

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS
Monday, 17 November, 1980

Time — 2:00 p.m.

CHAIRMAN — Mr. Warren Steen (Crescentwood):

CONSTITUTIONAL REFORM

MR. CHAIRMAN: Committee come to order please. We have sufficient members to start the afternoon session. When we broke at 12:30 for our noon break, I mentioned that this afternoon we would hear two more out-of-towners, a Mrs. Friesen from Headingley and a Mr. Lorne Parker, representing the Farm Bureau, and then there are two persons who, in communication with the Clerk's Office, had indicated that they could only attend today and that it was our intent to go ahead with Mr. Jeffrey Plant and a Mr. Vic Savino from the Law Union of Manitoba, then we carry on with our list.

Is Mrs. Friesen from Headingley present? Mrs. Friesen? Not here. Is Mr. Lorne Parker representing the Farm Bureau, present? Mr. Parker.

MR. LORNE PARKER: Mr. Chairman, members of the committee, ladies and gentlemen. You will have to excuse me if I am a bit out of breath, I ran the last two blocks.

MR. CHAIRMAN: Mr. Parker, if you want to take just a half a minute breather, your presentation is being distributed to the members of the committee. All right, Mr. Parker, please.

MR. PARKER: Thank you, Mr. Chairman. I am particularly pleased that you were able to make time this afternoon for me to give my presentation today. Tomorrow was out of the question as far as me being here myself.

Going into the text. As you will see I am a farmer by profession. I have farmed at Ste. Agathe for the last 30-odd years. I have absolutely no legal training. I am a Canadian with no separatist leanings, but such talk is growing in Western Canada and I think we should all be concerned. That is one reason that I am here today.

The second reason is because of a specific request by the Manitoba Farm Bureau, the major general farm organization in this province. I am not speaking for the Farm Bureau today and I want to make that very clear simply because we did not have time to prepare a brief and have it approved by our executive, but I was asked to attempt to reflect in my remarks what we seem to be hearing from the farm community. I might add our most recent quarterly meeting was just last Friday and there was considerable discussion on this topic.

I was personally proud of the statesmanlike performance of nine provincial Premiers at the September First Ministers' Conference. The odd man out was Premier Davis of Ontario. To that extent I think it is fair to say that the federal government strategy of divide and conquer was successful.

Almost without exception, the people I associate with favour simple patriation of our present Constitution at the earliest possible date with no amendments, but unilateral action to patriate with major amendments is divisive in the extreme. The Prime Minister added fuel to the fire when he suggested recently in Regina that we in the west should cool our hysteria and use our intelligence. Those weren't his exact words but that was the message that I got. I am one of those who simply do not believe that any Constitution which is imposed upon the provinces and their citizens by the federal parliament will be accepted in the various regions of Canada.

Two provisions of the proposed Constitution Act concern me. First, The Charter of Rights and Freedoms certainly has strong political appeal, but so has the appeal of those who speak in favour of motherhood. I have travelled extensively around the world, as have so many other Canadians. I have always come home impressed with the feeling of freedom so strongly evident in this country of ours: freedom of religion, speech, the press, assembly, etc. These freedoms are now embedded in various statutes at both the provincial and federal level. They can be democratically amended as social conditions change across this wide and diverse country.

Section 25 of The Constitution Act, 1980, says, "Any law that is inconsistent with the provisions of this Charter is, to the extent of such inconsistency, inoperative and of no force or effect." To a layman such as myself such wording sounds like a makework project for lawyers. Moreover, it may well put judges in the position of making political decisions rather than legislators.

My second and very major concern centres around the proposed amending procedures. As I understand it, The Constitution Act, 1980, can only be amended by unanimous agreement between the federal and provincial governments. This degree of unanimity hasn't been achieved in decades and I see no possibility of it happening in the two years allowed.

However, if in the two years, eight or more provinces with 80 percent of the population agree to an amending formula, such a formula could be put to a national referendum requiring a simple majority. Alternatively, the federal government could put an amending formula of its own choice to a national referendum, but in this case a double majority would be required in Canada as a whole and in each of the Maritime, central and western regions. I have had some experience with referendums on agricultural matters and I believe it highly unlikely that we'd agree to an amending formula with any type of referendum as set out in the proposed Constitution Act.

Rightly or wrongly, I came to the conclusion that the most likely scenario for an amending formula would be as set out in Section 41. Under this section any two of the four Maritime provinces with a combined population of 50 percent of the region,

according to the then latest census, would have a veto. A similar provision is written in for the four western provinces, but in the case of Quebec or Ontario, which at the time of proclamation of this Act, would each have in excess of 25 percent of the Canadian population, there would be veto power in perpetuity.

There are real dangers for Canada as a nation in centralizing the power to make future amendments in such an unfair manner. That is not my idea of a truly federal system of governments. There are particular dangers for Canadian agriculture and I suppose that is why the Manitoba Farm Bureau asked me to attempt to put together a brief statement for today's hearing.

The various regions of Canada are not fairly represented in our present parliamentary system. We could improve that situation by a system of preferential ballots together with an elected senate that would truly reflect the regional will. A stronger voice for the various regions of Canada is not addressed in the proposed Constitution Act. I, like so many other western Canadians, genuinely fear patriation under those terms. Simple patriation as soon as practical, a very emphatic "yes". Patriation with amendments that do not provide for a clear division of powers between the provincial and federal governments together with a fair amending formula, "no"]"

I believe that we should simply patriate the Constitution and get on with the day-to-day business of running this country, and that's a common statement that is being made day after day in rural Manitoba as I hear it in recent weeks. The idea of a constituent assembly to write a new Constitution, I think should be given a chance.

In the meantime, I am a strong supporter of the Premier of this province and the Premiers of the other three western provinces in their efforts to protect our regional interests within the federal system now in existence.

Thank you, Mr. Chairman.

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

MR. PARKER: Yes, I would.

MR. CHAIRMAN: Are there members of the committee who wish to ask Mr. Parker any questions relating to his brief? Mr. Parasiuk.

MR. WILSON PARASIUK (Transcona): Mr. Parker, I would like to ask you what type of constituent assembly you had in mind? Do you have in mind a constituent assembly made up of government and non-government people, meaning to draft an entirely new Constitution? You say that just after you make the statement that you would like to get the question of the Constitution in a sense out of the way and get down to the basic problems of this country and deal with the problems of running this country, but then you propose a constituent assembly which I don't know much about. Could you elaborate on that?

MR. PARKER: I think many people have attempted to enunciate what they mean by that. I think essentially they should be laymen, but experts in the

legal field. Thinking back, our various governments haven't been too successful in agreeing on any kind of an amending formula. I say let the ordinary Canadian with some expertise in the field get involved in that kind of a workshop session. In the final analysis, any decisions are going to be made by politicians in any case.

MR. PARASIUK: I just want to go back to Page 1. In the second paragraph you indicated that you agreed with the statesmanlike performance of nine provincial Premiers at the September First Ministers' Conference, and I'm trying to get some idea from the people coming forward before us, Mr. Parker, as to what their values are with respect to the country, and that one statement by one of the Prime Ministers, who you laud, struck me as bothering me and it was a statement by Angus MacLean, the Premier of Prince Edward Island, who said, "I'm a Prince Edward Islander first, a Maritimer second, and a Canadian third." I guess the feeling about Canada I'm trying to ascertain from people when they come before us is how do they fit into that? Do they see themselves as Canadians, Manitobans second or do they see themselves like Mr. MacLean as being Islanders first, Maritimers second and Canadians third?

MR. PARKER: I think that the majority of us in Western Canada are Canadians first. It bothers me though, Mr. Parasiuk, at the number of people that wouldn't use the word "separatism" 12 months ago are now using it. People that I think have great credibility, people in responsible positions, and I think we should be concerned about that.

I don't know the full context of Mr. MacLean's comments so I find it difficult to respond. My inclination is though that he is just as good a Canadian as any one of us.

MR. PARASIUK: Just to continue, Mr. Parker. The separatism that you say you have some concerns about, do you think that is fanned by constitutional matters or do you think it's fanned by the way in which a federal government is acting irrespective of the Constitution? I think it's important to separate politics and policy from the Constitution. I'd like to get your response, I'm getting some input from some people across the way there but I'd like to get your response to that.

MR. PARKER: I'm not happy with the attitude or approach of the present federal government in trying to effect what seems to me to be a unitary type of change. That's not my idea of federalism. I think we have to agree on a reasonable amount of consensus to come up with a type of Constitution or an amending formula that's going to last for some time in this country. I feel particularly strongly on that one. We want one made in Canada, not somewhere else. Farm people are determined though and I think our strong supporters are bringing that Constitution home, I said that in the paper. But to accept an amending formula that bears some dangers in terms of referendums, we know where the political power is in this country. I think there is great fear on that one and we see no justice at all in an amending formula that would give the two central provinces a veto

forever. I don't think we would be doing justice to our children and our grandchildren if we accept that, so my criticism is aimed at the federal government in a large sense, yes.

MR. PARASIUK: In terms of the Constitution?

MR. PARKER: Yes, and their procedure.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Sir, in the second last paragraph on Page 2 of your letter you referred to particular damages for Canadian agriculture. Could you amplify on that?

MR. PARKER: I anticipated that question, Mr. Mercier, and that's not easy to do. I am concerned though about our various national marketing agencies. I am concerned as to what type of effect it would have on major corporations, such as the Canadian Wheat Board, Crown corporations.

I think as you know I do sit on the Advisory Committee of that body and in times past and in times recent we have on occasion had Orders-in-Council directing the Canadian Wheat Board to do certain things. Anything that tends to give more power to central Canada, I guess I look at it with a jaundiced eye and maybe its evident in the wording of that paragraph. I can't be really more specific than that but that's the general fear that I have.

In terms of our marketing agencies now, I think those of us out west that supported a move in that direction initially were hopeful that we would get a fair crack at the gross market over time in the quota arrangements. Experiences indicated that in spite of the fact that we may be the cheapest producer in certain provinces in Western Canada, that isn't really the way it's worked and it's that kind of thinking that's permeating through the farm community.

Thank you.

MR. CHAIRMAN: To the members of the committee, any further questions to Mr. Barker. Seeing none, thank you kindly, Mr. Barker.

MR. BARKER: Thank you.

MR. CHAIRMAN: Is Mrs. Friesen from Headingley present? She is a person who asked specifically to be heard today.

Jeffrey Plant, is Jeffrey Plant present? Mr. Plant, do you have copies of a presentation or are you going from notes?

MR. JEFFREY PLANT: I am going from notes. Unfortunately I don't have a prepared statement for the committee to consider.

MR. CHAIRMAN: That's fine. Would you like to proceed please?

MR. PLANT: Yes. I'm here today as a citizen of Canada and as a resident of Manitoba, second. I am a professional engineer and I am the manager of a branch office of the consulting company that has offices in other parts of Canada. I guess that makes me a small businessman as well as a citizen.

As an engineer and not a lawyer I have had trouble understanding a lot of the legal issues involved with the constitutional talks but I have followed them with some interest.

Firstly, I do believe that the constitutional questions are very important. There are other concerns though that I have at the moment and they pertain to the economy and to the sluggishness of the economy specifically. They include such matters as unemployment and inflation and some very serious problems which face the governments of Canada and of the provinces. With this in mind I can't say that I've been happy that this particular government has taken steps to slow down the process of bringing the Constitution home.

I do agree with a number of the positions which Mr. Lyon and members of the government have set forward. I do agree that the Constitution should be patriated and I do agree that the present amending formula is not one which favours Western Canada and this province in any great measure. However, I would like to see an entrenched Bill of Rights and I'll speak briefly on those three matters.

Briefly I'll try to articulate what I believe is the position of this government. As I understand it, the government favors patriation. They would like to see an amending formula perhaps similar to the Vancouver formula, which was discussed earlier this summer, but they do not favor entrenchment of the Bill of Rights in a patriated Constitution. The issue regarding the Bill of Rights is not that the Bill of Rights should not be included now because it could conceivably be included at some future date using a democratic amending formula, but that such formula should never be included.

First of all, with respect to the matter of patriation, I am in agreement that it should be done now and I won't say anything further.

With respect to the Vancouver formula, as I understand it the Vancouver formula permits provinces to opt out of certain amendments. I don't believe that this has fully been developed. It's a relatively new idea in terms of an amending formula and I think that there is some indication that the matters of subjects which a province could opt out of must be discussed.

This type of formula which allows a province to opt out disappoints me in a sense and I hold it in some fear as a Canadian first. My view of this country is a view of a strong central government but also with strong provincial governments. The role of the strong federal government, however, is to try to balance the interests of each province and to somehow equalize matters in this country for all Canadians. If provinces are allowed to opt out, I feel that we as Canadians will tend to drift apart over the years and this to me is a very undesirable aspect.

I share the concerns however of the amending formula that was proposed at the Victoria Conference which seems to allow the Provinces of Quebec and Ontario to have a veto power. I would suggest to the committee that perhaps some alternative formula be considered which would not allow these provinces to have absolute veto powers over certain issues. This is similar to the Vancouver formula where provinces would be allowed to opt out of certain resolutions, but the effect would be

somewhat different in that any amendments would apply to all provinces.

The Victoria Charter formula, which is included in the present federal resolution, should perhaps be applicable to certain matters which affect the fundamental routes of this country; such things as the use of French and English as official languages by the federal government. Amendments to change such basic matters as that should perhaps be subject to veto powers by the two largest founding provinces to our Confederation. I believe that there are other matters which are not as fundamental to our historic roots, but are still very important to this country and which could perhaps be prevented from being enacted as an amendment to the Constitution by one of either Ontario or Quebec if they did not see the wisdom in such an amendment. There should be a safety valve which will allow us to get around certain or to enact certain types of amendments to the Constitution which are in the best interests of Canada in which the majority of Canadians and Canadian provinces support. This is an idea which I will leave with you for thought.

On the matter of an entrenched Bill of Rights, I believe as Canadians that we are all very proud of our record on human rights issues. There have been a few exceptions, one of the exceptions occurred with the Asiatic or Japanese Canadians during the Second World War. I won't go into that sort of discrimination. I'm not certain that an entrenched Bill of Rights would prevent that type of discrimination from occurring again as it did not prevent that type of discrimination from occurring in the United States at the same time.

The matter of rights in this country is one which, I believe, many of us can take for granted because in our day-to-day lives we tend to carry our lives in a certain manner that does not put us at odds with the law. The rights that are most important, however, are the rights of the most unpopular people in our society are the people with the least ability to take action to have their rights recognized and enforced.

At the moment if rights are violated in this province and in many cases we do not have a right to a cause of action to have these rights addressed by the courts. We do have the ability to lobby governments, however, or to talk to our elected representatives and have them hopefully take action to correct problems. The political reality in any country or in any democratic country is such that there are certain rights which are not popular politically to enforce and it's these rights, I believe, which an entrenched Charter of Rights would serve to protect. If I can quote an example from the Winnipeg Free Press, Barbara Cansino's article on November 6. She is referring to a case where an Ontario company is discriminating perhaps on employment applications. I'll quote from the article. "Respective employees are asked to indicate the amount of alcohol they consume daily, whether they have been rejected by the Armed Forces and if they have been on compensation for previous work injuries. The questions get more specialized for women." She goes to talk about some very specific medical questions that are of interest only to women and are not necessarily related to how a person might conduct their job. A person who is confronted with such a discriminatory type of employment

application has at the moment two choices. They can refuse to answer those questions and risk not being hired for the job or they can take some action to the Human Rights Commission in Ontario which at the moment cannot do anything about this because there are other Acts in Ontario which do permit medical questions to be asked of prospective employees. The Ontario government has seen problem and they are taking action, legislative action, at the moment to correct this problem and to prevent companies from asking discriminatory type of questions in employment applications. At first blush this looks like a good example of elected representatives seizing on apparent discrimination and solving it. If the government had not acted, however, this person would have no recourse in law to have those rights protected. If a Bill of Rights existed which protected discrimination or protected persons against discrimination on the basis of sex or allowed a right of privacy to certain people, this would allow a person a right of a cause of action and a right to address the courts for perhaps compensation. In this way a person's rights are extended. The government still has the right, however, to legislate and to enact legislation which will enhance the rights of large groups of people. For example, Employment Standards applications or Employment Standards could still be legislated by our elected bodies, however, the individual would have one additional right.

There are, of course, other instances of discrimination which have existed and the Bill of Rights has not necessarily been the existing Diefenbaker Bill of Rights and the Bill of Rights which exist in many of the provinces have not been successful in countering. This is discrimination with respect to native peoples. I was a little bit disappointed to read in the proposed federal resolution that the questions regarding native people have not been addressed in any great detail. In Manitoba we do have a large native population, many of whom contribute very productively to our society. I was a little bit disappointed that our government did not bring this matter up in the Constitutional debates and that something wasn't taken to resolve something more suitable in this matter. I fear that the Bill of Rights which the federal government proposes to entrench does not change the status of native people as it exists with the present Diefenbaker Bill of Rights and I think that the courts are in need of a little more strong wording if they are to interpret The Indian Act, another piece of legislation which pertained to native people as being discriminatory.

I think that I have gone on at least long enough, not too long. In conclusion I would like to mention that I have written to the Premier and I'm happy to say that Mr. Lyon has been very quick to respond to my letters. He has provided me with any information which I requested about his argument and I believe that the feelings which he holds and which his Cabinet hold are genuine and they are truly held and valid opinions. I would hope, however, that they would consider my presentation and would move towards a position where they would favour entrenchment of human rights.

The two-year period which is allowed in the federal proposal to consider new amending formulas seems

reasonable. Mr. Lyon indicated at the First Ministers Conference that he felt some sort of proposal could be worked out within a one-year period. I agree with Mr. Lyon that we can make progress within the next two years and I hope that these talks are one of the productive steps in achieving that. Thank you very much.

MR. CHAIRMAN: Mr. Plant, will you permit questions from members of the committee?

MR. PLANT: Yes, I will. I will do my best to answer them.

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

MR. D. JAMES WALDING (St. Vital): Thank you, Mr. Chairman. Mr. Plant, in your opening remarks to the committee you made mention of the economy, inflation and employment. I wonder if you could expand on that. I wasn't sure that the context and what you had to say in following that up.

MR. PLANT: At the moment in Canada we have a number of issues which confront Canadians and confront our elected representatives. One of them is the Constitution. We are discussing that for reasons which are quite complicated, but there are other problems, of course, with the economy. I'm not an economist and I don't understand the problems with economy, but I do understand that we do have high interest rates in this country, that we do have an inflation rate, which is approaching, if not in, the double digit range. These to me seem to be very serious matters which deserve some attention.

In the federal arena we have, at the moment, a government which has just recently enacted a budget, and it is the first budget which we have enjoyed in over two years. We have a Bank Act, which is supposed to be renewed every ten years, and which is at least two years overdue in being amended and renewed. There are economic problems that are, of course, influenced by the constitutional talks, such things as oil pricing negotiations and oil pricing discussions with the oil producing provinces, with the provinces who have offshore resources. These are economic problems that are tied in with constitutional talks, but I don't believe that the constitutional talks should continue at the relative exclusion of other matters, important matters pertaining to the economy. I don't know if it's for political reasons that we have managed to turn the spotlight off of the economy and on to the constitutional talk, or if in fact we have done that as Canadians. Perhaps people are as concerned as ever with the grass-roots questions of whether they can have a job and put bread on the table as they ever were, and we are deceiving ourselves to think that people are really concerned that the Constitution is our first matter of importance today.

MR. CHAIRMAN: Mr. Walding.

MR. D. JAMES WALDING (St. Vital): Mr. Plant, do you see anything in this resolution here that would

either help or hinder the government's ability to take care of these problems that you mention?

MR. PLANT: I think that there are certain things that will help the government's ability to take care of these problems. In the resolutions we see — if I just might refer to my copy — these resolutions, I think, will set out clearly a distribution of powers, which albeit is already set out clearly but I have trouble believing that the Constitution will be the be-all and end-all or a repatriated constitution will solve all of our problems. I think, however, that it will help towards clarifying the relative positions of the provincial governments and the central governments.

One of the matters that this document refers to is the mobility rights, which at present we do not enjoy in this country, or certainly not total mobility rights. I think that is something that will help the economy by allowing Canadians to move freely from one province to another to pursue jobs. It would allow employers to employ people whom they wish to employ regardless of their province of residence at the time they seek employment. From a business point of view, I believe that these are things that will help ease some of the uncertainty in our day-to-day lives and will help us.

Other matters that will help, I believe pertain to minority language rights. I am an anglophone who has lived in the province of Quebec for a period of time, and I know that there are many people who have left that province because they felt their right to educate their children in the English language was an important right and a right which the government was not willing to confer upon them. To a certain extent this may have caused problems in business in that province and in other provinces, whose companies might wish to expand into Quebec.

I think that, in general, the Constitution, and a quickly patriated Constitution will help to clear up some of these matters, but the matters that I just referred to would be included in an entrenched Bill of Rights and I think that would be a prerequisite to improving our economic problems as well.

MR. CHAIRMAN: Mr. Walding.

MR. WALDING: There's one more question, Mr. Chairman, if I may. On the one example that you quoted in your remarks about filling in an application form and certain questions of a medical nature. Do you think that the employer in that case could argue that it was his freedom of speech that permitted him to ask any question that he wanted to, and do you see that such a charter would, in fact, entrench his freedom to ask any question that he wanted to?

MR. PLANT: There are no absolute freedoms in a free society. One right is limited by another person's right in all cases, and this is a matter, I think, that would have to be decided by the courts. A person's right of speech should be guaranteed insofar as it doesn't infringe with another person's right of perhaps privacy or if, in fact, a person tries to defend a certain obnoxious line of questioning on the basis of his right of speech, that can be seen as quite a coloured attempt to discriminate. I don't think in this particular hypothetical case that you mention the courts would have much difficulty in

determining that one was a manner of discriminating for employment purposes, and the other was something not related to that question.

MR. WALDING: Thank you.

MR. CHAIRMAN: Mr. Uskiw.

MR. SAMUEL USKIW (Lac du Bonnet): Mr. Plant, I would like to ask you whether or not you would be prepared to amend your position, assuming there was a consensus in this direction, that we simply entrench language rights as opposed to all of the rights that you have in mind?

MR. PLANT: I suppose I must try to answer that question. I don't think that I would. I think that there are other rights that are equally important that should also be entrenched.

MR. USKIW: Okay.

MR. HOWARD PAWLEY (Selkirk): Mr. Plant, I am wondering, in reference to the resolution which the federal government has now passed to committee, Senate, House of Commons Committee, dealing with the Charter of Rights, there is a limiting provision, which limits the various rights to that which is traditional within democratic societies. I would like to have your opinion as to whether or not that limitation, which appears to be imposed within that legislation, should really be included there at all, if we are to have a Charter of Rights?

MR. PLANT: That sounds to me like quite a technical legal question. As I understand the problems with the interpretation of the existing Diefenbaker Bill of Rights, that has been one of the major problems the courts have faced in interpreting it — it is in the act, somewhere it is stated that there have existed in Canada and continue to exist the following rights, and I believe that has been detrimental in perhaps creating new rights and I'm not sure I understand your question.

MR. PAWLEY: Are you concerned that the qualification that is in that type of general provision in fact will be utilized in courts in the years that lie ahead to limit rights that are indeed being provided for within the Charter of Rights, and that it would be better to do away with that type of opening qualification if we were to have a Charter of Rights that is to obtain some of the objectives that we are attempting to achieve in Canada.

MR. PLANT: I note also though, under Section 24 and I am not sure if this is the Section that you refer to but the clause reads as follows: "The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada including any rights for freedoms that pertain to the native peoples." I am not certain how the courts, of course, would interpret that but it seems to indicate to me that this Charter does address the problem of rights which do not presently exist.

MR. PAWLEY: Yes, there is another more limiting provision. I wish I had the resolution in front of me, but I don't at this point, which restricts those rights to those which are normal to standards which are normally applied within a democratic society.

MR. PLANT: Yes, that would be clause . . .

MR. PAWLEY: Here we are, provision No. 1. "The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits as are generally accepted in a free and democratic society with a parliamentary system of government."

MR. PLANT: Your question is?

MR. PAWLEY: Do you feel that provision should be included or indeed is that provision going to be counter-productive, indeed is it going to limit the effectiveness of the Charter of Rights?

MR. PLANT: I believe that particular clause, and it is the opening clause, does have an important application. I do think it will limit the application of a Charter of Rights. It is also the clause which gives not only the provincial governments, the federal governments as well, certain freedom to make laws which may at times discriminate or may at times seem contrary to the Bill of Rights if they can establish reasonable limits as are generally accepted in a free and democratic society.

The importance of such a clause is that I think we have to recognize that ours is a parliamentary system of government and it will continue to be a parliamentary system of government and Parliament and the Legislatures will continue to be supreme even after enacting an entrenched Bill of Rights. It's this first clause that allows governments to make legislation which is contrary to one part of the Bill of Rights but to justify it on another bases.

I think we can picture times, and this might be necessary in times of war or real or apprehended insurrection, as I believe the present Bill is worded. I think that would be an important matter to leave in the Resolution. If I was an elected representative I would like to see that because that way it doesn't take away from the parliamentary responsibility.

MR. PAWLEY: I share your concern about there being no entrenchment of rights pertaining native people. There seems to be some difficulty in developing the type of phraseology that would properly express that desire and I am wondering if you would have any suggestion to the committee pertaining to such an entrenchment.

MR. PLANT: The problem of constitutional status of Indian peoples in Canada is one that certainly goes back a long way and I don't think it has ever been firmly resolved. I have spoken to various native individuals about their feelings on it and I am not certain as yet there is a consensus, even within the native community, as to what rights should be protected and the status of the treaties and in areas where there are no treaties. It's a very difficult question and I think it's one that cannot be furthered by sort of off-the-cuff comments. It does deserve

some very detailed study and some input from the very people who are affected by this clause, by the native people themselves.

MR. PAWLEY: Just one final comment. Would you have any opinion pertaining to the request by handicapped and women's organizations that there be entrenchment of rights pertaining to those interests?

MR. PLANT: The argument that I have heard pertaining to such rights which are not specifically declared in this document is that somehow these rights might not be as important as other rights which may exist or are found to exist. I don't know if that is necessarily true. I believe that Section 24 does specifically address that and again it pertains to the existence of other rights.

This document is drafted today but one hundred years from now there will be new rights and there will be changes in society. I think that this particular Resolution allows for change and it will grow with these changes. I'm not certain I share their concern. I believe that it is addressed. I may be proven incorrect.

MR. CHAIRMAN: Mr. Desjardins.

MR. LAURENT L. DESJARDINS (St. Boniface): Mr. Plant, I have the same concern. I share your concern over the protection of certain rights for the native people. I wonder if this would be satisfactory to you, if in this enshrined Bill of Rights, if there was such a thing, it would be clearly indicated that nothing in the procedure of amending the Constitution could take away any of their rights that they presently enjoy. In other words, all these have not been definite but this would be an attempt to make sure that they would not be any worse off than they are now, and all of a sudden just because there is a formula that they would lose certain rights.

MR. PLANT: I think we need to go further than that with respect. I think we need to define the rights that exist today and a number of cases have come before the courts and the Supreme Court of Canada specifically. I am not familiar with the details of all of them but one that comes to mind pertains to the Laval case, and this was a woman who was essentially denied property rights on the basis of sex. The details are not important but I think the thing that is important here is that we have in The Indian Act a provision that should have denied her rights on the basis of sex and I think the Bill of Rights which was passed later, there were indications in the Bill of Rights that you should not discriminate against Canadian citizens on the basis of sex. The Supreme Court of Canada held, and I am not sure I understand the grounds for holding this, that The Indian Act was the preferred piece of legislation in this case and that the Bill of Rights did not act to alter that. The point that I am making, I guess, is that the native people are citizens of this country and we have to decide if we have a Bill of Rights that prevents discrimination. Does this Bill of Rights prevent discrimination to all Canadians or do we allow discrimination against certain groups within our country who have enjoyed discrimination as a right in

the past? When I say discrimination, I'm not saying it in a derogatory sense. The Indian Act was enacted and this provision was included in The Indian Act for the protection presumably of the native people, but certainly the two thoughts are in conflict.

MR. CHAIRMAN: Mr. Desjardins.

MR. DESJARDINS: A question to Mr. Plant. Are you in effect saying then that — and I can understand — you're saying that we should in a way take certain rights away from the native people that they enjoy now, rightly or wrongly, that they enjoy now by saying that takes precedent without any further consultation with them?

MR. PLANT: No, we certainly should consult with them and I think we have to decide in consultation with native people what the rights are that exist today and whether they want those rights to continue, or do they want additional rights and I don't know the answer. I think it's something that needs negotiation.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Plant, you, I take it, agree with the entrenchment of some fundamental freedoms, such as freedom of speech or expression?

MR. PLANT: That's correct.

MR. MERCIER: You favour giving the judges the last word on the interpretation of that phrase?

MR. PLANT: Yes, I do.

MR. MERCIER: Mr. Plant, in the Supreme Court of the United States, in a case before them, the appellant had deliberately used a gross obscenity four times at a school board meeting attended by at least 40 children and 25 women. He was convicted under a New Jersey statute which provided "that any person who uttered loud and offensive or profane or indecent language in any public street or other public place is a disorderly person". It was held by the United States Supreme Court that this was a violation of the appellant's right of free speech. Do you agree with that decision?

MR. PLANT: Well, I have to agree with the decision, it was a very respectable court that gave it. However, there are a few notable differences between the American law and the Canadian law. One thing that I do note in reading from some of the writings of Walter Tarnopolsky of the University of Ottawa presently and Peter Hogg from Osgood Hall Law School is that the Canadian Supreme Court has been very reluctant to ever use the American precedence or to ever include the American precedence to interpret our existing Bill of Rights. Furthermore, we are more likely to draw upon our common law because that is, in fact, our heritage and before we go to the United States' Bill of Rights' cases, I believe we might well look to our common law history and the common law history of England, Australia and New Zealand.

I could add one more thing before we go on. This idea of having the courts interpret a Bill of Rights or

interpreting rights in Canada is not something new to our system, as we all know. In fact, at the moment the very fact that the Manitoba government, or through the Attorney-General's office, we can challenge in the courts proposed legislation of another government on the basis of its constitutionality, it's very demonstrative of this right that exists.

We have uncertainty in this country with respect to legislation until it has been decided in the courts. We've seen this in the Manitoba Egg Marketing case a number of years ago and in the anti-inflation reference of a few years ago, more recently. I'm not familiar with all of the times that various provincial and federal laws have been challenged in the courts, but the courts must make decisions and many of these decisions involve policy and it's a very difficult position for the courts to be in, but it's not a position that they haven't been in before.

MR. MERCIER: Mr. Plant, would you not agree that the court's decisions in those areas are only with respect to which jurisdiction, federal or provincial, has the legislative authority to pass laws and do not go, in effect, to strike down the laws that are within the jurisdiction of either level of government?

MR. PLANT: Well, they have certainly struck down laws that were found not to be within the jurisdiction of provinces. By the same token, they have struck down laws which were found not to be in a jurisdiction of the federal government.

I think the situation with respect to interpretations of the Bill of Rights is very analogous to the existing type of adjudication that the Supreme Court enters into. The hypothetical case that I picture is one whereby a government, be it provincial or federal, enacts a law which is found to be contrary to the Bill of Rights by a certain group of people, very similarly to the way that same body might enact a law which is not in its area of jurisdiction. We have a conflict and it is for the courts to resolve it.

At the moment, if such legislation is enacted by elected representatives, the individual has no right of address to the courts and I think that in Canada we should have that right.

MR. CHAIRMAN: Any further questions? Seeing and hearing none, thank you, Mr. Plant.

MR. PLANT: Thank you.

MR. CHAIRMAN: Is Mr. Parker still with us? It was brought to my attention a few moments ago that he wanted to table a paper or papers with the committee. —(Interjection)— No, the Clerk tells me that he had something further. He's obviously absent from the room so we'll get the papers from him at a later time.

Mr. Blake.

MR. DAVID BLAKE (Minnedosa): Mr. Chairman, for the record, Mr. Parker is listed on the new list of people to appear before the committee as the Manitoba Farmers Union. I'm sure he would rather have that be The Manitoba Farm Bureau.

MR. CHAIRMAN: That will be noted, Mr. Blake.

MR. DESJARDINS: Mr. Chairman, if we're going to note that, let's note also that Mr. Parker said that he was speaking for himself, not with that group, that he thought that he did express some of the things he had heard around but he wasn't speaking for that group. In fact, maybe you should strike everything out, even the name. He made the point himself.

MR. CHAIRMAN: Order please. The next person on our list is the Law Union of Manitoba, Mr. Savino. Mr. Savino.

MR. VIC SAVINO: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Savino, before you proceed, do you have a printed text that you wish to follow that you might have additional copies or are you speaking from notes?

MR. SAVINO: No, I'm speaking from notes, Mr. Chairman. I have to admit that in the rush of the development of these committee proceedings we were only able to get the Law Union together for one meeting and a meeting yesterday afternoon of our sub-committee to make the appearance before this committee today, so we don't have a prepared text.

MR. CHAIRMAN: That's fine. Would you proceed please?

MR. SAVINO: Thank you. Gentlemen, speaking on behalf of the Law Union to the issue of constitutional reform in Canada and how it relates to Manitoba, there are essentially four areas that I'd like to cover about the Law Union's position this afternoon.

Firstly, I'd like to spend a moment or two on who the Law Union is and why we are appearing before this committee.

Secondly, I would like to outline to you as clearly as I can what the general position of the Law Union of Manitoba is on the proposed constitutional changes that are before you and other Legislatures.

Thirdly, to express to you what some of our concerns are about this committee and other institutions that are considering the question of constitutional reform.

Fourthly, to tell you some of the reasons why, in our general position, we support the notion of entrenched rights in the Canadian Constitution.

First of all, who the Law Union is. I won't spend very much time on that. I think many of you have sat on other committees where the Law Union has appeared and by now you probably know that the Law Union is a fairly loose group of lawyers and law students who are interested in how the law affects people. Through our collective efforts as an organization we are trying to bring a social perspective to such areas as the practice of law, the development of new laws and the administration of the legal system. One thing that I should point out is that the Law Union is a non-partisan organization in that we welcome participation in the Law Union from all lawyers, whatever their political stripe may be.

I'll move on next to the general position which the Law Union has worked out through meetings of its membership and the sub-committee which met yesterday afternoon. It's very brief, our general position, at this point in time. We are in favour of the

entrenchment of a Charter of Rights. That's point No. 1 in our position. Point No. 2 is that we are not necessarily enamoured with this Charter of Rights, which has been proposed by the government in Ottawa. We appreciate that it does cover certain areas of civil liberties and legal rights, but where we feel that this particular document is wanting is in the area of economic and social guarantees that come out of the United Nations Human Rights Charter, which this country is a signatory to. That is one area where we feel the Charter of Rights certainly needs some beefing up.

The other area that we particularly concerned about is the notion of freedom of information which we feel has to be a companion to any system of enforcement of individual rights, whether that system be the one that is proposed by the anti-entrenchment people or that that is proposed by the pro-entrenchment people. In either case we feel that freedom of information is a very very important tool to be available to the citizen in the enforcement of his rights.

That, gentlemen, is our position in brief. After I deal with some of the concerns which the Law Union asked me to bring to this committee about the particulars of the way in which this committee might be proceeding, I will go into some of the reasons why we are in favour of an entrenchment of rights in our Constitution.

I should also state that we are taking a position only on that aspect of the constitutional reforms. We don't think that there is really much debate about whether or not Westminster should continue to control our Constitution and the debate with respect to an amending formula is not one that we feel overly qualified to participate in, so our emphasis is entirely on the Charter of Rights' question.

Our concerns, gentlemen. Our organization felt really pressed to get together an appearance this afternoon. We were concerned that there was not enough lead time and we are concerned that there may not be enough hearing time for the people of Manitoba to be heard on this issue. We appreciate that the existence of the committee came late in the process, but we feel that if a committee is going to hear the concerns of Manitobans about the Constitution that the committee should schedule sufficient meetings with sufficient lead time for all organizations, groups, or individuals, who have an interest to express that interest to the committee.

Our second concern, and that arises out of the first, is that we are wondering what the real purpose of these hearings is. We are assuming, we are making an assumption, that the purpose of these hearings is for the government to receive public input into their position on the Constitution and we are proceeding in good faith that the government appreciates the importance of this issue. I have to say that one of the major areas of discussion in the Law Union discussions was our very grave concern that what appears to be developing on the issue of the Constitution in Manitoba is entrenched positions based on partisan lines. It would appear that the government has dug in firmly against the notion of a Charter of Rights and has dug in on a partisan basis. I wouldn't necessarily say that the Opposition is dug into particular position. I think that there is probably diversity within the ranks of the New Democratic

Party as there clearly is within the ranks of the Liberal Party. I'm not sure how much diversity there is within the Conservative Party. But what I am sure of is that this issue, gentlemen, is so fundamentally important to the people of Canada and to the people of Manitoba that I think that we, as individuals, within particular partisan organizations have to rise above partisan politics in the consideration of this issue. I certainly hope that, as I mentioned earlier, we are proceeding in good faith that this committee is here to hear the people of Manitoba, and I certainly hope that the committee will hear the people of Manitoba and that the positions are not so deeply entrenched that they cannot be modified after hearing from the various groups that have an interest.

Having said that, I should also indicate that what we are giving you today from the Law Union's point of view, as I stated earlier, is our general position. We would like the opportunity to study both the federal and the Manitoba governments positions more closely and then have the opportunity to relate to this committee a developed position on the one that we gave you at the outset in terms of more specifics with respect to economic and social rights and the right to freedom of information.

I think you are probably going to be hearing from the Manitoba Association of Rights and Liberties, but I couldn't help but noting in the paper this weekend the letter to the editor from the director of that organization who, I think, is expressing some of the same concerns that I am expressing to you this afternoon.

I will move now to some discussion of why we in the Law Union are in favor of the concept of an entrenched Bill of Rights and why we feel that social and economic underpinnings must be contained in that Bill of Rights.

I think that probably the best place to start in dealing with that question is to look at the community which Manitoba is within Confederation. Manitoba, I think probably more than any other community in this country, is a community of minorities, a community of immigrants, a community of a very large and diverse mix of different cultures, different political beliefs, different religions, all kinds of different backgrounds, different languages, different ways of life. In times of crisis or in times of depression or in times of recession, it is all too easy for the majority to ride over the rights of a minority — a minority which may, as in the case of the Japanese in the Second World War and I can say from my own family experience in the case of the Italians just prior to the Second World War, sometimes minorities find themselves in the unfortunate position of their home country not liking too well what their, or at least their adopted home country not liking too well what their home country is doing. We saw some examples of what can happen when that happens in the case of the Japanese and other groups prior to and during the Second World War.

It is in that context I think that we have to approach the notion of what rights, in this rewriting of our Constitution that we are going through, will be entrenched, and the debate seems to be focusing around — and I heard Mr. Mercier ask the question of the previous speaker — around who should do it,

the Legislature or the courts. This seems to be the focus of the debate. So I want to spend a moment or two on that.

To me, and I think to any one who takes the time to study the Canadian political system, it is clear that the Legislature, by its nature, by its very definition, the Legislature is the rule of the majority over the minority. In a partisan sense, granted, not necessarily in a cultural sense or a language sense, but in the history of Manitoba we have seen in our own history how the Legislature, in terms of language, is the rule of the majority over the minority.

The question that has to be addressed is how does that minority, or that individual within a minority, or that individual who is just a plain individual whose rights have been abused, how does that person redress that right? How does that person retain the rights which we all agree in good times that we all have? Members of the Law Union see in our practices on an almost daily basis difficulties arising from the abuse of rights by institutions, by police officers, by bureaucracies, and so on and so forth. We often confront the situation with, well, what do we as lawyers advise these people under the present situation with our Constitution and rights, and we often have to ask ourselves what would we advise these people under the proposed changes to the Constitution.

The only advice that I could see giving an individual or a group whose rights had been abused in the context of the advocates of non-entrenchment, the only advice that I could give those people is, well, you've got to organize and overthrow the government. Is that really the kind of redress that we want our citizens to resort to? I mean it seems to me that is the logical extension of the non-entrenchment position, that if you feel that your rights have been abused, you can't go to a court and ask the court to make a decision one way or another, whether you are right or wrong, whether your right has or hasn't been abused. You are being invited instead to, through the political process, overthrow the government that you feel has abused you. I don't really think that's going to be a very effective remedy for the vast majority of people in our society.

I would want to refer to an example, a specific example which I am discussing publicly for the first time today, that I have encountered in my practice and in my involvement with the community. The example is with the Chilean community, the community of immigrants which has joined Manitobans over the last four or five years. I have had the privilege of dealing with many of those people individually and with the Winnipeg Chilean Association on a professional and other basis. One of the things that I have heard from so many individual Chileans, who came to this country in the midst of political turmoil and military upheaval five or six years ago, is that when they were clearing through the Canadian Embassy in Santiago or in Buenos Aires or in various other centres in South America, they were given a very thorough screening by the Royal Canadian Mounted Police. Now, of course, we all have to accept that there's a certain amount of national security discretion that has to be exercised by our national police force, but these people not only received a screening but before their

applications would be processed, they were required to sign a document which said that they would not engage in union or political activities as long as they were landed immigrants. Now that to me, gentlemen, is a fundamental abuse of human and civil rights, which our federal government or any government is quite capable of.

Given that that's the situation that exists for that particular group, how do they go about redressing that right? How do they go about righting that wrong? We look at The Federal Human Rights Act which permits citizens to have access to their files and would perhaps permit us to request that this particular document on their file be returned and expunged from the file, and that the people involved be assured that they indeed do have the same political rights as everyone else in this country.

However, first of all, in order for us to utilize The Human Rights Act, we have to have citizens and so we have to wait four or five years from when they arrived here. Secondly, I am quite positive that if I made that request of the Federal Human Rights Commission or the administrator of that particular part of the Act, that the battle would then be national security. It falls within the exemptions under The Canadian Human Rights Act, that exemption being national security and anything to do with the RCMP in the screening of immigrants has to do with national security and therefore you can't have that information.

The example, I think, illustrates two things. Number one, what on earth are those people going to do if you don't have entrenched rights? Are they going to overthrow the government of Canada to redress that right? The other thing that it demonstrates is, without freedom of information how are they going to begin to redress that right even if they do it through the courts?

I think that there's companion notions here when we're talking about entrenchment, and one of the notions that has to accompany any meaningful system of human, legal and civil rights has to be access to the information about the individual or group. I would go so far as to say that freedom of information is basic to the enforcement of rights. You cannot enforce or redress your rights if you don't have access to this information.

Now when you follow those thoughts through — at least that's what I tried to do in my own thinking about this particular issue — you go back to the anti-entrenchment position and I have to ask myself, I really sort of wonder — well, I know the government's position on entrenchment is no entrenchment, but what is their position on freedom of information? As I understand the Premier's position, he views the Freedom of Information laws in the United States to be "dangerous".

If you have a position that (a) freedom of information laws are dangerous and (b) we don't want an entrenched Bill of Rights, then I'm not sure what your position is, because out of the other side of the mouth Mr. Lyon, the Premier, is stating that we have sufficient protections within our system to prevent the abuse of rights. If you don't have freedom of information, how do you have sufficient protections in the system?

I should state that the particular wrong that I referred to in the case of the Chilean community, I

think would be covered by the existing proposed Charter of Rights, because that Charter has some clauses that say "every citizen" and some clauses that say "every one", and the basic freedom clause contains the "every one" provision, therefore, landed immigrants would probably be covered by that and every one is entitled to freedom of speech and freedom of political association and so on, so this particular group could begin to redress that wrong. But what are they going to do about it if they don't have freedom of information? How are they going to commence a court action if they don't have any evidence and the government won't give them that evidence? That, gentlemen, is one example of why the Law Union thinks we need an entrenched Charter of Rights.

There is another example which is even closer to our community, which I think needs to be referred to, and I found it interesting that Mr. Mercier should raise the issue of a U.S. obscenity case with the previous speaker, because I believe that one of the most obvious reasons to me why the citizens of Canada and Manitoba need an entrenched Charter of Rights is the kind of discretionary abuse of those rights that is going on in this community right now, with the removal of certain books and literature from bookshelves in this community without any consideration of having the legal question of whether or not under our present Criminal Code that particular book or information is obscene. How else can you define that but suppression of freedom of speech, suppression of freedom of information. It's the breach of a fundamental, basic, civil human right in our society and if we had a Charter of Rights, if the Attorney-General's department did not want to take the issue to court, at least the citizen could, but as it now is, the citizen is subject to the discretion of those whscene. How else can you define that but suppression of freedom of speech, suppression of freedom of information. It's the breach of a fundamental, basic, civil human right in our society and if we had a Charter of Rights, if the Attorney-General's department did not want to take the issue to court, at least the citizen could, but as it now is, the citizen is subject to the discretion of those who govern him.

Those, gentlemen, are just a couple of examples and I feel it very important to refer to specific examples of abusive rights that are occurring in today's society, because it's too easy in the debate to talk about things that have gone in our past and these are black marks in our past and we are now over that. That seems to always be the response to the Japanese-Canadian situation or the imposition of The War Measures Act and these various other black marks in our history. The side that argues against entrenchment seems to be saying, "Well, we're over that now. We're a more mature society than that now." I'm sure we all are full of the best intentions but we also all make mistakes and some of those mistakes result in the abuse of fundamental human freedoms. I would suggest that the Chilean example, which I gave you, and the suppression of printed material without a hearing in court is another example of that kind of abuse that is going on in our community today.

It is for those reasons that we in the Law Union believe it is essential that citizens have the protection

of a Charter of Rights; that citizens have the option, when they feel their rights have been abused, to go somewhere and get a ruling on whether or not their rights have been abused; and to offer to them to go to the Legislature and have the Legislature look after that problem is like offering Dracula to the blood bank, if you will. The Legislature is a partisan institution. The Legislature is the rule of the majority over the minority, and the whole purpose of the entrenchment of rights is to protect the minorities from the tyranny that can develop from the majority. Whether that majority is a democratic, progressive majority or not these things can develop and it is for that reason that we need the kinds of protections that are being proposed in our redrafted Constitution. That's just some discussion of our rationale for supporting the entrenchment position.

As I indicated, we feel there are weaknesses in the Charter which we would like to spend more time studying and discussing, and we think it needs a lot more study and input, particularly in the areas of social and economic rights. For example, how do we deal in the new Constitution — and I think we have to deal in the new Constitution — with the right to an education, the right to adequate housing, the right of women to compete equally in the workplace with men, the rights of native people which were mentioned by the previous speaker? These are examples of the kinds of rights which we would like to see, we in the Law Union, as part of the Canadian constitutional fabric and I would urge this committee to carefully consider what you've heard from the Law Union, and what you have heard from other representations before this committee, and what you will hear in future representations before this committee. I would hope that trust that we are placing in this committee, the assumption that we are making is that you are here to hear us and that your position can be modified by reason and logic. I hope that assumption is correct.

I will close with those remarks. Thank you.

MR. CHAIRMAN: Thank you Mr. Savino. Will you submit to the committee questions?

MR. SAVINO: Yes.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Savino, I take it by your remarks at the beginning by your concern over the amount of lead time or preparation time to make a presentation to this committee, that you would be just as, if not more, concerned about the federal government proceeding with the deadlines that they have imposed.

MR. SAVINO: Yes, I didn't state that expressly, Mr. Mercier, but we are just as concerned about timing with the federal government, yes. We don't know whether we are going to have the opportunity to address that committee at this point in time.

MR. MERCIER: Have you indicated to the federal committee that you would like to appear before that committee?

MR. SAVINO: The sub-committee is meeting again this week. We had to meet in a rush sort of fashion to deal with this meeting and the sub-committee is meeting again this week to try to develop a position that we would want to take to the federal committee.

MR. MERCIER: Mr. Savino, would you not agree that the obscenity definition in the code is certainly not a black and white definition?

MR. SAVINO: I certainly would agree, yes, Mr. Mercier.

MR. MERCIER: Are you aware, Mr. Savino, that vendors of material in the past have requested on a number of occasions that the Crown supply them with an opinion as to whether certain material is in their opinion obscene or not before they proceed to sell it?

MR. SAVINO: I'm not aware of that, no, but if you tell me it's so, then it must be so.

MR. MERCIER: Are you aware that in the instance you referred to the Crown Prosecutors formed an opinion of the materials in question after receiving a complaint from a member of the public?

MR. SAVINO: Yes, I'm aware of that and I'm also aware of some of the rationale that went into that position because I've had a discussion with that Crown Prosecutor's office.

MR. MERCIER: Would you not agree, Mr. Savino, that the vendor of the material could have obtained a court ruling by simply continuing to sell the material?

MR. SAVINO: Yes, I am aware of that, Mr. Mercier, and I understand that part of the rationale for the Crown not proceeding with this particular charge was because the particular vendor was prepared to back off and part of what the Crown Attorney, that I discussed the issue with, said was that it would have cost the company a lot to finance that particular court proceeding.

I should indicate that I think it's past the point where it's a mere exercise of discretion. Certain elements of the community have stated clearly that they feel this is a fundamental right that we're dealing with and so I think it's reached that point on this particular issue where you have to get some adjudication from the courts. I should also point out that there is a book store in town that is presently selling those books, and with respect to the problem of how much it's going to cost the person who has to be the guinea pig, our law firm is already committed to defend that case if you, Mr. Mercier, are prepared to prosecute it.

MR. MERCIER: You would be aware, Mr. Savino, that prosecutorial discretion is used in many cases depending upon the background and the record of an accused person? You are nodding your head in the affirmative?

MR. SAVINO: Yes.

MR. MERCIER: I thank you, Mr. Chairman.

MR. CHAIRMAN: Are there any further questions to Mr. Savino? Seeing none, thank you kindly for your presentation. Oh, Mr. Parasiuk.

MR. PARASIUK: I just wanted to ask Mr. Savino if the Law Union had considered the Manitoba government's action to go before the courts to try and have the courts stop the federal resolution from proceeding?

MR. SAVINO: In fact, that was one of the questions that was discussed at the meeting yesterday. We are aware that the government is in court within a matter of days on this issue. That is one of the things that gives us concern about how entrenched the government's position might be. However, in terms of the Law Union arguing in the court, is that what you are getting at as amicus curiae, that sort of thing?

MR. PARASIUK: No, I just wondered if you thought that was the best procedure for the government of Manitoba to take at this particular time, that they would go before the courts.

MR. SAVINO: The government of Manitoba has to, of course, determine its own course, but I really don't see the point of the litigation at this point in time. That's what we find hard to balance. Here we are appearing before a committee which is supposed to be considering the government's position at the same time as the government is already in court clearly stating a position. So that's why we have some concerns about what this committee's role really is.

MR. PARASIUK: If the government of Manitoba felt that it must use the court to somehow move or act with respect to this resolution, is it possible for the government to use the court as a last resort as opposed to a first resort, that is, could it have used the court, say next February or next March or sometime after having tried to proceed with the process of negotiation with the federal government, rather than using the court as a first resort?

MR. SAVINO: Certainly, I don't see why not. I don't know that there is any particular time limitation on challenging the constitutionality of the federal resolution. Further than that, as I understand the resolution as far as amending formula is concerned, there is at least two-year waiting period. As far as the implementation of the basic rights in the Charter, we're looking at a three-year period while the federal and provincial Legislatures are supposed to clean up their various pieces of legislation that might not comply. So there is at least that two to three year period in which any constitutional challenge could be mounted by any government or individual who felt that this was unconstitutional. In the meantime I think it sort of freezes the debate as far as the people of Manitoba are concerned.

MR. CHAIRMAN: Mr. Walding.

MR. WALDING: One question, Mr. Chairman. Mr. Savino, you mentioned under your first point or you commented on the diversity of opinion or lack of it in

the different political parties. I'd like to ask you whether there is a diversity of opinion on this matter within the Law Union?

MR. SAVINO: Yes, there is. The diversity of opinion is not over the basic issue of whether or not rights should be entrenched, but the diversity of opinion centres rather around what rights should be entrenched. The difficulty comes in the expression of those economic and social rights that I was talking about earlier and how those would be legally protected. That's part of the reason why I also stated that we need time to develop a position on those things that are missing from this Charter of Rights.

MR. WALDING: Thank you.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Thank you, Mr. Chairman. I'm sorry, Mr. Savino, there is one question, a general question, I wanted to ask you. I've heard the comment made that if an entrenched Charter of Rights indeed happened that the only limit on the number of constitutional challenges to existing legislation will be the ingenuity of lawyers.

MR. SAVINO: The ingenuity of?

MR. MERCIER: The ingenuity of lawyers.

MR. SAVINO: Yes.

MR. MERCIER: Would you agree with that statement and give some prediction as to the number of court cases and challenges to the constitutionality of legislation society might be faced with?

MR. SAVINO: I wouldn't necessarily agree with the statement that the number of constitutional challenges would only depend on the ingenuity of lawyers. I would agree that probably there will be more litigation, but I would also agree that is probably a healthy thing, because what I detect in the body politic out there, the people that I see on a day-to-day basis, is a certain amount of cynicism developing about our political system, and about the democracy, the rhetoric of democracy and the lack of it in practice. I think that citizens having the opportunity to redress wrongs would improve that political climate as well and, therefore, I think that's a healthy thing if we happen to have more litigation as a result of an entrenched Bill of Rights.

MR. MERCIER: I didn't want to pursue it, but do you think there is a greater cynicism against lawyers or against politicians?

MR. SAVINO: I think we probably share the space pretty equally, Mr. Mercier. That's one of the reasons the Law Union exists.

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

MR. SAVINO: Thank you.

MR. CHAIRMAN: Is Mr. Parker in the room? Oh, Mr. Parker, the Clerk mentioned to me a little while ago that you had a paper or papers that you wish to table with the committee, is that right, sir? The information in front of us said you represented the Farmers Union and there was a little discussion and it was arrived at that you were here as a private citizen.

MR. PARKER: That's correct.

MR. CHAIRMAN: All right.

MR. PARKER: The paper that I had was a critique or a speech done by the Honourable J.V. Cline — he used to be a judge in a B.C. court — to Law Students University of British Columbia. I thought it was an excellent critique. I did not know whether the committee had seen it and if not I was willing to table it if you wish to have it.

MR. CHAIRMAN: Would you give it to our Clerk and then additional copies will be made available to members?

The next person on my list is Professor A.R. Kear, political scientist. Professor Kear.

MR. A.R. KEAR: First of all, Mr. Chairman, and gentlemen, let me say that I am speaking on my own behalf and I'm not speaking on behalf of the University of Manitoba. It's the designation I gave here to assist you.

My presentation consists of a short brief accompanied by an article and the purpose of the article is to assist you in understanding what I am going to say.

These few remarks focus on three matters, political rather than legal sovereignty; secondly, the First Ministers' Conference composed of the Canadian and provincial heads of government; and thirdly, the unanimity principle for constitutional amendments and its effects on Canada and Manitoba.

The attached article "The Unique Character of the Constitution — Canada's futures lie in more conferences and agreements amongst its governments" is presented to reinforce and elaborate upon the three elements of this brief.

Political rather than legal sovereignty. Because Canada is legally a British colony, Parliament in Ottawa exercises only political sovereignty. Because our provinces have never been independent states, free both of London and of Ottawa, our provinces exercise only political sovereignty. What is at issue in the constitutional negotiations between the Canadian and the provincial governments is the sharing and allocation of political sovereignty rather than legal sovereignty within the Canadian system of governments.

The First Minister's Conference is a uniquely Canadian creation and has no counterpart in federal systems. The processes of unification of the British North American colonies inside the British Empire before 1867 were the reasons for the use of conferences amongst the imperial and provincial governments. The methods used then have been perpetuated since 1867 in the evolution and acceptance of the First Minister's Conference as

"the" Canadian constitutional amending mechanism amongst the Canadian and provincial governments.

The First Ministers' Conference differentiates Canada from federal America, federal Switzerland and federal Germany. I believe Canada is not federal but imperial for the following reasons:

First of all, conferences and agreements amongst the British imperial government and our colonial provinces were the only means to politically unite the provinces before 1867 into Canada.

Secondly, conferences and agreements amongst the Canadian and provincial governments have repeatedly amended the Canadian constitution since 1867.

Thirdly, the First Ministers' Conference has no counterparts in other federal countries.

Fourthly, the First Ministers' Conference guarantees the provincial governments, as governments, equal right to participate in the determination of Canada-wide policies, similar to imperial conferences when Britain had an empire which enabled the dominion governments, like Canada, to participate in imperial policy determination.

The unanimity principle for constitutional amendments and its effects upon Canada and Manitoba. The unanimity principle for constitutional creation began in 1862 before Canada was established and has become the constitutional amending principle since 1867, especially in recent years. Any move away from the unanimity principle would have these consequences:

Canada would lose its historic imperial character to become federal like the United States.

Secondly, Canada would break from a practice which began in 1862 before Canada was created.

Thirdly, Canada would break from a Canadian practice which has continued since 1867.

Fourthly, Ottawa would become dominant over the provinces, as Washington has become dominant over the American States.

Fifth, Manitoba would become less than Ontario, Manitoba would become less than Quebec, Manitoba would become equal to P.E.I.

Manitoba would give up its equal participation as of right, like any other province, in future constitutional First Ministers' Conferences, and here I refer to a specific section of the resolution introduced in the Parliament in Ottawa.

Finally, the First Ministers' Conference, as a Canadian constitutional amending mechanism, would be replaced by a majority amending formula.

In short, any move away from the unanimity principle for constitutional amendments would mean Canada would lose its unique character and its unique system of governments, most clearly demonstrated by the First Ministers' Conference and the unanimity principle for constitutional amendments.

Then I attach to this an Appendix which bolsters the reference in the article to the fact that unanimity was an imperial requirement laid down by the imperial government in 1862. Without reading this long dispatch, I merely draw your attention to two places which I have underlined for your assistance, where the British Colonial Secretary specified that the provinces would have to agree unanimously if The British North America Act was to be adopted.

The accompanying article could be read at your leisure or now if you like.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Thank you, Professor, for taking the time to appear before the committee and present this submission. Could you agree, Professor, that the ultimate logical extension of the action of the federal government at this time, if they can get away with what they are doing now, they could similarly abolish the provinces?

MR. KEAR: I said exactly that to you less than a week ago, Mr. Mercier.

MR. MERCIER: That's why I asked the question. Never ask the question when you don't know what the answer is.

MR. KEAR: Well, what I am referring to here specifically is the use of the referendum. The referendum as it is set out in the resolution at the moment has no safeguards, has no protection. It doesn't say when the referendum could be used. Is the referendum to be used after the first attempt to get an agreement after the second attempt? Is it to be used after the third attempt, the fourth attempt? Is it to be used after one province says no; two provinces say no; three provinces say no? Is the referendum to be used after Ottawa says no?

The referendum provision at the moment and the resolution, in my opinion, is wide open, and it provides no safeguards for the continuing existence of provincial governments as governments. If you want to put more clearly in Manitoba's case, Manitoba's population is 5 percent of Canada's population, what weight does Manitoba have in any national referendum? Not very much. To put it in its darkest form, this building could become a museum piece. I am not saying this is going to happen tomorrow. I'm talking about the long term implications of the use of the referendum.

MR. CHAIRMAN: Anything further now, Gerry?

MR. MERCIER: No, thank you.

MR. CHAIRMAN: Mr. Doern.

MR. RUSSELL DOERN (Elmwood): Mr. Chairman, I just want to pursue that point. Surely what is in the realm of logical possibility isn't to be confused with probability, and I just wanted to ask the Professor whether he thinks there is any likelihood that any federal government would abolish the provincial governments any more than the federal government might declare war on some of the provincial governments in a real sense?

MR. KEAR: That's like asking would any government in Ottawa ever declare The War Measures Act in peace time.

MR. DOERN: No, I'm saying to you it's a logical possibility that the provinces could be abolished, but what is the likelihood? I mean, surely, this isn't a real concern or a real possibility that madness and insanity are possible, but do you really have a fear of

this happening? Are you pointing out the reductio ad absurdum of a position?

MR. KEAR: I am saying this might happen. I'm not saying it will or shall, I'm saying it might.

MR. CHAIRMAN: Any further questions? Thank you, Professor, for your presentation.

The next group on my list is Paula Fletcher, Manitoba secretary to the Communist Party of Manitoba. I believe the Clerk has said that Mr. Ross will be appearing rather than Paula Fletcher. Is that true, sir.

MR. WILLIAM ROSS: Thank you. My name is William Ross, provincial leader of the Party.

MR. CHAIRMAN: Do you, sir, have a prepared text?

MR. ROSS: Yes.

MR. CHAIRMAN: Do you have additional copies?

MR. ROSS: Yes, they have been given to the Clerk.

MR. CHAIRMAN: Can you just hold it a moment, Mr. Ross, as our regular Clerk is absent from the room, for a moment or two?

MR. ROSS: I have some extra copies here. If I can make them available and get the others back?

MR. CHAIRMAN: All right, Mr. Ross, would you like to proceed now?

MR. ROSS: Thank you.

Mr. Chairman and members of the committee: The people of Manitoba have until now been completely excluded from the debate on the constitutional crisis confronting Canada. The failure of the 13 federal/provincial conferences since 1927 to arrive at a working solution, the cheap haggling and bargaining over provincial versus federal rights have only sharpened the crisis and divided the country.

It is time that the people and their organizations, particularly the labor and democratic movements, intervened to ensure a democratic solution to the constitutional crisis that will strengthen Canadian unity, guarantee genuine political, economic and social rights for all Canadians and defend the independence of our country.

The Communist Party of Canada welcomes the opportunity to present its views on the Canadian Constitution but we must register our protest at the late timing of these hearings, months after the Premier and other Ministers have publicly enunciated their positions on this vital issue in the name of the government and the people of Manitoba. One can only conclude, therefore, that these hearings are a mere formality to cover up a fait accompli, just to go through the motions of appearing to give the public a say in determining what kind of a Constitution, what kind of future for Canada they want.

It remains to be seen what the government will do with the presentations and recommendations coming from these hearings. We are certain that many Manitobans will be watching very closely what will emerge.

The Community Party of Canada has, for many years, advocated the need for a new made-in-Canada Constitution to replace the colonial British North America Act. What is needed today is not a patriated, out-dated BNA Act which has built into it unequal status of the French-Canadian people in the economic, social, cultural, and linguistic fields; which denies the rights of the native peoples; which ignores the legitimate demands of the people of Western Canada and of Atlantic Canada; and which does not embody a Bill of Rights providing guarantees of human and democratic rights for Canadians.

Canada needs a new start and a new direction to achieve genuine constitutional reform. This can only come from a new made-in-Canada Constitution which spells out the principles upon which a truly united Canada can be built. They should include the following:

1. Recognition of the national aspirations and the right to self determination of the French Canadian nation in Quebec. The Constitution must be based on the equal and voluntary partnership of the English-speaking and French-Canadian people in a bi-national, sovereign and independent Canada.

It must state unequivocally that the real national interests of the French-Canadian people, the preservation of their language and culture, will be best served in a united Canada on the basis of the complete equality of the two nations.

The emphasis by Prime Minister Trudeau on bilingualism evades the basic problem of the national question — the right to self determination. The rights of Francophones in English-speaking Canada to their schools, radio programs and so on, in French, where there is a demand for this, important as that is, can be no substitute for what is basic — the right to self determination and equality for the French-Canadian nation in Quebec. Only a united Canada which upholds the national rights of the French-Canadian people can effectively fight for its independence from the pressures of U.S. continentalism. Without Quebec, Canada can't be united and without such unity, Canada can't be independent.

2. The constitution must include full recognition of the national identity of the native peoples, enjoyment of regional self-government, full rights to their language and culture, including satisfaction of their land claims. The native peoples must be seated in all future constitutional conferences as full participants, with full power of decision-making on all questions pertaining to their affairs as native peoples.

3. The new Constitution must establish basic structural reforms. To overcome regional inequalities these structural reforms must be based on the necessity for all-sided economic development in all parts of Canada, combined with the nationalization of all natural resources, above all energy resources. Through joint federal-provincial Crown corporations benefits from the development of natural and energy resources must accrue to the people of Canada as a whole, as well as to the industrial development in the provinces where the resources are to be found.

The demand by the majority of provincial Premiers for more powers to the provincial governments, giving them greater control over resources, all at the expense of the interests of the country and its people, in effect, means tightening the stranglehold of the multi-national corporations, not only over

natural resources and energy, but over the Canadian economy, preventing it from working in the interests of all Canadians. These provincial rights merely reflect narrow, selfish economic interests, combined with those of the multi-national corporations, which dominate or control resources and energy in the respective provinces. A strong centralized government is essential to the implementation of a comprehensive and integrated industrial strategy for Canada.

4. The Constitution must embody a Bill of Rights providing guarantees of human and democratic rights for Canadians. These guarantees must ensure economic, social, cultural and linguistic equality, the right of assembly, the right to organize and strike, the right to habeas corpus, the right to a job, to health, to education, to housing, to equality of rights for women. It must as well include a decisive redistribution of the national income in favour of the working people at the expense of the corporations and the wealthy.

The Education Act of 1890 passed by the Manitoba government of the day, which deprived Franco-Manitobans of the language rights; Section 98 of The Criminal Code, passed by the federal government in 1919 in less than an hour so as to arrest the strike leaders of the Winnipeg General Strike on false charges of conspiring to overthrow the government; The War Measures Act used in 1970 on spurious grounds of the existence of an apprehended insurrection, are but three examples which come to mind as why a Bill of Rights ensuring genuine, not formal, rights for Canadians should be embodied in the Constitution and not left to the whims of Legislatures and Parliament.

5. To ensure equality of the two nations, the new made in Canada Constitution should establish Canada as a confederal republic with a government consisting of two chambers: one such as the House of Commons today, but based on representation by population; the other to replace the present senate, to be composed of an equal number of elected representatives from each of the national states. Each chamber should have an equal right to initiate legislation, but both must adopt the legislation before it becomes law. This structure will protect both democratic principles, equality of rights of nations, whatever their size, and majority rule.

A constituent assembly based on equal representation from the two nations should be convened to discuss and adopt these measures.

They are preferable to the proposals advanced at the Constitutional Conference, that of a house or a federation of provinces or a federal council. These proposals flow from the policy of decentralization and are directed to side-track solution of the national question, as well as weakening the ability of the federal government to act in the interests of Canadians in all parts of Canada. The Communist Party of Canada stands for a united Canada — two nations in one state, not ten empires.

The working class cannot support the idea of decentralization or Mr. Clark's "community of communities". This leads to undermining the strength of the working class on an all-Canadian scale, and in its struggle to defend and advance its economic and political interests.

For Manitobans as for Canadians in all parts of Canada, the crisis of confederation poses the question. What kind of Canada do we want? Do we want the Canada of monopolies and multi-national corporations, who own the decisive sectors of the economy, finance, the media, and stand in the way of basic democratic reform, or do we want a Canada in which the people are truly sovereign?

It is the working class and democratic forces which can best answer this question. Because monopoly resists democratic change the working class of our country must take the leadership of this struggle and rally support for a new made in Canada Constitution buttressed by a Bill of Rights, and for overcoming economic and social inequality and the achievement of far-reaching democratic reforms.

The Communist Party of Canada, which has fought throughout the years for these proposals, firmly believes that these, in fact, are the measures necessary to achieve a democratic solution to the crisis of confederation.

Submitted, Mr. Chairman, on behalf of the Manitoba Committee of the Communist Party of Canada.

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

MR. ROSS: Certainly.

MR. MERCIER: Mr. Ross, would you favour a Constitution that stated that citizens enjoy in full, the social, economic, political and personal rights and freedoms; an enlargement of the rights and freedoms of citizens; and continuous improvement of their living standards. Citizens have the right to rest in leisure; citizens have the right to health protection; citizens have the right to maintenance in old age and sickness, and in the event of complete or partial disability or loss of the breadwinner; citizens have the right to housing, citizens have the right to enjoy cultural benefits, citizens are guaranteed freedom of speech of the press and of assembly, meetings and street processions and demonstrations; and citizens are guaranteed freedom of conscience. Would you support general provisions in a Constitution like that, Mr. Ross?

MR. ROSS: Did I hear the right to a job in there? I may have missed it.

MR. MERCIER: Yes.

MR. ROSS: In general principles, yes.

MR. MERCIER: Citizens have the right to work.

MR. ROSS: Yes, in general principles, yes. I think many Canadians would agree with that.

MR. MERCIER: Mr. Ross, I have read from the Constitution of the Union of Soviet Socialist Republics.

MR. ROSS: I was aware of that.

MR. MERCIER: Are those rights upheld in that country?

MR. ROSS: You ask the people of that country whether they have the right to employment, they will answer yes; if they have the right to education from kindergarten to university, they will answer yes; if they have the right to health without payments, they will answer yes, if they have the right to recreation, they will answer yes. I think they will answer yes to most of those rights.

MR. MERCIER: Do you think their Constitution should be a model that we should look to?

MR. ROSS: No, that Constitution is based on the social system of that country, which is in turn based on the public ownership of all resources, which is based on the socialist principles. We are not yet ready, as yet, at that stage for Canada, but there are many items in that Constitution, like the right to job, to health, to education, which are applicable to Canada. So it's not necessary to follow exactly the Constitution of a socialist country, but it is possible to improve the Constitution of Canada to include social and economic rights, which many Canadians do not enjoy at the present time.

MR. MERCIER: Thank you, Mr. Ross.

MR. CHAIRMAN: Mr. Desjardins:

MR. DESJARDINS: Mr. Ross, I find myself in agreement with many points in this brief, but I would like to have clarification. Am I right, or is there something that I can't read in what you've said, am I right in feeling that through this brief the Communist Party of Manitoba is, in effect, repudiating the actions of Communist Russia, vis-a-vis the satellites or the country in the Soviet bloc, in that you feel that you are advocating the right to self-determination for Czechoslovakia, Hungary, Poland, Eastern Germany and so on?

MR. ROSS: I am afraid there is a misunderstanding on your part, sir. Those countries are not part of the Soviet Union. They're independent sovereign states in alliance with other socialist countries. They are not parts of the Soviet Union.

MR. CHAIRMAN: Mr. Desjardins.

MR. DESJARDINS: Then my question is that much more important. Do you feel then that they should have the right to self-determination without the influence of Russia then, in those countries?

MR. ROSS: They have established their right to sovereignty already.

MR. DESJARDINS: They have the right to self-determination, Poland and Czechoslovakia and Russia.

MR. ROSS: They are sovereign states, members of the United Nations, electing their own governments, having their own Constitutions. They are not part of the Soviet Union.

MR. DESJARDINS: Then there's no interference from Soviet Russia on this at all, in other words?

MR. ROSS: What there is, is both an economic union of those countries paralleling the European economic community, and a military alliance paralleling NATO, but these countries are sovereign, independent states.

MR. DESJARDINS: And if they want the right to self-determination, Russia has the right to send troops then?

MR. ROSS: You see in the labour movement we call that a red herring, and a smelly one at that, in order to detract from the issue at hand. What we are discussing here is the Canadian Constitution, and what we are discussing are certain basic reforms that have to be included in a made in Canada Constitution, not a patriated Constitution, which is an act of a colonial power, and that is where we should focus attention on. I know that there are people who will cry for the separation of the Ukraine as a republic from the Soviet Union, but are alarmed at the possibility of the separation of Quebec. I know that there are people who call for the right of Polish workers to strike, and yet deny Canadian workers the right to strike. But let's keep our eyes focused on what we are discussing at this meeting, and that is a made in Canada Constitution to meet the needs of the 1980's to serve the Canadian people.

MR. CHAIRMAN: Mr. Desjardins

MR. DESJARDINS: Mr. Chairman, through you to Mr. Ross, I certainly accept that, and I stated that I agree with many of the points in your brief, but I wanted to be sure that I understood what you meant by the right to self-determination, and that worries me. That worries me. You say that they have a right to strike, and you talk about something made in Canada, but maybe it is a red herring, and I've been taken by that red herring, but I've always felt that there has been and always understood that there has been a lot of interference from another country, from Russia in Czechoslovakia, in certain places, when their duly elected members have tried to do certain things, they've been threatened at times by invasion, and that is my concern. I want to know if you and I really agree. As you say, the main thing is Canada here. But what do you mean by self-determination? I wouldn't want this to become something similar to what I understand — I have no first-class observation to make on this — what I understand to be the situation, vis-a-vis those countries.

MR. ROSS: Well, I've presented a brief with proposals on the Canadian Constitution. If members want to hear my opinion on what is happening in the Soviet Union, I'd be very glad to come on another occasion and give a lecture or a talk for the enlightenment of the members of the Legislature, but at the present moment I think that we should be more concerned with the Armed Forces sent into Quebec in 1970 by an act of Parliament, which denied hundreds of people in that province their basic rights, and it was only later learned that the so-called theory of apprehended insurrection was false. I would be concerned with that. I would be concerned with what happened in Winnipeg in the 1919 Strike, when workers fighting for the right to

collective bargaining and improved wages were arrested and charged with conspiracy to overthrow the government. I would be concerned with that right. These are the things that I believe the members of the Legislature should be concerned with.

MR. CHAIRMAN: Mr. Desjardins.

MR. DESJARDINS: Mr. Chairman, Mr. Ross, as you know, we are very much concerned with what you have stated, the injustice of it all. This is not the point that I am trying to make at this time. You are nevertheless talking about some injustice done, capitulated by duly elected members of this country. The point that I was trying to get at is the right to self-determination.

My example is not something that was done in Russia — if those people are duly elected — something that was done in another country by Russia, after you stated yourself that these other countries like Poland and Czechoslovakia and so on are suffering and they can determine they should have their . . . That is the point I was trying to make. If you want us to accept this brief only in a question of Manitoba and come back another day to discuss other things, fine. If your definition of right to self-determination is the same as mine for this exercise anyway, well then I don't mind being associated with the Communist Party of Manitoba, but another question, I reserve the right to . . .

MR. ROSS: I can assure you, Mr. Desjardins, that we do not propose in any way for a foreign army, no matter from where, to come into Canada to decide the rights of the people of Quebec for self-determination.

MR. DESJARDINS: Would you be ready to go as far as to say that you don't believe in any invading army from any country to go anywhere in another country to decide for these people what to do? I would hope that you carry that not only for Canada in your belief.

MR. ROSS: In general principles, yes.

MR. DESJARDINS: Well maybe we should leave it at that.

MR. ROSS: Then let's leave it at that.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Ross, do you support the federal constitutional proposal?

MR. ROSS: No, we do not. You see, the Canadian people are prisoners of a British North America Act, which is an Act of the British Parliament, and what are we finding today? That British parliamentarians are involved in the debate as to whether they should accede to the request of the Canadian Government for certain measures with regard to the Constitution. We are prisoners of a situation in which that BNA Act is outdated and no longer meets the requirements of today, of the 1980s, and therefore the proposal of the Communist Party of Canada is that we start from scratch, calling a constituent

assembly, with representation from all sections of the Canadian people, over a period of time, to permit an extensive and thorough debate in order to lay down the structure of a new Constitution. Neither the federal proposals nor the proposals of the provincial governments meet that need in our opinion. Therefore we cannot accept the proposals of Prime Minister Trudeau and we cannot accept the recommendations of the provincial Premiers either. Neither of them, in our opinion, are adequate to meet and solve the problem of today.

MR. MERCIER: I only asked you that question, Mr. Ross, because the Winnipeg Free Press on November 12th carried an article which indicated that Pravda likes patriation and in a Radio Moscow report they indicated the Communist Party was backing the Liberal Party.

MR. ROSS: It's a coincidence that in a letter dated November 14th which I received today from the Central Executive Committee of the Communist Party of Canada, and I am sure, Mr. Mercier, now that you've asked the question, you'd like to hear the reply. It says, "To all provincial committees of the Communist Party of Canada. Dear Comrades: Enclosed is a press item appearing in the Globe and Mail of November 12th, regarding the debate on the Constitution, in which it is claimed that the CPC," that's the Communist Party of Canada, "supports the Trudeau government's position on this matter. We have checked up on the story with the Pravda correspondent in Ottawa who claims this is a completely garbled story taken from an article signed by him and published in the September 6th issue of Pravda. We are arranging to get a translation of the article. In the meantime, we have communicated with the media and ask that they make a correction of the article. The question of interest is, why was the article in Pravda completely distorted? What and who is behind this effort?" I hope that answers your question.

MR. CHAIRMAN: To the members of the committee, are there any further questions for Mr. Ross? Seeing none, thank you, Mr. Ross, for your presentation.

MR. ROSS: Thank you.

MR. CHAIRMAN: The next group on my list is the Western Canada Foundation, Dennis A. Epps, president. Mr. Epps, may I start by asking you, sir, if you have a prepared text of which you would have copies?

MR. DENNIS A. EPPS: Yes, Mr. Chairman, I gave them to the Clerk.

MR. CHAIRMAN: All right, if you want to pause for a moment, the Clerk will have them distributed. Would you like to proceed now, Mr. Epps?

MR. EPPS: Yes, I'll begin with a correction. It should be Western Canada Federation, not Foundation.

MR. CHAIRMAN: All right, my apology.

MR. EPPS: The West-Fed Association, Manitoba Branch, which proposes a Western Canada Federation, makes the following observations and recommendations pertaining to proposals for constitutional reform in Canada:

In all of the controversy that has been taking place on the constitutional subject, rarely, if ever, has there been mention made of the Statute of Westminster of December 11th, 1931, which is the only legal document which sets forth the consti-status of the provinces of Canada. Without taking this statute into consideration, all debate upon the constitutional subject is meaningless. The absence of reference to the Statute of Westminster reveals the woeful lack of knowledge Canadians have of their constitutional history.

The following would appear to be the constitutional position prevailing currently:

1. Paragraphs 2 and 7(2) of the Statute of Westminster of December 11th, 1931, elevate the provinces of Canada to the status of sovereign states.

2. The corollary of the above proposition is that the legislative body sitting at Ottawa has been governing Canada since December 11th, 1931, on assumed authority only.

3. Despite the inclusion of paragraph 7(1) in the Statute of Westminster, the British North America Act has had no validity since December 11th, 1931. It is null and void.

These conclusions are reached by reason of the fact that contrary to popular opinion, the provinces of Canada did not federate in 1867 by virtue of the BNA Act. It is an historical fact that a Federal Union was the objective of the Fathers of Confederation, but when they met in the London Conference in December of 1866 to finalize matters, the British government did not see their way clear to grant them their request. Instead of the Federal Union, which they requested, they were obliged to accept a United Colony under the name of the Dominion of Canada. Canada was demoted to the status of a colony and was governed by a Governor-General who received elaborate Letters Patent to govern Canada as an agent of the British government. The BNA Act was nothing more than an instrument in the hands of the Governor-General to govern Canada as a colony.

The privilege to federate was, therefore, still a future privilege for the provinces of Canada. This was made possible by the British government through the enactment of the Statute of Westminster on December 11th, 1931, which transferred authority over Canadian affairs from the British people to the provinces of Canada.

Immediately following the enactment of the Statute of Westminster, the provinces should have taken steps to complete the task which the Fathers of Confederation began but were not permitted to conclude. Since December 11th, 1931, the provinces have not signed anything in the nature of a Constitution and the people of Canada have not ratified a Constitution. From where then, does Ottawa derive its authority as the government of Canada?

The people of Australia voted twice on their Constitution; once to test public opinion and the second time to make it legal and binding. The people of Canada have not voted even once on a

Constitution. Are Canadians any less citizens of Canada than Australians of Australia?

Repatriation of The BNA Act is the most ludicrous and meaningless exercise conceivable. The BNA Act is a British statute, is British property and should remain in Britain. Even if it were brought to Canada it would have no more validity than it now has reposing in Britain.

The West-Fed Association, Manitoba Branch, proposes the following steps be taken to rectify the deplorable constitutional circumstances prevailing in Canada:

1. The provinces of British Columbia, Alberta, Saskatchewan and Manitoba, form a Western Canada Federation.

2. A Constituent Assembly be organized and elected for the express purpose of drafting a Federal Constitution for the four western provinces.

3. The Constituent Assembly to consist of representatives directly chosen by the electors.

4. The Constitution so framed be submitted to the electors for acceptance or rejection by a direct vote.

5. Such Constitution, if accepted by a majority of electors, be transmitted to Her Majesty the Queen by an address from the legislatures of those provinces, praying for Her Majesty's assent to such a Constitution.

6. That a Bill be submitted to the Legislature of each province for the purpose of giving effect to the foregoing resolutions.

7. That the Yukon and the Northwest Territories be invited to become part of the Western Canada Federation.

8. Should the remaining provinces of Canada wish to become part of the Western Canada Federation, they would be welcome to do so on a mutually acceptable basis after the Western Canada Federation has been formed.

Thank you.

MR. CHAIRMAN: Thank you, sir. Are there any questions to Mr. Epps from members of the committee? Mr. Uskiw.

MR. USKIW: Mr. Chairman, I . . .

MR. CHAIRMAN: Excuse me. I should firstly ask you, sir, if you would permit questions.

MR. EPPS: With your permission, I have a gentleman with me who is on the executive of West-Fed. He came down from Edmonton. He has had forty years experience in constitutional matters and has been a member of Parliament in Ottawa for 14 years, and he is far better versed on this subject than I am, and with your permission I would like him to take over the stand and answer these questions.

MR. CHAIRMAN: I will have to ask the members of the committee. What is your general feeling? This is a two-person delegation? All right, that's fine, Mr. Epps.

MR. EPPS: Thank you. Mr. Walter Kuhl.

MR. WALTER KUHL: Thank you, Mr. Chairman, for giving me permission to appear before the committee. I feel somewhat like an intruder but the

West-Fed organization prevailed upon me to assist my friend with the reason that, as he pointed out, I have spent considerable part of my life studying this question.

MR. CHAIRMAN: Mr. Kuhl, is that . . .

MR. KUHL: Kuhl, K-u-h-i.

MR. CHAIRMAN: May I mention that Mr. Epps was the person who presented the brief on behalf of the Western Canada group and he asked if you could replace him in answering any questions from members of the committee, which the committee agreed to. Mr. Uskiw had wished to ask a question of Mr. Epps and that is when the point arose. Are you prepared to answer questions from members of the committee?

MR. KUHL: Yes, quite so, thank you.

MR. CHAIRMAN: Mr. Uskiw, proceed please.

MR. USKIW: Mr. Chairman, I am somewhat very much rather intrigued by this particular submission and in particular by the map which sort of cuts Canada in half and disregards the eastern part of Canada as being part of our nation. I almost can't believe that people who are advocating that are serious people, but I have to assume that you are. What I am trying to determine is what advantages you see in proposing the breaking up of a country into a number of parts as opposed to solidifying the parts that we now have.

MR. KUHL: Actually so far as breaking the country up is concerned, it is our contention and mine personally that the Statute of Westminster on December 11 legally broke this country up into 10 parts and they still remain so. What West-Fed is attempting to do is put it back together again. We're starting with the west and as the last paragraph indicates, that once the west has federated, if the rest of Canada wishes to join in they are welcome to do so.

MR. USKIW: Mr. Chairman, I'm convinced that is not the popular perception of the state of affairs in Canada and I presume there will be others that would want to argue that particular proposition from a historical and legal point of view. Apart from your position on the historical and legal, are you serious in advocating that if you were to form a new nation that you wouldn't begin with all of the parts in it, as opposed to beginning with only the western part of the country?

MR. KUHL: I'm sorry, I didn't quite get your point of view.

MR. USKIW: Well, assuming that given the opinion that your facts are right and we have to form a new country, why would you begin by excluding parts of the continent that may want to be part of the country? Why do you say the west and then the east if they wish? Why wouldn't you have a proposal that would involve all of the length and breadth of sort of this part of our continent, that is, the part north of the U.S.?

MR. KUHL: I get your point. Speaking personally, I spoke originally on this question in the House of Commons in 1938 and at that time I did advocate a new Constitution for the whole country and indicated that the only legal entities that had the right to precipitate a new Constitution were the 10 provinces. I would prefer personally that group be chosen to settle the constitutional controversy. However, there are an increasing number of people, certainly in the province of Alberta, who feel that no matter what kind of arrangement would be arrived at the preponderance of votes in Ontario and Quebec would certainly stand in the way of rendering justice to a conclusion in constitutional matters, and so many are arguing that the only way to be sure that justice will be obtained is through attempting to set up a western federation. Personally, if this stage is never arrived at, my hope is that the threat to do so will bring about a demand for a Constitution to be created and drawn up properly and by the 10 provinces, whom we consider are the only legal entities who have the right to do so.

MR. USKIW: Yes, I am very much interested, sir, in your concept of democratic representation. You allege that if we were part of the whole of the continent, so to speak, or a Canadian side of it, that the population density in a given region would outweigh the balance of the nation and, therefore, there would be no justice done to Western Canada. It raises an obvious question and that is, do you think that Winnipeg, because it has virtually two-thirds of Manitoba's population, should be ruled by the minority from outside of Winnipeg. I think it's an analogous proposition. Do you believe that you can run a democratic system by rule of minorities? You're suggesting that you don't accept the rep-by-pop formula or, at least you don't think that it would work to the benefit of justice being served.

MR. KUHL: I don't think I oppose the representation by population principle. Did you suggest that I was?

MR. USKIW: Sir, you indicated that you didn't want to involve Eastern Canada in your proposal because of the density of population. Because of that density of population you feel the west would not be treated fairly in that the votes would be heavier in that part of Canada, so you would rather exclude them than to enlarge the nation, that you have in mind, to involve all of the territory that it now involves, namely from the Atlantic to the Pacific and into the Arctic.

MR. KUHL: There is a possibility, I suppose, of an imbalance arising in that manner, too. As I say, the fear that particularly westerners in Alberta have is that as a consequence of the amending formula, which Mr. Trudeau and his Party may eventually come up with, will be of such a nature that Alberta, and other provinces for that matter, will become mere colonies of Ottawa.

MR. USKIW: Just one last question. As you envisage this Western Canadian Federation, do you also envisage that oil revenues from oil produced in Alberta would be equally shared in all regions of this federation?

MR. KUHL: It depends how you define sharing, on what basis.

MR. USKIW: Mr. Chairman, I'm assuming it's a drawing up of a new nation that you have in mind here and we recognize that not every part of a region is endowed with equal amounts of natural wealth. Therefore, in your concept here for western Canada, would you suggest that the natural resources are the property of all of western Canadians, or rather that they be the property of the region in which they are located?

MR. KUHL: We could equally say, should the gold of Ontario be considered in the same light?

MR. USKIW: That's right.

MR. KUHL: I would think that all resources of all provinces would be considered on an equal basis from that point of view.

MR. USKIW: Just to finalize that point then, Mr. Chairman, you would agree that any oil revenues derived in Western Canada would be for the equal benefit of all citizens of Western Canada in your federation.

MR. KUHL: I'm not sure I can answer that precisely. Certainly the conclusion of that matter would rest with the political parties who would be elected to the new federal government and each party would have their own policy and philosophy on it.

MR. USKIW: We just made the full circle, that's fine.

MR. CHAIRMAN: Mr. Brown.

MR. ARNOLD BROWN (Rhineland): Mr. Kuhl, I was just wondering about the strength of the Western Canadian Federation. Can you tell me what your membership is at the present time? I noticed you were selling memberships.

MR. KUHL: Yes, we reckon it's around 30,000 at the moment.

MR. BROWN: Thirty thousand.

MR. KUHL: Yes.

MR. BROWN: Can you tell me who the leader of the this organization is at the present time?

MR. KUHL: Mr. Elmer Knutson, who is a prominent businessman in the City of Edmonton. He owns Alberta Tractor Parts and formerly owned Derek Dodge and he is a prominent member in the Chamber of Commerce.

MR. BROWN: Are you anticipating that the Western Canada Federation could become a political party within Canada as we see it today?

MR. KUHL: No, that is not the objective. The only objective, its function is as a pressure group for the expressed purpose of encouraging the four western provinces to form a federation. It is non political, not

in the partisan sense whatsoever, it is merely a pressure group attempting to rally support for a western federation. Once the federation is set up, the organization would automatically dissolve and from then on the work would have to be done by the various political parties.

MR. BROWN: Thank you.

MR. CHAIRMAN: Mr. Desjardins.

MR. DESJARDINS: Mr. Chairman, may I ask the gentleman, if you were successful in selling your idea to Manitoba and if there was such a thing as a union of the western provinces, could you give us a guarantee that Manitoba would not find itself in a minority position such as you claim the west is at this time and we would not become — what do you call it — I think a colony of Edmonton instead of Ottawa? There might be a fear. I wonder if you could . . .

MR. KUHL: I don't think we could think of any guarantees. You would have equal representation.

MR. DESJARDINS: Oh, it wouldn't be by population, it might be . . .

MR. KUHL: I wouldn't think so, but we're not being specific about that kind of thing. The constituent assembly would have to make decisions of that nature in the same sense that it was done in Australia when they federated.

MR. DESJARDINS: You're advocating, sir, that we should leave a country to start all over from scratch here in Manitoba, instead of maybe the colony of Ottawa that we just take a chance of being a colony of Edmonton. Because we feel — some of us anyway — that we're quite different from Alberta. They might call us Western Canada, we think we're more central Canada at this stage and it seems to me if you're endeavouring to sell an idea, you should give us some guarantee to tell us what we would gain by leaving the country to join another one.

MR. KUHL: Certainly we would get out from under the extravagance, wastefulness and unnecessary debts that are being incurred by the government at Ottawa.

MR. DESJARDINS: And we would get under what? We would get under what?

MR. KUHL: Since we start from scratch, it is our privilege to so order our economy that we don't proceed with the debt and taxation in the same manner that Ottawa has done over the years.

MR. DESJARDINS: We would come under the oil barons of Alberta.

MR. KUHL: If I had anything to say about economic life of the province, speaking politically and all, I would advocate and agitate for no debt and no taxation by the central government.

MR. DESJARDINS: Oh, that would be great. It would be great for Manitoba. Thank you.

MR. MERCIER: Sir, you have offered the personal opinion that the formation of your group might at least serve as a threat to gain improvements in the system. You have referred to the debt situation. Can you be more specific, perhaps, about the root causes of the formation of your group and the improvements that we see as necessary for Western Canada?

MR. KUHL: What I thought I said was that I hoped the threat might precipitate the building of a new Constitution properly, and as the brief points out we consider that the ten provinces are the only legal entities that are entitled to create this new Constitution. It would be our hope that that's the manner in which the new Constitution would be brought about.

MR. MERCIER: I appreciate that, and the brief is fairly legalistic. What improvements do you see in a Western Canada federation for Western Canada?

MR. KUHL: Well, as already pointed out, starting from scratch and it is our privilege to order our economy in whatever manner we wish, and as I said, if I had anything to do with the economics of Western Canada, there would be no debt and no taxation from the federal point of view. That should certainly prove of benefit to the provinces participating.

MR. CHAIRMAN: MR. Parasiuk.

MR. PARASIUK: Yes, I'm just trying to get some idea of what we're exchanging. You want us to exchange a devil we know for one we don't know. I'm intrigued by your particular philosophy, which given the fact that you say you want no taxes, no debt, I would have to say is a small "c" conservative philosophy in terms of the orientation.

I would like to ask you whether, in fact, you would want us to give up the whole notion of equalization payments right now in Manitoba, which isn't a "have" province, gets something in the order of 320 million in equalization payments from the federal government. What you are saying is that you would assume that there would be no federal government that you want no taxes, no debt, I would have to say is a small "c" conservative philosophy in terms of the orientation.

I would like to ask you whether, in fact, you would want us to give up the whole notion of equalization payments right now in Manitoba, which isn't a "have" province, gets something in the order of 320 million in equalization payments from the federal government. What you are saying is that you would assume that there would be no federal government that would be providing any type of equalization payments. Right now, the people of Manitoba believe and accept the whole concept of Medicare, which is paid for 50 percent by the federal government. I assume from what you are saying that you do not believe in Medicare, that you do not believe that a government should levy taxes, should incur any type of debt in order to provide Medicare for its citizens. That is one set of questions in terms of what a government would provide. There's another . . .

MR. KUHL: May I interject at that point? Just because a government doesn't levy any taxation and doesn't incur any debt doesn't mean to say it doesn't have any money.

MR. PARASIUK: Well, I've asked you about whether in fact you think there should be equalization payments between . . .

MR. KUHL: I would think on the face of it, yes, that there should be.

MR. PARASIUK: But it wouldn't levy any taxes in order to develop that. Who, in terms of the Manitoba perspective, because what I think you have provided us is a particular perspective of people within Alberta by and large, although there might be some Manitobans who are part of your organization, who do you think should be refereeing, in a sense, the country? You say you don't have faith in the national government, it's too top-heavy with, as you said, there are too many eastern Canadians or central Canadians involved in this government, and therefore these four western provinces somehow can provide for themselves better if they really were a federation unto themselves.

I want to give you one particular example of something that is bothering Manitobans very much, not too many of us, but I'm the health critic for the New Democratic Party in the Legislature, and I've become aware of the fact that the Alberta government, using a lot of its wealth from resources, has indeed set up a medical research fund. It's a very large medical research fund. Although the Alberta economy is really overheated in comparison to the Manitoba economy, and that really would be an understatement, because ours is very sluggish over the last three years, but despite the fact that the Alberta government is overheated, the Alberta government has decided to set up this medical research fund — it's a very rich fund — and they are using those funds to attract medical researchers from Winnipeg. They're using the power of their dollar to attract medical researchers from Winnipeg because they want to, in addition to building up a petro chemical industry, in addition to building up a secondary manufacturing industry in Alberta, they also want to build up a medical research industry. So what they are doing is raiding Manitoba, hurting the Manitoba economy with this very rich fund.

How is Manitoba to deal with that. We don't have as much power as Alberta, we don't have the same type of economic clout. We need some referee in this system. Are we going to rely on Alberta within this new federation, or do we have some better faith in relying upon a national government that has as its policy balanced economic development in all regions of the country.

MR. KUHL: I think that would be decided by the new government. Once whatever party would be elected to the new central government, it would be their policy that would decide that, but it wouldn't be Edmonton. I don't even know that Edmonton has been suggested as the site of the new federal government, it could even be in Manitoba, I suppose. So whatever policy there should read, it would have

to be proposed by the political parties running for office.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: I gather from the pamphlet that you distributed that you support the world price for oil.

MR. KUHL: Actually the West-Fed doesn't make any proposals economically whatsoever. Anything I've said about no debt and no taxation, that was my personal point of view if I had anything to say politically. I may have nothing to say politically were such a federation set up. Again, I repeat, all that West-Fed is attempting to do is to encourage people to support the idea of a federation for Western Canada, and any policies pertaining to any phase of economic activity would have to be proposed by the parties running for office in the new federal parliament.

MR. PAWLEY: I want to point out to you on Page 20 of your Western Canada Federation pamphlet, under "What's wrong with the picture", it is suggested that one of the prime problems is and the words are at the top of that page, "Why should Western Canada have to take less for its oil than world prices"? So from that I'm assuming that your federation supports the world price being established for oil.

MR. KUHL: Yes, that's an inference all right, but again I say, actually we claim we're not taking a stand on any of these economic issues because we want to keep it non political. I would say very definitely that would be a policy that would have to be determined by whatever political party was elected to form the government, and I grant that it appears as though West-Fed is taking a stand there, but actually it should not be. I grant it appears that way.

MR. PAWLEY: I was just wondering because Manitoba is a net importing province when it comes to oil. It may very well be that Saskatchewan and Alberta are exporting provinces pertaining to oil, but in view of the fact that you've expressed concern about protecting the minority position, because we have less population in the west, could you tell me how we would in Manitoba, Manitoba having altogether different interests than the oil exporting provinces further west, be able to protect ourselves from the imposition of world price for oil, which on the basis of last year's calculations would have meant an additional 60 million being drained from the Province of Manitoba further west?

MR. KUHL: I suppose the compensating price for gasoline could be instituted in the same way it is at the present time.

MR. PAWLEY: Could you guarantee that a western federation group would be generous enough, would be kind enough to insure that the interests of the 20 percent that are net importers of oil would be protected in your Western Federation Constitution that you proposed here?

MR. KUHL: All I can say is that would be entirely up to the people who constitute the assembly in the first place. All we were urging is that the west have an opportunity to set up a constituent assembly, and at that constituent assembly these problems would be ironed out.

MR. PAWLEY: But the Manitoba delegates would be a small minority in that constituent assembly, wouldn't they? 20 percent, 25 percent at the most.

MR. KUHL: That again depends upon how the Premiers come to an agreement as to what constitutes a proper constituent assembly. Again, that's not that the prerogative of West-Fed in any way, shape or form — all we're trying to do is advocate and agitate for people to demand a constituent assembly, and that's a matter for the Premiers to decide on or whatever representation comes from each of the provincial governments to start the ball rolling on this matter.

MR. CHAIRMAN: To the members of the committee it is 5:00. I have two on the list, Mr. Kovnats and Mr. Schroeder. Have you both got very short questions? Mr. Kovnats.

MR. ABE KOVNATS (Radisson) Mr. Chairman, to Mr. Kuhl, is it?

MR. KUHL: Yes.

MR. KOVNATS: Mr. Kuhl, I'm not sure whether, in fact, this presentation or the previous presentation has upset me the most. I would ask you if we are going back to 1931, December 11, instead of back to 1890? By what language would the West-Fed Association carry on their meetings?

MR. KUHL: At the present time a poll has been taken, I can't state over how many people, but that question was asked of the people who are mailed these polling sheets, and the overwhelming number of people indicated they wanted one language, the English language.

MR. KOVNATS: English language with no rights to the founding or one of the founding groups of Canada? What you are planning, in effect, is doing away with everything that happened prior to 1931, starting from scratch, as you say, with no language rights?

MR. KUHL: All I am saying is that the poll that has been taken thus far has indicated that. Now if the poll were taken over the whole west, maybe it'd produce a different result. But as far as the poll that has thus far been taken that's the result.

MR. CHAIRMAN: Mr. Schroeder.

MR. VIC SCHROEDER (Rossmere): Thank you, Mr. Chairman. I have a question which probably concerns me personally more than most of the members of the committee. There's many interesting features in your pamphlet, sir, but there's a quote on Page 20, "The Dominion admits there is no Governor-General and that no Confederation exists." Now I happen to be sitting in this Legislature by

virtue of the fact that Mr. Edward Schreyer went to Ottawa, thinking that he was the Governor-General. The obvious concern is that if he is not the Governor-General, he just may be coming back and taking my seat. Could you possibly expand on your reasons for deciding that — is it that he doesn't exist, or that the job doesn't exist?

MR. KUHL: Well, the actual case is the job does not exist, for the reason that each Governor-General previous to 1931 received special Letters Patent, which authorized him to govern Canada as a colony, and The BNA Act was merely an instrument in his hands to govern Canada as a colony. Ever since 1931 no Governor-General has received Letters Patent. So by virtue of what authority then does he become Governor-General?

MR. CHAIRMAN: No further questions. Thank you, Mr. Kuhl, for your participation.

To the members of the committee, the hour of 5:00 p.m. having arrived I will remind you that at 10:00 a.m. tomorrow morning the Societe franco-manitobaine and Mr. George Forest will be the first two persons that we will be hearing from, as simultaneous translation will be available, hopefully. From that point on we will go back to our original list, and that is the Catholic Women's League of Canada; Dennis Cyr; Professor Gordon Rothney; Charles E. Lamont, and Mrs. Bernice Sisler; and so on. That will be the procedure for tomorrow.

I might point out to all members of the committee and the public that we heard 11 presentations today and there are 29 others who wish to make representation before this committee. If by late tomorrow afternoon it doesn't look like we can conclude our Winnipeg hearings tomorrow, additional dates will be set tomorrow for sometime in the future.

Committee rise.