

RETIREMENT AGE POLICIES

REPORT OF SPECIAL COMMITTEE—DEBATE ADJOURNED

On the Order:

Resuming the debate on the consideration of the Report of the Special Committee of the Senate on Retirement Age Policies entitled: "Retirement Without Tears", tabled in the Senate on 15th April, 1980.—(*Honourable Senator Frith*).

Senator Frith: Honourable senators, I yield to Senator Croll.

Hon. David A. Croll: Honourable senators, I feel I owe the house an explanation as to why this item has remained on the order paper since April 22. I have been waiting for the report on the pension study which is being made by the Province of Ontario. It has been two years in the making and was supposed to be ready last fall; however, it was not. The press reports that it is now ready, and I thought I should see it before making my final comments.

That is not to say that the report we made has been lost sight of. Indeed, the matter of age has been picked up and is now part of the Bill of Rights. That is rather important. Moreover, a landmark decision on compulsory retirement has recently been handed down in Manitoba, and the government has said that it will propose the setting up of a pension committee composed of representatives of the province and the people involved, which is something that has been badly needed.

However, I thought that before I spoke to the Senate committee report I should see the Ontario report, because it should be most interesting.

I therefore move the adjournment of this debate until February 17.

On motion of Senator Croll, debate adjourned.

LEGAL AND CONSTITUTIONAL AFFAIRS

REPORT OF COMMITTEE ENTITLED "CERTAIN ASPECTS OF THE CANADIAN CONSTITUTION"—DEBATE

Hon. Maurice Lamontagne rose pursuant to notice of Wednesday, November 26, 1980:

That he will call the attention of the Senate to the Report of the Standing Senate Committee on Legal and Constitutional Affairs entitled: "Certain Aspects of the Canadian Constitution", tabled in the Senate on 26th November, 1980.

He said: First of all, honourable senators, I should like to congratulate Senator Grosart on the honour recently bestowed on him. I remember very well that, when we were in a different league, Senator Grosart authored a pamphlet called "The Conservative Facts," and I answered with another entitled "The Liberal Truth."

Senator Flynn: Oh, gee whiz! That was the best joke you ever made.

Senator Lamontagne: That was a long time ago. It is still true, though.

Senator Flynn: It is still "Trudeau"!

Senator Lamontagne: I will also long remember my association with Senator Grosart in his capacity as minority leader in the Senate Special Committee on Science Policy. He was at that time most co-operative and was of great assistance to me. [Translation]

Now, honourable senators, I would like to refer to the Orders of the Day and I am sorry that the full activities of the Joint Committee on the Constitution led to a delay in discussing the report that Senator Goldenberg tabled in the house in late November 1980.

In launching this debate tonight I must warn honourable senators that I have very little to add to the contents of the report and that to a large extent I will restrict my comments to the major points.

First of all I want to express my gratitude to the members of the subcommittee, particularly to Senator Neiman and to Senator Stanbury, as well as to the other senators on the Standing Committee on Legal and Constitutional Affairs, and especially its Chairman, Senator Goldenberg. I also want to thank the Honourable Eugene Forsey, Mr. R. L. du Plessis, our law clerk and parliamentary counsel, and the research branch of the Parliamentary Library.

As honourable senators are already aware, the substance of this report was unanimously approved by the committee members before the federal-provincial conference of September 8 last. We could enlarge on it but I think that that conclusion became a matter of record when we held our hearings.

As we all know many things have happened since. To get back to the initial stage I would like to recall one of the main reasons which prompted me to move the motion I did in this house last June.

In recent years several proposals had been made to replace the Senate. In 1978 the government itself had advocated the creation of a House of Federation in its Bill C-60. That formula has since been rejected outright and the Prime Minister referred to it last September 8 at the federal-provincial conference calling it "the ill-fated Bill C-60".

On the other hand even last June there seemed to be a certain consensus about a House of the Provinces as suggested by the Government of British Columbia, the Pepin-Robarts Task Force and other organizations as important as the Canadian Bar Association. This new chamber, which would have replaced the Senate, would have been composed exclusively of provincial representatives who could have been replaced at will by the provinces and would have been compelled to vote as a block, according to the instructions of the provincial premiers.

On June 12 last, speaking in this house about those proposals I said this in the other official language:

• (2050)

[English]

They are not compatible with federalism. They would replace federal tutorship by provincial tutorship. They would introduce a confederal chamber into a federal Parliament. They would introduce into a legislative body, the Canadian Parliament, a second chamber composed exclusively of representatives of the executive branch of another sphere of government.

[Translation]

Therefore last summer I presented my motion mainly because I was strongly opposed to these proposals and I was convinced at the time that their chances of being accepted were increasing rapidly. I humbly believe that the arguments I put forward in my speech of June 12 against the House of the Provinces have been accepted in some official circles. At any rate in the so-called "best effort" document prepared by the ministerial committee last summer there was a recommendation to set up a Council of the Provinces with three members from each province. In spite of the support of British Columbia this document was given a rather cold reception at the federal-provincial conference last September. As soon as the discussion on the Senate started the Prime Minister of Canada then raised the three following points and I quote, even if it is a rather lengthy quotation:

[English]

First, we are, as you are, committed to reform of the Senate as a crucial aspect of the constitutional reform. Second, we believe that such a revision must strengthen the voice of Canada's distinct and varied regions in the national capital. In other words, the Senate should perform a role of representing the regions. The third point, I think, is one on which we will disagree, at least for the time being, and it is the question of how does the Senate speak for the regions in the national capital or at the level of the national parliament? Should the Senate represent the provincial governments or should it represent the people of the provinces? I think that is a very important distinction. There have been reforms, and I believe British Columbia has tended in that direction, which suggest that the Upper House, the Senate, should be the place where the provinces, the provincial governments as such can speak, and, of course, one calls to mind immediately the Bonn system of government of the Federal Republic of Germany, but one also has to remember that goes with a division of power wherein the Federal Republic of Germany, the national government, has practically all the areas of jurisdiction.

[Translation]

Recently, in a speech he made in Toronto on November 5, the Prime Minister once again rejected the proposed House of the Provinces, when he said:

[English]

Parliament would be like the American Congress, presenting measures to be vetoed or approved by a Presi-

dent—with the Council of Provinces filling the role of President.

[Translation]

The immediate danger that I foresaw in June when I moved my motion therefore seems to have been avoided. On the other hand, while the proposal for a second legislative chamber made up solely of provincial government representatives, seems to have been definitely rejected, this does not resolve the grievance of the provinces which we underline in our report and which goes back to 1867 when, in accordance with the wishes of Sir John A. Macdonald, our Constitution subordinated in many areas the provincial legislatures to the central Parliament. This subordination is still characterized by the allocation to the federal level of government of extraordinary powers which transcend the distribution of constitutional jurisdictions. We state in the first part of our report that some of these federal powers, such as the power of disallowance and of reservation over provincial legislation, are now outdated, but that others, such as the power to spend and the emergency power, while they should be maintained, should no longer be used unilaterally by the federal Parliament, at least as concerns some of their aspects.

We recommend that, from now on, these powers be invoked only with the preliminary approval of a certain number of provinces representing the majority of the Canadian population. This recommendation is not really revolutionary since it reflects a practice and a custom which are well-established in our country. We would simply like this practice to become official and be entrenched in the Constitution.

We also recommend that the well-established institution of first ministers' conferences be recognized in the Constitution under the name of Federal-Provincial Council and that the functions of this institution include being responsible for approving the use of extraordinary powers by the federal government, such as the power to spend for provincial purposes under the cost-sharing program and the use of emergency power in peacetime.

Once again, this is not such a revolutionary recommendation in view of our present practice, but it would still establish in our Constitution a truer federation than that of 1867 and would constitute an important step towards a renewed federalism.

I would like to underline this last point by quoting the comments of two Canadian experts who wrote to me about our report. First of all, we have the comments of Professor Richard Simeon, head of the Intergovernmental Relations Institute at Queen's University, about this aspect of our report. His letter reads as follows:

[English]

I believe it is a very valuable contribution, and that in particular you have for the first time correctly stated the best way of representing provincial interests in Ottawa. I have, as you know, been a supporter of the "Federal Council" or "House of the Provinces," but I always thought of it as growing out of the intergovernmental

mode, as an institutionalization of federal-provincial relations. I believe it was a serious political and conceptual error to see such a council as a "new Senate", or indeed as part of Parliament at all. I think all these proposals have been groping towards the model your committee has set forth.

[*Translation*]

I should also like to mention the comments of Professor McWhinney, of Simon Fraser University, who has this to say about our report:

● (2100)

[*English*]

It is cogently argued and lucidly presented—the only really solid piece of thinking we have had to date, on the matter of Senate reform, from any of the mass of Parliamentary special committees, Task Forces, or other Commissions on the Constitution (public or private) in the past few years.

I think you have successfully demonstrated the inherent absurdity of the foreign Bundesrat model for Senate reform, and the intellectual confusions between the legislative review function and the executive federalism functions involved in its sponsoring by various strangely assorted political and lobbyist groups.

[*Translation*]

In view of last September's events and present circumstances, I doubt that our recommendations concerning the supervisory role, the "overseeing role" which the First Ministers Conference should play has much of a chance of being accepted, at this time.

Like Senators Croll, Hayden and doubtless many others here in the Senate, I have observed throughout my life that good ideas are not always accepted immediately and without a fight. Perhaps it is unfortunate; on the other hand, it might perhaps otherwise be too pleasant to launch into the fray.

I should like to give here a few examples of that truth as I have lived it. I developed, for the first time, a specific equalization formula in the summer of 1955, but it was not without a bitter fight that it was accepted in 1957. Only today, in 1981, is consideration given to enshrining its principle in the Constitution. The National Arts Council was suggested in 1951; it was not set up until 1957.

I suggested a general option formula for cost-sharing programs in the fall of 1961, yet it was not applied until 1965. When here, in the Senate—and Senator Grosart can vouch for that—we undertook our study on a science policy in 1968, several people thought it was an exercise in futility; still, over 60 of the 85 recommendations we made throughout the years have been implemented.

In the light of my own experiences and yours, I therefore remind those of you who might be pessimistic at this point, of the well-known and wise advice given once by Lafontaine:

Patience and time will achieve more than force and frenzy.

[Senator Lamontagne.]

For my part, I am convinced that is one very important aspect of renewed federalism, and I surely intend to continue advocating it.

The Prime Minister has already announced, on October 16 last, that if the Canada Act were proclaimed on July 1st, 1981, the federal-provincial negotiations on the sharing of powers and other aspects of the constitutional reform would start as soon as July 2. I hope that our positions concerning the federal-provincial conference or a federal-provincial council and its future responsibilities will then get all the attention they deserve.

[*English*]

I now come to the second part of our report. It attempts to answer the following question: Since the idea of a confederal chamber, composed exclusively of representatives of provincial governments seems to have been abandoned, should we continue to have in Canada a bicameral Parliament, and if so, should the Senate, envisaged as a genuine federal chamber, be elected or appointed?

The case for a bicameral Parliament, especially in a federal system that we are presenting in our report, is based partly on the experience of other countries and on the past record of this chamber. Basically, we claim that Canadians need an upper house not to duplicate what the House of Commons is mainly intended to do and can do efficiently, but to complement it and to correct its deficiencies. We indicate in our report five main reasons why an upper house, properly constituted, can complement the House of Commons.

First, a second chamber, less subjected to party discipline and more independent from the cabinet, can offer a guarantee against arbitrary decisions and for a more detached consideration of legislation.

Senator Flynn: Is that the case?

Senator Lamontagne: Yes.

Secondly, as the Senate is assisted by less partisan and more independent committees and is less preoccupied with the daily obligations of politics, it can devote more time and expertise to the detailed consideration of legislation.

Thirdly, a second chamber, having more time to scrutinize legislative proposals, is in a better position to consider the particular impact of legislation on regions, minorities and individuals, and to exercise a watchdog role in those respects—

Senator Flynn: It should, but it does not.

Senator Lamontagne: —if it is properly designed for that purpose.

Fourthly, a second chamber, with greater stability and continuity in its membership, can compensate for the inevitable high turnover of the Commons.

Finally, a second chamber, with the particular features that I have mentioned, can place a much higher priority on long-term investigation of complex issues, and, on this basis, improve existing government programs and inspire new policy initiatives. This has been proven over the years in this chamber.

These five main reasons which, in our view, justify a bicameral Parliament with two complementary houses, especially in a federal system, have also led us to the conclusion that the second chamber should be appointed rather than elected. Indeed, we state in the report:

The choice between an elected and an appointed Senate is straightforward: either Canadians want a second chamber as a replica of the House of Commons with the same powers, in which case the Senate should be elective, or they want a complementary and largely advisory second chamber, in which case an appointed Senate seems preferable. The ideal situation, in our view, would be to have an appointed Senate with only suspensive veto powers.

As to the future functions of the Senate, we believe that its legislative and investigative roles should, of course, be continued, but we put great emphasis on what we think should be its new and specific responsibilities as a protector of regions and minorities, including linguistic groups and human rights.

I do not intend to list all the recommendations we make to reform the Senate, but I wish to refer to those that appear to me as the most important. We propose that the number of senators be increased from 104 to 126 mainly to improve representation from western Canada. We believe that all appointments should continue to be made by the federal government, but that every second appointment should be made from a list of names submitted by the government of the province concerned. We recommend that in the future senators be appointed for a fixed term of ten years, renewable for further terms of five years, upon the recommendation arrived at by secret ballot of a Senate committee set up for that purpose.

• (21/0)

We also claim that, within an appointed Senate, the elected members of the House of Commons should have supremacy in the last resort in our democratic system. That is why we believe that the Senate should not have an absolute veto. The six-month suspensive veto would give it all the power it needs.

Senator Flynn: Like section 44.

Senator Lamontagne: I do hope that honourable senators will carefully consider all of the other comprehensive recommendations contained in that report.

Before concluding, I wish to raise a point about the inconsistencies that may exist between our report and the content of the resolution which is now being considered by the Special Joint Committee on the Constitution.

Honourable senators will undoubtedly wish to refer to these matters during the course of this debate. However, I do not intend to discuss them until the report of the Special Joint Committee on the Constitution has been presented, together with any amendments to the resolution that that committee may decide to recommend.

In my concluding note, I should like to express my conviction that the implementation of Part II of our report would go a long way towards making the Senate a more efficient

chamber and a better complement to the House of Commons, for the benefit of all Canadians. As we say in our report:

The reform of the Senate has been discussed for too long. The time has now come for action.

I hope that the Leader of the Government, after proper consultation with the Leader of the Opposition, and with the government when required, will soon initiate the changes that the Senate can bring about by its own action.

Hon. Daniel A. Lang: Honourable senators, I wonder if I might be permitted a question.

The report recommends that the Senate maintain only a suspensive veto power. Does that include only a suspensive veto over constitutional matters?

Senator Lamontagne: As the committee accepted this proposal, it covered all matters, including constitutional matters.

Hon. Andrew Thompson: Honourable senators, I wonder if I might put a couple of questions to Senator Lamontagne.

One of the reforms you mentioned as being most important for the Senate was that every second appointment would be from a list provided by the provinces. Would you still be agreeable to that if a certain province were to submit a short list comprised of three cabinet ministers?

Senator Lamontagne: We were not writing the Constitution, and we were not endeavouring to define the number that such a list would include. To my mind, this would be a subject of discussion. In any event, I would presume that there would be more than three names on the list.

Senator Thompson: My second question relates to the secret ballot by members of the Senate concerning the continuity of a senator after a 10-year period.

Do you feel that there could be a situation where perhaps, with a small opposition in the Senate, some effective opposition member, or perhaps even an opposition member, might find he is not getting the continuity because of the interest on the government side in not seeing him there?

Senator Lamontagne: We tried to cope with this problem, and we certainly did not have any partisan view in arriving at this particular recommendation. There were some members of the committee who wanted to go much further, but the general feeling was that the Senate, in a non-partisan way, would be in a better position to recommend renewal for a second term than would the Prime Minister.

Senator Lang: Honourable senators, I wonder if I might ask one more question of Senator Lamontagne.

In advocating the retention of an appointive Senate as opposed to an elective Senate, you state the former would be less partisan, more independent. Are you talking about the Senate as it is today; or by what means would you make it less partisan and more independent through your recommendations?

Senator Lamontagne: We considered the proposals for an elected Senate. If we had an elected Senate based on the model proposed by Senator Roblin, we would have lists of

candidates for election to the Senate, which lists would be set by each party. We discussed that proposal, and the feeling was that such lists would make honourable senators much more dependent on their respective leaders than would the proposal calling for 10-year appointments.

If we want to opt for the American system, which is one of direct election of senators, we would, in my view, reproduce the main weaknesses of that system.

Senator Flynn: It is a choice of weaknesses.

Senator Lamontagne: Yes. There is no ideal system.

Hon. Allister Grosart: Honourable senators, I wonder if I might address a question to Senator Lamontagne arising out of what I took to be a reference to a once rather well-known pamphlet, the authorship of which he attributed to me and to which he made a distinguished reply in another pamphlet.

Would the honourable senator not agree with me that the title was not, as he suggested, "The Conservative Facts", but "Here Are The Facts"?

Hon. Jack Austin: Honourable senators, Senator Lamontagne has given us a most erudite and fascinating address on a subject of great moment to us. The dilemma that I constantly come back to, representing as I do a part of Canada that does not have representation in the government party in the House of Commons, is that I am constantly being asked, and indeed challenged, to represent my regional interests, the interests of the people of British Columbia, in this federal parliamentary process.

Senator Flynn: Why not.

Senator Austin: At the same time as I endeavour to do so—not always with the agreement, I am sure, of the Leader of the Opposition—I find that my mandate—

Senator Donahoe: Not always with the approval of the Leader of the Government.

● (2120)

Senator Austin: I would hope that would be the case also. If I may come back to my thesis—

Senator Grosart: Your question.

Senator Austin:—I find that my mandate to do so as a member of this chamber is constantly being challenged by members of all parties in the House of Commons wherever my view of regional interest conflicts with theirs. I have endeavoured, Senator Lamontagne, to consider whether any appointive process simpliciter would ever provide the degree of mandate required to support those responsibilities, which are regional in nature, in terms of the role of senators in this chamber. That led me to the consideration of the possibility of some form of proportional election.

You have referred quite often in your answers this evening to direct election, and I would ask you whether, in your consideration of a form of proportional election, you gave thought to this question of regional representation and its authority in the Senate and in the entire federal process?

Senator Lamontagne: Well, of course, we did not envisage reform of the House of Commons. I think proportional representation, if it ever comes to this country, should be decided there. As far as we as a committee were concerned, we considered the possibility of increasing the proportion of representation from the western provinces, and we also added the additional condition, in order to provide for a better representation of political parties in this house, that every other appointment in the Senate should be made on the basis of a list provided by provincial governments, so that there would be a more realistic representation in this house.

On motion of Senator Flynn, debate adjourned.

The Senate adjourned until tomorrow at 2 p.m.