



Notes for a Statement by Quebec

THE SENATE

The Senate poses a particular problem in constitutional reform in the sense that its role and the nature of its composition are very dependent on how powers are distributed between the federal and provincial governments. During this round of negotiations, this distribution is only partially considered. For example, the federal government's broad powers have been set aside.

I The problem

At the present time, the Canadian Senate is made up of 104 members (sec 21 in the BNA), all appointed by the federal government, on a regional basis (Ontario and Quebec, 24 senators each, the Maritimes and Prince Edward Island, 24 senators, the Western provinces, 24 senators, six per province, Newfoundland, 6 senators, the Yukon and the Northwest Territories have 1 senator each).

Under the constitution, the Senate has the same powers as the House of Commons, except for the power to introduce bills of a financial nature; these must first be tabled in the House of Commons. So the Canadian Senate's powers are, theoretically, considerable. In practice, however, neither the Senate's discussions nor its decisions attract attention, and the public is not really interested in it, since, for a variety of reasons, its influence is not much felt.

The Senate in its present form is criticized for two reasons; the role it plays, and the composition and the mode of appointment of its members. In federations, the function of the second house is generally to represent the member states in the federal legislative process. For this reason, a procedure enabling the member states to appoint their representatives to the upper house is generally provided in the constitution, as are the terms and conditions under which the various states are represented in the house, in order to counteract the power the larger states may have in the lower house where the representatives are elected in relation to the population (eg the American constitution). The Canadian Senate obviously does not perform that function. With this in mind, it has been said that Canada is not really a federation at all, but a quasi-federation.

Finally, we should point out that, in certain federations, the upper house has a special role such as that of ratifying treaties, approving appointments to the supreme court, or exercising a right of absolute or relative veto with respect to certain bills of particular concern to the member states of the federation. The Canadian Senate has the right to perform none of these functions, although it does have the same power as the House of Commons to refuse to approve legislation.

Many people agree that our Senate, modelled on the British House of Lords, is in need of reform. The Senate as it now stands is not really federal in nature; in order for it to become so, it would need to reflect better the aspirations of the members of the federation and have powers established in relation to the scope of federal legislative jurisdiction.

## II

### Quebec's position

#### a) The Senate and the distribution of jurisdiction

For Quebec, as for others, this is precisely the problem. How is it possible to determine the composition and powers of a new upper house, the function of which would be to provide provincial participation in the exercise of federal jurisdiction, if federal and provincial power have not been redefined? The broader these powers are, notably through Ottawa's great general powers, the more the presence and weight of the provinces should make itself felt. And vice versa. So it is illogical to approach this matter backward. This is one of the major reasons why Quebec has always insisted, in the past and still at the present time, that priority should be given to the distribution of jurisdiction, before a study is made of the central institutions.

Quebec would like to point out in this connection that the provincial Premiers agreed in 1976 and in 1978, at Regina, to give priority to the question of the distribution of jurisdiction.

b) a possible approach

However, Quebec is already prepared to emphasize that, in its opinion, a reformed and transformed upper house should clearly and firmly permit what it has been reformed to provide: real provincial representation at the federal level and significant provincial representation in the exercise of federal power. Quebec also believes that the Senate should reflect the dual nature of Canada, both in its composition and in how it works.

Quebec would therefore be interested in knowing the opinion of its partners on these principles and on the various plans for Senate reform which have appeared recently and which may be useful as a basis for discussion, such as the P  pin-Robarts report. Quebec also believes that we should further discuss the considerable paper provided by British Columbia on this subject. This paper, which is the result of considerable thought, might provide, in Quebec's opinion, a very valuable beginning.