

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS
Wednesday, 26 November, 1980

Time — 2:00 p.m.

CHAIRMAN — Mr. David Blake (Minnedosa).

CONSTITUTIONAL REFORM

MR. CHAIRMAN: We are now ready for the resumption of our hearings. Do we have someone with a brief to present to the committee? Would you come forward Mr. Kirkpatrick and identify yourself for the committee?

MR. KELLY KIRKPATRICK: Kelly Kirkpatrick, Swan River. K-i-r-k-p-a-t-r-i-c-k, that's a long one.

MR. CHAIRMAN: Do you have copies, Kelly? Good, thank you.

MR. KIRKPATRICK: First of all, I would like to thank the Provincial Legislature for making it possible for the people of Manitoba to voice their opinion concerning the Constitution. I suppose one of the first concerns concerning the Constitution is the lack of factual information available to the average Canadian concerning the Constitution and the proposed changes to it. This bothers me; it just bothers me greatly. I am aware that literature is available at the Post Office, but wonder why the government couldn't have seen fit to have it distributed to every household in the country. After all, they manage to do quite nicely when dealing with The Income Tax Act.

I am also concerned that the federal government is not willing to go across the country and sit down and listen to the average Canadian; instead, it wants you to come to the seat of government, which I think is the attitude that Mr. Trudeau has of government being of the people not by the people.

I think that we, as Canadians, all agree with patriation for somewhat different reasons. Some think it should be done to show a sense of maturity in the Canadian nation. Some think it should be done to change the Constitution so that it would be more relevant to the society in which we live. Still others have finally agreed to it because they have been literally brainwashed over the last 50-odd years that this will immediately solve all our problems, if not economically, then socially.

I think the most prevalent opinion is that it should be brought home as a mature nation and improved upon. If so, I would suggest that the Constitution be brought back home unamended in the spirit of co-operation and not confrontation.

I feel that there should be an entrenching of rights, but not in the manner proposed by the federal government. I would like to have seen an entrenching of rights, but not left in the hands of a judicial body. Now, if this is not legally possible, I would like to see that each province or territory, as well as the federal government, have the right to appoint their representative or representatives to this judicial body. As a mature nation, I feel that no one province

should have more powers than others. In this way, we would ensure that every region of Canada would be equally represented.

In the field of energy and resources, I think that the provinces should have first right to their resources, but feel that the judicial body I have indicated would also have the power of secondary taxation, as well as the power of affecting equalization payments amongst the provinces.

These views go beyond the scope of most of the other briefs submitted, but I am concerned that if we cannot arrive at a satisfactory agreement, we must then look at compromise that ensures that two provinces don't control this country.

I would go on to say that if you look at the past history of this country, the injustices that have happened to the west and probably of the Maritime provinces, you would tend to feel very reluctant to give up the energy which we've got in the west and some of the good things that are now coming on stream. But I think that there must be some compromise and I just don't know how you do it but these are my suggestions.

MR. CHAIRMAN: Thank you very much, Mr. Kirkpatrick. Could we have some questions from the committee members? Mr. Brown.

MR. ARNOLD BROWN (Rhineland): Mr. Kirkpatrick, have you yourself experienced any great deal of difficulty with the present Constitution, The BNA Act that we have at the present time?

MR. KIRKPATRICK: No, not really.

MR. BROWN: Would you agree that the major reason for the haste that we seem to have at the present time is that the French language is going to be an entrenched right in the Constitution?

MR. KIRKPATRICK: My own view on that, and I don't think we have to have haste because I think that we run the risk, and I say this very honestly, we run the risk of bringing something into place that a hundred years from now we may look at and look archaic, we might be completely. I would, and I hate to say this, I would think that maybe a hundred years from now the working language in this continent will be basically English regardless of cultures and backgrounds and we have long forgot this French problem that we do have or any other problem, the Indian or the Metis problem that we do have. I don't think there's that big a rush. I would go along with that, yes.

MR. BROWN: Do you think that the federal government and the provinces, there were many areas in which they did have agreement on, that the areas in which agreement has been achieved on, those should be the areas that should be implemented and the rest of it set aside until such a time as what some emergency and so on dictated, that we face added problems?

MR. KIRKPATRICK: I think no decision is probably better than the wrong decision and maybe if it's legally possible, yes, if you can do it legally and I'm not a lawyer and I don't know whether it's legal to do this. Can you change portions?

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: I just have one quick question. You, Mr. Kirkpatrick, refer generally to some sort of compromise position on an entrenched Bill of Rights. Most provinces have human rights legislations, if not all provinces. The criticism of the federal Bill of Rights, Mr. Diefenbaker's Bill of Rights, is that the courts have held in all but I think two cases, that the Bill of Rights is not applicable to existing federal legislation. That could be easily overcome by amending Mr. Diefenbaker's Bill of Rights and making it applicable to all federal legislation. In that way you would then have a bill, you would have the rights, whatever Parliament prefers to set out in that Bill. It would be applicable to all federal legislation but it would be easily amendable in Parliament should some judicial decision occur that was not satisfactory. Is that the kind of solution that you compromise position that you are suggesting?

MR. KIRKPATRICK: As I said, I would much rather see an entrenching of rights but not left in the power, in the hands of a judicial body. I fear that, and especially a judicial body which I understand there will be five out of Quebec. I don't think that this is fair. I think we are a mature nation and I don't see why if we are mature, why every province, if you're going to have a judicial body, if this is what you're going to arrive at, at least a judicial body should have equal representation from each province and each territory and therefore, I think this is one of the things that makes us shy away from the judicial body. We give other excuses, but the excuse is basically we fear that Quebec and Ontario will control through this judicial body and for thereafter we will always be under their thumb. If you got to live with it, then make the judicial body fair and equitable to every province, and if you don't have to have it, I would be in agreement with you, Mr. Mercier, then we don't really need that judicial body. Amend Mr. Diefenbaker's Bill of Rights and make it applicable to all provinces.

MR. CHAIRMAN: Mr. Uskiw.

MR. SAM USKIW (Lac du Bonnet): I get from you, sir, that you are somehow expressing a desire for a greater degree of equality and control of the country and how it functions. Would that be a correct . . .

MR. KIRKPATRICK: Yes, if you don't mind me expressing my opinion here, representation by population, where density of population is the same, works very effectively, but in a vast territory and region such as Canada, where you've got disparities and density of population, it will not work. I have to start thinking that we've got to look at regions, even though their populations are less, having an equal say because they may have the resources that the regions with high density populations don't have. This is what's happening in the west. We don't have

the population but we've got the resources and it looks like they'd like to legislate those resources away from us.

MR. USKIW: When you use the word "we", we have the resources, who are you referring to? Who are "we"?

MR. KIRKPATRICK: My boy comes home from school and he tells me the hydrogen age is upon us and the nuclear age is on us, and the fact that, "Dad, you're dumb, our province is a "have" province. We've got an abundance of water for cooling nuclear plants; we also have an abundance of water which may be used in the generation of hydrogen." I say that what provinces that are "have not" provinces today, may be the "have" of tomorrow. We go through different ages. The "have" province used to be Ontario and Quebec, maybe not Quebec. It's moving and it's not to say that Manitoba be the centre of the resource field some day. We just got to take a look that things are in constant change. The change that we saw in the last 25 years will probably occur in the next 12, and we've got to be ready to legislate. I get very very afraid.

That's the other problem of this judicial body. I think that even though governments are slow in acting, they move a lot quicker than any judicial body will ever move. Have you ever gone to court and had lawyers and how long it gets drawn out? Sorry about that.

MR. USKIW: All of this is very intriguing. If you move into the area of our power from hydrogen, you basically have endowed almost every province in Canada with a great deal of self-sufficiency and plus, so I don't believe it becomes as major an issue as the energy question is today inter-provincially. But even if it were, do you not recognize the fact that Manitoba is a collector of other people's water and therefore if other people wanted to divert that water, we would not have it? Therefore, you have to have some supreme authority that has to rule on this question and that has to be a national government. If Saskatchewan wanted to divert the Saskatchewan River, the North Saskatchewan River, the South Saskatchewan River, and keep the water flowing out within its province and emptying elsewhere, that can only be done as I understand it through a federal-provincial arrangement. So really the water isn't all ours; we get it all the way from the Great Divide.

MR. KIRKPATRICK: Yes, I realize that, but did you ever stop to think that if you stopped that water, how long could you stop it before it would eventually come this way anyway? Is that consensus of . . .

MR. USKIW: I'm talking about man-made structures, the Garrison Diversion on the other side. You can do all sorts of things if you have the will and you want to put up the capital. So I think it's narrowed to talk in terms of the water belongs to us because it happens to flow into Hudson Bay. That presumes that no other authority can do anything with it and I don't presume that. I think the Provinces of Alberta, Saskatchewan, if they have the desire — and Alberta certainly has the money — could do anything they want with the flow of water. They can

decide that it isn't going to flow into Manitoba and therefore cheat you out of your hydrogen potential. Well, it's a very extreme hypothetical case I'm presenting to you.

MR. KIRKPATRICK: As I suggested, I think that this judicial body that would have, as I said, secondary taxation powers and would implement the equalization payments. Now that may seem awful cruel, but I think that if the judicial body is fair and each province has equal representation instead of this problem we now are faced with, a five-man committee out of one province, I don't know how many in Ontario. It's unliveable; we can't live with it. I'm saying that if you can't get down to equal representation, I'm not in favour of it. I'm totally against it, but if there has to be compromise, this is the way and the only way you could arrive at it.

MR. USKIW: Getting back to representation, you hopefully are not trying to convince this committee that the minority population in Canada is supreme over the majority population of Canada.

MR. KIRKPATRICK: I never really intimidated that, no. I said that each province, whether it be a "have" province or a "have not" province should have equal representation — equal, not beyond. Just the same as Quebec shouldn't have five; it should have the same as Manitoba is going to have on that. Okay, but not going beyond that.

MR. USKIW: But if you follow this through, let's assume that, if you take a look at the present parliamentary system, it is based on density of population and therefore you have the bulk of your Members of Parliament elected in two provinces. Now, surely you're not suggesting that to get around that problem, we set up another mechanism that takes away the power of representation and puts it into the hands of some other body.

MR. KIRKPATRICK: I was suggesting in the fields of entrenching of rights only, okay. I get concerned that some of the other things that are happening in this country are happening so fast that I don't think I would want it. I said I don't want it in the hands of the judicial. But such things as the entrenching of rights, which even though there is constant change, I don't think there's going to be that great deal of change, eh? But I think that there should be equal representation. Just because a large body lives in Ontario, does that give them, the number in Ontario, the right to say that it's okay to do this or okay to do that over the few that live in Manitoba? I don't think so.

As far as entrenching of rights, we're dealing with entrenching of rights for me as an individual, not for groups of people in Ontario and other parts of the country.

MR. USKIW: You made some reference to, in your opinion, at least, that there is no need for dealing with the language question. You believe that the problems that we have had in Canada, the problems over the issue of the French language and the French culture within Canada, the problems of the last decade in particular, do you think that we can

just overlook that as if they never were there and if these things had not occurred and that we can just say, well, we ignore that, we don't have to change anything to accommodate to that pressure?

MR. KIRKPATRICK: No, I'm not going to say that. I would say that we have a tendency to be hypersensitive; we have a tendency to jump. We jumped at a parking ticket and we've spent how long in court? I don't know, over that parking ticket, maybe it's still in the courts. It's like lawyers arguing about the phrasing of a question or a statement that water runs uphill. They could argue all day that it's not phrased right, but they never looked at the logic of the argument. Number 1, the parking ticket was an incidental thing. I would have liked to have looked at that problem in conjunction with something very serious rather than a parking ticket, but I understand the bilingual problem to an extent. Maybe I don't understand it enough but I have a tendency to think that we make mountains out of molehills and politicians have a great tendency to do that. You can make what somebody said, you can try and let somebody think that an elephant is a mouse with a glandular disorder.

MR. USKIW: If you take the parking ticket example, you see, what you are saying is the majority in Manitoba believe that it's a mountain out of a molehill, but you know, to the individual that has been aggrieved, that mountain is real. That is a denial of rights which were there, were there but not implemented and not respected legal rights. Now, I think we both agree that the issue was not the substance, it was symbolic in nature, and the reason it was pursued to the Supreme Court of Canada is to point out to Canadians that's only one little element that has shown through that is indeed a violation of our present law. And there are many other examples, that was only one. Therefore it points out the need to clarify constitutionally what are the rights of all Canadians, whether they be of English origin or French origin or others. It points out the need to clarify the Constitution, certainly it does to me.

MR. KIRKPATRICK: As I said, all I said is that I would hate to think that a hundred years from now they may look at what we've got so serious about and concerned about and there would really be no problem, and I'm not saying that they have rights, I like to think I have rights. I have no English blood at all in me. What am I, a second-class citizen? My people emigrated to this country — they couldn't speak a word of English when they got off a boat. They're proud of every word of English they can talk right now. They talk about the people in Quebec. There was just a program on the TV seeing the same that they would have thought that this was out west, well they felt alienated. Well, if they're alienated, what do these immigrants feel? I don't see as how they should be alienated. We've proven to them time and time again. Politicians are probably the ones that are most to be criticized for what they have done. They have made this look such a serious problem that people on the streets have said, hey, maybe it is serious; just the same as this Constitution. How many of us have heard it over and over and over again to the point where we think,

gee, we're not a mature nation, if we don't have that Constitution sitting in Ottawa.

MR. USKIW: Do you take lightly the fact that since 1890 Manitoba violated the rights of the French Canadians in Manitoba? Do you take that lightly?

MR. KIRKPATRICK: No, I don't take it lightly but I don't know whether . . . I don't know as how . . . Well, they must have took it awful lightly that they hadn't brought it to our attention since then. This is the thing, I don't take it lightly. I didn't realize it was there. Maybe I did take it lightly inadvertently, okay, but I didn't realize how serious it was that you are getting a parking ticket in French.

MR. USKIW: Let's then put it into the current perspective. A couple of years ago, Rene Levesque brought in a piece of legislation that did to the English minority in Quebec what Manitoba's laws did to the French minority since 1890 and we all objected to what Rene Levesque was doing. You follow what I'm getting at?

MR. KIRKPATRICK: Oh certainly I do.

MR. USKIW: You don't agree with Levesque's legislation?

MR. KIRKPATRICK: No, and I won't and I . . .

MR. USKIW: So then if you don't you must not agree with Manitoba's 1890 Act.

MR. KIRKPATRICK: That's right. I don't agree with Rene Levesque, what he did, and I don't think . . . I would hope that the legislation was brought in the province. It wasn't done with that intent. Let's put it this way. I don't think it was done intentionally.

MR. USKIW: It was done intentionally.

MR. KIRKPATRICK: Okay, it was done intentionally.

MR. USKIW: Oh yes.

MR. KIRKPATRICK: Then it took us an awful long time or it took that minority an awful long time to find that they were being unjustly treated.

MR. USKIW: That is correct.

MR. KIRKPATRICK: But as soon as they found they were unjustly treated, we're rectifying the situation. I think we did, didn't we in the Legislature indicate that we were going to have our . . . done in both French and English? No?

MR. USKIW: You know for whatever it's worth to you that's only the tip of the iceberg. The problem is much greater than that. That's only one small example. I'm sure Mr. Mercier will confirm. I don't think it's a political question here that we can have no end of similar cases if we don't deal with it constitutionally.

MR. KIRKPATRICK: Yes, that may be true, but only if you as an elected representative want to make it, if you want to make it an issue, you'll make an issue

out of it. In other words, if you want to dig that stuff up we could have issues all over the province. We could have the Indian up north have problems. We've got those kind of problems because politicians live and die by sensationalism and digging up things.

MR. USKIW: Are you not aware, sir, that this issue was not dug up by politicians, that in essence it was the French community that decided they were going to test The Manitoba Act of 1890 and to bring it to a head. It was not really a political party that was involved there, it was an individual backed up by the French Canadian community as such, that decided it was time this was resolved and set right so that really I don't think we can say it's politicians that were responsible. It's politicians that caused the problem in 1890.

MR. KIRKPATRICK: Well, all I'm just concerned with is we don't, in other words we don't make mountains out of molehills. I respect their rights. If they've got rights that they want approved or disproved in the courts then so be it but let's not get overly sensitive and start jumping off.

MR. CHAIRMAN: Any further questions for Mr. Kirkpatrick? If not, thank you very much Mr. Kirkpatrick for appearing before the committee with your brief. Do we have any more briefs to be presented to the committee? Will you come forward, sir, and identify yourself for the committee. Do you have a copy of your brief?

MR. KEN CARROLL: Yes I do, Mr. Chairman.

MR. CHAIRMAN: Thank you very much.

MR. CARROLL: I regret that I didn't provide sufficient copies. I have six available though.

MR. CHAIRMAN: That's fine. We can have them copied. Thank you very much.

MR. CARROLL: For what it may be worth, my name is Ken Carroll. I practise law in Swan River. I've been a resident of this area for about two-and-a-half years. As I have a written brief provided to you, I was going to try and highlight my concerns. I'm here more to express concerns than make recommendations but in trying to isolate the issues in my brief I didn't find it very easy without destroying the train of thought that I had tried to establish. So if you'll bear with me I would prefer just to quickly review what I have said in the brief if you have no objection to my following that route.

MR. CHAIRMAN: That's fine. Is the committee in agreement with that? Proceed, Mr. Carroll.

MR. CARROLL: I have broken this down into four major areas. The first is patriation, the second is an amending formula, the third is the Bill of Rights and fourth is redistribution of powers.

On patriation, the constitutional debate itself has monopolized the national and various provincial political scenes as well as becoming a constant source of discussion at coffee breaks throughout the country. I don't think there is any doubt in anybody's mind by this stage that there is pretty well

unanimous approval that patriation is something that should occur. It is the ambition of every nation or merging nation that they be truly independent and well, Canada itself is in fact an independent nation. Legally, we still have certain ties with Great Britain in that our major source of legislation is still an Act of the British Parliament. But notwithstanding our real independence, patriation and the thought of bringing home the Constitution strums a very pleasant tune on the strings of our national pride and well it should because Canada is a mature nation and is fully capable of attending to its own affairs. I believe it is time that Canada showed not only to itself but to the rest of the world that it has long since ceased being a colony of the British Empire and is now a nation in its own right.

I believe there is an important thing at stake here and it is not so much bringing The BNA Act home — it is commonly referred to as a constitution, but it's not, it's just an act of the British Parliament — the important thing is that our country and our political system is capable of bringing The BNA Act and the Constitution home. I think it is important that we are able to demonstrate to ourselves and to others that we are capable of making such a very important and significant move without threatening the very fibre of our nation. We have the opportunity of proving that a truly democratic process is capable of accomplishing this end and this is very important to keep in mind when you consider the violence that is often required in other parts of the world to obtain reforms that we in Canada often take for granted.

The problem now though is the debate and the process of patriation have been obscured by our attempting to accomplish too many goals at one time. Our various levels of government should not be attempting to use the national pride that is in favour of patriation as a basis to implement other changes in the Constitution specifically in areas of the distribution of power, language rights and a Bill of Rights.

The issue started simple and straightforward enough and every effort should be made to maintain that as our primary objective and that is patriation.

The provincial government side should be attempting to concentrate on that issue and to redirect the federal government and the people's attention to that issue alone, rather than at this time attempting to negotiate additional amendments with those in favour of the federal scheme, we should be trying to isolate the issue and deal with patriation now and once the Constitution or The BNA Act is brought home, then we should contend with rights and the redistribution of power in our own forum rather than having people or Canadian citizens having to travel to Britain to express their views.

Critical to this however is an amending formula. If we're going to bring The BNA Act home we have to know how we are going to amend it once it is here.

I am unable to offer any concrete suggestions on this topic; I am only able to express some concerns that I have. The Federation of Canada brought a number of separate independent colonies together under the umbrella of a single nation. This union was forged on the basis of each province having certain powers and duties which could not be unilaterally removed from it. I will speak later on that particular subject but my point is that we must provide a

formula where a breach of this original bargain will not occur.

The concept of the Canadian federation is that there are a number of semi-independent provincial states, each one having exclusive authority over certain areas of the law but sharing with the central government other areas of the law where the interests of the provinces are common.

It is impossible however for a single central government in Canada except within a limited number of areas to govern the interests of all the provinces with one set of laws. Our nation is too wide and too diverse for one set of laws to be just and equitable in all provinces.

It is important therefore, firstly, that we resist any movement towards a republican state and secondly, that we protect the interests of the individuals which requires the protection of the interests of the provinces.

The amending formula, be it a proposal for the reformed Senate or some other proposal, must to some degree protect the individual provinces from being the victim of a kangaroo majority of the other provinces. My meaning there is that the federal government has during the last Constitutional Conference and since that time shown its willingness to attempt to divide the provinces against each other by offering rewards in certain circumstances to the detriment of other provinces. With the diversity and sometimes conflict of interests between the provinces, it is all too often that a province can find itself alone or in a minority position on issues of critical importance to that province. It is imperative that the amending formula be practical but also that it provides some form of safeguard for the individual provinces. I believe that a right of veto to the province is too restrictive and provides too much authority for the province, but I believe there should be some form of review available to that province prior to restricting or taking away any of its rights.

Now on the topic of the Bill of Rights, and as with patriation, it is a concept that is dear to the hearts of all democratic and free-minded people. Having an entrenched Bill of Rights further provides a sense of security and ensures people that their rights will be protected even from the government.

This, in my opinion, is all that it accomplishes though is a sense of security. The important issue is whether or not in fact security is provided and that these rights are contemporary.

In order to ascertain the protection being offered by an entrenched Bill of Rights you would have to define what of course you mean by entrenched or how far entrenched is the Bill of Rights. Now the proponents of an entrenched Bill of Rights see it as being so securely fixed and fundamental to our Constitution that even our own government cannot ignore its existence or amend its intent and object. It is my opinion that the Bill of Rights formulated in that manner would become too rigid, would be outdated and perhaps become eventually inequitable and unfair.

When the latter happens and if we accept the American example, it will happen, some form of amendment will have to be made to the Bill of Rights in order that it remain a valuable and contemporary guardian that it was intended to be. Now if we follow that procedure the only remaining means of

obtaining such amendments would be to litigate each and every issue to the Supreme Court of Canada and hope that they will be able to interpret the Bill of Rights to accomplish the new desired goal.

Apart from the apparent objection that the judiciary rather than the people through their government would then have control over amendments, the judiciary would, even if full of good intentions, would be restricted by the wording that has been placed in that Bill. Too often and too quickly language believed to be comprehensive, clear and adaptive today becomes restrictive, narrow and loses its original intent and meaning.

If we want an effective Bill of Rights with as much meaning tomorrow as it has today then we must have some form of access to it other than through the judiciary. The question then is how far should a Bill of Rights be entrenched and I believe that will depend on the amending formula that is provided for the Constitution itself.

At any rate, as soon as you provide access to the Bill of Rights you are no longer talking about an entrenched Bill of Rights. The issue now focuses then on whether the Bill of Rights should be a part of the Canadian Constitution and amendable in the same manner as any other provision or should it be a separate Bill in itself with an amending formula of its own. Whatever the means of amending the Bill of Rights, it should not wholly be within the control of one legislative body.

We currently have the Bill of Rights in Canada, and I think it is a generally accepted belief that it has more show than might, but this does not mean that we should condemn all Bills of Rights separate and apart from a Constitution because the one we have now is an inept one.

The problem of the current one is that the body enacting it also gave itself the power to disregard it at its own pleasure. It may be an over-simplification, but I believe the solution would appear to be a Bill of Rights that has some real authority and that cannot be circumvented or amended by a single group or the group or groups that are legislating or being regulated by it.

The amending body may contain representatives of the various levels of government, the various levels of government in unison, some proposed reformed Senate or some other body that represents the entire interests of the nation.

Now on redistribution of power: As referred to earlier the Federation of Canada is a union of semi-independent states or originally was with a democratic central government, the function of which was to administer the common interests of those states. As a part of the pact each province was guaranteed certain rights and powers. Now in a parliamentary system it is generally accepted that Parliament is supreme and on this basis the federal government and its supporters are taking the position that they have the authority to unilaterally request the Parliament of Great Britain to send The BNA Act to Canada and to simultaneously implement certain changes.

While the provinces upon entering Confederation impliedly accepted the concept of the supremacy of Parliament, this acceptance and hence the very basis for Parliament's authority itself was on the basis of the pact that the former colonies had agreed to and

was subsequently encompassed in The BNA Act itself. It was on this basis that the Dominion of Canada was formed and from which Parliament itself derives its power. It is my opinion therefore that if Parliament can unilaterally change and amend the very basis upon which it has received its authority, then it is challenging the fact of its own existence and the existence of Canada as an entity.

Parliament cannot and should not attempt to unilaterally revoke and amend the basis of our Confederation. The Parliament is not the source of the authority of the provincial entities or the author of the provincial union. Parliament is the product of it. Parliament is the product of the provincial power and the product of their unity. Parliament has been established to govern the union within certain parameters as determined by the provinces. Its ultimate authority is derived from the provinces and it cannot in turn dictate to the provinces new terms for the source of its authority. It can only dictate within the system provided and not dictate a new system. When it comes to the very basis and principals of our federation, the authority lies with the provinces as a group and not with the tool, the federal government.

In summation therefore, it is the writer's view that an amending formula should be arrived at and be implemented at the same time as patriation occurs. No further amendments or changes should be attempted until this has been accomplished, at which time the guidelines for further amendments or changes will be established and the debate can then continue in its proper Canadian forum.

It may be important that patriation occur shortly but I believe it is more important that when it does occur that it occur properly. It is more important that it be done right than be done quickly. We must not be influenced by romantic notions of a Bill of Rights. What we do not need is a document full of flowery flowing words. It is more important that we be provided with a set of rights and that they be practical and provided in a way that they are always contemporary.

The value of entrenchment depends partly upon how far entrenched these rights are and the amending formula. A firmly entrenched Bill of Rights will make us rigid and restrictive. As soon as we allow some form of access to it then we are no longer speaking of an entrenched Bill of Rights. We are now speaking of by whom and how will such access be made.

The value of the rights that we are referring to is not measured by the Bill or the document in which it is contained. It is measured by the legislators who review it, the courts who enforce it and the spirit of the people and the government who respect it.

Thank you.

MR. CHAIRMAN: Thank you, Mr. Carroll, for presenting your brief. Will you allow questions from the committee members?

MR. CARROLL: Yes, Mr. Chairman.

MR. CHAIRMAN: You don't have to answer any if you feel you would rather not answer questions. Do we have any questions for Mr. Carroll? None? Thank you, gentlemen.

MR. CARROLL: Thank you.

MR. CHAIRMAN: Thank you, Mr. Carroll. Do we have any further briefs? Yes, Dr. Ritchie. Do you have a prepared brief, Dr. Ritchie, for the committee? If you haven't, fine, carry on.

DR. RITCHIE: No, I haven't. Mr. Chairman, members of the committee, I think I would like to congratulate the committee and the Legislature for giving this opportunity to the citizens of Manitoba, because I think it's timely and provides somewhat better exposure of a subject that is really very obtuse, and until you get into the political arena I don't think you really appreciate the difficulties of the so-called Constitution, which in our case is The BNA Act. I sometimes wonder if we aren't taking too much out of the Constitution with our other problems and then . . .

Now I think it's fair to say that the British at that time felt that Canada was almost ungovernable and they didn't really know what to do, and that the famous Lord Durham Report had said, two peoples roaring in a single bosom, so that it is a Confederation born as a contrivance you might say. I think, and Sir John A. Macdonald himself said in his speeches that he wished it was a unitary state, he would have liked to have seen a unitary state, but given the situation in Canada, he didn't see how that could function, and particularly with the two languages and the two cultures. Of course, the Maritimers always felt shortchanged on the Constitution because when they joined Canada they were the prosperous portion of Canada. Upper and Lower Canada were poor, relatively speaking, and they felt they lost their trade with New England, the USC Board and got very little in return.

We've had some amendments to The BNA Act over the years and I might say that I think — and I've been suggested this by a prominent politician who has been around a long time — that perhaps Canada is still together because The BNA Act was still in England, in London. Certainly, there is I think a lot to think about this problem because Quebec have not been the people who have wanted that The BNA Act rotated or the Constitution repatriated. They are the ones who have hung back and I suppose they have always felt as a minority that it's better to have — they had more faith in the Parliament of Westminster than they had in the Parliament up at Ottawa to protect their basic interests. I think the 1971 Convention in Victoria indicates that Mr. Bourassa, he was the one that really put the brakes on the formula that was devised to bringing it home. I think that has been one of the stumbling blocks, has been Quebec's fear that somehow they might have their basic interests not safeguarded which they felt were somewhat safeguarded by their present British North America Act.

Amendments, I believe, largely are the ones that I am aware of that have been done by the British Parliament have been pretty well agreed on by the province, the provinces and the federal government. I think that The Unemployment Insurance Act is one of them which there was no real argument about. Now, turning, what is changed and what has happened? The argument or the supposition that Quebec having

had a referendum, they were promised changes in the Constitution. Politicians, the federal government, made them promises and that it's time they were brought home but I suggest that the situation has not basically changed in Quebec for a good many decades on this problem of where do they stand in relationship to the west of Canada.

I have read quite a few knowledgeable writers of the French Canadian scene in Quebec and listened to the Quebec members, and I believe it's fair to say that of the French-speaking people in Quebec, one-third were probably separatists from way back, one-third didn't greatly care and one-third were pro federals. When you take the vote out, look at the recent referendum vote and you take out the 20 percent of non-French people who all the polls indicated vote almost 90 percent for federalism, you looked at the French-speaking people in Quebec probably split pretty well down the middle on their approach to the referendum. I would suggest that if a referendum on this subject in the future — and I certainly think there will be more — might indicate that it might draw greater support of so-called sovereignty association or whatever we want to call it, than what it did at this first referendum. I base this partly on the feeling that the French Canadians are evolving into a nation state; that they have evolved their own language and culture. They feel very strongly that they must preserve that language and culture in the sea of North American English. Certainly this is a dominant feature of their look on the outlook to Canada.

Now we are such a regional country. I think it's very difficult to draw up a Constitution that will really satisfy our needs and the best we will have will be something which we'll need to amend as time goes on. A prominent politician said to me in Ottawa who was discussing this project or this idea of Canada and he said, well, Canada has really always been — and I respect his opinions very much — a compromise between Ontario and Quebec and neither one of these two regions basically were greatly concerned about the peripheral parts of the country which is the west and the Maritimes. They were so dominant, these regions, that I think it's fair to say that this was largely the case.

We also had in my opinion, maybe it's unfortunate but this is the way Canada is, the rule that since 1896 Canada has been governed by the Liberal Party largely with three or four relatively short interludes of Conservatives; two of which, the Great War, which took an enormous amount of our effort and the second, the Great Depression, in which no government could have done a great deal along constitutional lines. During those years, the province of Quebec has been a bulwark of that party and consequently in my estimation they have had the ear of the government of Canada to a great extent. Whether this is good or bad, I don't know. I don't hazard a guess, but I do say that they, the province of Quebec, has had a great input into how this country has been run. I would think that sooner or later, as regions change, they might lose this and therefore become less dominant. It does indicate, for instance, the four western provinces, our population has surpassed Quebec's in the last couple of years or about a year ago I believe, or two years ago,

when the figures show we have surpassed them. It's a real concern to them.

Now I think a dual country or a bilingual country or a dual-culture country is a very difficult country to manage and may be made difficult by our great distances apart that we are and our concentration of populations in smaller areas. Therefore, I think we're going to have lots of problem when we bring the Constitution home. I feel that we really shouldn't bring this Constitution home without an amending formula being in place. While I see no great hurry to bring it home or great urgency, if we are going to bring it home, we really should have an amending formula. That amending formula, I guess, will be something along the Victoria Charter ones which will give Quebec and Ontario, all provinces I believe that have had 25 percent of the population at any one time since Confederation, will have veto powers. I think it works some hardship on provinces like Manitoba and Saskatchewan with only a million and probably not going to grow too fast in the foreseeable future and also in the Maritime provinces. If we bring it home without an amending formula, I just don't see how it will function. I don't know where you would go, at least in a legalistic way. There may be other ways of doing it but I would wish that an amending formula be brought home and allow Canadians then, if we're going to bring it home, let's bring it home with amending formula and let's get into it and make what changes we should to get the country together or to try to keep it together.

On the Bill of Rights, myself, I've tended to certainly see that Legislatures and Parliament should be supreme, the Legislatures of the day. I think if we start getting too much in the Bill of Rights, educational rights, and all these things, I think we have to remember these are costly that is, and you're up against the fact that if for instance, a judge in the court ordered a certain school district that they should provide the minority language rights, you're pretty well looking at the duplication of educational facilities in that if you're going to carry it out. Furthermore, there are so many other government things and even municipal things, if it's right, that there be a minority language rights, you're up against the fact that you really basically should provide those rights to all the citizens even if they are only a few out of the many. I have faith in the Legislature that they would do the right thing, by and large, and not everyone does but I think in time they correct their mistakes. Therefore, I am one who feels the less written down and in the Constitution would be better. I think it's even bad enough in statute, but at least it can be changed when it's in statute and to change things, while not impossible, then we must have some method of changing the Constitution, while not impossible, are going to be very difficult. Therefore, I would say the minimum. I think maybe people have said, well, Mr. Diefenbaker had a Bill of Rights and he had but it wasn't statute, not in the Constitution. I think that's a distinction that we kind of forget.

I would like to speak a little on what has been my pet and my idea that has gone wrong with Confederation. We have a good country and it's all said and done, with a high standard of living but has made some of the things worse, and that is that under the Fathers of Confederation gave to the

provinces the jurisdiction over health, welfare and education. With Quebec's, with the two languages, that was a pretty natural thing to give. Now in earlier years, up till 25 or 30 years ago, these things were largely carried on at the local level. Twenty-five years ago even in Swan River, 90 percent of the doctors, the hospitals, the school board, social assistance, were carried by the local governments, let alone the provincial. We've had a great change in this and furthermore, one of the changes has been the use of the income tax as the main vehicle to raise money whereas previously, 25 or 30 years ago, if you took a look at the way the federal people raised money, it was largely by tariffs, customs, sales taxes, excise tax, and so on and the income tax and the corporation tax too, which was a relatively larger thing than it is now. The corporation tax in most tax peoples' minds is a type of a sales tax.

When the federal government, having had the power over the income tax they get in large sums of money, great sums of money, that were used largely in redistribution programs and also in shared-cost programs with the provinces. To my way of thinking, this is where we largely went wrong, that I think these programs are provincial and while the thought of the government was probably, well, let's have every Canadian, regardless of whether he lives in the Yukon or Cape Breton Island, get the same. But I believe we went too far and I believe the federal government usurped provincial and it was done, I suppose, with the idea that that's only fair and we don't want things left out, and I think that the federal people, and I sensed it when I was in Ottawa, they had the great idea that somehow if they didn't look after the welfare of individuals, Canadians, the provincial governments wouldn't do it, and that I really think is carrying altruism too far and while it would be nice to have everything exactly the same in all parts of the country, I believe that if we're going to stay together that we'd be better off to look for some differences or expect some differences. There is differences anyway when you get looking at them.

With this in mind, I believe that I'm one who believed that having a more looser federation will serve us better than a more tightly drawn one. I believe that the present constitutional proposals will draw things up fairly tight. I don't think in a modern day we can live this way, I think all over the world you have problems of, the Scotch want more independence, the Welsh want more independence, the Britains want more independence, the Basques want more independence. Soviet Russia has lots of trouble with their minorities, which we don't read about, which apparently are very real, so that we do seem to be getting into a period of disintegration you might say or local prominence of various groups all over the world, not just in Canada. But I think in a general way I would favour a looser idea of a federation rather than a stronger tie and in that way I would hope that we would have a better country and an easier country to run, but it also implies probably some regional differences. I also think that sometimes some of our western problems might well be solved by more activity on our part to approaching some of the problems that we tend to turn very often to the federal government for a solution.

So I think with those short remarks that's the gist of what I have to say. Thank you very much.

MR. CHAIRMAN: Thank you very much, Dr. Ritchie. Would you answer questions from the committee if they have any?

DR. RITCHIE: I'll try.

MR. CHAIRMAN: Mr. Uskiw.

MR. USKIW: Yes, I'm very much intrigued by your idea of a nation. It seems to me from what I have witnessed over the years that if we went to your kind of loose federation that we would accentuate the disparities between the regions rather than play them down, and you seem to think that is probably acceptable as a trade-off.

If you look at Newfoundland or PEI or New Brunswick, I think they would be in terrible shape if they didn't have federal funds flowing in. They would have a standard of living disparity that just wouldn't be tolerated, so to speak, by anyone with any degree of conscience. You know, if you want to call this a country, surely there ought to be some basic standards across the country in terms of health and education, in terms of income and opportunity. A loose federation would certainly destroy that hope, wouldn't it?

DR. RITCHIE: Well, perhaps. One thing that struck me as a politician — I went to Ottawa with the idea that all the maritimers or Quebecers, had holes in their pants and so on, and I think I can well say that the members when I went there along with other members including the members of your party, were all struck by how all Canadians tend to live almost at the same level, even the so-called poor people, or the poorer regions. I think that we've had these in the past. After all, rural Ontario in the late 1880's and 1890's was poor, was overpopulated, and so they solved it by trooping out west for the Ontarians and the Quebecers went down to New England to work in the cotton mills. So we've always had this movement but it was, I suppose you could agree that it's a tendency to movement of people rather than putting it back.

I think one of our great problems is, if you take a look at DREE and all these programs, you'll find great questioning as to how much value they really are and certainly I read one account by two professors at Laval, who claimed very little economic activity for what they'd studied in that province of Quebec.

I agree that it's a trade-off but I think maybe we've got to recognize that there is trade-offs and after all after the war it seemed to me everybody I talked to around Dauphin was going to work in Ontario, in Toronto and St. Catharines and some of them were going to the coast. I think that's a movement of peoples, but I agree it's an argument that could well be made.

MR. USKIW: Just one more to follow up on that. As I envisage your idea, it seems to me that Manitoba then, because of the withdrawal of equalization dollars, would then have to lower its standard of

living under that concept. Would you agree with that?

DR. RITCHIE: My understanding is that Manitoba neither makes or loses in this give and take. My own and I believe Mr. Craik mentioned it, about three years ago I made a study — I know we lost heavily on our unemployment insurance. We gave out, I think I looked for 1975 or 1974, and Saskatchewan gave relatively more. Now I ascribed that to the fact that Saskatchewan is a more rural and farming population and they were paying taxes but they didn't have as many people on the work force whereas say, British Columbia broke about even, yet had a high economy and a high wage level. I don't think it would make much difference to Manitoba. The one place it probably would make a difference is the Maritimes, and I don't say we should do away with equalization entirely.

MR. USKIW: If you look at Manitoba's position though, we receive, probably this year it'll be somewhere in the order of 400-some-odd million in equalization payments. I'm guessing, I don't know what they are going to be. On top of that we receive hundreds of millions of dollars through cost-shared arrangements on education and health. Now if we were to finance those ourselves, we'd either have to raise our own taxes or we have to lower those standards so that we simply would have to admit we can't afford them. Those are the two choices left to us if we didn't have the support of federal dollars, which are really redistributive dollars, dollars collected elsewhere and pumped into the province of Manitoba.

DR. RITCHIE: I suggest to you that while I'm talking about things that I am not exactly familiar with, the exact amount, certainly I agree with you, as I say, 30 years ago the doctor, the hospital and the educational system functioned by local taxes or local fees or tariff. Now at least it's in Winnipeg for us, and certainly the province should have much more tax room. Naturally the federal people have got to give up substantial of their taxes, but I still think that that would be returning to the original Fathers of Confederation that health, welfare and education is a provincial responsibility and while I wouldn't say it should be absolutely no federal interference I think, and certainly if you look at the federal budget, something has to be done down the road, maybe it's not as drastic as we like to think.

The shared-cost programs and the transfer payments are a very great problem and I really don't think we can keep them up unless we can get our economy going faster than it is.

MR. CHAIRMAN: Any further questions of Dr. Ritchie? None. Thank you. Mr. Anderson.

MR. EINARSON: Mr. Chairman. Dr. Ritchie, you mentioned in your comments about federal-provincial responsibilities. I'd like to ask you when we talk about, I think you mentioned Medicare as one example in your remarks, when Medicare was introduced by the federal government — what are your views on the way that was done when it came

to cost-sharing? Would you like to elaborate on that because you mentioned that.

DR. RITCHIE: I think that it was a very encompassing thing. Instead of going into it, shall we say, a little less, it was general agreement to go into something, but I don't think . . . the federal viewpoint was a pretty hard one in my estimation that you had to have everything just so. They left very little to the provinces leeway to, even for own special circumstances. For instance, Newfoundland didn't have enough doctors. They really said, what's the point in giving us a lot of money, we haven't got any doctors to spend it on, and it took them some years before they developed their doctors. I think that it was a sort of a hard and fast and pretty encompassing thing. I think we might have experimented a little with some lesser restrictive practice. Perhaps though, one has to say we were dealing with a special case, relatively few people, the doctors, were a relatively small number, only a thousand in Manitoba at that time or 800 — there's about 1,200 now. So when you're dealing with that many people you probably find it a little easier to control the situation and that sort of thing. But I think maybe even more so in the hospital field, for instance, the province of Alberta charged a fee of 1.00 or 2.00 a day for a bed, I forget what it was. Some people didn't think that was right and some people thought it was wrong but that was I thought for the people of Alberta to decide. But the federal government said if, for instance, the average stay cost was 20.00 a day for a bed and the patient paid 2.00, they would only pay half of the 18.00 rather than half of the 20.00, which I think was a fair assessment. Again, I think it's up to the Legislature. The people of Alberta eventually would want to have a hospital with a fee or without a fee, that's really up to them, not up to the federal government to be making those, and for the federal government to treat everybody as near as possible to equity.

MR. CHAIRMAN: Thank you Dr. Ritchie, for appearing before the committee, for your brief. Do we have any further briefs? If we have no further briefs, oh, we have one, all right, sorry. Would you identify yourself for the committee please.

MR. DAN JAMIESON: My name is Dan Jamieson. I do not have written copies of my brief for the committee. I apologize for that.

MR. CHAIRMAN: Fine. Proceed.

MR. JAMIESON: The famous Latin American liberator and constitution writer Simon de Bolivar, was fond of saying that no constitution no matter how well prepared or how well drafted could hope to succeed if it fails to take into account the national character of the people that it is intended to govern. Bolivar is remembered by history as a brilliant constitutional craftsman and a lousy judge of national character. I fear that the same may occur with Pierre Trudeau.

The Canadian national character is difficult to define, partly because it is composed of such diverse elements and partly because like any nation ours responds to historical forces and changes in subtle

ways almost from a day to day basis. Two elements emerge clearly as a part of the Canadian definition however. One, Canada is a mature state and two, Canada is a federal state. As a mature state, Canada should certainly be a keeper of her own principal national documents. There can be no doubt but that the Constitution or the principal constitutional document that we have in Canada, The British North America Act, should be patriated, should be brought home from Britain. I think it is also true to say at this time that it should be brought home as it is. The federal government has requested that certain amendments be made prior to patriation. I believe that we in Canada are capable of tinkering with our own Constitution and that it would be preferable for the Constitution to be brought home before any changes are made in Britain.

As a federal state, Canada may be viewed as a partnership. I believe that most of this has been said to the committee. Canada is a partnership between ten provinces and that each of those ten provinces has made a unique contribution, not only to Canadian history but to Canada as a political entity, an economic entity, and a cultural entity. I believe that it is important that upon being patriated the Constitution be turned into a document which protects the rights of each of those entities.

The central ingredient for that protection will be an amending formula. Without an amending formula I believe that the principal of parliamentary supremacy eventually will move in and take over the Constitution. By that principle I believe that it will be the Federal Parliament which will ultimately usurp the power to amend the Constitution if no amending formula is put into place before the many issues which now require constitutional attention come to a head.

A number of formulae have been suggested, one which Pierre Trudeau has suggested, if no other formula comes forward within two years, is a referendum. I believe that a referendum would be unsatisfactory for two reasons. One is that the issues currently facing the country, which will have to be dealt with in the Constitution, are incredibly complex. A referendum fight would undoubtedly be carried on in the same manner as a political fight and with 30-second television spots and I think that after having heard debate on an issue so very basic and simple as whether divorce should be federal or provincial, having heard debate like that going on hour after hour all summer long, I think that this committee would probably agree that it is virtually impossible to give all of the pros and cons on even that simple issue in a 30-second television spot or even a 30-minute speech to a convention or group. I think that a referendum would lead to unsatisfactory results because the result of the referendum would be based largely on an emotional reaction to who is promoting one side over the other, rather than on the basis of any reasonable consideration of the issues.

I believe that the Victoria Charter is in my own view an unsatisfactory amending formula. I do not believe that any one province, even a province as important to our Confederation as Ontario or Quebec, should have a veto power. I also do not believe that any one province such as Prince Edward Island or Manitoba should be disadvantaged in

seeking to oppose amendments to which it is unfavourable. Certainly it can be seen that in Western Canada, British Columbia need only find a partner to oppose a proposed amendment and that amendment would fail, whereas Manitoba would not only have to find a partner but it would have to find the right partner. Saskatchewan simply would not do.

Similarly in the east, Prince Edward Island would have to find the right partner, in fact, Prince Edward Island would have to find two right partners because it could not combine with any other province to have more than 50 percent of the total population.

A third problem which I have with the Victoria Charter and this may merely be because I have been reading in the wrong magazines and haven't found the information that I have been seeking and that is, who will propose the amendments? As far as I can see, the Victoria Charter contemplates only amendments proposed by the federal government. It does not contemplate amendments proposed by the provinces.

For these reasons I would like to state that while there are many problems involved with it, I believe that the House of Federation proposal which was made by the federal government with certain modifications would likely be an acceptable means of amending the Constitution. The federal government proposal essentially contemplates the Senate being composed 50 percent of federal representatives and 50 percent of provincial representatives. This representation to be based in some as yet unstated way on provincial populations, provincial powers.

I believe that I mentioned to one of the members of the committee last night in discussion that choosing the numbers was merely a matter of finding an appropriate mathematical formula. I suggested at that time that a formula based on exponential numbers would probably be best and went home and did some thinking about it and came up with a formula and this may be more detail than the committee is interested in hearing.

The formula that I came up with was where the provincial population is equal to " n square X 100,000", then that province would have " $2n$ minus 1" representatives in the House of Federation, the province appointing " n ", the federal government appointing " n minus 1" members. By this formula the Province of Prince Edward Island would have three representatives in the House of Federation or in the Reform Senate. The Province of Ontario, the largest representative, would have 17 members. Essentially, the Province of Ontario would be adequately represented without being able to overpower the Province of Prince Edward Island.

I would suggest that such a body to become an ongoing constitutional conference that it could give adequate consideration to the constitutional issues before the country, that it could give adequate consideration to the question of a Bill of Rights, which is far more complicated than the motherhood issue which it has been made to appear. Certainly I think that a Bill of Rights is a positive step, however, what should go into that Bill of Rights is just an incredibly complicated question.

The energy question that we have facing the country today, the question is being couched in terms of oil but certainly Manitoba's hydro electric power is going to come up sooner or later for

consideration under that question. I believe that a House of Federation would provide a national body with adequate provincial representation and would provide a filter to hopefully filter out those short-term partisan advantages which unfortunately have so often been sought in the context of constitutional committees across the country since the question was raised.

I think that I should say with all respect to this body that certainly through the Sixties and through the early Seventies constitutional conferences did become virtually political hustings for provincial Premiers and sometimes for the federal government as well.

Thank you.

MR. CHAIRMAN: Thank you very much, Mr. Jamieson. The committee members; Mr. Mercier, you have a question?

MR. MERCIER: Just a couple of short questions, Mr. Chairman. You referred to them as the federal proposal re the transfer of marriage and divorce jurisdiction. You are aware that the Province of Manitoba opposed that transfer of jurisdiction to the provinces? Are you aware of our position paper on that?

MR. JAMIESON: Yes.

MR. MERCIER: Are you generally supportive of the Province of Manitoba opposing the transfer of marriage and divorce jurisdiction to the provinces?

MR. JAMIESON: Essentially, as I mentioned, that was one of the most forward ones and yet as you say there was still disagreement amongst the provincial Premiers. My own position on it was that the provincial government being the repository of family law should become the repository of marriage and divorce, but I have to admit there are a lot of good arguments against that position as well as for it. It is an incredibly complicated question even though it's the simplest question.

MR. MERCIER: You would appreciate it becomes complicated particularly in enforcement of maintenance orders.

MR. JAMIESON: That is probably the principal argument against the transfer. I believe that something in the order of the reciprocal enforcement of Maintenance Orders Act could overcome that argument, but at the moment it simply lacks the wording to do so. That would be my position on that.

MR. MERCIER: Just one other question on the House of Federation proposal. You have suggested a compromise on representation between representation by population and equal representation, which is a kind of compromise I think it may very well get down to, although I tend to favour equal representation; but on the powers of such a new body do you see equal representation from the federal government also with that formula?

MR. JAMIESON: The formula that I suggested was one where each province places the number " n " in

the Senate and the federal government places "n minus 1 person" for each province.

MR. MERCIER: What sort of powers do you see that body having? Do you see them having a suspensive veto on legislation for a period of time?

MR. JAMIESON: The suspensive veto is one that was put forward by the federal government. The body could suspend this legislation for a period of time, but then must accept it. The House of Federation, as I see it, I don't see it doing that. I see it making a decision, either this piece of legislation falls within the Constitution and we therefore accept it or it falls outside of the Constitution and we therefore reject it. Once rejected, that legislation could not be revived in its current form.

MR. MERCIER: So it would make its decisions . . . it would be a constitutional court almost.

MR. JAMIESON: Yes, that's correct, with political overtones. It would not be restricting itself strictly to judicial questions; it would be examining from a political point of view.

MR. MERCIER: Thank you.

MR. CHAIRMAN: Mr. Uskiw.

MR. USKIW: Yes, would you, given the fact that you believe that your Senate, your new Senate, should deal with question of rights, would you go along with the idea of entrenchment of language rights in the meantime? Let's forget about the whole list of rights system, just one specific.

MR. JAMIESON: The specific question of language rights, and I take it that you are referring to the entrenchment.

MR. USKIW: That's right.

MR. JAMIESON: I would support the entrenchment of language rights, French and English, provided there was a sufficient population base to warrant the delivery of services entrenchment . . .

MR. USKIW: The other question has to do with your idea with the House of Federation, is it?

MR. JAMIESON: I take that title from a proposal of Mr. Trudeau's.

MR. USKIW: Okay, let's assume that was the route followed. Would you agree that to give it meaning that one would have to give that body at least a definitive timeframe by which to bring back their proposals, as opposed to sort of looking at the next 50 years where nothing happens?

MR. JAMIESON: I believe that likely what would have to happen is legislation put forward would have to dealt with within a certain period of time, 30 days, 60 days, and that a constitutional amendment — keep in mind that this is also the amending body — I think that considerably more time would have to be given for consideration of an amendment.

MR. JAMIESON: I only want an answer on the principle of whether there should be a time limit.

MR. JAMIESON: Yes, definitely.

MR. USKIW: You agree with that?

MR. JAMIESON: Yes.

MR. USKIW: It may be a long time limit but you believe it should be stated?

MR. JAMIESON: Yes, it should be. I think that the point that we're making is that the questions of the Constitution can be debated forever.

MR. USKIW: That's right, exactly.

MR. JAMIESON: Without resolutions.

MR. USKIW: Without any change or resolutions.

MR. CHAIRMAN: Thank you very much, Mr. Jamieson. Any further questions from the committee? Thank you for appearing before the committee, Mr. Jamieson.

Are there any other briefs in the audience? If not, committee rise. Thank you very much, gentlemen. Committee rise.