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THE SENATE

Role in Protecting Minorities—
Inquiry—Debate Continued

Speech by:

The Honourable Claudette Tardif

Tuesday, June 10, 2014

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[Translation]

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ROLE IN PROTECTING MINORITIES— INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Nolin calling the attention of the Senate to its role in protecting minorities.

Hon. Claudette Tardif: Honourable senators, I would like to begin by thanking Senator Joyal for graciously allowing me to take part in this inquiry. I would ask that the debate remain adjourned in his name following my intervention.

I am pleased to take part in this inquiry to highlight the Senate's role in protecting minorities. I would like to thank Senator Nolin for starting this series of very important inquiries for the Senate, as well as Senator Chaput, who spoke last week about the Senate's role in protecting minorities. This is a topic that is relevant and of great interest to me, given my Franco-Albertan background.

As both Senator Nolin and Senator Chaput stated, in the 1998 *Reference re Secession of Quebec*, the Supreme Court recognized the protection of minorities as one of Canada's four fundamental constitutional principles, together with federalism, democracy and the rule of law.

According to the court, even though they are not formally set out in the Constitution Act, 1867, "these principles inform and sustain the constitutional text: they are the vital unstated assumptions upon which the text is based." In addition, in a speech from December 1, 2005, Chief Justice Beverley McLachlin said that these "unwritten principles that transcend the exercise of state power... are derived from the history, values and culture of the nation, viewed in its constitutional context."

The Fathers of Confederation enshrined in the very nature of the Senate the principle of protecting the rights of minority and representing their interests. That is one of its fundamental missions. That was true at the time of Confederation and it still is today.

• (1750)

In the book *Protecting Canadian Democracy: The Senate You Never Knew*, which was edited by Senator Joyal, it is stated that the adoption of the Canadian Charter of Rights and Freedoms in 1982 confirmed and broadened the protection of minority rights. I would like to quote our honourable colleague. He said:

As these new categories of rights are added to the Constitution, the role of the Senate as the chamber for the expression of minority rights and human rights within Parliament has been confirmed, broadened and strengthened.

As Senator Chaput demonstrated so well in her speech, the purpose of the principle of protecting minorities is not to dilute our democratic representation system but to strengthen it by making it more inclusive.

The opinion recently issued by the Supreme Court of Canada in *Reference re Senate Reform* indicates that, over time, the Senate came to represent various groups that were under-represented in the House of Commons. According to the Supreme Court, the Senate has served as a forum for women, and ethnic, religious, linguistic and Aboriginal groups that did not always have a meaningful opportunity to present their views through the popular democratic process.

Today, we generally understand the term "minorities" to mean a collective of all the groups that tend to be under-represented in public institutions. The meaning of this term has clearly evolved since Confederation.

Also in *Protecting Canadian Democracy: The Senate You Never Knew*, Professor Janet Azenstat indicated that, in the minds of the Fathers of Confederation, the Senate was to represent the political views of minorities, meaning that it would represent the under-represented political views of society in general. In other words, the Fathers of Confederation envisioned an upper chamber made up of appointed members that would support political opposition, but they also saw one of the key roles of the Senate as protecting the francophone minority by providing Quebec with fair representation within the Canadian federation. The Senate was also to provide representation for national minorities, meaning either the anglophone population in Quebec or the francophone population outside Quebec.

It is vital to remember that Confederation is more than the result of a union between the colonies that existed at the time. It is also a pact between two political communities, two founding peoples: French Canadians and Canadians of British origin. Confederation in Canada was intended to guarantee the preservation and development of the two peoples that came together in it. The Senate is an essential component that allowed that pact to be concluded.

As Professor Benoît Pelletier points out in his text on the suggested replies to questions raised by the reference to the Supreme Court on Senate reform, the preservation of minority rights and the establishment of an Upper Chamber to represent their interests were conditions upon which the provinces, and specifically Quebec, joined Confederation.

In the words of George Brown, and I quote:

Our Lower Canadian friends have agreed to give us representation by population in the Lower House, on the express condition that they would have equality in the Upper House. On no other condition could we have advanced a step.

In addition, measures were specifically included in the Constitution Act, 1867, to protect the anglophone minority in Quebec. The senators from that province are actually appointed

to senatorial districts that were, in certain cases, drawn up in order to guarantee that the minority anglophone community is represented. The Fathers of Confederation did not see fit to include a similar measure guaranteeing the representation of francophone minorities in the other provinces.

However, there is a well-established tradition of appointing representatives from minority francophone communities to the Senate. An analysis of Senate appointments shows evidence of this tradition. Indeed, if we look at historical data on senators, we see that francophones in minority situations have enjoyed almost continuous representation in the Senate in Alberta, Manitoba, Ontario, New Brunswick and Nova Scotia.

As of March 17, 2014, 3.4 per cent of members of Parliament were from francophone minority communities, while approximately 11 per cent of francophone Senators were from outside Quebec.

With the exception of two periods from 1934 to 1940 and 1964 to 2005, my province of Alberta has had a francophone representative in the Senate since 1906. After Senator Amédée Emmanuel Forget, from Alberta, died in 1923, it became an established practice for the linguistic minority to be represented in the Senate, since the Albertan community expected to see a francophone senator appointed. Frank Oliver, owner of the *Edmonton Bulletin*, wrote the following in 1923:

[English]

The death of Senator Forget leaves a gap in Alberta's representation in the Senate. When the provinces of Alberta and Saskatchewan were formed and the Senatorial representation of the four western provinces was increased to 24 or six to each province, one of the Alberta senators was selected as the representative of the French Canadian portion of the population. . . . The recognized reason for the existence of the Senate is the protection of the constitutional rights of minorities.

It is for the strength and safety of the State that it should be freely understood that these rights are not, and are not to be, endangered.

[Translation]

Pierre-François Casgrain said something similar in 1928 when Franco-Ontarian Senator Henri Lacasse was appointed. He said the following in the other place:

I am pleased to observe that the government has fulfilled a duty: they have acknowledged the rights of the French Canadian minority in Ontario, by calling to the upper house one of its distinguished citizens, in the person of the hon. Senator Lacasse, and I think that all the French Canadian people of the province of Quebec, as well as those of other parts of Canada, will give credit to the government. . . for such a fair and just act.

Similarly, in a speech in the Senate in 1956, Acadian Senator Calixte Savoie clearly expressed that the Acadian community expected to be represented in the upper chamber. In his first

speech in the Senate, he thanked Prime Minister Louis Saint-Laurent for his appointment to the Senate and said:

As a faithful spokesman for all Acadians, I would like to express their happiness and gratitude to the Right Honourable the Prime Minister who saw fit to recognize the great merits of Acadians. . . . It is not so much his having appointed an Acadian to the Senate that prompts me to speak in this way, for we were entitled to that. It is rather that he should have appointed a man free from any political ties.

Beyond the historical data and the well-established expectations of French Canadians, we also have to consider that the Senate included members who were champions of language rights and that it has served as an important forum for condemning injustices perpetrated on francophones in minority situations and expressing their concerns about the government's actions.

• (1800)

[English]

The Hon. the Speaker *pro tempore*: Colleagues, it is almost six o'clock. Am I instructed not to see the clock?

Hon. Senators: Agreed.

[Translation]

Senator Tardif: The first Acadian senator, Pascal Poirier, was appointed to the Senate in 1885. He was a prominent figure in Acadia who was known as a key organizer and player during the great Acadian rallies at the end of the 19th century. He was also known as a writer, having published works on Acadian culture and history.

In Ontario, we have the example of Senator Napoléon Belcourt, who was appointed to the Senate in 1907. He rose in the Senate on many occasions to defend the cause of French-Canadians. He presided over the first Congress of Franco-Ontarians in 1910 and became a leading figure in the fight against Regulation 17, adopted by the Government of Ontario in 1912 to effectively abolish French as a language of instruction in the province's schools.

If you look through the *Debates of the Senate*, you will see a number of interventions by Senator Belcourt on the subject of Regulation 17 and French-Canadians' right to their own schools.

More recently, we had Senator Jean-Robert Gauthier, who carried on this tradition by devoting himself to defending the francophone minority in the upper chamber. In the 1990s, during the long fight against closing the Montfort Hospital in Ottawa, Senator Gauthier spoke a number of times in the Senate to call the attention of his colleagues to the serious injustice being done to the francophone community in his province with the closure of that hospital. Other senators also intervened on the matter and, on April 24, 1997, the Senate unanimously adopted a motion to urge the federal government and the Government of Ontario to find a solution in order to keep the Montfort Hospital open.

Senator Gauthier's efforts also led to the adoption of significant changes to Part VII of the Official Languages Act in 2005. That part is stronger and better now thanks in large part to the hard

work of Jean-Robert Gauthier, who wanted to improve things for official language minority communities.

In the same vein, I should also honour the ongoing efforts of our honourable colleague, Senator Chaput, who wants to update the Official Languages Act with her Bill S-205 to ensure that it takes into account the current dynamics that shape francophone communities.

Over time, in addition to official language minorities, other groups have requested representation in the Senate or have been included in the principles governing appointments because of their distinct identity.

For example, in 1955, MP Walter Dinsdale spoke in the other place about Senate reform. In his speech, he said that, given “that one of the basic functions of the Senate is to protect the interests of minority groups,” women and Aboriginal people were two groups that should be taken into account when appointing senators.

The Hon. the Speaker *pro tempore*: Senator Tardif, do you want more time to finish your speech?

Senator Tardif: Yes, please.

[*English*]

The Hon. the Speaker *pro tempore*: Honourable senators, is it agreed that Senator Tardif have an additional five minutes?

Hon. Senators: Agreed.

[*Translation*]

Senator Tardif: He concluded by stating that each province should have at least one female senator.

That same year, John Diefenbaker, who was an opposition member at the time, also pointed out how odd it was that the first inhabitants of the country, Aboriginal people, had never been represented in the Senate. Once he became Prime Minister, Mr. Diefenbaker appointed the first Aboriginal senator, James Gladstone, in 1958.

With regard to the appointment of women to the Senate, for a time, the governments claimed that women could not be appointed because they were not considered persons under the law. After a long fight against this interpretation of the law, in the 1920s, Emily Murphy and four other Albertan women, today known as the Famous Five, asked the courts to rule on this issue.

In 1929, the Privy Council in England overturned a Supreme Court of Canada decision and supported the Famous Five's arguments. Shortly thereafter, in 1930, Prime Minister Mackenzie King appointed the first female senator in Canada, Cairine Wilson.

As of March 17, 2014, the representation of women in the other place was about 25 per cent, whereas the representation of women in the Senate was 35 per cent. On that same date, 1.9 per cent of members of Parliament were Aboriginal, Inuit or Métis, while 5.2 per cent of senators fell into that category.

Honourable senators, Canada and its institutions have come a long way since Confederation, as has our view of what constitutes a minority. What has remained the same, however, are the founding principles of Confederation, including the principle of protecting minorities, which is inherent in the nature of the Senate.

I am concerned about the fact the representation of minorities has been virtually ignored in the debates we have had in recent years on Senate reform. This principle is often forgotten during discussions on Canadian democracy where something is only legitimate if it is what the majority of voters want. This eclipses one of the fundamental missions of the upper chamber. Canada is a big and complex country made up of different regions. I am certain that our parliamentary system needs an institution that acts in the interest of minority groups by taking a second look at important issues, as set out in the founding covenant of Confederation.

In addition, a number of minority groups, specifically associations representing francophone minority communities such as the Fédération des communautés francophones et acadienne du Canada and the Société de l'Acadie du Nouveau-Brunswick, wish to preserve that forum. They have very clearly expressed that view on a number of occasions in recent years, both publicly and before the courts, stating that any proposed change to the Senate should take into account the representativeness of those communities.

Today, it is more important than ever, as we reflect on the future of the Senate, to consider the notions of the two founding cultures, the contribution of Aboriginal peoples to nation-building, the contribution of other cultural communities to the country's vitality and the special status of Quebec in its role as the defender of the francophone community both on its own territory and in the other regions of the country.

In other words, it is important to consider the normative foundations of the Senate and the historic role it has played since Confederation. Establishing and preserving an institution is never an end in itself. Let us never forget that an institution's essential value lies in its ability to meet the objectives with which it was entrusted. Honourable senators, let us never lose sight of those objectives.

In conclusion, as Senator Chaput has also done, I would like to acknowledge the Right Honourable Paul Martin, who appointed me to the Senate in 2005. In so doing, he re-established the tradition of appointing an Albertan to the Senate to represent the francophone community. It is a true honour for me to sit in this chamber and to represent the members of my community. Finally, I also wish to thank Senator Nolin once more for giving me the opportunity to offer my views on this important matter.

(On motion of Senator Fraser, for Senator Joyal, debate adjourned.)