberta government introduced the *Senatorial Selection Act*. This act enables our province to conduct Senate nominee elections so that Albertans can democratically choose their representatives in the Senate. Thus far, three Senate nominee elections have been held, in 1989, 1998 and, most recently, 2004. Under the act, province-wide candidates, whether independent or of registered political provincial parties, are selected by Albertans to become nominees. The list of elected nominees is provided to the Prime Minister with the expectation that the nominees will be appointed to fill Senate vacancies arising in Alberta.

In 1990, Alberta's first elected Senate nominee, Stan Waters, was appointed to the Senate by the Conservative federal government of former Prime Minister Brian Mulroney. Subsequent Liberal federal governments have not appointed these Senate nominees. Currently, Alberta has four Senate nominees, all elected in an election on November 22, 2004. Despite the fact that three Senate vacancies from Alberta existed after their election,

none of them has been appointed to the Senate. Instead, the vacancies were filled with unelected appointees on March 24, 2005.

> ***Alberta believes that reform of the Canadian Senate is essential and continues to support comprehensive constitutional reform to bring about a Triple-E Senate that embodies three key principles.***
>
> *Hon. Gary Mar*

The first principle is that representation to the Senate is equal from each province. What is some times forgotten, or perhaps not easily understood, is that in a federal parliamentary system the representative functions of the Senate and the House of Commons are intended to be very different. The House of Commons, based on representation by population, represents the democratic principle. The Senate, based on representation from each part of the country, is designed to represent the federal principle. Together, the two chambers reflect the national will. The rationale behind this structure is to ensure an appropriate expression of democracy and federalism.

Some national jurisdictions in the federation that have large populations will hold a majority of sway in the lower chamber and their interests will be reflected accordingly. At the same time, having a strong upper house with equal representation from each jurisdiction, ensures that the interests of smaller ones are not ignored or eclipsed by those of the overwhelming majority. This upper house is an essential element in a properly operating federation, particularly one as large as Canada, where there is a great diversity in priorities, needs, goals and interests between the provinces.

As noted scholar K.C. Wheare wrote:

> States may be reluctant to enter a federal union unless they are guaranteed some safeguard in one house of the legislature against their being swamped by the more populace members of the union... Equal representation in the Senate gives some sort of security to the smaller states that the powers which have been handed over exclusively to the federal government will not be exercised as a general rule in the interests of a few states. Unless there is this feeling of security and unless there are the checks and obstructions which such a second chamber provides, it may be impossible to initiate a federation or to work it successfully.

The majority of federations in the world have upper chambers that provide equal representation for each of their sub-national jurisdictions. For example, in Australia, each state is represented by six senators, regardless of its population. The upper house in Mexico is comprised of three senators from each state.

At the time of Confederation, Sir John A. Macdonald acknowledged the need for equality in Canada's Senate.

> In order to protect local interests and prevent sectional jealousies, it was found requisite that the three great divisions into which British North America is separated, should be represented in the Upper House of the Principle of Equality.

Though the concept of equality was adopted, it was unfortunately applied imperfectly – an equal number of senators were given to each region of Canada rather than to each province. This may well have been defensible in 1867 on the basis that each region would have had similar interests requiring protection and representation.

In 2006, however, this distribution does not reflect the modern character of Canada. Each province has evolved in its own distinct way with unique priorities, interests, concerns and goals. Accordingly, each province should have its own representation in the Senate.

This idea is hardly new. As early as 1908, Prime Minister Sir Wilfrid Laurier was calling for such a distribution.

> What I would insist on is that each province should be represented by an equal number of Senators, that each province should stand in the Senate on the same footing, and that each province whether it be big or small should have a voice in the legislation, not according to the numerical strength of its population but according to its provincial entity.

If the Senate is to reflect the true national will, then the principle of equality that currently exists in the Senate must be extended from the archaic notion of regions to the modern reality of provinces.

Alberta's second key principle is that members of the Senate of Canada are elected. It is obvious that a basic principle of democracy is that a government is accountable to its citizens. Citizens should have the opportunity to select their representatives and should have the ability to hold their representatives to account through free, regular elections. Our current Senate does not reflect these basic democratic ideals.

This lack of a democratic foundation impedes the Senate's ability to fully execute its constitutional role. There is little doubt in my mind that the senators in our upper chamber today take their role to provide sober second thought seriously, but the nature of modern expectations is such that Canadians view it as inappropriate for an unelected body to block, amend or pass judgment on the objectives of the elected House of Commons. This puts our well-meaning senators in what I would perceive to be a very frustrating position.

Clearly, the Senate's present lack of democratic foundation limits the ability of the Senate to fulfill its original representative function under our Constitution. To Albertans, this all points to the need for senators to be directly elected by citizens.

Albertans demand the right and expect the opportunity to elect their representatives, including their senators. Alberta has done its part to address this by holding Senate nominee elections that allow Albertans to select those that they would like to see serve as their senators. Alberta believes that the rest of the country should take similar steps toward ensuring that senators are elected by residents of the province they represent.

Alberta also believes that Senate elections should be held under provincial electoral processes, with candidates running as independents or as members of provincially registered political parties. This is essential to ensure that the Senate reflects its intended purpose as a forum for representing provincial interests.

Two key issues arise if Senate elections are held under federal election processes. First, non-independent candidates would need to be from and subject to federally registered political parties thereby undermining their ability to represent the interests of their provinces; and, second, the makeup of the Senate would risk becoming a mere echo of the House of Commons rather than an independently elected body with a separate and different composition and perspective. In my view, this would run contrary to the spirit and purpose of the Senate.

Presently, senators hold their appointments until the age of 75. To many, this is tantamount to an appointment for life without ever being required to seek a renewed mandate or being held accountable by the public. Under the current system, a senator can serve a term as long as 45 years without ever being evaluated by the citizens that he or she may represent. Just as lawmakers in provincial legislatures and the House of Commons must submit to an election at regular intervals, so too should the lawmakers in Canada's upper house. Alberta believes that senators should be elected for a fixed and certain term of office.

Finally, Alberta's third key principle for Senate reform is that the Senate must be an effective body. If the Senate is to fulfil its intended purpose, then it must possess and be able to exercise effective legislative powers. As discussed earlier, the Senate was designed to represent the federal character of Canada and to act as a chamber of sober second thought.

It is important to recognize, however, that the Senate's effectiveness in fulfilling this role is largely linked to its legitimacy in the eyes of the Canadian public. Constitutionally, there is no doubt that the Senate currently has considerable authority to play a role in the process of lawmaking. It can block or veto a bill passed by the House of Commons. In practice, however, the Senate virtually never fails to ratify legislation sent to it by the House of Commons.

Canadians would not support an unelected chamber blocking the will of an elected house. An elected Senate would have the legitimacy to play an effective and meaningful role in the parliamentary process.

In conclusion, consistent with Alberta's long-standing position on Senate reform, Alberta takes the following positions on matters being considered by this Special Senate Committee on Senate Reform.

Alberta can support the goal of Bill S-4 to limit the terms of senators to only eight years.

Alberta believes that senators, like members of Parliament, should have terms of fixed duration to ensure that they are accountable to Canadians.

Alberta believes that Bill S-4 should be regarded only as a step toward greater reform of the way senators are selected. Senators who are unilaterally appointed by the Prime Minister every eight years are no more democratic than senators who are appointed to the age of 75. Imposing a shorter term, while welcome, does not address the Senate's fundamentally undemocratic composition and structure.

Alberta does not support the motion introduced by Senator Murray and Senator Austin. Although the motion would increase Alberta's representation in the Senate, in my view it would continue to reinforce the inequality of the Senate's composition.

Alberta believes that, as the chamber intended to represent the interests of the provinces, each province should be equally represented in the Senate.

Canada is not a federation of regions; it is a federation of provinces. Furthermore, the archaic distinction of Senate's divisions along arbitrary regional lines no longer reflects the realities of our modern country.

Each province in our federation has evolved and grown in its own unique way, and each has its own priorities, goals, interests and challenges. Accordingly each province needs equal representation in the Senate.

Under the Murray-Austin motion, regional divisions would be maintained and provinces that are more populous would continue to dominate the Senate, leaving it as a mere echo of the House of Commons.

Alberta's position has remained virtually unchanged for the past quarter century. Albertans strongly support Senate reform so that our upper chamber is equal, elected and effective.

Marie Bountrogianni, Ontario (September 21, 2006) As I am sure members of the committee have heard, Senate reform is not a priority for Ontario or for the 39 per cent of Canadians who live in Ontario. Among all of the critical issues facing the country, changes to the Senate should not be a high priority.

Let me anticipate one question before I continue with my remarks. You may ask: If it is not a priority, what are you doing here? What is a minister doing here if this is not a priority? The answer is simple: We are genuinely concerned that the issue of Senate reform will lead us into unexpected places and reopen constitutional questions that should not be reopened at this time. Ontario wants to ensure that the attention of Canada's leaders are focused on the right issues. We cannot allow our attention to be misdirected toward constitutional discussions that could last a long time and yield no real benefits for Canadians.

We believe focus is important. In Ontario, we have focused on improving results in our education system, in our health care system, and in terms of employment, infrastructure, the economy and prosperity. The current federal government has also attracted praise for having a focused agenda. We would urge the federal government to focus on the priorities of Canadians, and we are concerned that a constitutional debate on the Senate is not something that Canadians would welcome at this time.

Debating the future of the Senate distracts the federal and provincial governments from dealing with Canada's more pressing needs, such as reforming our fiscal architecture in meaningful ways, strengthening the economic union and investing in our people and infrastructure to ensure that Canada and Canadians remain prosperous in an increasingly competitive global economy.

> ***Meaningful Senate reform requires constitutional change. Currently, Ontario is not in favour of re-opening the Constitution.***
>
> *Hon. Marie Bountrogianni*

The process of Senate reform inevitably leads to new rounds of constitutional discussions and Ontario does not believe that this would be in Canada's best interests. Countries around the world are focusing on investing in their people and infrastructure. We need to do the same.

While Bill S-4 may seem to be a small step, the Prime Minister, in responding to a question from this committee, said it was his "frank hope" that this process would eventually "force the provinces" to "seriously address other questions of Senate reform" that require constitutional amendments.

The Prime Minister may favour a constitutional discussion focused on only the Senate, but I think we all know that these proposals have a good chance of leading us down the path travelled during the Meech Lake Accord and Charlottetown Agreement debates. These issues distracted governments and Canadians for over five years. These constitutional debates divided Canadians in ways that took an enormous toll on the country and the government of Ontario does not support reliving these experiences. We urge the federal government to not embark on this path without a full appreciation of the likely consequences.

If the federal government insists on reopening the Constitution to deal with the Senate, Ontario's preference is for abolition. Alternatively, any reform designed to make the Senate a more meaningful democratic body would need to deal with the under-representation of Ontarians in the Senate. If Senate reform is to proceed, the under-representation of Ontario citizens must be addressed. Electing senators under the existing system would entrench and exacerbate inequities that are acceptable for an appointed body acting as a "chamber of sober second thought," but clearly would not be acceptable in a body that would become a potential democratic competitor to the House of Commons.

The proposed reforms would see a legislative chamber much like the House of Commons, one with similar powers and one which would likely be seen by voters and senators themselves as democratic and legitimate. However, it would also be an institution in which Ontario has just 23 per cent of the seats while having 39 per cent of Canada's population.

When the Senate was established at the time of Confederation, it was established on the basis of appointed senators, lifetime tenure, and regional equality, rather than representation by population. Clearly, changing any of these pieces is a significant departure from the intended role of the Senate, that of "chamber of sober second thought," and requires a full national discussion and the consent of the Canadian public.

Once Canada has elected members in the Senate, much like the members of the House of Commons, and with similar powers and responsibilities, there is a real risk of gridlock between the two chambers, especially if the partisan composition of the two differs, as we so often see in the U.S. Congress. Canada currently has no mechanism for breaking deadlocks and the current proposals do not address the danger this poses to the effectiveness of Parliament and effective government.

We would also suggest that if the federal government is interested in parliamentary and democratic reform, it should address the under-representation of Canadians living in Ontario, Alberta and British Columbia in the House of Commons. This change was promised by the governing party during the last election. It is a reform that would not require constitutional change and would significantly enhance democratic representation in Canada. As a result, it is Ontario's position that rather than pursuing Senate reform, addressing this under-representation in the House of Commons would be a much better use of time and energy.

The Ontario government believes that all Canadians are equal. We believe in the principle of one person, one vote. We believe that all Canadians deserve equal representation in the House of Commons. As we know, Canadians living in Ontario, Alberta and British Columbia are significantly under-represented in the House of Commons and the federal government has promised to address this issue.

Ontario's 106 constituencies in the House of Commons represent just 34 per cent of the chamber's 308 members of Parliament. This means Ontario, with 39 per cent of Canada's population, falls well short of a fair share of the seats in the House of Commons.

One of the founding principles of Confederation was the principle of representation by population and a proportionate distribution of seats in the House of Commons among the provinces. However, in 1991, the federal Royal Commission on Electoral Reform and Party Financing criticized the formula then in place for distributing seats, saying that it:

> ...substantially modified the principle of proportionate representation to an extent never before experienced.

Since the publication of the Royal Commission report in 1991, two redistributions have further reduced Ontario's share of Commons seats compared to its proportion of the population. We are moving further away from the principle of one person, one vote. Canadians who live in Ontario, Alberta and British Columbia are increasingly being underrepresented in the House of Commons, and, as a result, new Canadians, Canadians whose first language is neither English nor French, and visible minorities are also underrepresented. I know the federal government is aware of this, and Ontario urges it to act on its commitment to the people of Ontario, Alberta and British Columbia. I quote once again from the Royal Commission report:

> Discriminating against provinces with populations that are growing relative to national population growth can only cause unnecessary friction within our country.

This therefore represents our overall position on Senate reform. It is not a priority for the government of Ontario or for Canadians living in Ontario. It leads to a process of constitutional reform which is not in the interests of the country. Abolition is preferable to tortured attempts at finding national consensus on reforms, and there are real reforms to our House of Commons that would significantly enhance the quality of our democracy that do not require constitutional change.

Benoît Pelletier, Quebec (September 21, 2006) The Government of Quebec does not usually appear before the federal Parliament, but circumstances do arise where its seems necessary to come and express our position on an important issue.

I am therefore here today to speak on behalf of the Government of Quebec, because the legislative intentions announced by the federal government involve an institution, the Senate, whose basic composition is inherent to the very basis of the compromise that created the federation.

There is a great deal of value in the Senate as a parliamentary institution. Although its contribution to the federal legislation process is little known, it does play an important role in the Canadian parliamentary system. The Government of Quebec is quite open to the idea of modernizing this institution.

Bill S-4 on Senate amends section 29 of the *1867 Constitution Act* by creating an eight-year term replacing the appointment for life with mandatory retirement at the age of 75 that currently exists for senators.

The Government of Quebec has no objection to this proposal as a limited change to be made to the Senate. We do believe, however, that the new eight-year term should not be renewable, so as to guarantee the independence of senators from the federal executive branch.

That said, the Government of Quebec is aware that Bill S-4, according to statements made in relation to the bill, is being described as basically a first step.

When the bill was introduced, the leader of the government in the Senate indicated that Bill S-4 was an important first step toward a longer-term objective of bringing about major Senate reform. We do not know exactly what those major reforms will be. However, we do believe that they would be brought in gradually, and consist of a set of proposals.

We also understand that the second step of this incremental approach would be another bill, following this one on Senate tenure, that would involve the federal government changing the way that senators are selected. Prime Minister Harper, when he appeared before this committee on September 7, stated:

> ... the government will introduce a bill in the House to create a process to choose elected senators.

The exact details of that legislation are not yet known, and some federal statements on the specific mechanism to be set up have been somewhat ambiguous. That said, the election of senators seems to be under serious consideration as a unilateral change.

This unilateral federal power is by definition limited in our system of federalism. That was very well explained by the Supreme Court of Canada in the Reference on the Upper House handed down in December 1979. I would like to mention some of the major principles expressed in that opinion, which was an important step in Canadian constitutional thinking.

The court began by setting out the limitations of federal legislative powers over institutions, then provided for in former subsection 91(1) of the *1867 Constitution Act*. That amending power was:

> ... limited to that which concerns only the federal government. [This power] of the federal government relating to the Constitution deals with matters concerning only that government.

The court found in particular that the various ways in which the federal legislative competence over institutions – which was introduced into the Constitution in 1949 – as it was exercised at that time, dealt only with issues that were unlikely to have significant repercussions on federal-provincial relations.

The possibility of implications for federal-provincial relations is one of the important premises used by the court to conclude that the federal unilateral power was limited. The implications were seen by the court to include not only an amendment to the formal division of powers, but also changes to the institutional structure through which overall federal legislative competence is exercised. That competence is very broad and could have repercussions on provincial autonomy. This structure may be at issue when the Senate is under consideration.

Another point made in the Supreme Court opinion was that matters that were part of the federal compromise were not under unilateral federal competence. The court held that the Senate, in its essential elements, is part of that compromise underpinning the Canadian federation. Quebec agrees with that view.

The court showed that the Senate is not simply a federal institution in the strictest sense. As the court stated:

> ... the Senate has a vital role as an institution that is part of the federal system.

The federal institutions created in 1867 therefore express the federal pact itself through their basic features. So it is to be expected that a province will take an interest when there is any question of changing those basic features. That fact was reiterated recently by the Council of the Federation, which reminded the federal government that the provinces must be involved in reforms that deal with major aspects of key Canadian institutions such as the Senate.

The Senate's original role in defending regional and provincial interests is another factor noted by the Supreme Court in finding that there were significant limits on the federal Parliament's authority to legislate regarding the Senate. Regional and provincial interests are one and the same where Quebec is concerned, since it is considered a distinct region in the Senate. Those interests also take on special meaning in relation to Quebec's national identity and the Canadian duality. George Brown, one of the Fathers of Confederation, indicated in the pre-Confederation debates that:

> The very essence of our compact is that the union shall be federal and not legislative. Our Lower Canada friends have agreed to give us representation by population in the Lower House, on the express condition that they shall have equality in the Upper House. On no other condition could we have advanced a step and, for my part, I accept this in good faith.

It is clear that any Senate reform needs to be in keeping with the original intention for an Upper House that would represent regional, provincial and minority interests and in which the Canadian duality would also be reflected.

Finally, in the Reference on the Upper House, the Supreme Court explicitly identified three aspects of the Senate that, among others, constitute basic features of the institution.

The powers of the Senate are the first aspect. They are at the very core of the purpose and existence of the institution.

Regional representation is a second basic feature of the Senate mentioned by the Court, which indicated that such representation:

> ... was one of the key elements of the Upper House when it was created. Without it, the basic character of the Senate as part of the Canadian federal system disappears.

The third basic feature of the Senate concerns the way in which senators are selected. The Court indicated:

> Substituting a system to elect rather than appoint senators would be a radical change in the nature of one of the Houses of Parliament. The preamble to the *1867 Constitution Act* talks about "a Constitution based on the same principles as that of the United Kingdom," where the Upper House is not elected. By creating the Senate in the way it is laid out in the Constitution, those who designed it clearly wanted a completely independent institution that could impartially review the measures adopted by the House of Commons. That was achieved by having the members of the Senate appointed for life. If the Senate was made into a wholly or partially elected body, a fundamental aspect of it would be changed.

The Court therefore gave its opinion on an elected Senate by stating that the Upper House, as an appointed body with the role of providing legislative oversight, was constitutionally protected. The current means of selection, which is that senators are appointed rather than elected, stems from a fundamental and deliberate choice by the Fathers of Confederation. Before 1867, the province of United Canada experimented with an elected Senate. So it was with full knowledge that the Fathers of Confederation decided not to continue with that model.

Those initial constitutional choices were then brought into the modern era in the 1982 Canadian Constitution, which confirmed the intangible character of the three key essential features of the Senate that were described in the Supreme Court opinion, that is, the powers of the Senate, the distribution of seats and the way in which senators are selected, which is a broad concept that is probably not limited to the power of appointment.

The Reference on the Upper House is therefore still relevant in the context of the *1982 Constitution Act*. It expresses the broad considerations involved in exploring ideas to reform basic features of an institution like the Senate. This is a complex constitutional environment that is tied to considerations underlying the federal compact itself, implications for federal-provincial relations, the diversity within the federation and the exercizing of powers within the federal Parliament.

The idea of turning the Senate into an elected House, while praiseworthy, illustrates that complexity because of its predictable impact.

One impact would be the balance of relations within the federation. Moving to an elected Senate is not neutral in terms of its effect on federalism. There are implications for the role of the provinces in inter-governmental relations. The federal Parliament would likely claim increased legitimacy, but the change would not necessarily mean that provincial interests were better represented. Newly elected senators would tend to gradually align themselves with the political dynamic at the federal level, including that of the federal-political parties. The way things have evolved in other countries, particularly in Australia, is instructive in this regard.

Several of the founders of the Australian federation thought that an elected Senate should function as a chamber of Parliament whose role would consist in representing the interests of the states within the federal legislative process. However, the resulting Australian Senate has often been criticized in that regard. As early as the 1950s, a joint parliamentary committee undertaking a constitutional review concluded that the Senate had not functioned as a chamber representing the interest of the states, but rather had been dominated by federal party politics as was the House of Representatives. For the committee:

> ***The loyalty of senators to their parties has been largely responsible for the sublimation of the original conception of the Senate as a States' House and House of Review.***
>
> *Hon. Benoît Pelletier*

Second, the use of elections could change the nature of the Senate. An important aspect of the Senate has always been that it be sheltered from political storms and electoral ups and downs.

Elections would also change the balance between the houses of the federal Parliament. In fact, the Upper Chamber would acquire a new type of legitimacy. That legitimacy, which would be important in terms of the constitutional authority of the Senate, could become a rather delicate issue if the Senate were to include elected and non-elected senators. How would the Senate exercise its authority within that type of context? We know, for example, that the Senate has an absolute legislative veto because of the nature of the institution itself: it is an appointed chamber, which is responsible for providing a second legislative review. A balance is struck because of the very different nature of both these chambers and that balance may be changed if the Senate becomes progressively made up of elected representatives.

It is worthwhile recalling that, in the Constitution, the method of selection of senators and the authorities of the Senate are described together, and within their own paragraph, as issues that require use of the 7/50 procedure. This reflects the links between those two constitutional reform issues.

The evolution of the Senate into an elected chamber could also lead to representation demands, as is illustrated by Senator Lowell Murray's motion on representation of the west, which is also the subject of your committee's deliberations. Representation is an area that, from Quebec's point of view, raises interests with deep roots in Canadian duality and in the origins of the federation, as described in George Brown's statements that I was quoting from.

The Canadian Constitution is a federal constitution. There are therefore very good reasons for ensuring that a change in the fundamental characteristics of the Senate should not be affected by one Parliament alone but rather be part of a multilateral constitutional process.

The first of those reasons lies in the balance of our federal relations. Coordinated constitutional action is necessary because of the impact an elected Senate will have on the existing balance within this federation, and on the relationship between levels of government. The federal government cannot change that balance through measures that federal institutions alone would apply, without a broader debate on important issues related to the federal context, where the various stakeholders each have a voice. The use of a multilateral constitutional process would itself provide some of that balance, given that under a unilateral federal process, provinces would be deprived of their ability to effectively and legitimately voice their rights and interests.

The second reason lies in the very purpose of this type of process within federalism. As we all know, it is the majority that controls parliaments. The use of more complex procedures to amend the Constitution is a way of taking into account minority interests when certain intangible constitutional elements are at issue.

This enabling aspect of multilateral procedures is particularly important for the nation of Quebec, which is in a minority political situation in Canada. It is particularly important in terms of constitutional reform of federal institutions because it is in precisely those institutions that Quebecers find themselves in that minority situation.

From the Quebec government perspective, clearly any future transformation of the Senate into an elected chamber would be an issue that should be dealt with through constitutional negotiations and not simply through unilateral federal action.

Since 1982 and even prior to that, Senate reform has essentially always been viewed as a constitutional issue requiring negotiations. Furthermore, the reform of an institution that is a fundamental component of the 1867 federal compromise should not take place without taking into account the Quebec situation. The future of the Senate fundamental characteristics must be considered within that context.