

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS
Monday, 8 December, 1980

Time — 8:00 p.m.

CHAIRMAN — Mr. Warren Steen (Crescentwood):

MR. CHAIRMAN: Committee come to order. I have a letter from Mr. Mercier that he is unable to be with us tonight and he is therefore resigning from the committee. All agreed, accepted, passed? Mr. Brown, do you have a motion?

MR. ARNOLD BROWN (Rhineland): Yes, Mr. Chairman, I would move that Mr. Filmon replace Mr. Mercier on this committee.

MR. CHAIRMAN: Agreed? So done. We now have a quorum officially. We broke off at ten after 5:00 with Mr. Matas having just quickly rushed through the reading of his brief. He agreed to come back. He is present to answer questions from the members of the committee and so on. I am open to anyone who wishes to ask a question.

Mr. Schroeder.

MR. VIC SCHROEDER (Rossmere): Mr. Matas, on Page 6 of your brief you are referring to the International Civil and Political Covenant. That is the United Nations Charter which is dated 1966. Is that correct?

MR. MR. DAVID MATAS: No. The International Civil and Political Covenant I believe . . . well, Canada acceded to it in 1976 and there are three I suppose human rights documents floating around internationally. One of them is the Universal Declaration of Human Rights which is about 1948. There is the International Civil and Political Covenant and then there is the International Economic Social and Cultural Covenant. The three together form what is called the International Bill of Rights.

MR. SCHROEDER: I have before me a document entitled International Covenant on Civil and Political Rights, 1966 and it indicates that it was, at the time of printing that it had been signed by 38 states but had only attracted one ratification. Is that part of that group of three?

MR. MATAS: Yes, that's it. There are 63 states, I think, who have signed it now.

MR. SCHROEDER: Could you tell us what kind of rights, if any, that document gives now to Canadian citizens in terms of appearing before international tribunals?

MR. MATAS: There is a human rights committee that is established under the Covenant and there is a so-called optional protocol to that Covenant which Canada has acceded to and that optional protocol allows for individuals of the countries that sign the optional protocol to complain that the signing state has violated the Covenant. That is how Miss

Lovelace made her complaint. Canada has signed this optional protocol, one of a few, I think about 20 states who have. Most of the signatory states have not signed the optional protocol and that option protocol allows for Miss Lovelace to complain and there is this human rights committee set up under the Covenant which I believe consists of 18 members elected by the signatories. There is a Canadian on the committee, Walter Tarnapolski. The committee members, although they are elected by the signatories, do not sit as representatives of the members states and Walter Tarnapolski is not the Canadian representative. They sit as independent experts and they are supposed to be acknowledged persons in their field and they are forbidden in fact to take instructions from the government.

MR. SCHROEDER: The people appearing before that body, that is, for instance Sandra Lovelace, does she have a remedy which is enforceable against Canada under that protocol?

MR. MATAS: Well, she doesn't actually appear before the body. All she does is she sends in a written communication and they read it, ask Canada for a reply, and up to now this business of replies has been going back and forth for quite some time. I believe that from the figures I recollect, there's been a number of individual complaints from Canada, but none of them have reached any final conclusion. The only final conclusion I've seen is in relation to Uruguay. There's been a number of individual complaints in relation to Uruguay which also exceeded the option of protocol, and have come to conclusions where the Human Rights Committee has come up with the statement that Uruguay has in fact, in these individual situations violated the covenant.

MR. SCHROEDER: Such a statement goes some way, but does that committee have any jurisdiction to order the individual country involved to right the wrong? Is there a remedy which they can enforce on the country through international law?

MR. MATAS: I suppose that there's an assumption. There are basically three remedies set out in the covenant. One is that the signing states have to report on compliance and the Human Rights Committee looks at the report. There's an optional interstate complaint mechanism and Canada has exceeded to this optional interstate complaint mechanism. It's never been invoked as far as I know and then there's the individual mechanism. But the actual remedy as far as I am aware is a finding of violation and it's assumed that once a finding of violation is made the state will conform to the covenant, which it has signed.

MR. SCHROEDER: In your opinion, does the proposed resolution meet with the minimum qualifications of the protocol signed by Canada and by the provinces?

MR. MATAS: Well, the proposed resolution, Canada has taken the position — Canada has already

reported on compliance under the covenant and it's taken the position that although the statutory framework is not in conformity with the covenant and that's, I think, fairly clear — that it is nonetheless in substantial compliance with the covenant because the rights it's supposed to protect are in fact protected. An example is retroactive legislation. There's nothing prohibiting right now retroactive legislation although the proposed charter puts in something about retroactive legislation, but Canada has taken the position that it doesn't pass retroactive legislation anyway so that we're in substantial compliance with the covenant.

Now the covenant really doesn't say anything about what should be in the proposed charter. The member signatory states have an obligation to enforce the covenant, but the means by which it's enforced is left to the member states so that there's no requirement that the covenant be duplicated in this proposed charter, but there's no question that it isn't if that's your question. There's parts of the covenant that are not in the charter and I invite you if you're interested in that particular question, to look at an appendix to a brief that was submitted by the Canadian Bar Association through the Joint Committee of the Senate House of Commons and I can, in fact, send a copy to you which compares in detail the provisions of the covenant with provisions of the Charter and notes the divergencies.

MR. SCHROEDER: If you would, I'd appreciate that. There is one other area. Although your brief has dealt strictly with the matter of a Charter of Rights, I'm just wondering whether your group would agree with some of the people who appeared before the Joint Committee in Ottawa who suggested that there should be some statement in the Charter of Rights confirming the statements made over the last decade or so by both federal and provincial governments indicating and confirming that although this is a bilingual nation with English and French as official languages, that it is also a multicultural nation.

MR. MATAS: That is my recollection of what the Canadian Jewish Congress has proposed in its brief to the Joint Committee, that it came out in favour of an assertion of multiculturalism in the Constitution. The Winnipeg Jewish Community Council is not proposing specific items to be included in their Charter, but we identify and support completely the Canadian Jewish Congress, for which I believe has been submitted to you, which goes into a lot of detail.

MR. SCHROEDER: Thank you.

MR. CHAIRMAN: Mr. Parasiuk.

MR. WILSON PARASIUK (Transcona): Mr. Matas, in reference to Page 2 of your brief, I understand that in the past you had been a Clerk to a Supreme Court Justice. I would just like you to expand on your last paragraph on Page 2 with respect to the Bill of Rights. Does that Bill of Rights have primacy over all federal legislation?

MR. MATAS: No. There is some federal legislation which specifically exempts the Bill of Rights. The War Measures Act specifically exempts the Bill of Rights

so that the Bill of Rights does not have primacy over The War Measures Act. And it's possible of course in the future, for the Parliament to make similar exemptions in other laws. When it passed The Public Order Temporary Measures Act, it made a similar exemption. That Act has now expired; it was a temporary measure and the temporary is passed but Parliament can and has and potentially will put in these exemptions. That's one reason why we're in favour of entrenchment. The courts have interpreted, they have taken the position that the Bill of Rights does render legislation inoperative. They took that position in the Dry Bone's case but that case states a position. It's also the only case in the Supreme Court of Canada that actually held a provision of federal statute inoperative as a result of the Bill of Rights. So that the practical effect of the Bill of Rights is quite weak and one of the reasons is that it's a mere statute as opposed to constitutional provision.

I want to read to you now a quote from a case which poses the particular problem that having a statutory Bill of Rights creates. It's the case of Kerr and the Queen. It's a 1972 case and I'm quoting from Mr. Justice Laskin. He wasn't Chief Justice of the Supreme Court of Canada then as he is now. He says in that case; it was a breathalyzer case: "Compelling reasons ought to be advanced to justify the court in this case to employ a statutory as contrasted with the constitutional jurisdiction to deny operative effect to a substantive measure duly enacted by Parliament, constitutionally competent to do so. In that case the Bill of Rights had been invoked to render inoperative the breathalyzer test on the grounds that it was self-incrimination and a violation of due process. Along with the other reasons given in the case, Mr. Justice Laskin gave this one, that this was a statute, and because it was a statute, the Bill of Rights was a statute and not a constitutional instrument, he said compelling reasons had to be given but the court would normally act in compelling reasons in every case and I suppose you can read that as meaning particularly compelling or more compelling reasons had to be given in the case of a statutory instrument than would be necessary in the case of a constitutional instrument. So that is another real reason why we need entrenchment, the interpretive effect of the Bill of Rights as a statutory instrument renders it a much weaker instrument than it would be if it was constitutional.

MR. PARASIUK: Yes, just to continue, we heard from some Alberta legislators this morning and I can recall that at the First Ministers' Conference in September, Premier Lougheed of Alberta said that the government of Alberta was in favour of the Bill of Rights but they would like the government of Canada to follow their model, that is, to have primacy legislation and he indicated that they had brought in primacy legislation. The Manitoba government has taken a position that they aren't in favour of a Bill of Rights in any way shape or form. I had looked for a while at a Bill of Rights which might have primacy over other legislation and in talking to some other people I found out that their reading of the situation is very much like yours, namely that the Supreme Court to date has not really been treating the Bill of Rights as having primacy over the others in the way that it would if the Bill of Rights was entrenched in the Constitution.

MR. MATAS: I think that is a fair statement.

MR. PARASIUK: I would like to move on to another topic, again relating to the Supreme Court on Page 4 of your brief. Have you heard of provinces not going before the Supreme Court if they had a jurisdictional dispute with the federal government because they felt that this would infringe upon the principle of parliamentary sovereignty and supremacy? Have you heard of any province ever taking that position?

MR. MATAS: No, I have not.

MR. PARASIUK: You have never heard of anyone taking that position indeed, because they of course feel that they should have access to some remedial vehicle if they feel that their rights have in fact been infringed upon by another level of government?

MR. MATAS: Yes.

MR. PARASIUK: And the point you are making on Page 4 is that I guess what's good for the goose is good for the gander and that individuals should have the same access to remedial action that governments have. Is that the point you are making on Page 4?

MR. MATAS: Yes, but I suppose it's a bit more than that. Individuals right now can invoke the Constitution as it stands, I mean, they can invoke the division of powers the same way that the provinces can. Their problem is of course standing, an individual, a province is considered always to have standing in a constitutional case because its jurisdiction is affected. Many individuals feel that their rights are affected by these constitutional divisions but unless they are affected in a very individual and personal way, then they cannot or — they have had difficulty in the past to start with getting before the courts to invoke the Constitution. Some of these cases we've heard a lot about recently in relation to publishers, like the K. C. Irving case. K. C. Irving was prosecuted for monopoly and there was constitutional questions there about whether the federal law was constitutional in allowing him to be prosecuted, and he was able to invoke that because he was particularly affected. But we've had another case where a doctor went to court to ask that Medicare be struck down as being unconstitutional because the federal government had legislated it and it was not within federal jurisdiction, that was his argument, but the court said he had no standing to go before the court because he wasn't affected individually and particularly, he was just affected generally the way everybody else was.

The law as standing has shifted a bit in relation to individuals more recently and it is something that Mr. Thorsen was very much involved in in his litigation about French language rights so that individuals and constitutional litigation may have now better standing than they used to have. So it's not really just a question of putting individuals on the same level as provinces although that is an important constitutional issue. The question is what they're going to have standing to fight about or what they're going to have standing to invoke, and once you've got a Bill of Rights that's something of course that individuals will invoke, but it's something that states or provinces may well invoke too.

MR. PARASIUK: Yes, I don't see anywhere in your brief any reference to linguistic rights, which in a sense are really part of the entrenched charter. Does the Winnipeg Jewish Community Council have a position on linguistic rights? Maybe it was in the brief but maybe I didn't see it.

MR. MATAS: The Winnipeg Jewish Community Council does not but the Canadian Jewish Congress does. I can read you an excerpt from the oral testimony by the Canadian Jewish Congress which . . . I think this may have been distributed to you as well.

MR. PARASIUK: Yes, we never had a chance to read it yet.

MR. MATAS: Yes, I quite appreciate that . . . which says at Page 4, there's this Section 2. It says Section 133, The British North America Act and its equivalent of The Manitoba Act should be extended to New Brunswick and Ontario — that's basically the position.

MR. PARASIUK: What about the other question of the present proposed charter would entrench as a right, the right of minority groups, official minorities, to educate children in one of the official languages of Canada? That is, the English in Quebec could educate their children in an English school and francophones outside Quebec would have the right to educate their children in French schools. Has the Canadian Jewish Congress taken a position on that particular?

MR. MATAS: Yes. I can refer you to Page 12 of the main brief. The language of education instruction is Section 23, so the constitutional committee of the congress says, the committee is concerned about several aspects of 23. First, the committee is of the opinion that everyone should be able to claim protection in this section. The committee's unconvinced that the section should be limited to citizens of Canada. Secondly, the committee strongly objects to the concept of first language learned and still understood. This implies language testing which the committee believes to be highly improper. Finally, the committee observes that the present wording implies that only publicly funded minority language education will be permitted. In the committee's view, privately funded minority language education should be permitted. In the committee's view, privately funded minority language education should be permitted as well. Therefore, the committee recommends that Section 23(1) be redrafted as follows: "Any person residing in Canada whose language of education at the primary or secondary level is that of the English or French linguistic minority population of the province in which he or she resides has the right to have his or her children receive their kindergarten, primary and secondary school instruction in that minority language. If he or she resides in an area of the province in which the number of children of such residence is sufficient, public funds shall be provided for such instruction." The brief goes on, it says the same reasoning applies to Section 23(2). However, because a citizenship requirement has been deleted, some provision which prevents a voidness of the discipline of Section 23(1)

is tolerable. The spirit of Section 23(2) protects a child who has commenced his education in the minority language in another province.

In order that such a child not be required to change in midstream, the following version is suggested: "Where any resident of Canada changes residence from one province to another and prior to the change, any child of that person has received at least three consecutive years of his or her kindergarten, primary or secondary instruction in either English or French, that person has the right to have any or all of his or her children receive their primary and secondary school instruction in that same language. If the number of children of those persons, resident in the area of the province to which that person has moved and who have a right recognized by this section is sufficient, public funds shall be provided for such instruction." That's basically the position of the Congress.

I suppose I should point out, in the oral presentation there is something as well. It's just a short paragraph, I'll read that. It reads: "It is felt that simple availability of education or funds for education is not sufficient but it is essential that minority language groups have control of the curricula and the schools dispensing education in the minority language and that the best means of affecting this would be to permit those groups to control their own school boards."

MR. CHAIRMAN: Mr. Desjardins.

MR. DESJARDINS: I wonder, on that same topic that we were discussing on Page 12, I wonder if that could be misleading. He finished by saying: "If he or she resides in an area of the province in which the number of children of such residence is sufficient, public funds shall be provided for such instruction." Could that be interpreted in different ways by a court? Could it be, for instance, a school division, or an area and then you could have complications? Let's say that the school, a certain school division, do not have these, there is no provision. That could be a real battle too, wouldn't it?

MR. MATAS: These provisions have been quite common in constitutional reform proposals but they, in fact, do not exist in our law so we can only speculate about how the courts would interpret them but the expectation is that it would relate to what would be administratively feasible in terms of costs and numbers. It would be a factual inquiry and the parties involved would have to show what could reasonably be done, what size schools normally are and what resources are available or could be made available and how much it would cost. I think there would obviously be room for argument. There seems to be in most situations but I don't think that it's insufficiently vague. I think that this is standard level of draftsmanship in this area.

MR. CHAIRMAN: Any further questions, Mr. Desjardins?

MR. DESJARDINS: No, that's fine, thank you.

MR. CHAIRMAN: Any further questions from other members of the committee? Mr. Einarson.

MR. HENRY J. EINARSON (Rock Lake): Mr. Chairman, to Mr. Matas, on this question in your

brief on Page 12 on languages. When you talk about establishing the rights in entrenchment of the official languages and if it's left, and when you talk about entrenchment it's being placed in the hands of the courts and supposing the courts made a decision that those minority groups, even if they aren't sufficient numbers, will be taught, say in the French language or English language, there is a price tag attached. Are you saying that people are going to follow the decision by the courts because when that happens is it your understanding that they have no recourse as opposed to if it was not entrenched, it was done by the various Legislatures, say maybe language rights should be left in the hands of the provinces. What are your views on those two positions?

MR. MATAS: You are suggesting, you are putting a hypothetical example in a situation where the numbers are not sufficient but the courts would decide all the same, that it has to be done. I would suggest that is not a realistic hypothesis. The way the whole thing is structured is that the courts would only make such a decision where the numbers were sufficient. But the provision says, public funds shall be provided for such instruction, and so in that situation, there is a right for education in the minority language when numbers are sufficient and public funds shall be provided. What's the recourse in a situation where people don't want this? First of all, the whole purpose of an entrenched Bill of Rights is to protect certain rights that we believe to be fundamental and this has been proposed because it represents in the position of the Congress and also in a lot of other submissions as well, a fundamental value that there should be a minority language education.

Now if at some time in the future that turns out not to be a fundamental value of Canada, as I have said in the main brief, a Constitution is not immutable. It takes, an entrenched Bill of Rights is not immutable. It just can't be changed quickly by a plurality but a sustained majority can change it.

MR. CHAIRMAN: Any further questions? Mr. Parasiuk.

MR. PARASIUK: Mr. Einarson's question regarding the possible expense of entrenching language rights in a Constitution, to your knowledge does the court take into account the expense involved in a trial when they set up the procedures for a trial? I gather that some trials can be very expensive but society has decided to pay that price in order to ensure that there is due process of law and that the person being tried has an opportunity to have due process served. Is expense ever considered in those instances?

MR. MATAS: There is no doubt that simple due process of law, the process of trial by jury and appeals are obviously more expensive than having a summary trial with an administrative court and no right of appeal, and yet we are prepared to go through those expenses because we believe that by so doing we are protecting ourselves and our fundamental rights.

MR. CHAIRMAN: Any further questions? Seeing none, thank you very kindly, Mr. Matas.

MR. MATAS: Thank you.

MR. CHAIRMAN: And to, is it Mrs. Blankstein? Thank you kindly. As agreed upon this afternoon because Mr. Gilmore from the Manitoba Chamber of Commerce is from out of town and from Winkler that he would be the first one heard tonight and the last presentation was a split one, partially prior to supper hour breaking and partially after.

Mr. Gilmore.

Is Mr. Johnston making a joint presentation? Mr. Johnston.

MR. JOHNSTON: Mr. Chairman, I would like to merely introduce this presentation that Mr. Gilmore is going to give to you. My particular position this year is president of the Manitoba Chambers of Commerce and that is an organization that there are 77 Chambers in the Province of Manitoba and there are some 7,500 members of the Chamber and we have had some interest in constitutional reform now for some months. The Canadian Chamber, first of all undertook to set up a committee and Graeme Haig from Winnipeg was one of the co-chairmen of that committee and they produced a document in July which we as a Manitoba Chamber undertook to study at our board meeting in Killarney in September. As you can understand the logistics of our kind of organization is such that getting agreement of all our members is more difficult than if you are operating in one particular place.

We had discussion in September and following that we met with the Cabinet and made that part of our presentation to the Cabinet and then we met with the members of the opposition and made the same presentation to the members of the opposition.

The position that we are in now is that the resolution of the government came down in October and as a board we have not, on behalf of our members, had an opportunity to study that in detail. But nevertheless we felt that it would be useful at this particular point in time to have a presentation made by Mr. Gilmore who is our chairman of our constitutional committee for getting our particular position on the table at this point and he will tell you where we stand as far as the other matters are concerned.

Thank you very much.

MR. CHAIRMAN: Mr. Gilmore.

MR. GARY GILMORE: Thank you, Mr. Chairman. I don't have a written submission, however I do have copies of the submission of the Canadian Chambers of Commerce that Mr. Johnston has just referred to. It can be distributed to the members of the committee.

MR. CHAIRMAN: Certainly.

MR. GILMORE: Basically, Mr. Chairman, as Mr. Johnston has mentioned, what we are doing tonight is not presenting a final policy and we are not really trying to suggest to the committee the decision they should be making but rather we are going to explain the position of the Chamber of Commerce and also indicate some considerations that we would ask the committee to bear in mind in making their decisions.

In addition to having 77 Chamber members from around the Province of Manitoba, the Manitoba

Chambers of Commerce is also a member of the Canadian Chambers of Commerce. I would like to sort of make this point clear because apparently there is going to be a presentation tomorrow by the Winnipeg Chambers of Commerce which is one of our members and yet is totally independent from us in their submission. And in the same way, we are independent from the Canadian Chambers of Commerce and as a result the submission that is being presented to you now is not of our doing. We may choose to adopt it. We have accepted it in principle at our policy meeting, our policy convention in April when the Manitoba Chambers of Commerce policy is decided upon. We may choose to adopt the Canadian Chambers of Commerce submission or not. So before going any further I just wanted to clarify the situation that there are sort of three levels of Chambers as there are three levels of government.

As far as Chamber policy is concerned, as Mr. Johnston mentioned, we have trouble moving extremely quickly in the formulation of policy because of the fact that our members are spread around the province. Our policy proposals have to be submitted. They can be submitted from any member Chamber or from committees of the Manitoba Chambers of Commerce itself. They have to be submitted in February. They are then circulated and debated and voted upon at our annual convention which this year is in April. So that until April, our Manitoba Chambers of Commerce is not in a position where we could have any firm direct policy on the Constitution.

I would like to go into a little bit more detail and Mr. Johnston presented as to the chronology of the involvement of the Manitoba Chambers of Commerce on the constitutional question to date so you can see where we're at. The submission you have before you is a draft that was presented in August, the initial draft was prepared in July and this is a little bit more refined version that was presented in August.

At our Killarney meeting it was decided to form a constitutional committee to hopefully draft proposals on the Constitution for presentation to our April convention. There were basically, two motivating factors that seemed to motivate the directors of the Manitoba Chambers of Commerce in deciding to form the committee. The first was that the Chambers of Commerce is basically a group that represents the interest of the business community and a great deal of the issues facing the business community at the present time seem to have constitutional aspects to them. So if you're wondering why the Chamber of Commerce even bothers trying to do something with the Constitution, that's one of the reasons issues such as the price of fuel, for instance, affects business a great deal. The ownership of resources, issues such as that, have a great deal of affect on our members and that was the prime reason that we decided to become involved in the constitutional question. That plus the fact that as we represent, or as we are perhaps one of a number of organizations representing business, we felt that the business community through the voice of the various Chambers of Commerce, should be putting in its opinion and making its feelings heard on the constitutional issue.

On December 3, just last week, we had a meeting of our constitutional committee at which it was

resolved firstly, to make a submission to your Special Committee and secondly, to draft and distribute a questionnaire to our members. The questionnaire has not been finalized yet. We hope to have it distributed later this month and we would certainly hope to have the answers received prior to the February date at which the resolution is to go back before the House of Commons. I am not sure whether this committee would appreciate receiving results from the questionnaire or not. I can understand that you might feel somewhat inundated with various questionnaires and polls and things at this date. What we hope to do in the questionnaire is present questions, both referring to the resolution and as to the feeling of our members as to the contents and the method being used in the resolution and as to the overall questions of constitutional reform and the feeling of our members towards them.

Following the answering of the questionnaire, of course, we will be going forward to formulate our policy proposal. There may also be other policy proposals put before our convention as well. The Winnipeg Chamber of Commerce has a task force on the Constitution and I would assume that they might also have a policy proposal to present at that time, and after that as I mentioned, the Chamber of Commerce will have a proper policy.

I'd like to take a few minutes now to just indicate what our feelings are so far concerning the resolution and so far, I mean, so far as our policy-making mechanism has been able to proceed. It isn't a firm policy but what has impressed us both through our directors, through the members of our constitutional committee and through the opinions that we received from our Member Chambers around the province, is the absolute necessity for this whole constitutional matter to proceed in some manner. There's a great number of questions, as you gentlemen are all aware, that are to some extent waiting on the answer of these constitutional things, and this isn't just a resolution. This is the whole constitutional question.

The resolution, of course, doesn't deal with all of these items. It only deals with some of them but it may in some way constitute a real step forward if it can set this procedure, if it can set the constitutional reform procedure forward and what we as a Chamber would like to impress upon you now, is that our members feel very strongly that we don't want the matter to be dropped or shunted apart for another five or ten years or something of that manner. These questions are important, it's not simply an academic exercise, as I know all you gentlemen are aware of that but certainly some members of the public feel that it's just sort of fooling with paper. Well, of course, that's not the case. There are a great number of decisions and policies that people wish to make that can be affected by the Constitution and I would urge this committee in making its decision to bear that in mind, and try to ensure that the entire procedure and process of constitutional reform, progresses rather than simply being allowed to wilt or stay without progress for a number of years yet.

That's all I have to say at this time, Mr. Chairman. I'm available for any questions.

MR. CHAIRMAN: Mr. Gilmour, would you permit questions?

MR. GILMOUR: Yes, Mr. Chairman, I would.

MR. CHAIRMAN: Sorry, I was listening to another person speak to me for a moment. Mr. Arnold Brown.

MR. BROWN: Mr. Gilmour, have you been addressing yourself to the question of entrenched rights or rights being handled by Parliament. Have you been discussing this at all within the chamber?

MR. GILMOUR: Not to a great extent at this point. The original submission that you have before you, the one from the Canadian Chambers of Commerce, of course pre-dates the resolution in the federal government. It was prepared in the summer when the entrenched rights was a question to be discussed but hadn't quite become the crucial question that it is today, and most of our discussions were more along the economics of the constitutional question somewhat reflecting the focus of the Canadian Chambers of Commerce submission. We may very well be now approaching our members for some opinion on an entrenched Charter of Rights or our committee may decide that is one area we don't feel we have any expertise in and we would want to just avoid. That decision hasn't been made yet.

MR. BROWN: We've had at least one presentation and maybe two presentations in there in which a great concern was shown that nowhere in the Constitution, at the present time, or in the one in the proposed Constitution do we have the right to own property, that Canadians have the right to own property. This is of particular concern to some people. I wonder if this would be a concern to the Chambers?

MR. GILMOUR: I don't know Mr. Brown. It's something that again, we haven't considered specifically. I'm just wondering to what affect the right to own property would be effected by not being specifically stated in the Constitution. I don't know if it is effected to any great extent.

MR. BROWN: The reason I raised this, Mr. Gilmour, it's just something for you to think about.

MR. GILMOUR: And I appreciate that.

MR. CHAIRMAN: Mr. Schroeder.

MR. SCHROEDER: Thank you, Mr. Chairman. I think all of us appreciate, especially the comments about the urgency of getting on with this, so that we can get back to getting the economy back into shape. But just following up on that matter of the urgency of having something with respect to the right to own property entrenched in the Bill of Rights, I would hope that while you're considering that, that before you do so, you consider rights of conscience, religion, freedom of speech and certain other rights which we would, at least on this side, I believe, consider more fundamental.

MR. GILMOUR: Certainly, Mr. Schroeder, if we were to consider an entrenched Bill of Rights at all and given intensive consideration or bring forward a proposal, we would consider all aspects of the question.

MR. CHAIRMAN: Any further questions to Mr. Gilmour? Seeing none, thank you both Mr. Johnston and Mr. Gilmour for your presentation.

MR. GILMOUR: Thank you.

MR. CHAIRMAN: Next on the list is the Liberal Party in Manitoba, Fraser Dunford. Just prior to the supper break, Mrs. Westbury said that she was under the impression that they had wished to be withdrawn from the list, but I haven't got anything in writing and neither has the Clerk. Is Fraser Dunford present? Alex Berkowits? Mr. Berkowits.

MR. ALEX BERKOWITS: Yes, Mr. Chairman. My name is Alex Berkowits and I am a businessman in the electronics field, industrial.

MR. CHAIRMAN: Just before you proceed, Mr. Berkowits, do you have a formal presentation that you would have copies?

MR. BERKOWITS: No, just . . .

MR. CHAIRMAN: And are you here as a private citizen?

MR. BERKOWITS: Yes.

MR. CHAIRMAN: All right, proceed, please.

MR. BERKOWITS: This is the third day that I have been here and have been listening quite attentively. What I gather is we have some excellent historians in Manitoba. I don't think we have any problem that we would be losing some of our historians here. Everybody has been talking from the 1800s and nothing too much has been discussed about the present problem. I wish we had more tool and die makers in Manitoba than historians. We've been losing them left and right as we have heard today, to Alberta and the western prairies. Myself, there is no question in my mind and I will give you a brief resume of my experiences, is that the Bill of Rights is too precious. It has to be in the Constitution. So far as my own personal life, I came to Canada in '48 after the war as an orphan and I mastered four languages at the age of 10. Four languages. So when one is having difficulties deciding whether we should have one language or two, to me, it wouldn't matter to have another one, for I managed to pick up another two since then. The question is being industrial oriented, can we afford it? And nobody seems to discuss that. Everybody is really dodging the issue. What can we afford?

I would like to elaborate with regard to education. In various countries that I have been educated in there has been always one language that has been exercised officially. The reason for that is self explanatory, that no country could afford officially to keep up that kind of an expense. It is therefore important that I express that this secondary language — every country has secondary and third languages. They are mainly used, Latinic languages, if one wished to practise medicine. If once some of the people were practising commerce, they would take up other languages, or if they wished to pursue a career as a diplomat, these languages are a must in all countries, regardless whether it's in the western hemisphere or behind the iron curtain or anywhere in the world. There is nothing new about having a curriculum of other languages in any country. It isn't against the law. As a matter of fact, it's encouraged.

I, myself, have four kids; I'm having trouble getting them to speak one language. I also feel it is very important that since it is essential that a federal government — we have a tri-level government — as I have been educated here. It's a civic and then we have provincial, as well as a federal one. It is essential that the federal government should take all the responsibilities for education.

I don't think senior citizens, any part of the country, not only Manitoba, should be burdened 60 percent of his real estate property on education. The chances are very good that my four children not necessarily will stay in Manitoba. We live in a mobile world. There is no reason whatsoever that we should pay from real estate property to pay for our education. I think and I doubt it if the federal government would not accept that kind of a responsibility. I believe today Mr. Schroeder said he has lost a brother and a sister to Alberta, I believe today — two sisters. I would like to point out, these were all educated right here in Manitoba on the taxpayers' money here. They claim that are worried about the non-renewable resources such as oil. I think that is non-renewable also. I don't think at this time that your folks will be ready to raise another family.

These elements are equally non-renewable when we're losing people left and right; therefore, my children are equally the same thing. I feel it's a Canadian responsibility since my kids will be exposed to travel anywhere in Canada hopefully, they will settle, and we are paying the bill for it. So I will not dwell any further on that particular issue. I feel such an issue should be brought forward to the federal government. I doubt it if they would act as a delinquent and they will not take on these responsibilities because I think as a provincial government we have other responsibilities to look after from the members of Legislature in here.

Now I will go into the next issue that has been troubling me concerning discrimination and racism. I am a person who is not running around like historians from one library to the other to find out what happened in this world. I am living evidence. I know how it started. I also have experienced it and I will be frank, I don't like myself the way things are. To give you a little food for thought is that the legislation which I heard, it's not going to work if the people don't want; the public does want. There is no need to worry about the public. The problem is to make sure that the member of the Legislatures are supervising the laws and the rules that they write, that are in our Charter, wherever it is, whether it's in a provincial or a federal way, that it is exercised.

The biggest problem we have is, I think, that we have a bureaucracy fear imbedded and I think some of the Members of Parliament are more scared of the bureaucracy than the public. This is the experience. If some of you are interested, I even have evidence to show you that not only is there a continuation right now in discrimination, it's active racism, and they are getting bolder every day. And if this isn't checked by our elected Members of Parliament, and that applies to the civic administration more so, that I found, than in the provincial, because the provincial Members of Parliament at least are putting in full time. They are dedicated far more as I observed. We have a city

administration looking after more than half of the population of Manitoba, a bunch of dodos on a part-time basis. You just cannot do a job. All they are doing right now during the day time, they are writing up the tenders and at night they are proving it.

That is how things are going wrong. You make your point, you prove the point that this is going on there. Believe me, there are too many — you could name it a clique, whatever the case is. The law, everybody has their own phraseology. The more you prove the wrongdoings, and I am sure, gentlemen, you all read the papers. One building is paying tenfold and the other one for taxes and nobody seems to come up and say, why. They set up a commission and they come up with the results to say, interior memorandum, that it's the inflation. It's not the inflation because some of them in this department, there isn't a person who is less than 20 years, to accept that for a staff who is working on a department to look after and come up and say, inflation. We all know it's inflation but how come these people have been working for 20 years in there, over two decades, and nothing has been done?

That's why, because the citizen doesn't have any rights at all. The Bill of Rights is essential and I spoke to some of the Members of Parliament and they agree there is no backbone in our Bill of Rights, what we have now. And everybody has been telling us we do have a Bill of Rights.

Now I am sure, gentlemen, you know it, all of you know it, there are no teeth in the Bill of Rights. It has been proven time and time again. I will not dwell any further on that because you are fully aware of that.

We have to have a sense of humour in it also. We have everything going for us here. It's like having a beautiful wife who doesn't want to sleep with her husband. We've got a wonderful country. I wish my kids would appreciate this country half as much as I do. They were all born here

I really would like to believe as much as I could that my experiences for having no Bill of Rights, to have a Bill of Rights is very important, extremely important. I don't know how to express it, and those people who think that we don't need a Bill of Rights, I don't think they are honest with themselves because one has to have a warped mind to think that you could just go by complaining around when somebody is discriminated. The sad part about it is that when you do go to the elected Member of Parliament which has repeatedly been said here in the three days that I have spent here, that you could go to the elected Member of Parliament and clear up all the problems. That is not the case. I could prove that to you. I went to the elected Member of Parliament. They will not have any part of it because they appoint, whether it's a Board of Revision or whoever it is, which is another elected Member of Parliament. All they are I could say, are political peddlars, and they will not at all, when you bring up the situation, you prove that they are discriminating you, and not only do you prove they are discriminating you, they are lying under oath and what is the end of it? Never mind disciplining the thing, they are promoting the person, and that is where the problem is. We are sitting on top of it and we are talking around in circles, constantly in circles, that we say, well, we're not that, we have all kinds of

loopholes. We can't afford to have loopholes. We have to have equal rights for everybody in this country, whether it's the Native people as was mentioned, whether it's the Japanese and what has happened to them. I wasn't here. I would have to take the word for what was brought up here. We just have to have written a constitution.

So this is so important. I can't see why anybody in the world would want to even challenge that. I don't want to sound patriotic. I am a good Canadian and I'm proud of it, and I don't want to leave just because some people are going to tell me, if you don't like it the way we run it, go somewhere else. That's not the answer. Let the other guy go.

The last part of it, I would say is, why do we argue so much. What's such a big . . . I'm more of a practical person. We're living in the hemisphere of North America, close to 300 million people and we can't just close our eyes and say it's dark outside at high noon. We have to face the facts. I don't say the American Constitution is perfect. This is not the point I want to make here by far, but I would like to stress that what I see over the news when it comes 11 o'clock, I think it's a responsible constitution. Japan was copying us and a lot of countries are copying us. We're a young country, there's nothing wrong in copying somebody else if it's going to be good. I think the American Constitution is a very responsible Constitution. When somebody is called up on the carpet and you have the Senate Committee and some wrongdoings, or somebody hasn't exercised and hasn't done his job, those guys don't lay back, they sing like a canary, they even tell them the diapers, when the last time they were changed.

Whether it's Exxon or President Nixon or anybody else, there's no hanky-panky. When those guys are on the floor they've got to say if somebody got some money for a campaign or where it comes from, they can't say, I don't have to tell you.

Well, what I have seen on the news, at least 11 o'clock news, I must say . . .

A. MEMBER: See the 6 o'clock news.

MR. BERKOWITS: The 6 o'clock news, maybe it's something different. I'm glad you all have a sense of humour.

The fact remains that when you have a President Nixon and he had to answer for his . . . he had to be responsible for his conduct and all the other ones along the line, unless I don't know, but whatever it is it was there and they paid the penalty for wrongdoing. But I don't think that's the case here, I must say so, regretfully. I must say regretfully it doesn't here. As a matter of fact, it's very disgusting where a president of the Bank of Toronto says, don't move that Embassy here and the next day it doesn't to the Prime Minister of ours or things like that. And that has happened on the 11 o'clock news. You haven't got a good memory. Because he stood up and he says, don't do that and it was done so because that is not . . . you can't tell me that is done when you have a Constitution and a Bill of Rights, that you could just come up and lip up like that any outsider and tell the government of the country. And this is what I meant before, that's why we need an elected member of Parliament, they're making the decision, this is the way it's going to be, this is written, but also we must make sure that

some of these people rotate and sit in to these policies. You ask any councillor in the City of Winnipeg whether he ever appeared on a Board of Revision for a tax assessment. I'll bet they never sat foot in it. Because it's educational for them — that's why they don't know what's going on. You phone him up and he's not there. The only full-time person right now that we have is our Mayor, nobody else is working. If somebody's digging up the street five times during the day, who are you going to call? You can't call — see if they're doing something wrong.

But I won't take any more of your time. I understand there's quite a long list, Mr. Chairman. I will close for the time being, for now.

MR. CHAIRMAN: Mr. Berkowits, would you permit questions from members of the committee?

MR. BERKOWITS: By all means.

MR. CHAIRMAN: Mr. Desjardins.

MR. DESJARDINS: Mr. Berkowits, you introduced an interesting suggestion that the financing of education should be done by the federal government. Then you'd have a problem unless you are suggesting that the administration, that the responsibility for education should also be transferred to the federal level.

MR. BERKOWITS: Yes, all of it.

MR. DESJARDINS: Oh, I see, fine.

MR. BERKOWITS: Definitely. In most countries you'll find that's the way it works.

MR. CHAIRMAN: Mr. Schroeder.

MR. BERKOWITS: Can I add something?

MR. CHAIRMAN: Yes.

MR. BERKOWITS: Mr. Desjardins, we must remember when this started, this local business school in education was done when you brought over a teacher from the old country or wherever he came from, and he gave them board and room, and that's how it happened and then it became the local situation, and it still is a local situation but matured nations — if there's a mature nation it doesn't work that way.

MR. CHAIRMAN: Mr. Schroeder, please, — (Interjection)— and no comments from you Walter. Mr. Schroeder.

MR. SCHROEDER: Thank you, Mr. Chairman. I'm going to be very careful, Mr. Berkowits. I must say I enjoyed your presentation very much. It was very clear that there was a lot that you wanted to say to us that should have been said. I want to be very careful because of your reference to historians so I will try to stay in the year 1980, and I would certainly like, with you, to see more tool and dye makers in the province — there's enough lawyers.

MR. CHAIRMAN: Mr. Schroeder, can you get around to the question before the 11 o'clock news comes on?

MR. SCHROEDER: I'm getting there. If you see education as being a federal responsibility, then do you see the school board as it exists now being scrapped, do you see some new entity taking its place, or how do you see education then being administered. Is it all from a central administration or would there be some decentralization?

MR. BERKOWITS: Well, the way I know it, it would be the federal government that would set all the rules and regulations of the curriculum. It would be standard, which I think is essential too. There are many problems kids have travelling from province to province in their education. Some provinces they have Grade 12, 13 and back and forth. Some places they have certain things. I think it's essential that we have the federal government have the Minister, whoever's the Minister of Education, to set up the curriculum properly and that would be right through the country. I realize the way it says right now, they would appoint whoever they feel they should have as the head of the education in various provinces to look after. As a matter of fact, some of the people who are heading our Education Department here are making almost as much as the Prime Minister. The thing to do is we do have to have a discipline type of education especially. It's essential, especially since we don't have drafting. Like my kids, they don't have to go to war or we don't have to declare war but I don't think it would hurt any of us to have our kids taken away. It wouldn't hurt them at all after Grade 12 to just get them to a good sergeant and take them away from the mother and father for a while. Not three years; 16 months is sufficient and I don't think you will hurt them at all.

Getting now to the education point, it is essential that we have the education curriculum problem for now. We have a problem. I realize the language situation with having both languages or whatever it is. I can't solve that problem. All I know is that we are all talking about conserving energy and conserving material and all that. We have become very conscious, but if we're going to duplicate everything, I don't know how it is going to work. That, I would leave to the experts. I wouldn't have any objections myself to have more than two languages, so far as that goes. Can we afford it? The question is, who is going to put up? I wouldn't be surprised if you put the whole education platform into the federal government's lap, they will come up with an entirely different proposal than they got right now. Because once they find out how much they have to pay, they would say even one language is too expensive. Right now, they don't have to. (Interjection)

So far as education to give you a direct answer, I would leave it completely to the federal government, just like they have other networks that it should be looked after by the federal government. We shouldn't have to worry about it because that's Canada.

MR. CHAIRMAN: Any further questions? Mr. Schroeder. Mr. Uskiw.

MR. SAMUEL USKIW (Lac du Bonnet): I am somewhat intrigued by your suggestion, sir, that you think the American model is perhaps worth looking at and you cite the example of President Nixon who had to pay his due for any wrongs that he had

committed. As I recall history and it's recent history, the President's men who were protecting the President on instructions from the President and who lied on his behalf were all put in jail.

MR. BERKOWITS: That's right.

MR. USKIW: But the President had the opportunity to leave his office, first, by being allowed to choose his successor who you then make a deal with to give him the pardon. I hardly think that's an example that Canadians would want to adhere to. (Interjection)— That's right and a nice pension on top of that. You know, it's not my example of a good system.

MR. BERKOWITS: That is why I said it's not perfect but something to work for. If you remember I said, it's not perfect but it's something to work for, to pay attention to it. But it's a lot better than having done the same thing in here and then find out they are promoting him. That is the difference.

MR. CHAIRMAN: Any further questions, Mr. Uskiw?

MR. BERKOWITS: That has been happening too often in many departments. You know, the time has passed when you came up in industry and you fired 40 guys and the general manager said, I solved all the problem. Well, that's not the case anymore. Those days are gone, it's you start firing them from the top.

MR. USKIW: Do you support the present Canadian parliamentary system or the British parliamentary system, if you like? Do you support that concept or would you prefer that we move towards the American style?

MR. BERKOWITS: If you look at one or the other, since we are in this geographically, I'll give you a direct answer. Geographically, we have to be realistic and practical, yes.

MR. USKIW: You support the Canadian parliamentary system?

MR. BERKOWITS: The Canadian parliament system, if we have to pick up certain things from the States, it would be more applicable to us. We could work better; we could sort of modify them. I mean the Bill of Rights, you have some real good stuff. You don't pick up all the garbage from there. I think we have something better here on this part of the hemisphere to work with, then we're going to hightail all over, they mentioned Switzerland and Europe. Don't tell me about Europe. I lived in the area, they were changing borders every weekend. So I know. I'm used to getting up in the morning — in fact, the outhouse was a half-a-mile from the house and you take your passport with you. You might have crossed the border.

MR. CHAIRMAN: Mr. Filmon.

MR. GARY FILMON (River Heights): Mr. Chairman, I was attempting to follow closely Mr. Berkowits' presentation which was very interesting. I, too, was intrigued with some of his comparisons and examples. I take it that you are arguing in favour of an entrenched Charter of Rights.

MR. BERKOWITS: Definitely.

MR. FILMON: But along the way you said that what's important with an entrenched Charter of Rights is to make sure — and I wrote down the quotation — "That the members of the Legislature are supervising to ensure that laws are being interpreted properly." The argument against the entrenched Charter of Rights is that they would not be in a position to do that because it would then be left to the judiciary to ensure that laws are being interpreted properly.

MR. BERKOWITS: I would say once the law is in a Charter — what I mean — I'll probably go over that and maybe we might get in on the same wave length. When there's a rule or when it's a by-law, it doesn't matter, it says it shall be so-and-so many metres or whatever the case is. What we're lacking in that, it works. This is legislation. It's right; it's good, and the elected members mean well by it and it's passed. The only thing is that's lacking is the follow-up, to go to some of those places where it's exercised. Like somebody should go in once in a while at 100 Main Street and see what's doing or 10 Fort Street and you would be surprised.

MR. FILMON: But are you saying that the elected people should do that?

MR. BERKOWITS: I think so, yes, definitely.

MR. FILMON: But if you go for an entrenched Charter, it won't be the responsibility of elected people, it will be the responsibility of the judiciary.

MR. BERKOWITS: Well, sure.

MR. FILMON: Okay, well, just a second, all right. Again then, later on you said that the big problem with the Board of Revision was that they were appointed people. Political pedlars, is what you said and they were in charge of making the decisions about assessment at the Board of Revision.

MR. BERKOWITS: That's right.

MR. FILMON: That's exactly the situation you would have if you turned over an entrenched Charter of Rights to the judiciary. They are appointed people. I won't call them political pedlars but you can choose your own words for it, but it's exactly the same situation.

MR. BERKOWITS: Yes, but they are shielding the elected Member of Parliament. It's the elected Member of Parliament that should be there with the group.

MR. FILMON: But that's the problem when you have an entrenched Charter of Rights, you're taking it away from the elected Member of Parliament and giving it to the judiciary. In effect, as you say, they are shielding them.

MR. BERKOWITS: If there is a right — okay, typical example, let's say there is Minutes of a meeting there, a public hearing, and you ask for your Minutes verbatim, and they come back and they had a meeting and all that, and it was a public meeting and

I was denied to receive those Minutes. Now if that is entrenched in the Constitution, will he still do that.

MR. FILMON: It depends who denies you. If the judge denies you, then you have a problem.

MR. BERKOWITS: It isn't the judge.

MR. FILMON: Well, it's an appointed person and it could be the same parallel.

MR. CHAIRMAN: Any further questions to Mr. Berkowits? Seeing none, thank you, Mr. Berkowits.

MR. BERKOWITS: Thank you.

MR. CHAIRMAN: Georgia Cordes.

MRS. GEORGIA CORDES: I have only one copy for the chairperson.

MR. CHAIRMAN: Are you representing yourself as a private citizen or representing a group?

MRS. CORDES: Yes I am, private citizen.

MR. CHAIRMAN: Okay, proceed please.

MRS. CORDES: I appreciate the opportunity to appear before this committee of our provincial government to address my concerns regarding the development of the constitution of Canada. As a citizen I would hope that my presentation along with the many others will be considered in the Manitoba government's formulation of its future position concerning constitutional matters. Only then will my exercise of this privilege and your exercise as committee members of your duty to respond to this issue have not been wasted.

I have chosen to focus my brief today in relation to the women of Canada. Both my private family life as a wife and mother as well as my current public life as a woman who is a community action volunteer, have given me a rich experience and differing perspective about what it means to be a woman of Canada.

In a wider context, my professional training in social and community work along with my personal value system, have helped me to understand that constitutional implications for women have the potential for application to nearly all if not all, other groups of people who do not make up the power elite taking part in our current national struggle. So it is out of genuine concern for all Canadians that I raise my following comments.

The Pepin-Robarts Task Force on Canadian unity pointed out that a Constitution is comprised essentially of, 1) the basic principles, objectives, and rules which command the political life of a society; 2) the definition, composition, functions, powers, and limitations of the principle organs of government; 3) the distribution and co-ordination of powers between levels of government; 4) the definition of relationship between the governors and the governed, particularly the rights of the latter.

Our current basic constitutional document, The British North America Act, passed in 1867 by the British Parliament, contains no preamble as outlined in Item 1 above. Neither does it contain a Bill of Rights which would address Item 4 above. It is increasingly apparent that Items 2 and 3 as found in

The BNA Act require reassessment for our contemporary society.

As a Canadian resident for 12 years and a citizen for four years, I believe that Canada is capable of developing its own constitution, it's own statement of goals and the framework in which they are to be achieved. As an immigrant, I believe this process could further enhance our identity as Canadians. It could help us to further define who we are and where we seek to go as a nation. As a country we need a common sense of purpose and direction beyond the times of crisis events which temporarily unify us. We need to know where we stand as citizens and as a society in times other than war, flood, or other disaster.

Since moving to Canada, I have experienced that other Canadians knew best who they were as a people during the 1972 International Hockey Tournament in which Canada defeated Russia and in response to the recent Terry Fox phenomenon. We need a national resolve mature enough to build upon our exhibited underlying strengths as we have shown at the times I have previously mentioned and to extend them into guidelines for application in all that we do each day of the year. I believe our own constitution can help us toward that resolve.

The constitution which Canada develops will have significance only to the extent to which it is honoured, supported, and relevant. As a paper document, much as a marriage licence, it offers validity to a promised relationship. Much more importantly as a symbol, it can inspire and direct that promise.

The quality of our constitution will be found in its workable application. Likewise, its quality will also be found in its promise of the treatment of those who are governed.

In North America, half of the population has historically been ill served by constitutional documents. In the United States the women are struggling to have an equal rights amendment added to their Constitution to guarantee them equal rights and equalizing treatment where these have been previously denied them.

Only last year did Canadian women celebrate the fiftieth anniversary of the persons' case in which initially the Supreme Court of Canada rejected the proposition that women were persons. As such they continued to be denied equality of political rights. The five Canadian women petitioners appealed their case to England and in 1929 were successful in establishing in Canada's constitutional law that women are indeed persons.

For those who cringe when they hear the terms, Ms or Chairperson or Manpower, the persons' case is an excellent example of the importance of language terms. If they are not made accurate and explicit they will be artificially confining on the one hand and on the other hand be redefined and molded if not distorted to reflect that beliefs and biases of those in positions to influence or decree the roles and rights of citizens.

Women have learned through experience to this very day that constitutional language must leave no doubt or loopholes through which their rights will continue to be deflated to a less than equal status. One only needs to recall the well known 1973 case of the Indian woman, Jeanette Lavalle, or the 1978 case

of the Vancouver woman, Stella Bliss, to recognize that equal treatment usually depends on a male judge's interpretation.

Basic political rights for women in Canada now depend on a combination of case law and statute. An explicit statement of rights entrenched in our Constitution would offer a firmer safeguard for equality of political and other rights across Canada which are currently for women on a frail foundation at best. Once entrenched, such rights would be standards preserved from federal and provincial legislative and administrative interference.

Canadian women cannot look to the current British North America Act to find total equality of rights with men. Neither can they look to Canadian case law and statutes which have historically discriminated against women through judicial reluctance to recognize their equality of rights. Nor can women look to the Canadian Bill of Rights which is expressly stated so as not to affect provincial actions as it can affect only matters within federal jurisdiction. Even if the Canadian Bill of Rights did apply to all Canadian women, court decisions have revealed no strong guarantee for women of equality in the law itself.

Canadian women cannot look to provincial Human Rights Acts to secure universal equality of rights when each will differ by province. In nearly all provinces, existing Human Rights Acts do not have supremacy over existing discriminatory legislation and policy.

We cannot look to the concept of an unwritten tradition of freedom for it has not and cannot address the second class status of Canadian women. Such a concept is fleeting at best, written on the wind, if indeed uttered at all. We cannot depend on provincial government legislation to be responsive to the total goals and needs of local women, to develop equality of rights, as long as such governments have the right and the power to negate hard won rights previously legislated. We need only remember the year 1978 in the development of Manitoba family law to understand this. Even if we are fortunate to reside in an enlightened and progressive province with respect to equality of rights, my personal belief is that I would want such fundamental freedoms shared with my neighbours across Canada.

The federally proposed Charter of Human Rights promises every one "equality before the law and equal protection of the law without discrimination because of sex". This is not enough to protect the rights of women. The Canadian Bill of Rights is similarly worded but not explicitly enough to guarantee equal rights to even those women whose appeals would fall within federal jurisdiction. The Supreme Court has decided that, "before the law" only refers to the administration of the law and not to the law itself. Based on this interpretation in its past decisions, the court has legally allowed blatant discrimination against women to continue.

The proposed Charter of Human Rights must contain words which enable judges to reject laws which deny equal rights and equalizing treatment between groups of people. A clause explicitly stating that women are guaranteed full equality is required. An example would be, "every individual shall have equality of rights under the law without regard to sex". It is interesting to note that although Manitoba's position is opposed to an entrenched

Charter of Human Rights for all Canadians in our constitution, it has vehemently and almost singly supported the spirit of universal equality of rights from province to province with respect to family law. I have trouble understanding the contradiction in positions. Nevertheless, I applaud Manitoba's complementary support of provincial and Canadian status women organizations and women's interest groups who are fighting to have divorce jurisdiction remain with the federal government.

Prior to the 1968 Divorce Act there was a patchwork of divorce laws from province to province. The grounds and means for acquiring divorce differed widely amongst provinces, many of those mechanisms blatantly discriminating against women. Women fear a return to a similar patchwork and fear they should. The current divorce system has become a bureaucratic maze for Canadian families. Once divorced, adequate corollary relief such as maintenance and child custody and enforcement remain little more than a dream for over half of Canadian women requiring such services. These support services are crucial as equalizing measures for Canadian women because of their contributions to the family unit, traditional family responsibilities, and historically dependent economic status. Yet women have been and continue to be hopeful that the federal government with support from the provinces, is capable of improving this system.

We would like to see Manitoba's progressive response to meeting these needs of women implemented across Canada. To be faced now with a proposal initiated by Quebec and Ontario to multiply these existing problems by regionalization is a kick in the stomach for the status of women in Canada. Women cannot enjoy equality of rights with men when they will not even be able to enjoy equality of rights with each other from province to province.

Women have seen no guarantees under the federal proposals. Their provinces will not differ on divorce grounds nor that they will not regress from The Divorce Act standards or that they will not overtly discriminate between men and women. Fearful women should be to find ourselves forced into a new-old divorce system, which will reward or penalize spouses depending upon their respective economic positions, geographical location and mobility, as well as family status. Women have heard that song before.

Finally, women have new evidence that legislated or constitutional guarantees of rights will keep such further systemic discrimination from happening to them all over again. My equality of rights and access to equalizing treatment are not local and private matters with which only my family or my province should be concerned. It is largely through such reasoning by individuals and governments that women have discovered that many rights which they took for granted were non-existent. Uniformity and equality of fundamental rights are a national concern.

Equality between sexes of appointments to various organs of government is crucial if women expect to have their needs as citizens addressed in ways more collectively objective and experience-related than they are today. Suggestions of quota systems and affirmative action measures which serve as equalizers to help groups to catch up to equality of rights are some ways of offering more balanced representation.

I understand that some provision for these equalizing means is made in the proposed Charter of Rights, although women have unfortunately not been specifically included.

Whether one agrees that affirmative action measures are the answer to the near absence of women appointments to federal bodies, such as the Senate and courts, it is absurd that 51 percent of our Canadian population can be so under-represented in number, awareness and empathy and so ignored in consideration of their abilities to lead our country. It is not for lack of qualifications that women are overlooked. If women, more than half of our population, are treated in this manner to keep them from positions of decision making and power, what message does this have for all other groups denied access to institutions which control their daily lives?

Canadian women are directly affected by government funding and spending mechanisms. Health and welfare services impinge on our daily lives. Hospitalization and Medicare, including reproductive health care, Unemployment Insurance, the Canada Pension Plan, Family Allowances, Old Age Security and Guaranteed Income Supplements, to name some. Which level of government has power over revenue and which level of government controls content of services funded by such revenue, according to a new Constitution, has grave implications for the priority given non-needy services for women. Rape crisis centres, day care services and services for battered women and their children, are required by women of all backgrounds. The birth of such services remains largely in a stage of labour as long as governments ignore the process or address it with funding proposals which deny equals access by women who do not carry welfare labels.

Meanwhile, these special needs of women as half of our population, are once again given less priority and funding and support than we give to developing our highways. Mary Eberts in a document entitled, Women and Constitutional Renewal, states that women are not yet in the economic mainstream of Canada. We are still out of positions of economic power and still seeking the basic individualized justice of day care so that we can work and contribute outside the home, and receive equal pay for work of equal value when we do. Women are the largest minority, the most all-pervasive special interest group in Canada. The introduction of women into the constitutional review process would find a substantial shift toward individual concerns and away from the special power games of governments.

Thank you.

MR. CHAIRMAN: Thank you. Do you permit questions?

MRS. CORDES: Yes I will.

MR. CHAIRMAN: Are there any members of the committee that wish to ask a question? Mr. Einarson.

MR. EINARSON: Mr. Chairman, I'd like to ask Mrs. Cordes, by any chance were you born in the United States?

MRS. CORDES: Yes I was. I was born in Alaska.

MR. EINARSON: Well the reason I asked is that you were concerned, I think, about the Constitution and

that sort of thing, and I don't know whether you're familiar but in Canada when the census was taken, a question that is asked is, "What is your nationality?" And I rather supposed that you did come from the United States because some of the comments you were making I thought were relevant to that country and that's why I posed this question, or make a few comments before I do. In the question of the census-taking in this country you're asked what is your nationality, and the question was not inanswerable in such a way that it'd be Canadian, it had to be your specific nationality. In the United States of America, you're an American if you were a naturalized citizen. Is that not correct?

MRS. CORDES: All I know is that when I did live there I was asked my nationality too. You know, one is expected to say German or French or what country other than United States did your ancestors come from. I don't know what to answer. You know, there's a blending of three kinds of ancestral backgrounds in my family. Right now I feel very much a Canadian. When I lived in the States I felt I was an American citizen, but both countries are very much a melting pot so it's very hard to . . .

MR. EINARSON: You don't find too much difference in Canada in that respect then as you did in the United States. Is that correct?

MRS. CORDES: When asked about nationality?

MR. EINARSON: Yes.

MRS. CORDES: No, I think it happens all over and it's just . . . I'm a Canadian now.

MR. EINARSON: Another question then. You were talking about the rights or the lack of rights for women and you were specifying to a good extent in regards to marriages, divorces and what have you. I would like to ask you what your view is in regards to . . . depending on the church or religious background you come from, that certain religions have certain rules and regulations insofar as marriages are concerned. How can one reconcile your rights as a legislator when having to cope with the kind of things that you may have to put up with within your own church? I'm not asking you what your church is but just a general situation.

MRS. CORDES: If I were a legislator, how would I be able to incorporate beliefs from my religious background into the work of my Legislature?

MR. EINARSON: And protect your rights as one if you had a divorce or marriage problem in life, and you were asking that's the question I gather, that is, that women are not receiving the same kind of rights as men, but from certain churches that you may come from and you were married in that church, the church attaches certain rights or rules and regulations you have to live by, that I have no authority as a legislator as far as your divorce rights may be concerned. How do you reconcile that situation when we talk about governments providing equal rights to women when it comes to divorce laws?

MRS. CORDES: Perhaps I can answer it from two perspectives, one from my own as an individual

citizen and a woman. I feel there is a freedom of religion in Canada so I have a right to chose a religion I wish to belong to for my own particular reasons and how fully I wish to adhere to their precepts and whatnot, that is my decision. It seems to me if I didn't agree with a particular religion for whatever reasons I may chose, either not to obey all the rules or I may wish to go to another. But the difference there I think is that there is the freedom to chose but you have no freedom to chose whether you're a male or a female when you're born. And the other perspective I think you were coming from was as a legislator, how would you reconcile all of these things? The answer seems to me no matter what our line of work, that if we're attempting to help within community work, I guess to the best of our ability we attempt to get all of the opinions and feelings of our constituents and then try to deal in the best way that we think we know how — that's the basis upon which we were elected. So I don't think that one can be completely dictated by their religious upbringing or their national upbringing or whatnot. It's the constituents that you are serving as well, so you need a blending of all of those experiences.

MR. EINARSON: Thank you.

MR. CHAIRMAN: Mr. Filmon

MR. Filmon: Thank you, Mr. Chairman. I appreciate Mrs. Cordes' brief and I certainly concur with her that rights of women under the law have not been equal in North American society and I appreciate the fact that you are arguing for equality of women's rights in our country, but I don't necessarily follow given some of the examples that you have stated, that these rights ought to be entrenched in a Charter of Rights. Specifically, you've indicated your concern and a concern that I've heard expressed from many American friends that the Equal Rights Amendment has not been able to be passed in the United States as yet, and also pointing out that the proposed Charter of Rights is not adequate for the protection or the assurance of equality of rights in Canada, and yet if you were to entrench it you might be entrenching something that isn't adequate and then would put yourself in the position that they find themselves in the United States right now, of having a great deal of difficulty in amending it. Is it not sufficient to argue for strong federal legislation that does achieve equality of rights under the law, and that has primacy perhaps over provincial jurisdictions in this regard. Would that not satisfy your needs without having entrenchment?

MRS. CORDES: I don't believe so. I think I've attempted to state in my paper that I felt that an entrenchment of rights, particularly as we would like to see for women, is a firmer safeguard than any of the other options and I feel if you go the legislative route as has been done in the past, as long as there's that power and ability to change legislation and to interfere with it, then I think we're going to end up with the same kinds of problems that we have right now.

MR. FILMON: But aren't you faced with the same problem in attempting to amend the constitution when it doesn't prove to be adequate?

MRS. CORDES: My understanding is that it cannot have legislated interference. It cannot be interfered or tampered with by Legislatures. I feel it's a firmer kind of foundation for women than what we would have through legislation. That's not to say . . . I've heard people bring up examples of Bills of Rights in countries where they have oppressive regimes, but no, as I stated before, it's a document and it will work to the extent that we honour it and support it.

MR. FILMON: I think it's a question of attempting to provide the best possible protection and assurance of these rights and the argument is over which way is best. Thank you.

MR. CHAIRMAN: Mr. Uskiw. Do you have a question?

MR. SAMUEL USKIW (Lac du Bonnet): Yes. You dealt with the problems of divorce and whether that should be provincial or national jurisdiction . . . some degree of concern about provincial jurisdiction where you might have ten different sets of rules in Canada. I would ask you the much broader question and that is, why does government have to be involved in divorce at all?

MRS. CORDES: Any government?

MR. USKIW: Yes. Why should it be the business of the state to decide when two people should separate or when they should not separate? If it's a mutual thing, if two people want to separate why should the state have anything to say about it?

MRS. CORDES: Perhaps I can only answer that in relation to the experiences that I've had through my work, and I think in the past, not even to regress to your example but in the situation where we have had such a diversity between provinces, there's just too much room for a very flagrant discrimination.

MR. USKIW: You're talking about the American . . .

MRS. CORDES: No, in Canada, against the weaker situation within a marriage and usually that tended to be woman because of her economic position.

MR. USKIW: Perhaps you're not understanding what I'm saying. I recognize that if there's going to be a separation of two people, that their questions of children, the question of division of assets and so on, those are legal questions. I'm wondering what the state though has to do with deciding whether you should have a divorce or not. If you both want the divorce, why should the state tell you, you can't have one?

MRS. CORDES: I would imagine for the same reasons that governments are involved in all the other kinds of things that it does. You know, I mean why would we want the state involved in education or developing highways or whatever?

MR. USKIW: Don't you see a big difference, though, between this example and the need for education, the need for public service and a whole host of other areas?

MRS. CORDES: I'd be interested what the difference you feel there is.

MR. USKIW: It seems to me that if you and I wanted a separation, assuming we were married, that's our business and not the business of anybody else. It certainly shouldn't be the business of the state; I think it's a purely personal decision.

MRS. CORDES: Oh, I don't agree with you. I think families are our basic foundation within Canadian society and the rights of particular people within those unions are just as important as any of the other kinds of rights that we enjoy.

MR. USKIW: Let's follow this up. We have tens of thousands of situations in existence today where, because there is a three year waiting period, you have a separation without it being legal. You have separated couples living with other people waiting for this three years to expire in order that they can get their divorce. I think this is a lot of nonsense.

MRS. CORDES: I'm the first one to advocate that there be changes to The Divorce Act that that not have to be.

MR. USKIW: It seems to me that if two people choose not to live together that I don't want Mr. Einarson telling them that they must even if they wish not to for three more years, or for two more years, or that they can't, or that they can go their separate ways without a tremendous amount of difficulty and entanglement vis-a-vis the laws of the land. It seems to me the state's intervention there is far too extreme in trying to run the personal aspect of people's lives.

MRS. CORDES: As I stated earlier, I submit to you that what is happening within the family is one of the more important areas that government should be looking at in terms of supports for the family. Now, if The Divorce Act needs to be changed or laws need to be altered, I feel that you need to be involved in those things.

MR. USKIW: I'm all in favour of protecting the children and protecting the rights of the two parties . . .

MRS. CORDES: Spouses, yes.

MR. USKIW: . . . as to the division of assets and so on when they split. That's fine. We can write all sorts of chapters on that but the question of whether they should be entitled to separation I think is their own personal decision. I don't think it's the decision of the state.

MRS. CORDES: Perhaps we'll work together to get The Divorce Act changed.

MR. CHAIRMAN: Any further questions?

MR. USKIW: The other question is . . .

MR. CHAIRMAN: Oh, Mr. Uskiw, another one?

MR. USKIW: Yes, just one other one. I always have the opinion that when you entrench or enshrine something that says you must treat me better than you did, that that makes that person weaker, that demonstrates the inequality and perpetuates it more

so than by changing the attitude and moods of society.

MRS. CORDES: I think rather than looking at it that way, all that I am saying is let me enjoy what you already have.

MR. USKIW: I don't object, I think you should.

MRS. CORDES: I don't think that makes you weaker. If you want to look on it from the point of view that it may make you weaker, that is something that you have to grapple with . . .

MR. USKIW: Like if you say there are nine Supreme Court judges, that we must put in the law that five of them must be women, or four of them must be women.

MRS. CORDES: Well, as has already been pointed out, there are conditions already that lawyers have to meet in order to become, or people have to meet in order to become judges. They have to be lawyers, have certain kinds of training, blah, blah, blah, blah. So adding one more condition for a particular period of time as an affirmative action measure to help bring women or any other group to the point that their treatment is equal. That's why I call it equalizing treatment. At some point in time it may not have to be that way anymore; they will automatically be appointed.

MR. USKIW: Wouldn't you prefer, though, that we entrench that idea more through the educational system from kindergarten up, rather than try to impose it up from above through an entrenchment of rights that are specific to any particular group whether it's women or . . .

MRS. CORDES: I don't really care how it's handled. All that I'm saying for constitutional purposes that these major organs of government, that their composition must change. Now how that's handled, there's a number of options.

MR. USKIW: Okay.

MRS. CORDES: But there are measures within the proposals already talking about affirmative action. Now, obviously, you know, and they're talking about putting that in the constitution and I'm sure that they are thinking eventually the need for that particular kind of affirmative action, say for handicapped people or whatever, eventually may disappear because they will be so well accepted within a society. So they've already . . .

MR. USKIW: . . . an educational job.

MRS. CORDES: Not for women, though.

MR. USKIW: I think that's an educational job rather than something that should be imposed.

MRS. CORDES: Well, someone felt it was important enough to put it in.

MR. CHAIRMAN: Any further questions? Seeing none, thank you very kindly. Mr. Uskiw, I'm having a hard time keeping Mr. Desjardins quiet here because

he's finding it very difficult to understand your line of questioning now that you're such a success in the business world and your thinking has changed.

A representative for the Manitoba Catholic School Trustees Association, would you give us your name, sir?

MR. DONALD BROCK: Mr. Chairman, gentlemen, my name is Donald Brock and I do represent the Manitoba Association of Catholic School Trustees. I was here earlier when the committee was meeting on the 18th of November and left copies of my submission at that time. I wonder if they are available to the committee tonight.

MR. CHAIRMAN: Yes, they are. The Clerk is about to distribute them. Would you like to proceed?

MR. BROCK: Yes. By way of introduction, I would like to note that my submission is directed to the very specific area of interest of the Catholic School Trustees and not the broad sort of plane that some of the earlier submissions have been.

The Manitoba Catholic School Trustees Association is a voluntary organization concerned with the matters of education within our province and particularly with the independent schools in Manitoba operated by Catholic parishes and other Catholic institutions. There are approximately 18 Catholic schools represented by the association and approximately 3,800 students attend these schools.

The association notes reference to The Universal Declaration of Human Rights of 1948 in the booklet, Explanation of a proposed Resolution respecting the Constitution of Canada. The Canadian government has subscribed to this declaration and the association strongly endorses the declaration and in particular Article 26 which states:

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups and shall further the activities of the United Nations for the maintenance of peace.

Thirdly, parents have a prior right to choose the kind of education that shall be given to their children.

The association is aware that the constitution of Canada has certain provisions intended to safeguard the rights of minority groups in matters of education. In The British North America Act of 1867, Section 93 states: "In and for each province the Legislature may exclusively make laws in relation to education, subject and according to the following provisions:

Firstly, Nothing in any such law shall prejudicially affect any right or privilege with respect to the denominational schools which any class of persons have by law in the province at the union." It goes on to provide that, "Where in any province a system of separate or dissentient schools exists by law at the union or is thereafter established by the Legislature

of the province, an appeal shall lie to the Governor General-in-Council from any act or decision of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education."

And fourthly, "In case any such provincial law as from time to time seems to the Governor General-in-Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General-in-Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial law for the due execution of the provisions of this section and of any decision of the Governor General-in-Council under this section."

The Manitoba Act of 1870 provides in Section 22, "In and for the province, the said Legislature may exclusively make law in relation to education, subject and according to the following provisions:"

Again, it provides that, "Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union."

It provides that, "An appeal shall lie to the Governor-General-in-Council from any act or decision of the Legislature of the province, or of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

Again, "In case of any provincial law, as from time to time seems to the Governor General-in-Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General-in-Council on any appeal under the section is not duly executed by the proper provincial authority on that behalf, then, and in every case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial law for the due execution of the provisions of the section, and of any decision of the Governor General-in-Council under the section."

The association is of the view that matters of human rights are of fundamental importance. The concern of the association does not stem from the entrenchment per se of the rights noted in the proposed Constitution Act of 1980. The concern of the association is that the entrenchment of the certain rights noted in the proposed Constitutional Act of 1980 will subordinate the rights of denominational schools, and particularly Roman Catholic Schools which existed at the time of the enactment of The Manitoba Act of 1870, and which are protected by Section 93 of The British North America Act of 1867.

The association notes that fundamental freedoms set out in Section 2 of the proposed Constitution Act of 1980 are rights of the individual and not rights of a class of persons as provided by the sections of The British North America Act, 1867, and The Manitoba Act of 1870, above noted. The association is concerned that the rights of a group to continue to operate a denominational school will be open to attack by individuals allegedly exercising their individual right of conscience or religion under the proposed Constitution Act of 1980.

This unfortunate experience has occurred in the United States of America and Australia where there are entrenched declarations of rights.

The association notes that the proposed Constitution Act of 1980 does not include a statement of rights relating to education, more particularly set out in Article 26 of the Universal Declaration of Human Rights, nor the rights described in Section 93 of The British North America Act of 1867, and the association expresses the concern that this omission will by implication subordinate rights relating to education and rights of a class of persons.

We note Section 24 of the proposed Constitution Act of 1980 states that the Act is "not to be construed as denying the existence of any other rights or freedoms that exist in Canada". This is a much weaker statement than that found in Section 93 of The British North America Act of 1867 which is, "Nothing in any such law shall prejudicially affect any rights or privileges with respect to denominational schools which any class of person have."

The association expresses its concern that the rights of Roman Catholic and Protestant minority groups now set out in the constitution of Canada as above noted are not eroded by the proposed Act.

The association also notes with gratitude recent changes in The Public Schools Act and The Educational Administration Act of this province which will provide significant practical assistance to the schools represented by our association and other independent schools in the exercise of their rights relating to education.

Thank you for your attention. If there are any questions I will be pleased to try and answer them.

MR. CHAIRMAN: Mr. Desjardins.

MR. DESJARDINS: Thank you, Mr. Chairman. Mr. Brock, I want to make sure that I understand your position. You are not coming out against or in favour of an enshrined Bill of Rights but if there is to be an enshrined Bill of Rights you would want at least the same guarantee to be as strong and for a class of person also, as you have now. Am I correct?

MR. BROCK: That is correct, Mr. Desjardins.

MR. CHAIRMAN: Any further questions to Mr. Brock from members of the committee?

Mr. Filmon.

MR. FILMON: Yes, Mr. Chairman, but you are pointing out that under entrenched declarations of rights in the United States of America and Australia, education by private Catholic schools is in a weaker position than it is in Canada. Is that correct?

MR. BROCK: Catholic schools and other schools that are denominational indeed. A recent Supreme Court decision was to the effect and under the justification of preserving individual rights that the Lord's Prayer was not permitted to be on the wall of the school room. In my mind a rather absurd application of the principle of human rights but nevertheless that is the American experience that I suggest is not a good guide for the Manitoba situation. The same fears that I have expressed with respect to educational rights for minority groups I

find expressed in the representations made by the Canadian Jewish Congress which I viewed on television in that the fear is expressed that the many rights, the many civil rights, that Canadians enjoy are not indeed incorporated into this particular Bill and by omission, are they subordinate to the ones that are included. Similar representations were made on behalf of the Indian Brotherhood by a speaker whose name I do not recall but it seems the observation that the Catholic school trustees are bringing to this committee have been brought to other committees by other minority groups who seem to share the same fears.

MR. FILMON: Thanks, Mr. Brock.

MR. CHAIRMAN: Any further questions to Mr. Brock? Thank you, Mr. Brock, for your presentation.

Ukrainian Canadian Committee. Is Dr. Kondra present?

MR. ISADORE HLYMKA: Mr. Chairman, Dr. Kondra is not present today. I am taking his place. My name is Isadore Hlymka, representing the Ukrainian Canadian Committee.

MR. CHAIRMAN: Could you, sir, spell your last name for Hansard purposes?

MR. HLYMKA: Yes. The last name is spelled H-L-Y-M-K-A. You need a phonetic language, it's very simple. The initial is "I", and if you wish my title I am professionally a chemist, hold a doctor's degree in the field of Science from the California Institute of Technology.

MR. CHAIRMAN: Do you, sir, have printed copies of your presentation?

MR. HLYMKA: Yes, I have those over there. Now we address ourselves to rather a few simple things instead of going completely over the entire proposition of the proposed brief because it is much too extensive to go into this and there are only a few things that we are specifically interested in and things that are not covered in other places.

The Ukrainian Canadian Committee is a co-ordinating body of Ukrainian Canadian organizations in matters of common concern. The Committee represents the views of 29 Canada-wide Ukrainian Canadian organizations.

This brief is a reconfirmation, because we have been presenting briefs before and this is following the same line, a reconfirmation of the stand taken by the Ukrainian Canadian Committee in previous submissions concerning the entrenchment in Canadian constitution that Canada is a multicultural nation. There seems to be doubt in somebody's minds and this is what we want to emphasize.

The Committee maintains that Sections 15 and 22 of the Proposed Resolutions for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada is not specific enough to recognize the multicultural nature of Canada and that Section 16(2) is inimical to the future growth and development of multiculturalism in Canada.

Canada has adopted the policy that English and French are its official languages and that either one may be used for all purposes of the Parliament and

government of Canada. This was considered necessary to recognize the participation of two major nationalities involved in the Confederation of Canada and to provide equal opportunity for individuals of both of these groups to participate fully in the government of Canada in their own language and thereby help maintain Canadian unity.

Equally fundamental, and this is our particular interest, to Canadian unity is the preservation of a democratic system in which all citizens, including almost one-third whose origin is neither English nor French, that we have equal opportunity to participate in all aspects of government and Canadian life as a whole. This requires the respect for human rights of all Canadians.

The Canadian government attempted to assure, in part, this respect for human rights of all Canadians when it tabled its response in the House of Commons to the final report of Book IV of the Royal Commission on October 8, 1971, which said in part:

"We believe that cultural pluralism is the main essence of Canadian identity. Every ethnic group has the right to preserve and develop its own culture and values within the Canadian context. To say that we have two official languages is not to say that we have two official cultures and no culture is more official than another. A policy of multiculturalism must be a policy for all Canadians."

This policy of the government was approved by all political parties because it is not a political idea but an inescapable reality due to the diverse origin of Canadians over the century. This is supported by the report of the Special Joint Committee of the Senate and of the House of Commons, on the Canadian Constitution which was tabled in Parliament on March 16, 1972, and which states in Chapter 6, the preamble to the Constitution: "What kind of a nation Canada is: a free people in a free society; a country characterized by rich diversity in linguistic communities, cultural heritages and regional identities; a country where individual fulfillment is the fundamental goal of society". And the above Committee further recommended that the preamble to the Canadian constitution include among its basic objectives, "To develop Canada as a bilingual and multicultural country in which all citizens, male and female, young and old, native and Metis, and all groups from every ethnic origin feel equally at home".

This same report stated further in Chapter 1, titled Constitution Imperatives: "The most critical challenge focusses on Quebec's role in Confederation. Questions of Quebec's expression and development, culture, language, poverty and unemployment are part of this challenge", and that "French culture cannot survive anywhere in Canada unless it flourishes in Quebec". However, this report also states that "Equally pressing is the need for the recognition and protection of ethnic minority groups", and again, this is what we wish to underline, "including the native peoples", and rejects the theory "that Canada is divided into two cultures".

Therefore, on behalf of the Ukrainian community in Canada, we submit three points:

(1) that the constitution of Canada entrench the basic character of the Canadian nation as a free

people in a free society, in a country rich in diversity of its linguistic communities, cultural heritages and regional identities, where individual fulfillment is the fundamental goal of society, and

(2) include that a charter of human rights prohibit discrimination in all government departments and services and in Canadian life as a whole, by reason of sex, race, colour, religion, ethnic origin or ethnocultural affiliation, and

(3) that the charter assure every citizen equal opportunity and support to maintain and develop the culture, including language, of his or her choice.

Now I would just like to comment on that number (3), that it is not enough to recognize the rights of people to do what they might want to do but also the responsibility of the country for the development of these rights.

At the end, we include the Resolution on the Revision of the Canadian Constitution which was passed at the 13th Congress of the Ukrainian Canadian Committee last October 12th, 1980, which met in Winnipeg. There were delegates from all across Canada from various provinces and I shall simply read that Resolution that was endorsed because it does represent very definitely the consensus of the view of the Ukrainian Canadian people across Canada. The Resolution reads as follows:

WHEREAS the entrenchment of certain rights in the proposed constitution of Canada has resulted in a deadlock between the federal and provincial governments, and

WHEREAS minority rights provided for in the proposed revision of the constitution apply only to the French and English thereby discriminating against about 30 percent of Canadians especially in regard to their culture and language, and

WHEREAS the constitution should protect all its citizens against discrimination between individuals and groups irrespective of their background or bases of affiliation, and

WHEREAS the constitution of Canada should entrench only the basic principles and rights which are not likely to change, and

WHEREAS details of implementation of basic principles should be left to Parliament in accordance with the needs and the times,

THEREFORE be it resolved that the 13th Ukrainian Canadian Congress requests that the Prime Minister and his Cabinet, and the First Ministers of the Provinces correct the deficiencies in the proposed constitution by entrenching in the revised constitution that Canada is a multicultural nation and that every citizen and all groups and minorities, irrespective of their origin, background and affiliation shall have equal opportunity and assistance under government policies in maintaining the cultures and languages of their choice, and

That the Parliament of Canada shall legislate from time to time the working or official languages of the government of Canada and its institutions.

That is the end of my presentation.

MR. CHAIRMAN: Thank you, sir. Would you permit questions from members of the committee?

MR. HLYMKA: Yes, sir.

MR. CHAIRMAN: Are there any questions?

Mr. Uskiw.

MR. USKIW: In which way do you presently notice discrimination under Section 2 of your three recommendations, "prohibit discrimination in all government departments". Would you give us an example of where you would point to discriminatory practice?

MR. HLYMKA: Discrimination of course is rather tricky but I might mention, for example, I was reading the other day, Applications for assistants to the Canada Council. They say, will receive applications, one from the French, one from the English. The rest of us, one-third of Canada, is left out. You can not make an application with regard to presenting or working up some sort of a publication or a study or work if you happen not to be part of the English or the French community; that is one.

Another one, if you want to look at Mr. Yalden's reports, annual reports, he was in town today — he always cites at the end of his report the quotas, that there shall be so many French, so many English. Period. I consider that we should remember that Canada really has three component elements, the English, the French and the other which we shall call multicultural for short. I could probably suggest others but these are sort of not very open but certainly it says that . . .

I'll give you another one, one that happened in St. Boniface when CBC took over CKSB. The Ukrainians used to carry on programs for, I don't know, 10 or 15 years. Came the CBC, they bought it out as a national broadcasting service and they didn't write it out in there but they made us understand that it might as well have been — no Ukrainians need apply at this station. No programs in any other, no Italians, no Jews, no other people unless they are either French or English. So there are these not probably overt by calling somebody names, but the thing is, you are different, you are not quite as privileged as somebody else is.

MR. USKIW: Well, yes let me pursue that a little further. You're suggesting that these positions were set aside for people of English ancestry or French ancestry only, or are you saying that they wanted people who could speak French and who could speak English? There's a difference.

MR. HLYMKA: There is a difference and this is really the grounds for equivocation but there have been instances in which a person, for example, fully able to speak in French but because he came in from central European background maybe he didn't quite have the right accent, and so on. So this is grounds for equivocation and it's quite true that you can say we don't care that you have a choice of two melting pots. You either go through the French one or the English one, and then you can participate fully.

MR. USKIW: You see, I don't worry about having to know the English language in order to succeed in a job application or the French language, as long as you're not saying that I must be of either of those two ancestral groups.

MR. HLYMKA: All I am trying to say is that this type of country that we are in that is made up of people

from many parts of the world, that I would rather leave these things to the course of history, historical development, that some of the people who are not interested in survival, I mean small ethnic groups, or people who have strong representatives in other countries, that these people, they will give up, they will choose one of the two melting pots to integrate. On the other hand, there are those who have maintained and who wish to maintain for whatever reason, cultural or historical, and as I say, I prefer to leave it to history for people to disappear if they want to disappear, but I would not like the law to say that you shall disappear.

MR. USKIW: Let's assume that we entrenched that provision as you have outlined in your second recommendation in the Constitution. What is to prevent any administrative body from doing exactly what they are now doing in the hiring process and claiming that they have hired the most qualified applicant? I mean how can you ensure what you want to ensure by entrenchment is really what I'm saying. If there's a sort of policy that tends to be discriminatory although it isn't said that it is discriminatory, I don't think entrenching it in the Constitution will change the policy.

MR. HLYMKA: I would probably make this particular comment. It's not so much in the entrenchment as the basic fact of recognition of the facts of Canada. We have to look at Canada two ways. We have to see a vision in the future. This proposal that is now in Ottawa seems to be a vision that people have obtained by looking in a rear view mirror and I think it's a matter of just simply being, if you wish, polite or courteous and say these people do exist. If they disappear, well, that's their lookout. And some of them that are strong — the Ukrainian community has been in Canada for 100 years — my family is now in its fourth generation. I don't like to be one of the unofficial Canadians. I would like to see the word official struck out and use a more general word so that it would not dig in under my skin.

MR. USKIW: How then would you view the American system? Obviously, you would then not at all subscribe to a melting pot system. You want to have the differences noticed so that you wouldn't subscribe to sort of destroying the ancestry of all of the people and calling them all Canadians, like the Americans call all their citizens Americans.

MR. HLYMKA: I think there's a little bit of confusion here about this business of being Canadian. Being Canadian is a citizenship. If I am a Canadian and my father was a Canadian, my son is a Canadian, my grandsons are Canadians. There's no question about that. People confuse that, that the word . . . when I say Ukrainian Canadian, that the Ukrainian is an adjective, it modifies what kind of a Canadian. There is a French Canadian, what kind of a Canadian, there is a Chinese Canadian, Japanese. So you have to remember that this isn't a fight between these two words, and the people also who should know better who call us hyphenated Canadians, you'd never have a hyphen between an adjective and a noun. An adjective doesn't require a hyphen. So Ukrainian Canadians are never hyphenated. We don't want to

be and it's just the ignorance of English grammar that people insist that these two are in conflict. They have never been in conflict.

MR. CHAIRMAN: Mr. Uskiw, do you have another question?

MR. USKIW: On the third point you suggested the charter should assure every citizen equal opportunity and support to maintain and develop culture including language. I'm just wondering just how cumbersome you envisage this new Constitution to be. If you're talking 25 different cultural groups or 50 different cultural groups and entrenching culture and language as a matter of right could be a bit of a difficult situation for any government.

MR. HLYMKA: Again, really what I am saying is that if you recognize the basic elements of a democratic system and do not place somebody in a second-class or somehow inferior or slightly suggestive or a connotation that these people are not quite . . . You take as an example the present draft that they are talking about in Ottawa. There's nowhere that it mentions that there are anybody else except French and English Canadians. Not that there's anything wrong with saying that there are French and English, but for goodness sakes let's be honest with ourselves. There are other people and they tell me, demographers and statisticians tell me that if immigration continues the way it does, that in 25 years time we are going to have 50 percent of the population that is going to be neither English nor French. Let's as I say not look in the rear view mirror to see the vision of our country. Let's look at our country what it's going to be like in 25, 50, 100 years from now, and let's give it freedom so that if it goes that way, if out of those 25 people that you mentioned, if 10 of them disappear in the next 10 years and the other three in the next 25 and so on, that is normal evolution. So leave it to the historical process and do not compel people to follow a certain rigid regime.

MR. CHAIRMAN: Mr. Desjardins

MR. DESJARDINS: Yes sir. I think that there's been quite a change ever since the time that I started in politics. They used to talk one time of bilingualism and biculturalism and that has changed, and I have no problem at all with multiculturalism. I think, I'm not going to speak for anybody else on this committee or members of the House but I doubt if you'll find anybody that is against it. A lot of the things that you are saying are very valid. I remember the instance that you refer to about CKSB in St. Boniface and I addressed a brief favouring the retention of some of these programs that you were talking about. But to make sure that I understand — during the Manitoba Mosaic that was held, I don't remember what time now, I think we had agreed on certain things, and are you suggesting that you have problems with, not culture, I think we're taking for granted that we all want multiculturalism, but with bilingualism as far as official language of Canada and the other considered languages of culture. Do you accept that?

MR. HLYMKA: We have no problem in recognizing that. I think it's the other way, that I think that the

officials, starting at Ottawa have problems recognizing us as existing. We have no problem recognizing that Canada is bilingual — I'd prefer it the other way — bilingual within a multicultural framework, that there is real good reasons, solid reasons why we should be bilingual officially in the government, the federal government, so that there's no problem there. I think the problem is the other way around.

MR. DESJARDINS: Then I recognize the problems you say, and I agree with you a hundred percent with this explanation. But I have difficulty with No. 3 and I think that for those you're giving ammunition for those that are saying that there shouldn't be an enshrined Bill of Rights in the Constitution because that will be very, very difficult to find the proper interpretation on this because you are saying that the Charter assures every citizen equal opportunity and support to maintain and develop the culture, including language of his or her choice. There is no doubt that there is more opportunity to develop the two official languages, and that's why I asked if you were in favour of bilingualism. If you recognize that, it should be made quite clear. And also when you say, to maintain and develop and support, opportunity and support. What do you mean by that? How can it be equal opportunity? Will a government decide that they will give, for instance, to your group which probably would be the best way — let you do the promotion the way you want and how would they do it with another group for instance? I mean you're talking about equal. I think I know what you mean and I think you're absolutely right that you have to be considered, and it should be very clear that you people are not second-class citizens. I have no problem with that at all. I support you one hundred percent. But I think this would be difficult and then furthermore in the last page of your document you read that the resolution of the Ukrainian Canadian Committee, I'm a little concerned with your last paragraph that the Parliament of Canada shall legislate from time to time the working or official languages of the government of Canada in its institution. It seems to indicate that the bilingual character of Canada could be changed, therefore it wouldn't be enshrined in a Bill of Rights any more, it could change, it could become only English or it could become German, it could become anything else unless I don't understand that and I would appreciate your clarification of these two points.

MR. HLYMKA: There are, and I will go back to two things. Number one is about that, you mentioned point No. 3, and in answer to that I would say simply that I would refer to the first page, the last paragraph, "Equally fundamental to Canadian unity is the preservation of a democratic system in which all citizens, . . ." In other words, the whole thing lies or is covered by the word "democratic" and what we mean by democratic is that people are treated with respect due them. Now it's quite true that you have, for example, a large group of people that would obviously deserve certain considerations that a very minor group would not have equal in that sense, but equal refers to really respect for those people.

Now coming back to this . . .

MR. DESJARDINS: Excuse me, could we stay on that one point to make sure, to clarify it, if you don't mind?

MR. HLYMKA: Okay.

MR. DESJARDINS: I have no problem with that at all but you must recognize, sir, that if you are going to follow this and you have already said that you accepted the bilingualism, but multiculturalism, if you define and if you talk about the other languages as a language of culture and you want to preserve that, I agree with you one hundred percent. But the way it is now, you are saying that you believe in bilingualism but you are stating now that the Charter assure every citizen equal opportunity and support to maintain and develop language and it will by necessity, will not be equal if they are not official languages. There will be more money spent on official languages. That is the concern that I have. If you are talking about a language of culture and you want to retain it, I think that we should do everything possible to permit that because I am very much against a melting pot. I think we've got an awful lot more to offer in this country and I would like to retain the mosaic instead of the melting pot.

MR. HLYMKA: The question then — that equality can be considered in many ways. One can think of absolutely equality, one can speak of relative equality and I suppose what is meant in this is a relative equality.

MR. DESJARDINS: Then we agree it would be just to have experts try to put that into words to create as little problem as possible to make sure that it's not just a document that doesn't mean anything that you can have recourse to if it's . . .

MR. HLYMKA: Right, and for example, you could bring back the phrase that people have used, where numbers warrant, things like that, some sort of a relative but not an absolute, the word that it might imply at this stage.

MR. DESJARDINS: Am I correct that the main thrust of this brief is that you are tired of being more or less bypassed or looked at as third class citizens, second class citizens, and you want to be sure that you are also very good Canadians, you have a contribution to make?

MR. HLYMKA: Not only a contribution because I don't like that, that it's the contribution that you insist that we shall make, but what about the contribution the other way to us recognizing, so it's a two-way street.

MR. DESJARDINS: I think I recognized that when I said you are tired of being second class citizens.

MR. HLYMKA: Yes, I realize. For example, you speak, I heard even this evening, about minorities. Well, you have taken a word out of context, I don't mean you, but I mean the people who are doing this, the drafters of the new proposal. They took out the question of redefinition what minority is so everybody now talks about the minority languages and so on and we know very well that these are not the minority languages, French and English. These are languages of the two majorities in Canada if you want to put it that way but in the press and in the radio, television, and so on, this is garbled,

everybody talks about minority languages but it doesn't refer to me, it doesn't refer to my neighbour, it doesn't refer to other people who live in Transcona or East Kildonan or North Winnipeg; they're not minorities.

MR. DESJARDINS: In all fairness, if I may, Mr. Chairman, and I am not saying this is right, but I mean in all fairness, I think it is clear that when they were referring to English minority and French minority they were talking about minority official language and maybe they should say that.

MR. HLYMKA: They should say that every time because, as I say, I heard it tonight talking about minority languages and Ukrainian is a minority language in this province. I don't think they should sort of exclude this out of the definition.

MR. DESJARDINS: With this explanation, Mr. Chairman, I have no problem at all supporting this brief.

MR. CHAIRMAN: Any further questions to Mr. Hlymka? Mr. Einarson.

MR. EINARSON: Mr. Chairman, I would like to diverse — I know Mr. Hlymka said not to look back through the rear view mirror but I can't help but bring back a bit of history in relation to what we are being faced with today, namely the constitution that is on the lips of everybody, at least on more people all the time. How do you read The Official Languages Act that was established in 1969 by the present government? Do you interpret that as causing any problems insofar as you as a Ukrainian group in this day and age?

MR. HLYMKA: No, we have accepted that entirely. The thing is that there is, when you have people who are expert federal bureaucrats like Mr. Yalden and Mr. Keith Spicer before and they keep stepping a little bit out of step and so on. There is nothing wrong except one thing in The Official Languages Act and that is what I call the "nothing" clause, the clause that says, "nothing shall be done. The government is enjoined to do nothing, not to offend people, not to derogate from the rights that have been established or may be established". Now this is simply a tolerance, a toleration of these people that they exist and we won't bother them. But that is not leadership from the place up above in Ottawa. We want a little more than just plain tolerance. We want acceptance and tolerance is not acceptance so we would like to remodel that particular, I think it's Section 38. That one is very poorly worded. It offends me.

MR. CHAIRMAN: Mr. Einarson? Any further questions? Thank you kindly, sir, for your presentation.

MR. HLYMKA: Thank you, gentlemen, for listening to my spiel.

MR. CHAIRMAN: Manitoba Teachers' Society, John Wiens.

MR. LEE SAGE: Mr. Chairman, Mr. Wiens is not able to be here this evening. My name is Lee Sage. I

am here only to indicate that the Society cannot make its presentation this evening. However, we are still interested in making the presentation and that if time permits in the committee schedule we would like to make that presentation later in your hearings.

MR. CHAIRMAN: All right, Mr. Sage, we shall keep your Society's name on our agenda.

Mr. Desjardins.

MR. DESJARDINS: Mr. Chairman, I don't think it would be fair to start another group at this time and I would move that the committee rise, that we adjourn for tonight.

MR. CHAIRMAN: The committee has been sitting since 10:00 this morning and this is our third hearing for the day. I am agreeable if that is the majority . . .

MR. SAGE: In that case, Mr. Chairman, would I assume that we might be heard starting tomorrow morning as the committee resumes? Would that be a safe assumption?

MR. CHAIRMAN: The committee will resume at 10:00 a.m. tomorrow morning, sir, and if you wish, your name will be first on the list.

MR. SAGE: Thank you, Sir.

MR. CHAIRMAN: The next one would be the Alerted Canadians Alliance; Church in Society Committee, Manitoba Conference, United Church of Canada; fourthly, the Manitoba Association for Rights and Liberties, and that would be the order we would follow, starting tomorrow morning.

MR. SAGE: Thank you, Mr. Chairman.

MR. DESJARDINS: We're not just starting right from the start, those that are here.

MR. CHAIRMAN: Well, we have one, a Mrs. Friesen, but I've got the afternoon so I will —(Interjection)— Well, Mrs. Westbury said that she is under the impression that they would like to be withdrawn from the list.

The committee is adjourned until 10:00 in the morning.