

FEDERAL-PROVINCIAL CONFERENCE OF
FIRST MINISTERS
ON THE CONSTITUTION

CONFERENCE FEDERALE-PROVINCIALE
DES PREMIERS MINISTRES
SUR LA CONSTITUTION

VERBATIM TRANSCRIPT

(unverified text)

COMPTE RENDU TEXTUEL

(texte non vérifié)

OTTAWA

October 30 - 31 and
November 1, 1978

OTTAWA

Les 30 et 31 octobre et
le 1^{er} novembre 1978

CAUTION

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Morning Session

October 30, 1978

COMPTE RENDU TEXTUEL

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Séance du matin

le 30 octobre 1978

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THE MEETING COMMENCED AT 10:00 A.M.

CHAIRMAN (The Rt. Hon. P.E. Trudeau, P.C.): If the Premiers are ready, we will begin this conference. My first and pleasant duty as Chairman is to welcome the ten Premiers to this very important conference, with particular mention of two new Premiers who have joined our group, Premier Bennett Campbell from Prince Edward Island and Premier John Buchanan from Nova Scotia.

Je voudrais aussi souhaiter la bienvenue aux autres ministres provinciaux, aux membres des différentes délégations, aux observateurs, dont un grand nombre sont réunis dans cette salle et évidemment à tous ceux qui nous regardent à la télévision ou qui nous écoutent à la radio.

I might make particular mention amongst observers the fact that we have native representation from the three principal native groups, the National Indian Brotherhood, the Native Council of Canada and the Inuit Tapirisat of Canada. At this stage I will ask Mr. Henry Davis, our good and efficient secretary who is ready to make any administrative announcements that he may have. Mr. Davis.

MR. HENRY DAVIS: Mr. Chairman, if you would allow me, I too would like to welcome Mr. Campbell and Mr. Buchanan to this table and thereby to the Secretariat's Board of Directors.

As to the administrative arrangements, as Secretary of Services for this meeting, you will find them as usual described in the briefing material which has been distributed. In particular I would just like to mention again that Room 168 to the Chairman's left and opposite my own office, has been set aside for the use of First Ministers who wish to place or receive telephone calls while remaining in the vicinity of the Conference Room itself.

Les délégations qui désirent organiser des entrevues et des conférences de presse devraient communiquer avec le Bureau des Relations avec la Presse du Secrétariat, situé à la salle Sussex. Comme d'habitude les délibérations de cet après-midi seront suivies d'une réception donnée par le président pour tous les délégués et les conseillers au salon des délégués.

Pour conclure, monsieur le président, j'aimerais rappeler à tous les délégués le caractère inter-gouvernemental du Secrétariat dont les services sont à la disposition de tous les gouvernements sans distinction.

If you will permit me, Mr. Chairman, having acted as Secretary of the last meeting of this kind in Victoria in 1971, I should also like to express my personal pleasure at being able to serve this Constitutional Conference which is beginning today.

Merci Monsieur le Président.

THE CHAIRMAN: Merci Monsieur Davis.

Alors, la première chose que nous devons faire c'est de convenir de l'ordre du jour, en fait des ordres des jours puisque nous en avons trois, nous nous réunirons de dix heures à une heure le matin (10h00 à 1h00), de quatorze heures trente à dix-sept heures (14h30 à 17h30) dans l'après-midi; le premier jour nous sommes convenus de faire d'abord ce matin des déclarations générales, chaque premier ministre tour à tour aura la parole, cet après-midi au deuxième item de l'ordre du jour nous devons aborder la charte ou la déclaration des droits; le troisième item c'est la distribution des pouvoirs et je pense que nous pourrons demain matin commencer à traiter de ce sujet pour aller dans l'après-midi au quatrième item les institutions, ce qui devrait prendre toute la journée de demain, alors mercredi, le troisième jour, nous commencerons par l'item cinq, les méthodes de la révision constitutionnelle suivies de la duplication des services, de sorte que dans l'après-midi du mercredi nous pourrons, je l'espère, tirer les conclusions et prendre les décisions nécessaires pour donner suite à nos délibérations.

Est-ce que nous sommes d'accord sur cet ordre du jour qui a été établi à la suite de correspondance entre les premiers ministres et moi-même?

If we can agree on the agenda, we will begin with Item 1, the opening statements and we will each speak in turn on this particular item. As Chairman I think I must ask the basic and fundamental question Why are we here? I am sure there are a lot of Canadians watching us on television, perhaps with a sceptical eye and thinking, "with the economy in the state that it is in, high unemployment, high inflation, why are they meeting on the constitution? Surely these problems will go away if we let them alone. Surely by pragmatic approaches, by patient solutions to irritants as they arrive, we will be able to dispose of this thing and why meet in a full-blown conference?" Well, I think I should first point out to those who say that we are wasting time first that we are going to be meeting in a few weeks again as a group on the question of the economy but more important to remind ourselves that we have not met in a Federal-Provincial First Ministers' Conference, believe it or not, since Victoria in 1971. There seems to have been a lot of talk on the constitution, but in the eight Federal-Provincial Conferences since 1971 in Victoria, not one of them has been on the constitution.

They have been on the economy, on energy matters, fiscal arrangements, one of them was the Western Economic Opportunities Conference. Another dealt with tri-level consultations so that the Premiers meeting amongst themselves have dealt with the constitution. It is also true that at some of our lunches or dinners at Sussex Street we did talk about constitutional matters, but this is the first real Federal-Provincial of First Ministers on the Constitution since we failed at Victoria. I say we, Premier Davis, Premier Hatfield, myself with Henry Davis. I think we were the four who were there then. I see with some nostalgia the disappearance of some of our friends and colleagues and the appearance of others -- not too much nostalgia, Premier Davis. But the fact is that the problems have not gone away at this time. As a matter of fact, they are more urgent than ever and I think these will be the two things I would like to talk about this morning. First, that constitutional reform is a matter of urgent necessity, as they say in Parliamentary language.

Second, that we can succeed in this difficult and almost impossible task. Now, on the first subject, the matter of pressing necessity, well, I have the authority of many Premiers who have said that over the past months, just a few quotations. Premier Hatfield in June of 1977, a year and a half ago was saying:

"The Prime Minister of Canada should now call on the Premiers of Canada to prepare for constitutional talks, to demonstrate to the people of Quebec before the referendum that the honourable skill of compromise is still the dynamic force of Canada, that Canadians are prepared for change."

Premier Lougheed, about a year ago in September of 1977 was saying these words:

"We don't think that the status quo will be satisfactory either for Quebec or for the other regions,

particularly the outerlying ones. The federal government, the Prime Minister must produce within months a third option and the ball is in his court and I suggest that he must serve it soon."

Premier Bennett in the statement of the British Columbia government just a month ago in his first paper states:

"The government of British Columbia is firmly of the view that if we are to cope with the serious stresses with which we are faced as a nation then there must be bold and imaginative action now by all levels of government on two fronts: first the economic front and equally important the constitutional front."

Another quotation from Premier Blakeney just last week:

"I believe the job of the Prime Minister and the ten Provincial Premiers next week is to identify those areas where agreement is possible now. To that extent I share the federal government's sense of urgency."

Et finalement le premier ministre Lévesque déclarait à l'Assemblée nationale le dix (10) octobre dernier: "L'échéance n'est pas pour demain, mais elle approche tout de même à grands pas étant donné l'engagement que nous avons pris de tenir le référendum avant nos prochaines élections, une phase nouvelle s'ouvre maintenant."

There is a deadline for choice, Premier Levesque is telling us, and that deadline is coming soon. It is perhaps not the same one for all of us, but we all realize that this is an urgent matter, that it is an important matter.

Why is it so important then? Why are all the Premiers as all of you stated in your meeting in Regina last summer, why must we get on with this job? Well, very bluntly stated, Canada is a badly, sorely divided nation, divided between east and west. The west particularly where we hear a lot about western 'alienation, dissatisfied with the roles that they play in national decision-making and they have said so repeatedly. One could add divided between north and south. I am thinking not only of the native groups, but also the people of the Territories who feel remote from the locus of decision-making, divided between French and English-speaking Canadians. French-speaking Canadians being dissatisfied with their place in a predominantly English-speaking Canada and English Canadians, English-speaking Canadians, dissatisfied with their place in a predominantly French-speaking Quebec. Divided as between individuals on the one hand and the state on the other. Individuals worried about their freedoms in the face of ever-growing governments and bureaucracies at all levels of government.

And finally, divided as between the provinces and the federal government. Constant squabbling, wasteful duplication by overlap of the application of the constitution at the federal and provincial levels to say nothing of the municipal levels. Well, there is this political division in Canada and we may as well recognize it. We are divided amongst ourselves and because we are divided we are economically weak. The economy to progress needs a measure of certainty. Canada is a major trading nation in a difficult, in a competitive, in a tough competitive

world and we can't face this world effectively in an economic sense unless we act as one country. If we are dealing with the industrialized states, with their high technology, particularly at the multi-national, multi-lateral trade negotiations at Geneva, we have to be able to take a position as a government, as a strong united country to face this tough competition when we are discussing tariffs, discussing trade concessions and even vis-a-vis the third world with its cheap manpower and its cheap resources, competition from that source is increasingly tough. Competition for the same markets and here too our weakness as a divided nation can be extremely harmful.

Economic initiatives require stability, require that the rules of the game are known whether by Finance Ministers when they are trying to set budgets for the province or for the whole country, and they must know what the rules of the game will be in terms of their application of those budgets, stability is required for investors whether they are thinking of the royalties they will have to pay on oil or the taxes they will have to pay on potash, or the regulations they will have to abide by when they are looking for offshore resources, but all forms of capital investment in plants for instance, which are necessary to create jobs for Canadians. They presuppose political stability and particularly investors must be in the position of knowing if they are going to be investing in a Canadian market of twenty-three million or twenty-three minus six million on the assumption that they may fear that one province is going to separate out.

So there is great urgency in drawing up the rules of the game whereby Canada does govern itself. Some people say, "Well, we have a constitution, a written constitution". Yes, we do. It is composed of some two dozen Acts of the British Parliament, some four Imperial Orders-in-Council, and many dozens of Acts of Canada relating to provincial matters, and Acts of Canada relating to federal constitutional matters. It is a very complicated constitution which can hardly be said to design a clear framework for our common future, and what we need now is in a clear act of national will to write a constitution to replace these many, many dozens of British and Canadian Acts.-- very important in terms of the economy, in terms of our self esteem to be able to say to the world, "Yes, we are one Canadian nation". We may argue about many things but we are all bound by one fundamental law -- the law of the Constitution, and that law will be interpreted by one system of Courts headed by a Supreme Court, respected by all,

not a Court that loses legitimacy by one level of government or the other being able to say, "Well, you know it is always leaning in one direction", or "It has come ahead with decisions that are always favourable to the other level of government". We need a Constitution and we need a Court that we will all respect and all accept. If we don't like the present one, let us change it, but we cannot act as one nation until we have done those things.

So, that was the first question. It is a matter of pressing necessity; and the second question I would like to address is can we succeed in writing a Constitution. Well, first let us ask ourselves what has to be done. I would divide it into three tasks, logical but perhaps not in chronological order. First, we should have our own Constitution. As I remind you our Constitution is made up now of as many British Acts as of Canadian Acts. We have to patriate the Constitution and find an amending formula. Canada is the only country in the world, the only independent country in the world which does not have its own Constitution written in Canada for Canadians by Canadians, the only country which in a legal sense is still a colony because it still has to go to some other country in order to change its basic law. So, that is the first thing we should do -- make ourselves truly sovereign.

The second task has to do with the division of powers. Since in a Federation the exercise of sovereignty is divided between the federal level of government and provincial levels of government, we have to agree on a division that will best permit each level of government to best serve the people under its jurisdiction. That is looked upon as the Confederation did when they drew up Sections 91 and 92 giving some powers to the federal government and some powers to the provincial governments. While this division of powers is 110 years old, I think some of us could still live with it. Certainly

I could, but I know a lot of Premiers, and I respect their views, want it changed and, therefore, we should change it and modernize it.

The third task is to write in clear terms the basic law, the constitutional law whereby we set up our institutions and govern ourselves. Now, we can either do this together by writing a new Constitution for all of us, or we can begin the task by doing it separately. This is permitted under the Constitution. If we look at the B.N.A. Act, 1867, Section 91, the first paragraph says:

"Parliament can do the following things:

The amendment from time to time of the Constitution of Canada" (with certain exceptions). "The Provinces can do the following things: The amendment from time to time of the Constitution of the Province" (with one exception). But we can do it. We can do it under the present Constitution. It would not solve the problem of division of powers, but it would permit us at each level of government to address certain basic problems, whether it be the problems of minorities within our provinces or regions, problems of language, problems of regional disparities. So, these are the three tasks that have to be done -- patriation, division of powers, and/or use of Sections 91 and 92.

Can these things be done? I have indicated optimism when I started this statement. I thought I said, I thought we could succeed, but we have an incredibly difficult uphill task. Let us look again at those three tasks -- patriation and amending formula. While the record, ladies and gentlemen, is one of dismal failure, it was started in 1927 when, at last, the governments of the provinces and federal said, "Let us get together and try and our Constitution," because we were getting close to the Statute-of-Westminister-time, it was after the Balfour Conference and we felt that Canada was going to be the only

country that could not have its own Constitution. So, there was a meeting in 1927, 51 years ago, and it failed. And since then there were eight other attempts to agree, the federal government and the central government, on a way to patriate the Constitution. Nine attempts in all under six different Prime Ministers of Canada and countless numbers of Premiers, I suppose, and each time we failed.

Why did we fail after 51 years of effort? Well, some of us know the recent history and it was not different in the less recent history. We failed because we had decided we had to proceed by unanimity, every government had to agree before we could do something, every provincial government and every federal government had to agree. That is why we failed. Now, let us try and agree again once more. What will we do if we don't, as our predecessors have not for more than half a century, what will we do then? Can we find some other way of doing it, or will we hand it to some constituent body saying: "We have failed as Premiers and as First Ministers?", or shall we ask the people to decide for us, or what? But are we going to live another fifty years without our own Constitution, and I repeat in the legal sense, being colonies? I suggest that as a matter of pride we cannot fail, and I would like to hear from the Premiers at this conference on the deadlines we are setting ourselves to do this task.

Now, what about the division of powers? Well, the task here is perhaps as difficult. After Regina, the meeting you had a couple of months ago amongst the Premiers, the provinces sent the federal government a list of fifteen areas where they would like to see constitutional change, but in a way which diminished federal powers. Just a couple of weeks ago Premier Lougheed in his publication stated some twenty-nine areas which should be addressed

for constitutional change, and twelve of them have to do with the division of powers, but once again, each one consists in limiting the federal power and increasing the provincial ones.

Premier Lévesque has views on this too, as we know. He wants a new division of powers. In his statement of October 10th he says it quite clearly:

"Il faut rapatrier chez nous -- c'est-à-dire dans la province de Québec ou dans le Québec, dans l'Etat du Québec, -- il faut rapatrier chez nous le pouvoir exclusif de faire des Lois et de lever des impôts. Le Québec sera souverain quand son Assemblée Nationale sera le seul parlement qui puisse légiférer sur son territoire.

This is a very clear and classical definition of sovereignty as John Austin would have put it some almost two hundred years ago. A nation is sovereign when no other power can make laws for its territory and that is the division of powers Mr. Levesque's government is asking for, not only move some powers from the federal government to the provinces, but move all powers to the provinces? That is the task we have, division of powers. Can we make progress? I believe we can make some progress. I certainly understand the provinces when, for instance, they talk about their resources and they say, "Well, we have to have the produce of these resources, particularly when they are depletable resources. We have to be able to use them for the people of the province" and they are right, but no Prime Minister of Canada can keep that job very long if he didn't also say, "But the resources of any province should also be available to the totality of Canadians so there can be some redistribution of wealth within the country." How do we solve that? I believe it can be solved and when we look at the division of powers tomorrow I think we can make some progress if we are patient and if we are flexible.

But, you know, the real question, gentlemen, is do we have the time? Can we agree on a new division of powers within the timeframe that you yourselves have set in the statements that I quoted you as saying earlier?

Finally, the third task is on the division of powers -- on the use of Sections 91 and 92.

Ce sont ces articles de la constitution que j'ai lus tout à l'heure qui permettent au Gouvernement fédéral d'amender sa constitution et aux gouvernements provinciaux d'amender leurs constitutions. Et bien disons tout d'abord que ça a été fait bien des fois, contrairement au partage des pouvoirs dont je viens de parler et où il n'y a que trois cas, sauf erreur, où on ait changé le partage des pouvoirs, c'était en 1940, à propos de l'assurance-chômage,

en 1951 et 1964 quand on parlait des pensions de vieillesse.

Donc, pour le partage des pouvoirs, c'est difficile, ça n'a pas été fait souvent, mais pour l'utilisation des articles 91 et 92 de la Constitution, ça a été fait bien des fois, le Gouvernement fédéral, plusieurs fois s'est servi de ce pouvoir pour changer la constitution.

This power was used when the federal government, for instance, adopted the Alberta Natural Resources Act in 1930, the Manitoba Natural Resources Act in the same year, Saskatchewan Natural Resources Act in 1970. It was used also by the federal government regarding its own area of jurisdiction. I am reading in the order that it comes in Maurice Olivier's book, Succession to the Throne Act, 1937, done by the federal government acting alone. Demise of the Crown Act, 1952, Royal Style and Titles Act, 1953, Seals Act, Oaths of Allegiance Act, Governor-General's Act, Senate and House of Commons Act, Supreme Court Act and so on and so on, many times the federal government has used its powers to amend its constitution and many times the provinces have done it too. I guess the most notable examples were when the Province of Nova Scotia and the Province of Quebec in recent decades used the power of Section 92 to change their constitution and to abolish what was the equivalent of the Senate, Legislative Council. They didn't ask us for permission to do it. They said, "This is the constitution of the province, we will do it" and they did. So it can be done. It has been done many times. The question is really because of the failure in fifty-one years to do the other things and because, to quote again Premier Lougheed, the ball is squarely in the federal court, we went ahead and did present our vision of Canada. We published "A Time for Action" last June and Bill C-60. It was essentially that, our vision of Canada, not binding on the provinces, trying to bring a global view of what a constitution should be, but only binding on ourselves, no provision to sort of change the distribution of powers or force the provinces to do anything. Just saying that we, within our area of jurisdiction, want to write a constitution which will reduce this alienation, this divisiveness in Canada, which will reduce regional disparities by making provision for equalization and other formulas, a Bill of Rights which would protect a citizen, his freedom from expanding governments, language guarantees insofar as they come under federal jurisdiction, modifications to the Senate and to the Supreme Court, to find ways that would permit the regions that don't feel sufficiently represented at the centre to find ways in which they

could be involved in some way in the basic institutions of government, of the central government. So that is essentially what we were doing in Bill C-60, trying to solve some of these problems of alienation insofar as we could at our level and defining the institutions of government as they exist now. Essentially what does C-60 say? It says, "There shall be a Queen. Then there shall be a Governor-General appointed by the Queen and there shall be two houses of parliament to make laws of Canada and there shall be a Cabinet to execute those laws and there shall be courts to enforce these laws."

I agree it would be better if we could all sit down and write a constitution together, but having failed for fifty-one years, what was wrong with the federal government attempting to do this at the federal level of jurisdiction? Describing the institutions? Admittedly some caused problems but we said C-60 is not carved in stone. It doesn't matter much to me if there are eleven judges or nine judges on the Supreme Court, providing it has legitimacy, providing we all agree we will be bound by its decisions. I couldn't care less if the Senate is half appointed by the federal government and half by the provinces or whether it is directly elected by the people for that matter, providing Canada can be more strongly unified by it. So it is there for discussion and I hope we will discuss it, but what did the provinces say at Regina? They said that we could not do this without unanimous consent. I am reading from the communique following the meeting of Provincial Premiers in Regina in August of 1978: "The Premiers firmly believe that significant constitutional reform should have the concurrence of all governments, recognising the equality of status of all provinces in the process." I just ask you, is that unanimous consent likely to be forthcoming, gentlemen?

Je pense que monsieur Lévesque a une réponse bien facile et bien légitime dans sa position. Bien sûr qu'il n'a pas la même vision du Canada que nous, alors est-ce qu'on est réaliste, est-ce que vous êtes réalistes d'avoir décidé à Regina

qu'il fallait que nous soyons unanimes avant de faire des changements constitutionnels d'importance. Je vous laisse la question.

It is time for me to draw conclusions because even as Chairman I think there is probably a limit as to the time I should take. I am going to ask two questions: first, is constitutional reform urgent and necessary?

Et ma réponse était oui, la réforme constitutionnelle est importante, elle est urgente. Elle est urgente pour vraiment des questions de fierté. Est-ce que 110 ans, 111 ans après, 112 ans maintenant, 111 ans après que la constitution a été écrite pour la première fois, est-ce qu'on peut se permettre encore de la laisser dans des parties essentielles, en Angleterre. Important également pour des questions d'économie, des raisons économiques, si l'économie canadienne doit être solide, il faut que les investisseurs, ceux qui créent des emplois, il faut qu'ils connaissent la règle du jeu, donc, il faut qu'on se décide relativement bientôt, il faut surtout le faire, parce que je le répète, monsieur Lévesque, le premier ministre de la province de Québec, nous a donné des échéances et il a dit clairement à part la souveraineté-association, il n'y a pas de changements à l'horizon -- et je lis encore sa déclaration faite à l'Assemblée nationale, il y a trois (3) semaines: "Chose certaine en tout cas, on ne voit rien d'autre à l'horizon qui soit susceptible, -- rien d'autre que la souveraineté-association, -- qui soit susceptible de briser le cercle vicieux dans lequel sont enfermés deux peuples distincts que tout appellerait pourtant à se mieux comprendre et à se respecter.

Before the people of Quebec are called upon to vote on their referendum, it is our belief, it is your belief from the quotations that I read that there should be some alternative, some other option apart from what is called the status quo, meaning the several dozens of British and Canadian Acts which compose our constitution.

So that was the first question: is there a formula urgently necessary and the answer can be only yes.

The second, can we succeed, with our patriation, can we succeed? I will be blunt again. It has been prevented in the past by the provinces and my question to them is: will they allow it now?

Et même à vous, Premier ministre Lévesque, est-ce que vous qui parlez souvent de pays colonisés et de la nécessité de décoloniser le Québec, est-ce que vous consentirez à ce que nous décolonisions le Canada pour commencer, pour vous mettre d'accord sur le rapatriement de la constitution au Canada. Vous aurez vos options après, mais pour commencer, est-ce qu'on peut se mettre d'accord pour dire: bon, au moins mettons la constitution au Canada.

Will the provinces now agree on some way to have our own constitution and to bring it back from the United Kingdom? On powers, can we agree on the kind of Canada we want? Obviously we can't agree, certainly not unanimously when we know that one of us here is asking for the totality of powers. Some are more modest, but there is a great deal of desire to transfer powers from the federal government to the provinces, to limit in some way the federal power. Some of it is legitimate, and I repeat we are prepared to discuss that tomorrow and make concessions. I should just warn you that we have a list of about ten areas where we think power should be transferred from the provinces to the federal government for the better running of Canada but we will discuss that tomorrow and I think we can make some progress. But can we make enough in the time available?

The third, on the use of Sections 91(1) and 92(1), can we make some progress and on Bill C-60, which I repeat is not carved in stone which we are prepared to change and modify but which incorporates some of the principles and goals that we see for a renewed basic law for Canada? C-60, our vision of Canada. What is the provincial vision of Canada and can we put it together. If we can't, can we in some way continue to at least put a framework at our own levels of government? But hopefully we can do it together and we are going to ask you if there are some elements of C-60 which can be changed in order to get agreement from you, but can we do it within a given timeframe? Must we, as leaders, must we accept the change, reform will have to be ruled out if there is no unanimity. Once again, what will we do if once again we fail because one of us or two of us is not in agreement with the overwhelming majority? Do we just throw up our hands and say, "Let some constituent assembly made up of editorialists and professors and legal experts write the thing. We haven't been able in fifty-one years. Let's give it to somebody else?" Or do we consult the people as the suggestion sometimes has been made? I don't think any of us want to say in the face of

history that we have failed as leaders, but we have actually until now failed badly.

Those, gentlemen, are things I want to say and to quote Premier Lougheed, "The ball is in your court, gentlemen, and I suggest that you serve it soon."

Premier Davis.

HON. WILLIAM DAVIS: Mr. Prime Minister, I must say that I was quite impressed by your eloquence. I believe sincerely in terms of the arguments that you have presented to us and with respect, sir, I will disagree with one or two and agree with a number. I intend to depart from my opening remarks to make just one or two preliminary observations.

I was a little concerned, Mr. Prime Minister, in your what appeared to be a suggestion on the unstable nature of this country, the great divisions that exist and while I hope I am not hiding my head in the sand I think with respect, sir, that perhaps you have tended to exaggerate them. That does not diminish Ontario's either desire or commitment to participating in this process or sharing the same sense of urgency because, Mr. Prime Minister, historically our interest goes back to the late '60's and of course to the meeting in Victoria of 1971. I would be disappointed though, Mr. Prime Minister, if the people of this country felt that one of the most significant reasons for our present economic difficulty which once again I think can be overstated -- and I am one of those who does not overstate it and I recall many of your observations in the last three or four months, Mr. Prime Minister, where you have been urging Canadians to demonstrate a little greater confidence and that you yourself, sir, have suggested things are appreciably better than some of the reports of editorial and financial analysts would suggest. I guess I can only speak for our own province, Mr. Prime Minister, but from the experience I have had, from the discussions with investors and people interested in the economy of our province and throughout indirectly this country while they are concerned about the political situation -- and I do not minimize it -- I would say with respect their concerns are really more deeply rooted in basic economic matters than they are in political stability of this country and I just would not want people to think that out of these discussions and hopefully with some real progress in terms of constitutional reform, restructuring or whatever terminology one might wish to use that through that automatically will flow a substantial improvement in our economic situation because, Mr. Prime Minister, while they may be related I think the economic causes are somewhat deeper and hopefully we will be dealing with them in the

latter part of November.

So I would just like to say, Mr. Prime Minister while I share your sense of urgency and we are welcoming this opportunity to share our ideas on how to resolve some of the problems that presently confront us I guess I am somewhat more optimistic, perhaps taking a confident view of the existing situation than Mr. Prime Minister from your perspective enunciated the early part of your remarks and I say that with respect but I could not help but feel that as I listened to you very eloquently stating the rationale, the reasons for the urgency and for the need for us to come to grips with it.

You suggest Mr. Prime Minister the ball is now in our court and I will not speak for any other Premier quite obviously. I guess our reaction to the division as you describe it, the present legislation ~~is~~ is not that we are unalterably opposed to it by any stretch of ~~the~~ imagination. We have reservations about certain sections. While I was not quoted in your earlier list of those who sought constitutional exchange I think you can find a number of quotes, Mr. Prime Minister, that will substantiate your argument. Our concern was, sir, that we want to see this process somewhat more comprehensive and I know the frustrations we have all felt, we have all shared and I don't suggest for a moment that we will achieve total unanimity. From our concern with division the process that was started was that it was not as comprehensive as it should be. It is very difficult for me as Premier of a province like ours to say yes we agree with all of Phase I or parts of Phase I without knowing what we are going to do with respect to distribution, what we are going to do with respect to amending formula because, Mr. Prime Minister, when some of these things are locked with no mechanism available as to change whether it is five years, ten or fifteen years now it is not easy for us to accept and my argument has been and will continue to be-- and this will be part of what we will be saying

in the next three days -- the Province of Ontario is prepared to look at this in a far more comprehensive sense with the hope that there is sufficient time -- I think really when you say "time", Mr. Prime Minister, I think time we can find: I think it will be the will of the people around this table which is relevant. If we want to see change in my humble opinion we can achieve it, not necessarily within the precise timetable that you would suggest but certainly I think it is there. I do not want to minimize the need for these constitutional changes that are being suggested because there are a lot of other important issues facing Canadians and I share this with you, sir, that while as I have explained to some of my colleagues, if you were to assess or ask the people of this country what are their priorities today constitutional reform would not be No. 1. I think we all know that but we have always argued that it is certainly beyond our creative capacity and we have sufficient intelligence to deal with both economic issues and constitutional change together, that we should not say because the economic situation is less than that which we would like that we cannot take the time or should not have an interest in constitutional change. I don't happen to share that point of view of yours in that instance, sir. I think part of our responsibility in these next three days, and I guess part of yours as chairman is to listen to the many different voices and opinions that will be expressed around this table and attempt to bring them together. That is not a very easy task. I don't envy you that but I think it is part of your responsibility Mr. Prime Minister as chairman and as the First Minister of this country and I think it is difficult but I do not think it needs to elude us. I think if some of us could set aside pre-conceived notions, some which won't fit and can't fit this marvellously I think diverse country then I would hope sir that we can as a result not have solutions imposed upon us. I am convinced that this country is something other than what the inhabitants

of Ottawa or two nations or massive decentralization or other theories would have us believe. I am not married to any particular theory. I think the vast majority of Canadians have a healthy skepticism of easy answers. I think that to suggest what we are embarked upon is easy I don't think that Canadians want to be assimilated and I think they enjoy their differences. I think in many respects that is a great plus because I think most Canadians have a very deep attachment to this country no matter what the diversity might be.

At the same time Mr. Prime Minister you can't be Premier of what has been described as one of the central provinces of Canada and not get some sense that there are grievances or concerns in other parts of our country, perhaps at the extremes in terms of geography, not philosophical points of view and we are sensitive to those feelings. We have been sensitive for a long time and if you look back through the history of these discussions, Mr. Prime Minister, you will find that to the extent that economics are relevant in the minds of my fellow Premiers around this table that Ontario has never been reluctant to support equalization: in fact, I think in some communications we have recommended, Mr. Prime Minister, it be entrenched in the constitution, the concept of equalization or other terminology and we are sensitive to these feelings and I think that we can find solutions to the tensions at least to reduce them. I am prepared to acknowledge the status quo won't do but with respect neither will upsetting the total applecart in the process. I do not think that is necessary.

We are at this conference, Mr. Prime Minister, as we were there in 1971 to contribute specific and I hope constructive suggestions to achieving a reasonable plan of constitutional change. We are not here to centralize or balkanize. I want to make it abundantly clear that while we have certain views on distribution of powers -- and I

think I speak for the people of the Province of Ontario -- we will not be part of a process that sees the dismemberment or the weakening of the government of Canada in terms of its responsibilities to deal with the significant economic fiscal international economy. That has never been our thrust Mr. Prime Minister in terms of discussion on distribution.

I would also really following upon what you said hope that we would not leave this meeting without a specific plan of further instructions to get on with this critical task and I will be making some proposals to this a little later on.

Mr. Prime Minister some of us have been through this experience and while it is complicated maybe we tend to over-complicate in our own minds when I think we should be doing two or three things. I think we will have to test the proposals that you have enunciated Mr. Prime Minister, those that others will be making and they should be put against some very clear tests and they are very simple: do they really strengthen and improve the relationships in this country? That has to be a fundamental question; do they have the support of Canadians? While I don't expect we are going to achieve unanimity I think it is important that Canadian people generally accept what we are trying to do and that is a very simplistic test but in fact will they work? Sometimes we don't ask that question before we make some proposals that I have seen in the last few years. I think it is equally a test that the constitution should not be a source of division. Our discussions to improve the agreements amongst us must lead to reconciliation, to trust and a new sense of united purpose.

I think it is worth reminding ourselves Mr. Prime Minister that this is the first time as you said in seven years since the meeting in Victoria in 1971 that the Ministers have met to discuss constitutional issues. We have had discussions as Premiers, we have had communications as part of some of our meetings but it is the first time in

seven years and two months ago that as First Ministers of this country we have come together in a formal sense to discuss constitutional change and I won't go through the history. They go back beyond 1971 some 51 years or more and my involvement is less than yours, I can only go back to the late 1960's so I won't burden you with the historical record. It is there for consideration.

I just want to -- and once again I don't want to go back through the discussions in Regina because our very able chairman can communicate them to you but I just hope Mr. Prime Minister you did not get the sense that we were being totally negative. We were not. I will only speak for myself. We are concerned about some of the provisions of the bill but that concern did not in any way detract from my commitment at least to constitutional change as long as we were considering the total concept how we were going to achieve it and taking into account dealing with one aspect without consideration of the other to be frustrating and perhaps in the long-run will be self-defeating.

Now the meetings over the past ten years the history of which I shan't record have brought me to certain conclusions about our present situation which I will share, Mr. Prime Minister. They may not be relevant. The first is constitutional change is a national priority. It is not something that is hopefully being motivated entirely by the government of Canada. It is a national priority and has to be accepted by all of us or it is not going to work.

I think in that period of time a clear idea of what will and what will not work is emerging. I think you have sensed this, and you indicated your sensibility to the proposed legislation.

The third point is our individual interest and concerns in what changes each of us regard as essential to preserve a blend of national and local interests, I think we all have a better understanding. Certainly I have. I say, with respect again, reform must be comprehensive and a wise agreement is unlikely on a piecemeal basis and I don't object to the pragmatic approach. I think Premier Blakeney has suggested there be a smaller package of change. I understand that potential, Mr. Prime Minister, but I really would feel badly if this conference didn't come to grips with the broader picture, broader issues, and set the machinery in motion to deal with them.

I think the fifth conclusion that I have come to is that a reasonable consensus among the eleven governments here is the effective way to proceed if we are to achieve -- and I am not just speaking now for people in political life, because I think we sometimes sort of look at ourselves and say, "It is all on our shoulders." Mr. Prime Minister, I share with you the desire not to send it to a group of academics or constitutional experts, although you must have had a few constitutional experts dealing with the present legislation. I am sure you didn't draft it out yourself, Mr. Prime Minister. I think there has to be an attempt at consensus. That doesn't mean unanimity. "Consensus" doesn't mean "unanimity." If we are to achieve our objective of establishing an atmosphere of trust amongst Canadians, which I think is a prerequisite for, shall we say,

a restored national purpose.

I think the sixth conclusion I come to is that differences cannot simmer indefinitely: Accommodations and commitments should be made within an agreed upon and foreseeable time.

So, I see this conference, Mr. Prime Minister, as representing a culmination of past efforts. I honestly don't think the discussions in Victoria, the progress that was made there, have been totally wasted. While seven years have elapsed, I hope we can take this opportunity to start the job of shaping and refining our individual preferences into a new expression of our national and local objectives.

Since that period, sir, we have had the benefit of many reports, many studies, in addition to some helpful contributions of governments. I am concerned. I understand the report of the Task Force on National Unity will soon be available and it will, presumably, reflect the viewpoints of many Canadians that they have consulted. I think all of this should be tabled, shared. I prefer no untoward surprises once the negotiations, Mr. Prime Minister, have started in earnest and provided we have a common understanding of what the precise situation is, I think we can build towards an agreement. During the next few days we will be making detailed comments on each agenda item. They will, in the main, not be final or absolute positions. I have come here saying I prefer one issue with which you are barely familiar, and I will come to that tomorrow. When we are taking final or absolute positions, I don't think there are any absolutes in this sort of negotiation, but we do have some preferences.

For example, Ontario is for an arrangement which will, firstly, reduce the frustrations

caused by unequal economic opportunities across the country. We cannot afford the continuation of sharp disparities, and a better distribution of economic activity is, therefore, a priority. Now, that is not a simple thing for the Premier of the Province of Ontario to say, but I think it is fundamental in considerations of this nature. We believe the accommodation is necessary for the reasonable requirements of French speaking Canadians to ensure that their language and culture will be able to develop and to thrive.

Predominantly, but by no means exclusively, the focus of this development will be in our sister province of Quebec. We believe the cultures of Canadians from many lands should be allowed to flourish so that the contributions of our multicultural heritage can be fully shared amongst us. We must, Mr. Prime Minister, respect the rights of our native people. They have, in our view, an especially valid claim to our utmost consideration on this matter, and we should ensure that they are carefully consulted as we make progress in this area.

We should find ways of encouraging and improving cooperation among the various parts of this country so that governments can work together in pursuit of common objectives or receive a fair hearing when differences must be arbitrated.

The modernization of the Act that you refer to, while being careful to retain those aspects where it has been proven over the years, and there have been many, I don't think our Constitution is static, and acting together we should take more advantage of its existing flexibility.

There are eight areas to which Ontario, sir, attaches high priority, selective but significant

adjustments to the distribution of powers, and this is not a question of saying we want more; it is a question of having a realistic assessment of what the Government of Canada can do best, what the provinces can do best, and I think that this is really what the people are anticipating. We are not looking for it because we want more to do. Some days we have all we can handle.

We want new practices including consideration of institutionalization if necessary of inter-governmental consultation. We want a process by which the provinces meaningfully contribute to the appointment of the Judges of the Supreme Court of Canada, although in case, Mr. Prime Minister, you are concerned, we do have complete confidence in the Supreme Court of Canada as an institution. We questioned one or two of its judgments in the past year, but I want it made clear that we do.

We also want as part of any constitutional consideration -- it is a very high priority, Mr. Prime Minister, and I am sure you will sense this. My colleague, the Premier of Quebec, will understand this, the assurance that individuals, goods, capital and services can move freely across the country. I mean, that has to be what this country is all about. Any constitutional change that doesn't incorporate the rights of individuals to move freely, to work where they wish to work, movement of capital and goods, etc., I think that should be part of the constitutional discussion.

An expression of individual human rights. We support this as identified in the 1971 Canadian Constitutional Charter. Mr. Prime Minister, this may not receive the unanimous support of my colleagues, but the rights of parents to have their children educated in the minority language where it practically makes sense to do it.

I understand that education has since day one been a matter of complete provincial responsibility, but I would say when we are dealing with matters of language and culture where education has to be basic, Mr. Prime Minister, Ontario is prepared to see that right entrenched in the Constitution. I think you have been careful to avoid it, and I understand why, but to have all of these discussions without getting into some consideration of an amending formula, involving a significant majority of legislative bodies across this country which, once again, will not be unanimously received here, Mr. Prime Minister, to deal with this on a comprehensive basis without getting into some consideration of an amending formula, I think, is not too logical.

We have also expressed a principle which I communicated to you, sir. We have a draft bill which, hopefully, will be helpful to your drafters, which makes it very clear, the Queen, as Head of State, and as the basis of executive authority. Those, Mr. Prime Minister, are the priorities we see in terms of constitutional change and, as I indicated earlier, the leadership here is critical although, I think it is fair to say -- or for you to say to us, "The ball is now in our court." I wouldn't go that far, Mr. Prime Minister. I think the ball is in both our courts. I don't think you can pass it to us, nor can we pass it to you. Either this total group around this table wants to accomplish something, we want to see it move ahead, or we don't. Ontario is quite prepared to be one of those who wishes to see it move.

I will just sum up my observations, Mr. Prime Minister, by suggesting that while the process is not on the agenda -- and I don't want to get into debate on what the process should be -- but I think it is fundamental fairly early in the conference to agree that

there will be a process of some kind, that we don't finish these three days exploring this, spending time as we did in Victoria, and seven years hence whoever replaces Henry Davis, and I won't speak of the three of us -- anyway, whoever -- whoever seven years hence, whoever is Chairman doesn't say: "Seven years ago the First Ministers of this country were here and accomplished nothing. We are still at square one."

So, Mr. Minister, when I talk about process, I am really talking about a commitment of all of us to seeing that in some way or other progress is made to proceed logically and intelligently, that we don't make changes just for the sake of doing it, that we recognize there is a great deal, sir, in what is already there. It is important, it is relevant, it works. At the same time we are sufficiently flexible to make the changes that I think will resolve some of the issues you referred to in your opening remarks.

Thank you, Mr. Prime Minister.

THE CHAIRMAN: Thank you, Premier

Davis.

LE PRESIDENT: Je donne maintenant la parole au premier ministre de la province de Québec monsieur Lévesque.

HON. RENE LEVESQUE: Monsieur le président, après vous avoir entendu vous-même et puis aussi monsieur Davis maintenant au nom de l'Ontario, je crois qu'il est devenu assez clair que si nous sommes ici aujourd'hui, ce n'est pas seulement parce qu'on nous a convoqués afin d'examiner à nouveau certains projets de changements qui ont été proposés il y a quelques mois par votre gouvernement.

Mais ce qui nous sollicite vraiment au fond, ce sont des préoccupations bien antérieures à ces projets, et on me permettra de le dire, des préoccupations qui vont beaucoup plus loin. Il est clair depuis un certain temps que l'état du cadre constitutionnel actuel, de même que les pratiques fédérales, conviennent de moins en moins à un nombre croissant de provinces, qui le font désormais savoir avec autant de franchise que de fermeté. Ce à quoi on ne saurait qu'applaudir.

Il y a encore une autre raison, cependant, qui est aussi celle qu'on évite autant que possible de mentionner -- et je remercie le premier ministre fédéral d'avoir pour une fois souligné cette raison avec une très généreuse insistance -- s'il a fallu constater un malaise constitutionnel qui est devenu si sérieux, c'est avant tout je crois, chronologiquement en tout cas, parce que le Québec pose à l'ensemble canadien depuis des années, sinon des générations un problème assez fondamental et vice versa. Ce problème c'est l'inaptitude du système politique existant à répondre aux aspirations profondes

et constantes du Québec et de sa population. Nous ne prétendons pas que cette insatisfaction soit nécessairement plus visible que celle des autres provinces. Mais comme elle est essentiellement d'une autre nature, on a l'impression qu'elle a toujours plus de difficulté à s'exprimer assez clairement pour être comprise.

Si vous voulez bien, on va quand même essayer encore une fois en tâchant en quelques minutes d'aller un peu au fond des choses du point de vue du Québec, afin d'illustrer ce que monsieur Davis vient d'appeler nos demandes raisonnables.

Pour les québécois du siècle dernier -- il ne s'agit pas de remonter au déluge, mais il faut quand même voir d'où on est partis -- pour les québécois du siècle dernier, l'instauration du régime fédéral, c'était ou ça devait être la garantie de leur autonomie politique. Ils percevaient le nouveau régime comme une assurance contre la centralisation et ils espéraient -- dans les domaines qui leur paraissaient vitaux à l'époque -- pouvoir enfin assumer la maîtrise de leurs affaires. Et pendant longtemps, une foule de leurs héritiers ont continué de le croire ou du moins de l'espérer. L'illusion a même été si tenace qu'on en rencontre encore aujourd'hui qui l'entretiennent. Et pourtant, je crois qu'on admettra que la preuve est faite depuis longtemps que dans l'autre société celle du Canada anglophone, dès le départ, on avait compris le fédéralisme d'une toute autre façon. Les canadiens anglophones n'éprouvaient ni les mêmes besoins ni les mêmes inquiétudes que le Québec. Ils avaient souhaité ou dans certains cas accepté tant bien que mal ce régime fédéral essentiellement parce qu'il permettait la naissance d'une nouvelle nationalité dont l'existence et

le développement exigeait à leurs yeux un état central aussi fort que possible, maximum d'autonomie provinciale d'un côté, maximum de puissance fédérale de l'autre: ainsi le fédéralisme canadien a-t-il été lancé à partir d'un immense malentendu dont le meilleur symbole est peut-être cette appellation parfaitement inexacte, dont on semble vouloir se débarrasser depuis quelque temps, cette appellation parfaitement inexacte de "Confédération" dont on prétendit l'affubler.

Je ne pense pas que j'aie besoin de dire que, au fil des années, ce n'est pas la conception autonomiste ou décentralisatrice qui a prévalu à Ottawa. L'expansion territoriale, l'addition de nouvelles provinces, l'émergence et l'enracinement de la grande bureaucratie fédérale, tous ces facteurs ont servi à renforcer et à la longue à rendre dominant la perspective centralisatrice du régime. Dès lors et de plus en plus, le Québec, qui était déjà la "province pas comme les autres", on le sait, a pris forcément l'allure de l'empêcheur de danser en rond. Au nom des principes du fédéralisme, il s'est vu constamment obligé de combattre des politiques qu'Ottawa s'acharnait avec la même constance à proposer, en s'appuyant bien entendu sur sa propre version des mêmes principes. Et la raison du plus fort étant d'ordinaire la meilleure, proposer c'est souvent synonyme d'imposer.

Après 111 ans, pas loin de 112, force nous est de constater que cette confusion, dans laquelle une multitude de citoyens ont depuis longtemps renoncé à se retrouver, n'a guère favorisé le développement de relations normales entre les deux nations qui coexistent, qui cohabitent au Canada. De part et d'autre, des tendances fondamentales absolument contradictoires sont ainsi affrontées tout le long du chemin, et presque sans interruption,

le Québec a dû lutter contre celle que favorisait systématiquement la majorité anglo-canadienne, pour des raisons que nous respectons d'ailleurs. Avec ce résultat que nous québécois, pour sauvegarder nos attributions constitutionnelles, pour les élargir autant que possible, nous avons toujours dû consacrer à cette fin des énergies, des ressources et du temps qu'ailleurs au Canada on avait le loisir d'utiliser à des fins plus immédiatement rentables. Tant et si bien qu'on pourrait dire que le régime est construit de façon à nous laisser souvent cette seule alternative ou bien de négliger des droits qui pour nous sont essentiels ou bien d'être sans cesse désavantagés en les défendant.

Depuis quelque temps -- c'est évident, ça paraît -- l'opinion s'est mise à évoluer dans d'autres provinces, rejoignant partiellement les vues décentralisatrices du Québec. Un bel exemple nous en est fourni couramment dans le domaine des richesses naturelles et certains d'entre nous autour de cette table ont connu les exquises frustrations qui peuvent s'ensuivre. Mais dans l'ensemble, on me permettra de dire que les amorces de solution qu'on a vu apparaître ne modifieraient les choses qu'en surface, sans toucher au fond de la tendance historique, tout au plus pourraient-elles aménager cette tendance en lui donnant plus de souplesse.

Or, il y a une chose qu'il faut bien comprendre, si on veut, c'est que tout ça était confusément prévisible dès 1867 dans l'esprit des québécois francophones. Sans rejeter pour autant l'existence ni l'action d'un gouvernement central, ils se doutaient bien qu'au mieux leur influence n'y serait jamais que minoritaire. Pour montrer qu'ils n'avaient pas tort, il suffit de rappeler que l'évolution démographique est venue réduire leur

représentation parlementaire de 36% du total des députés en 1867 à quelque 26% qu'elle sera au lendemain des prochaines élections nonobstant le fait qu'il s'est trouvé parfois à Ottawa et jusqu'au tout premier plan des hommes politiques du Québec, dont certains étaient de grande valeur. Mais en même temps, les québécois francophones savaient que c'est au Québec seulement qu'ils pouvaient former et demeurer une majorité. C'est pourquoi -- et qui pourrait leur en faire reproche? -- ils y ont tout naturellement établi la base véritable du pouvoir politique dont ils pouvaient disposer, la base véritable. Et voilà aussi pourquoi dans la perception collective comme dans la réalité des choses, c'est à Québec que s'est vite situé et que se trouve encore le gouvernement qui est, pour l'ensemble des québécois, le gouvernement national. C'est là et là seulement qu'un pouvoir québécois a des garanties de permanence, et je vous prierais de croire vous tous qui êtes autour de la table de croire que je n'ai aucune intention provocante en disant cela, je constate simplement un fait historique et psychologique qui, je crois, est indéniable. A mesure que le temps passe et que notre société continue d'évoluer, toutes les sociétés continuent d'évoluer, on ne les arrêtera pas, cette réalité devient d'ailleurs de plus en plus éclatante. Cette réalité, elle n'est pas née le 15 novembre 1976 quand votre serviteur et le gouvernement que je représente sont apparus sur la carte du Québec. Ce qui s'est passé il y a 2 ans est en fait la conséquence d'une vieille situation que le changement rend de moins en moins supportable; les québécois -- comme c'est vrai pour bien des gens dans le monde -- sont de plus en plus fiers de leurs racines, de plus en plus confiants en eux-mêmes, sans se prendre pour d'autres, la

fidélité aux origines est devenue graduellement plus dynamique et déterminée que dans le passé et de plus en plus sans oublier le passé, c'est vers l'avenir qu'elle a tendance à se projeter. Elle ne saurait donc s'accomoder plus longtemps -- du moins nous le croyons -- des entraves de toutes sortes que lui impose la confusion congénitale du régime actuel. Elle exige désormais que soit traduit en termes politiques son besoin de clarté et de cohérence.

Or, ce besoin n'est pas venu au monde hier pourtant, il a été à peu près entièrement entièrement négligé au cours des tentatives passées de révision constitutionnelle particulièrement celle de 1968-71. Je dirais même qu'il y a là une donnée qu'on a tenté -- jusqu'à présent en tout cas -- de masquer tant qu'on pouvait.

On a par exemple abordé le problème constitutionnel canadien ou en tout cas on a prétendu -- et par conséquent celui du Québec aussi -- par le biais de l'accroissement du bilinguisme au Canada ou par celui plus récent d'une modification à certaines institutions fédérales. Je dois dire qu'à notre avis on passait de la sorte complètement à côté de la question en ce qui nous concerne.

Ce que le Québec demandait surtout et sans relâche, c'est que la constitution nous garantisse l'exercice, en pleine autonomie, de tous les pouvoirs nécessaires à son développement comme société distincte. A la suite de bien d'autres par exemple Duplessis et Lesage, ces vues ont été exprimées aussi de 68 à 71 par trois premiers ministres successifs: messieurs Johnson, Bertrand et Bourassa. Et puis après, je ne sais pas combien de rencontres fédérales-provinciales et des comités de travail on a abouti à la déception de Victoria. En ce qui concerne le Québec, Ottawa considérait que les positions de mes

prédécesseurs allaient à l'encontre de sa conception du Canada et que, par conséquent, il n'était pas question d'y donner suite. Pourtant, ceux qui les défendaient ne cherchaient tant bien que mal non pas à remplacer, mais à réajuster le cadre fédéral.

Inutile de dire -- je pense qu'il faut le dire quand même -- que l'attitude d'Ottawa, tant en 1968-71 qu'auparavant -- et à maintes reprises depuis -- a énormément contribué à faire apparaître au Québec une nouvelle approche politique et à conduire à la remise en cause du fédéralisme lui-même.

L'expérience vécue ne semble pourtant pas avoir porté fruit, puisque, aujourd'hui encore -- ou en tout cas jusqu'à aujourd'hui -- l'approche a semblé demeurer essentiellement la même.

Et si les mêmes causes produisent ordinairement les mêmes effets, il n'y a pas tellement lieu, pour les tenants du régime, de s'attendre à un déblocage majeur de l'exercice qui recommence.

Tout le monde doit savoir de reste maintenant qu'il ne suffit pas de se réunir pour réussir. Je pense que ça a été illustré par l'histoire des cinquante dernières années aussi.

Maintenant, nous, représentant les québécois comme gouvernement, en essayant de rester fidèle à notre démarche, à notre action politique, mais aussi à la logique pure et simple, nous sommes amenés à croire par conséquent que notre principale contribution à cette conférence ne saurait résider dans une discussion point par point du projet fédéral -- ce qui n'interdit absolument pas d'en parler, bien sûr, le long du chemin, --- mais que notre contribution pourrait peut-être davantage consister en une réaffirmation tranquille et sans trop d'illusions

de ce qu'il est convenu d'appeler la continuité historique des demandes québécoises.

C'est dans cette perspective que nous déposons -- que nous allons déposer -- comme documents de référence à tout le moins, une liste des positions constitutionnelles énoncées par les gouvernements qui nous ont précédés, peu importe leur parti.

C'est en nous inspirant de cette continuité d'ailleurs évoquée dès notre première rencontre, en décembre 1976, que nous avons pu aussi souscrire à la déclaration unanime des provinces, lors de la conférence de Régina.

C'est la même attitude qui nous guide également dans les points de vue que le Québec formule aux diverses conférences fédérales-provinciales.

Bien entendu, nous n'assumons pas toutes les formulations de ces demandes, parce qu'elles ont été avancées à des moments et dans des contextes différents. C'est ailleurs, ce n'est pas là, mais c'est ailleurs qu'il faut chercher ce que j'appelle la continuité.

Ainsi, tout ce qu'on trouve dans ce document qui est devant vous au sujet, disons, des municipalités, de l'éducation ou de la culture, n'avait pas d'autres buts que de s'opposer à des tentatives répétées d'Ottawa de grignoter des compétences, des responsabilités c'est-à-dire de compétence provinciale,

Dans d'autres cas, comme dans celui des communications ou de l'environnement, il s'agissait plutôt pour le Québec d'obtenir une responsabilité prioritaire que l'entente de 1867 ne pouvait pas prévoir, évidemment.

Enfin, on y retrouve aussi des réclamations dans des champs d'activités qui ne sont que le prolongement naturel des responsabilités déjà reconnues au Québec.

Maintenant, ces positions de nos prédécesseurs, elles ont ceci de caractéristique qu'elles visaient toutes à défendre les droits constitutionnels du Québec contre la centralisation, à Ottawa, des leviers politiques importants dont une société comme la nôtre a besoin pour son épanouissement. C'est du moins la profonde conviction qu'on peut appeler historique, des québécois en particulier, forcément des québécois francophones.

Ce qui signifie que ces positions sont allées toutes très nettement dans le sens de l'accroissement du pouvoir québécois. Et je suis sûr de n'être contredit par aucun adversaire responsable, si j'affirme qu'aujourd'hui encore, au-delà des divergences, les positions de tous les partis à notre Assemblée Nationale -- j'ai vu hier celle qu'exprimait le nouveau chef ou enfin le récent chef élu de l'opposition officielle au Québec -- que les positions donc, je le répète, de tous les partis à notre Assemblée Nationale, continuent, dans le contexte actuel, à tendre vers ce même objectif. C'est une sorte de minimum que je pourrais appeler un minimum vital.

Par le truchement de centaines de groupes et d'associations représentant tous les secteurs de la vie québécoise, l'exemple le plus frappant étant sans doute celui des Etats Généraux, comme on les appelait au Québec il y a quelques années, c'est cette même volonté qui s'est exprimée si souvent en formule dont l'intensité était variable mais dont l'inspiration était toujours la même, des formules allant du "statut particulier" aux "Etats Associés", tandis que les gouvernements, eux autres, ils allaient de "Maître chez nous" à "Egalité ou Indépendance" mais enfin on voit toujours cette même tendance de fond.

Et c'est ça la continuité qu'on trouvera évoquée en détail dans le document que j'ai déposé. Si

quelque partie substantielle de ces réclamations sur le partage des pouvoirs et aussi des bénéficiaires du pouvoir, celle entre autres qui ont fait l'unanimité des provinces, devenait enfin l'objet d'un consensus solide et concret autour de cette table, nous ne sommes pas ici pour le refuser. Rien de plus légitime dans le cadre actuel.

Il nous semble cependant qu'après tant d'années négatives et avec le sentiment d'urgence que prétendait évoquer tout dernièrement le discours du trône fédéral, non seulement sur ces points, la balle me semble être encore dans le camp d'Ottawa, mais le renvoi positif devrait en être -- me semble-t-il -- aussi immédiat que possible.

Il ne peut pas s'agir de se perdre à nouveau dans ces labyrinthes qui mènent interminablement de conférences en comités, de comités en conférences, parce que dans ce cas-là, on nous permettrait d'exprimer à l'avance un scepticisme solidement nourri d'expériences vécues.

Et l'on comprendra aussi, j'en suis sûr, que quoiqu'il advienne, il n'est pas question de renoncer à la grande consultation du référendum, où les québécois auront pour la première fois de leur histoire l'occasion de se prononcer librement sur leur avenir. Et d'ici là, nous ne cesserons de proposer cette option qu'on appelle la souveraineté-association et qui nous apparaît comme la seule façon vraiment moderne et logique de réorganiser entre nous, je parle de deux entités, deux peuples, de réorganiser entre nous les rapports essentiels.

Et, je dois dire, que nous savons gré au premier ministre fédéral d'en avoir donné tout à l'heure un aperçu, si incomplet soit-il, enfin il y avait déjà là une évocation intéressante.

Et, bien sûr, ça illustre le fait qu'entre

cette solution que nous proposons et la réforme du statu quo, il y a une différence fondamentale, c'est une différence qui représenterait une accélération majeure évidemment, mais pas du tout une contradiction du cours permanent de notre histoire et de nos aspirations. Même si, dans le passé, on n'osait pas ou on ne pouvait pas s'avouer, au Québec, que c'en serait l'aboutissement le plus normal.

En un mot, la souveraineté-association, nous en sommes sûrs, est une expression légitime, aussi légitime et peut-être moins équivoque que toute autre, de la continuité québécoise.

Mais, cette affirmation, elle ne contiendrait par contre aucun désir, en dépit de certaines calomnies qui ont circulé ça et là, aucun désir de se cantonner timidement dans ce qu'on appelle l'ethnocentrisme ou le repli sur soi.

A mesure que les québécois sont devenus plus sûrs d'eux-mêmes, la continuité interne s'est doublée aussi d'une volonté d'ouverture aux autres, qui est plus apparente aujourd'hui, que ceux qui veulent bien regarder, plus apparente aujourd'hui que jamais dans le passé.

Les québécois ne sont pas des gens agressifs ou revanchards. Ils tiennent évidemment, comme n'importe quel autre peuple, à défendre leurs droits et leurs intérêts et à ce que leur gouvernement ne se néglige pas sur ce point. Mais, s'ils tiennent à être respectés des autres, ils sont pleinement disposés à rendre la pareille, et tout particulièrement à ceux du reste du Canada avec qui se sont établies au cours des années et des générations des relations aussi nombreuses que variées. Cet aspect-là aussi de la tradition québécoise, notre gouvernement l'endosse entièrement car il est positif et fécond. Nous sommes et nous voulons demeurer quoiqu'il arrive ouverts à ceux qui nous entourent.

Si nous demandons à nos compatriotes au Québec, d'approuver, avant longtemps s'ils le veulent, le remplacement du régime fédéral par une autre forme d'association -- c'est justement parce que nous cherchons à concilier ce qui nous apparaît comme l'intérêt vital du peuple québécois avec cette autre exigence de continuité qui est celle du Canada et qui exige entre autres ce libre mouvement autant qu'il est humainement possible des biens et des personnes qu'évoquait le premier ministre de l'Ontario.

Quand nous aurons le mandat d'en reparler pour de bon et officiellement, je vous prie de croire par conséquent que ce n'est pas l'égoïsme buté ni un nationalisme étriqué -- les fesses serrées si vous voulez -- qui nous aura conduits jusque là. Nous sommes suffisamment réalistes pour savoir qu'une attitude négative ou bornée de notre part, ou de la part du reste du Canada, porterait à court et à long terme, préjudice à tout le monde sans rendre le moindre service à personne, et particulièrement dans le domaine économique ou la performance courante d'ailleurs n'est pas tout à fait réjouissante.

C'est pourquoi il va nous falloir à tous dans les années qui viennent et à commencer peut-être par aujourd'hui nous dégager de part et d'autres des préjugés commodes, enracinés souvent, des deux côtés et des simplifications trompeuses. Nous autres, en tout cas, au Québec, il nous semble que depuis que notre mémoire collective existe nous nourrissons un objectif qui est profondément correct qui est celui de nous construire, sans nuire aux autres, un milieu, des institutions, des moyens d'action qui puissent enfin nous permettre de contrer la dépendance excessive, ce qu'on a résumé, si vous voulez en une expression bien connue, c'est l'objectif d'être maîtres

chez nous, dans un monde qui est quand même un monde d'interdépendance. De la même façon toutefois nous sommes parfaitement d'accord pour que notre évolution n'empêche
naires des autres provinces de se développer comme ils l'entendent. Et en conséquence, nous sommes convaincus, une fois déterminé l'avenir politique du Québec, -- et ça, ça appartient aux québécois -- nous sera possible de coopérer ensemble, sans amertume et dans le respect mutuel peut-être mieux que nous n'avons jamais réussi à y arriver jusqu'ici. En tout cas quand on pense à l'avenir, il me semble qu'il y a tellement de possibilités qui s'ouvrent aux canadiens et aux québécois que nous aurions tort, face à l'Histoire, si nous n'essayions pas ensemble et en reconnaissant aussi nos différences, de corriger résolument le présent pour qu'il cesse une fois pour toutes de stériliser tant de promesses, parce qu'il y a énormément de promesses dans l'avenir que nous pouvons partager quelque soit le régime politique.

Merci, monsieur le président.

LE PRESIDENT: Merci monsieur le premier ministre.

I now give the floor to the Premier of Nova Scotia.

HON. JOHN BUCHANAN: Mr. Prime Minister, thank you for your very kind welcome to this conference. It is certainly a great pleasure to be here and certainly a new experience for myself and my colleague ministers. I must admit, sir, to a certain amount of fear and trepidation as I approached this conference of such prestigious gentlemen but after meeting last night with yourself and the other Premiers, I have concluded that after all the group is only human and I am a bit more at ease.

My opening remarks on behalf of Nova Scotia will be more general in nature than specific.

The constitution of a great nation such as ours is more than a legal document. It is more than a piece of legislation passed by one element of the Confederation. It is the living heart of the political, social and cultural union that binds us as Canadians. It is the key to the preservation and enhancement of that heritage which is most precious to us - a parliamentary political system under the Crown.

As Canadians we are the inheritors of a system of government and a constitution created over nearly four centuries by the collective efforts and wisdom of our forefathers.

In our political system which unlike those of other nations is based in part on convention and precedent, we have a way of government that protects our freedoms while being uniquely able to respond to new and unforeseen challenges.

The symbols and institutions of our past are important because they are part of Canada. These symbols and institutions must continue if we are to fully understand our present system of government and plan for the future, as we must, in the light of our past. As Joseph Howe, a great Nova Scotian, said in 1871:

"A wise nation preserves its records, gathers up its monuments, decorates the tombs of its illustrious dead, repairs its great public structures and fosters national pride and

love of country by perpetual reference to the sacrifices and glories of the past."

We Canadians have in the past found ways of working together for the achievement of common objectives. Our history proves this. Some of the previous attempts at constitutional revision failed because of deep and basic disagreement, some because of political events and some because the will to succeed simply was not strong enough to carry on with the difficult and time-consuming undertaking. With confidence in my colleagues around this table, I suggest that we embark on this great undertaking with a will to succeed which must not fail because of disagreements which we may have had from time to time in the past.

Facing us in these three days is a discussion of the entire spectrum of our political and constitutional fabric. It would be unrealistic to suppose that we can solve the problems of the country in three days. This conference is part of a process which must succeed and Nova Scotia is determined that it shall succeed.

But we must also realize that Canada is faced with severe economic problems. To many Canadians these discussions will have little relevance to their families who face record inflation, unemployment and loss of livelihood. The Prime Minister mentioned these in his opening remarks. We must recognise our duty to address these questions. Ten years ago a previous administration from the Province of Nova Scotia made the following statement to a Federal-Provincial Conference:

"With great respect Nova Scotia submits that the question of regional economic imbalance is just as important as our much publicized constitutional difficulties with which we have great sympathy. Nova Scotia is of the opinion that economic problems underlie many of the frustrations that have received attention in recent years. We delude ourselves if we think that satisfaction of demands respecting constitutional or human rights

matter very much to the man in any province in Canada who is unemployed for months each year. In his mind the constitutional questions will take second place in the struggle to feed, clothe, and educate his family. We feel that federal-provincial governments have a responsibility to maintain an appropriate balance in dealing with the subjects of constitutional change and regional disparity. We must deal with the constitutional questions effectively but in so doing let us remember that the average man, wherever he resides in Canada, simply has to be more concerned about earning a livelihood for his family in a productive form of employment than he can be about having his constitutional rights recognized so long as his social environment is tolerable."

We see no reason after the passage of ten years to change that view.

I say to you, Mr. Prime Minister, in all candour, that we cannot undertake the task of devising a new constitution faced with deadlines. Nor can we consider parts of the constitution in isolation from other parts of the constitution. It is one constitution for the federal government and one constitution for the provinces. It is one constitution for the people of Canada. The Confederation of 1867 was achieved through the collective endeavours of the Fathers of Confederation without unilateral action by any one party. Agreement was then and must still be, the only way by which we resolve our constitutional difficulties and problems.

There are a number of specific points to which I will not address myself.

The Province of Nova Scotia supports a constitutional Monarchy and asserts that there should be no change in the role of the Queen. As far as the charter of rights and freedoms, it seems to us that rights and freedoms should not be incorporated into the Canadian constitution unless they apply with equal force to all Canadians wherever they reside. I suggest that it is misleading to put into the Canadian constitution rights and freedoms of Canadian citizens which are binding on one or more

governments but not on other governments. We believe that the proposed rights and freedoms should be considered very carefully and only those which all jurisdictions within this country are prepared to adopt should become part of the constitution.

We would support a proposal for direct appointment of provincial representatives to the Second Chamber thereby providing for the expression of provincial and regional points of view in that Second Chamber.

As Premier of a new Conservative government in Nova Scotia perhaps I will be forgiven for suggesting that the Senate has been underused and misused in the past. Changes in the Second Chamber must be of such a nature as to ensure that we possess a Second Chamber that will operate as an element in responsible Government with the traditional capacity for "sober second thought" and most importantly with the capacity of expressing and protecting provincial regional interests.

We believe that the commitment to equalization stands apart from any other program as a pillar of Confederation. The principle of equalization is completely fundamental to our concept of Confederation. If the citizens of Canada are to enjoy a reasonable standard of essential services without an abnormal burden of taxation we must continue equalization transfers between governments.

We see regional development as a process by which regional disparities and hence the need for equalization transfers will be reduced and eventually eliminated. We are committed to develop Nova Scotian resources to improve our province's economy. We see great potential in our forests, our fisheries, mines, our off-shore resources and our agriculture. If we are to develop our resources such as the fisheries, we must have greater control over the decisions that are made at the federal level which are so vital to that industry. Finally, with respect to our greatest resource, the talent and skills of Nova Scotians, we can ill afford a transportation system, which has since the inception of our nation, put our industries

and processes at a competitive disadvantage. Transportation policy must be seen as a development tool to fulfil the original promises of Confederation. We had an expectation of economic advantage from Confederation which has not yet been fully realized.

We are prepared to examine this matter of distribution of powers very carefully but we must point out that powers, of course, entail responsibilities. From the very beginning some of the provinces could not finance the ordinary functions of government. This situation became more acute as their responsibilities increased, largely by reason of changes in social, economic and political philosophies. Certainly in the case of the less affluent provinces, transfer to them of any additional responsibilities would have to be accompanied by a transfer of some source of additional fiscal capacity. This would mean, of course, further transfer of payments from the government of Canada. Whatever happens, the government of Canada must retain sufficient jurisdiction and resources including taxing and spending powers to carry out these responsibilities.

In conclusion we must realize that we are indeed fortunate in comparison with most of the world's nations. Why do we find ourselves in these circumstances? Partly, no doubt, because of accidents of geography and history for which we can claim no credit. But these accidents only set the stage and provide the opportunities for us to become a great nation.

We are what we are because over the past years Canadians have possessed the imagination, the courage, the determination, and the willingness to make sacrifices to fulfil their dreams. The present is the product of these Canadians and their dreams and it is the will and determination of Canadians that will create our future.

This country, Mr. Prime Minister, has a great future. Look around at other countries and compare their potential for growth and development to ours. Is there another

nation anywhere with more potential and greater opportunity to achieve for its citizens an unsurpassed quality of life?

We suggest there is not. But potential is one thing and reality is another. Whether our potential will be realized depends on us and our attitudes. Canada can continue to be a great nation and we can go on to the pursuit of achievement if we have the will and indeed the good will to do so.

It is our hope that there shall be a reasonable consensus among the eleven governments present here and that we will be able to solve the great problems of Canada and in the interests of Canada, of one Canada. We in Nova Scotia are willing to do our part and make our total commitment to that process.

THE CHAIRMAN: Thank you, Mr. Buchanan.

Je donne maintenant la parole au premier ministre du Nouveau-Brunswick.

One point you emphasized is that we have tried in this country for 51 years to bring about constitutional reform and we have failed. The impression given is that we have been consistently working and consistently trying to tout constitutional reform and such is just not the case. I think that any student of those efforts that have been made over the years would seriously question the quality of the effort made each time. I think they would take note of the lack of any sense of urgency at each one of those meetings, especially when you compare that sense of urgency with the kind of sense of urgency and concern I think exists in Canada as a whole today. I don't think that there ever was put forward a notion which I share very deeply, that if we succeed it is a matter of personal pride, the kind of pride that was so rightly the pride of the Fathers of Confederation. I think that we have to recognize, being one that was present at the conference in Victoria, and had a great sense of personal pride that I was there and making a positive contribution to what I hoped would be the permanence of this country, making a positive contribution to what I hoped would be the constitution of this country. I had to displace that pride when in fact we failed with a sense of disgrace, a sense of disgrace that we let that failure stand for so long, a sense of disgrace that we did not pick up, having failed that once and having come so close, that we did not pick up from Victoria in 1971 and again 1972 and 1973. The call that I made that you quoted was the call that I was making in 1971 and 1972 and 1973, long before Quebec decided, because of current events that came to fruition at a particular moment in time, decided to take a chance on the proposition which was put before them by the Parti Quebecois in 1976. I think that --

I have always sensed that it was important from the point of view of pride, being Canadian, that we do face up to this lack of constitutional reality in our country, the fact that we don't have a constitution.

I feel that because of that you cannot argue that real effort was made in those years because of the lack of the quality of effort, because of the lack of a sense of urgency and because of an attitude that constitutional reform really wasn't important, really wasn't necessary. After all, we can get by with what we have got. I don't think that is any longer proper and I don't think that we can suddenly turn to the argument that we have failed after 51 years of effort and therefore we must now succeed in 51 days or in 51 weeks and this seems to be the other point that you make, that we now have a deadline, we now have a time frame. Well, Mr. Prime Minister, I disagree with that proposition that we have a deadline in the sense that that deadline is the date of the referendum in Quebec which we don't know and I don't think anyone here knows when that day will be or that that date is before the next election in Quebec. I don't think there is a deadline and I think in imposing a deadline, in imposing some kind of concept on the Canadian people that unless we get something done by such-and-such a date that the government of Canada is going to act unilaterally is causing a great deal of concern in this country, a real concern in this country. I think what we should be doing which I don't think we really did in Victoria in 1971 as a group of political leaders, recognize that what we are about here is an exercise in political -- to demonstrate whether or not we have the political maturity to come to terms with a very difficult problem. Whether or not we have the real determination in the interests not of responding to the

Parti Québécois but in the interests of responding to all Canadians who have, as I have found in certainly -- most vividly in the last two or three years, a strong commitment, a concern to this country, a strong commitment to being Canadian, a strong sense of pride about being part of this country. I found that in all parts of this country.

You mentioned about the divisions. Yes, there are divisions, there are frustrations and we share them. We share them on the provincial level and we share them on the national level, but those divisions are not as negative or as serious as I think you would suggest they are. This is not a homogenized, pasteurized country of people. This is a country which does have very substantial differences and I think that was the hope of this country. I think that was the concept of this country which was recognized by the very practical people who met finally and agreed finally in 1867, that we were going to have certain differences in this country and we were going to live with them and build on them and we were going to make it known to the world that this country could have differences of language and culture and still be a country. This country could have differences in economic standards and still be a country.

Mr. Prime Minister, it is for that reason that I am so determined that we make a commitment here and I will make that commitment and I think there are indications other Premiers are prepared to make them or First Ministers are prepared to make that commitment. We will make a commitment here that we will in fact start now to try and come to terms with the real problems we have in this country, that we will come to terms with the realities of this country, that we will act as honest brokers, as dealers in things that are important, that we will compromise we will try and look at what our institutions are, determine whether or not they are

worthwhile. I happen to think that many of them are worthwhile and I think many of them are important as I already stated. I think the Senate of Canada is important to Canada. I do not agree with the proposition that the Senate should become some sort of regional institution. I think it is a national institution. I think it has and will continue if certain reforms are made to it, it will continue to reflect a trans-Canadian point of view. I think it is important that our Supreme Court be a Canadian institution and not be a regional institution, that we not expect appointment of one part of Canada to represent that part of Canada only and put forward that point of view, but that all the members of the Supreme Court represent Canada as a whole and the interests of Canada as a whole. If we are not satisfied with the decision of the Supreme Court from time to time, if we don't believe that in fact represents the political reality of Canada, that we have the courage to acknowledge the decision as being an opinion of the court and not some kind of entrenched declaration of law and that we use Parliament and the Legislatures of our country to change the law in order to reflect what we believe at that moment in time to be the right position as to the will of the people of this country with regard to whatever matter it is the Supreme Court has decided upon.

I think, Mr. Prime Minister, that as far as -- the other concern I have is about the tendency to regionalize what I consider to be the national institutions and that is that we in the Province of New Brunswick have historically believed in a strong central government. We think it is important that the government of Canada reflect the whole country and we also think that the government of Canada must be strong and not be weakened by regional assaults from time to time, particularly when a particular region feels economically strong so that it can protect provinces like New Brunswick.

We want a strong central government not to bully us and not to beat us up, not to keep us down, but a strong central government that can provide the kind of initiatives and imagination that the government of Canada has from time to time, to have helped us share in the Province of New Brunswick the wealth of this country . . . been done through a variety of programs which I think ultimately led to the principle of equalization which I think is one of the great flagship concepts of Canada and reflects exactly what I think the Fathers of Confederation wanted to see happen in this country, to recognize that there are and will continue to be economic minorities in Canada and that those economic minorities, like the language minorities or cultural minorities will have rights as comparable and as equal as possible with those in the majority. So I feel that we want to see a strong central government and we want to be assured however, that from time to time that central government does not . . . powers because of some particular problem to diminish what we consider to be very important principles, and one of course is, as I have made fairly clear in the last few weeks, one of which is the principle of equalization. That principle must be enshrined in the constitution.

There are a number of other concerns which we have and which I look forward to expressing here at this conference and I have a prepared text which is as far as I am concerned on the record. Most of all, I do feel it is important that we do have here at the beginning of this conference a sense which I believe is the sense of the people of Canada. I don't really believe they are asking "Why are we here?" I believe it is really the sense of the people of Canada, a sense of concern that we really do this time make a commitment to be in here, a process

that will not end in failure, will not end until in fact we have succeeded and as long as that takes, as many meetings as that takes, those meetings must be held because we must come to terms with this issue of the constitution. It may not be clearly understood by the person who is unemployed, it may not be clearly understood by the person whose rights from their point of view are being trampled upon, but what is I think clearly understood is that we have not been able to demonstrate yet that we can put this problem or this challenge to some sort of resolution and that is the most important thing that we do here this morning and today, to make the commitment, each one of us, that we are going to stay here until we get some kind of -- make some kind of progress and we are going to stay, be prepared to continue this process until we in fact reach some kind of an agreement.

Mr. Prime Minister, you have indicated that there is a deadline and there is a time frame. I can be as realistic as anyone about what is happening in the Province of Quebec but I want to say that I remember political positions taken by the present political leaders of Quebec. I remember those positions in 1970. I remember hearing them being enunciated in 1970 and I sensed that those positions are not standing up to the reality of the people in Quebec. That is why it is so difficult to understand what the current position is of the government of Quebec and that is why it is so hard I think for the head of the government of Quebec to explain it to the people of Canada.

Each one of their positions as they have taken them have been clear. The problem is, there have been so many of them and they have been so different, and that continues to be the case.

I think, Mr. Prime Minister, that we do not need to deliver to the people of Quebec before the referendum or before the next election, a signed, sealed, finalized document called The Constitution of Canada. What we have to do, and what I think we have done, and I think we are doing right now, is giving evidence that we are prepared in this country to take a new look at Canada and to accommodate the variety of tensions that exist in this country -- not just in Quebec, but in other parts of Canada as well, the kind of tensions that exist in my province, and I think that what we must do is give evidence not just to the people of Quebec, although it is important before the referendum, but to all Canadians, that we are prepared to come to terms with the greatness of our country and settle this problem of our country so that we can get on with settling the continuing economic problems that we are going to have here.

Again, I am here to see to it that we will, in fact, make progress. I am optimistic that we will, in fact, make progress having heard what I have heard so far and having read what I have read so far. We will, in fact, make some progress. We will not get a Constitution signed here in the next two or three days, but we are going to make progress, but what we must make is a commitment also to continue to build on the progress we make by Wednesday, and thereafter as often and as frequently as possible. If it takes six months, or if it takes two years, or if it takes three years, as long as we give evidence that we are making progress we will succeed and we will have the kind of country that I know that the Canadians want, and the kind of country that

everyone around this table wants.

Thank you.

THE CHAIRMAN: Thank you, Premier

Hatfield.

THE CHAIRMAN: I will now give the floor to the Premier of the Province of Manitoba, Mr. Lyon.

THE HON. STERLING LYON: Mr. Prime Minister, when I was preparing for this meeting I could not help but remember another earlier meeting that both you and I attended, although our titles and our responsibilities were somewhat different than now. I am speaking of the historic conference on the Constitution held here in Ottawa in February of 1968. You attended that meeting as Canada's Minister of Justice, and I was there as the Attorney-General for Manitoba. Of the eleven First Ministers here today, sir, I believe only you and I and the First Minister of Ontario attended that meeting in an elected capacity, and in remembering that earlier meeting I could not help but ask: "Are we really any further along after ten years? Have we really progressed in the matter of our Constitution?" And you will not be surprised, Mr. Prime Minister, if I say it is difficult to answer those questions in the affirmative. It is difficult to escape the feeling that we have today in some ways a less promising time in which to deliberate our Constitution, and that the attitudes surrounding this important question are more complicated.

As I listened this morning, sir, to your opening remarks, some of which might be regarded as provocative, I too shared concern with the sense of gloom in which you portrayed the economic and political situation in our country today. I was encouraged to hear you say, sir, that the federal government is prepared to make changes, and I hope substantial changes, in Bill C-60. I was discouraged, sir, to hear you describe them in a manner of what I believe to be case, the way the situation is even in a legal sense, of our country as somehow being in a colonial status.

I think all of us have to ensure that we do not use too exaggerated language, although all of us from time to time fall victim to that very human trait.

You mentioned the communique of the ten Premiers which issued from Regina in August of this year, and for my part, sir, in line with the comment made by the Premier of Ontario, what we were attempting to say there was not the need so much for unanimity in the discussions and in the proposals that were being put forward in Bill-60, but rather we were seeking to arrive at that feeling of contentment that we truly believe is necessary among the eleven First Ministers of this country if we are to achieve that kind of progress that I truly believe everyone at this table wants to leave having achieved.

There are parallels as well, sir, between that conference in 1968 and this one, parallels that I believe we might benefit from examining for a moment. One of the major proposals put before that earlier meeting by the federal government was that Canada should establish a Charter of Human Rights, a written Bill of Rights such as one finds in many countries, including, it should be noted, many countries in which human rights are not much respected in practice, and that that charter should be enshrined in the Constitution to protect their list of so called fundamental rights for all time. When I recall provincial responses of nearly unanimous opposition to that proposal in 1968, I cannot help but feel a sense of *déjà vu*. Those responses were similar in spirit and in content the responses evoked by the renewal of that proposal and to much of Bill C-60, which we dealt with at Regina in August. It was said clearly then that there was

no one in that conference room, as indeed there is no one in this conference room today, who was opposed to the maintenance of human rights in our society, and it was said equally clearly by the then Premier of Alberta, Senator Ernest Manning, among others, that the people of Canada already enjoyed and were assured of more rights than could be encompassed in any list.

There was a sense in that conference room in 1968, Prime Minister, that however charming or however fashionable some sort of charter of rights might be, that it addressed none of our urgent problems or opportunities in Canada, that it had essentially nothing to do with us or with our history as a nation, and indeed that it subverted the attitudes and the fundamental purpose of the supremacy of Parliament. At this stage in our successful history of parliamentary democracy ten years later, is it not equally apparent that to transfer even partially our traditional law-making function from the electorate, or indeed from the people from whom we are appointed, would indeed be irrational? That kind of curious, mechanistic, legalistic habit of thought that led the federal government to suggest a Charter of Rights in 1968 rather than a substantive response to any of our problems in many ways is born again in Bill C-60, and in the summary paper "A time for action", which you have described this morning, sir, as the federal government's vision for Canada, our current Constitution is dismissed because -- and I quote:

"It has little educative value and Canadians find in it little which inspires patriotism."

One wonders, sir, what kind of sterile mind, oblivious to and unrepresentative of Canadian achievements, concocted such an observation. In the face

of such distortions with our past and present I feel obliged to speak for a moment, sir, to the relationship between our history and our institutions in Canada, and may I say that my colleague, the Premier of Nova Scotia, I think, spoke in very eloquent terms of that relationship, and of that history, and of those institutions.

It is important, as never before, for us to look long and hard at where we have been as we work to decide where we ought to go next. When our country was founded in the 1860s there was a conscious effort by those inspired Canadians, the Fathers of Confederation, to incorporate into the very fibre of the new nation attitudes and institutions which have proven themselves able to contribute to the order and prosperity of the community, to offer effective protections for the rights of individuals and to attract and sustain the loyalty of the people who make up our nation. These institutions began with a Constitutional Monarchy which was viewed as the fount of honor as well as the focus of continuity and loyalty for all Canadians. They encompassed the courts and the common law. In Quebec where there was an unwelcome provision of civil law jurisdiction, the Fathers of Confederation quite wisely saw no virtue in discontinuity, and so the civil law remains.

The provision was adapted successfully to the Canadian environment. We evolved certain peculiarly Canadian conventions to assure a balanced representation of geographic and linguistic groups in the federal cabinet, and for more than a century that our country has existed those institutions, sir, have served us well.

That set of practices and institutions, which according to this summary paper, and I quote again: "Have little educative value and little which inspires patriotism," provided us with the framework and saw our country and our people through two great wars in this century in which literally hundreds of thousands of our men and women fought and risked and suffered, and although the bureaucrats that wrote that summary may see little here to inspire patriotism, those people who saved Canada in two world wars believed they did so to preserve democratic freedom in this country. Surely, they have earned the gratitude and the respect of Canada and its government. They have certainly earned an international reputation for steadfast courage in the face of suffering and, indeed, death.

I would say, Mr. Prime Minister, that it would be better if those who wrote the summaries were caused to learn something of the history of our nation and of the sacrifice of the thousands of males born, to say nothing of those sentiments and those loyalties which concern ordinary people in Canada today.

I would say that we have had in Canada a proud tradition evolved from the mother countries of our two founding races enhanced by traditions brought by other peoples who have come to join us and enlivened by the original inhabitants of Canada, the original native Indian population.

We have an effective and a proud sense of achievement, we have proud records of achievement in both peace and war, but the current proposals offered by the federal government, sir, seem to imply that these traditions are nothing more than tiresome and cumbersome and must somehow be removed to permit us

to establish something "distinctively Canadian". I would suggest, sir, that after one hundred years and more of shared experience in this country we have made of our institutions something distinctively our own.

Prime Minister, there is no one at this table who does not agree that it is urgent that we improve our Constitutional rights in Canada, but I suspect that there is no one at this table, sir, who would say that Bill C-60 in its present form makes any significant contribution to that end.

Speaking for Manitoba, Prime Minister, we do not perceive of any way that the House of Confederation will deal with the critical question of distribution of powers. We do not see that changing the historical and acceptable name of the Privy Council will bring us closer to a successful amending formula for our constitution. We can see no connection between the proposed tinkering with the Monarch's role and the critical questions of taxation in Canada today. We see no way, sir, in which establishing the Charter of Rights as a federal pre-condition to constitutional change is in the least helpful in achieving a genuine consensus. Indeed, if the federal government would abandon that irrelevant condition now at this table, it would do much to create a better atmosphere for consensus. May I say, sir, that in abandoning the concept of the Charter, we would then be able to consider what amendments are appropriate to Section 133 to reflect the reality of language rights in Canada today. We need not have a charter of human rights to use as a vehicle in order to improve in our constitutional framework the reality of linguistic rights in Canada today. It can be done by amendment to Section 133. I say this because I believe that we have the capacity to make an effective new beginning in that important process at this meeting. There is no shortage of suggestions for change emanating from the federal and the provincial governments over the last twenty years. While all these suggestions and others which will emerge are helpful, what we most need now is a consensus as to the priority of the items we ought to deal with and the mechanics of the process which we should follow in dealing with it.

In 1976 the Premiers reached a number of agreements about elements of constitutional improvement. Those might well serve as one good starting point for the process, but it seems to me it is critical to set forth our priorities plainly and it also seems to me that the priorities we ought to follow are relatively clear.

Our first priority should be questions of the

redistribution of powers and an acceptable amending formula. As I mentioned, the Premiers were able to reach substantial agreement even on many of the difficult issues and I believe that if we are serious about making progress we have no choice but to begin to address those issues. We have no choice, sir, but to start recognising some basic principles that must apply. The first of these must be that there is no place in this process for unilaterally established deadlines. We are as mindful as you, Prime Minister, that our colleague the Premier of Quebec is planning to hold his referendum in the relatively near future. We are as determined as you to show evidence of progress as quickly as possible but the time is past, sir, if ever it existed in this country, where the federal government could unilaterally direct the content or schedule of fundamental constitutional change. For Manitobans there is no magic in the date of July 1, 1979. I think we must recognise that this process will not result in instant answers. Our expectations of and our claims about the process must be realistic. We are all aware that as the end of a parliament or legislature draws near, the authority of any government to take new or radical initiatives diminishes perceptibly.

Secondly, as a matter of principle, we must understand that the traditions of this country cannot be ignored or denigrated in the process.

Finally, Prime Minister, I think we should be guided by the understanding that the constitutional arrangements we are working to improve have in comparative world terms been quite successful in practice. I would suggest that there must be a very heavy onus on those who advocate change to justify it.

Let me summarize. I am suggesting, sir, that there are five basic steps that we should take to put this approach to the problem of constitutional improvement on a sound and promising basis. First let us agree the exercise we are beginning

again at this conference is not an exercise in replacing a constitution, rather it is an exercise in improving the constitution, a constitution that has proven over one hundred years and more that it works and it works well.

Secondly, let us begin reasonably by deciding here at this conference which areas of that basically sound and successful constitution require change or improvement urgently. Let us pick those matters that we can agree must be changed.

Thirdly, having selected these priorities, let us go through the great mass of suggestions that have accumulated over the past twenty years and let us separate the wheat from the chaff and let us see what can apply or can be adapted to apply to our current problems and our current aspirations.

Fourthly, let us remember that until we have agreed on a procedure for the amendment of our constitution, we can literally do nothing. Let us ensure that that is treated as a concurrent priority in the process.

Fifthly and finally, let us agree that we will put aside items which do not meet the test of urgency or of general consensus and support. That simple series of steps, sir, can be achieved here at this conference and if we do achieve that, if we do set our priorities, if we identify the general areas where agreement may have already been indicated, if we establish momentum toward an amending process and if we agree not to proceed on peripheral or secondary issues that can only serve to divide us, if we can do this with a sense of the value of the constitution we are striving to improve, I believe, sir, we shall have taken a firmer and more substantial step towards success than Canadians are accustomed to seeing from gatherings of this sort.

I would say that only we can set the priorities. These are matters that must be decided, not by officials or by experts, however valuable they may be, but by the people Canadians have elected to run their public affairs. All of us speak for Canada at this table in these constitutional discussions. After

we have taken these preliminary steps, then the rest of the mechanism, the meetings of Ministers and of officials, the research and the analysis, the detailed appraisals of all federal and provincial proposals, these can all go forward, but as leaders of our governments, we are the only ones who can take these first steps.

Prime Minister, we will provide you with some specific comments on the matters raised in Bill C-60 during the course of this conference but more importantly I would say to you that Manitoba is ready to renew our own participation in the serious process that we have been discussing. We are prepared to begin again to work, to find answers for the greatest and most urgent problems that face us. We bring and we sense among our people a reservoir of tremendous goodwill towards all other Canadians, a reservoir of goodwill that should never be underestimated. On the basis of that goodwill I fervently believe we can be successful. At this gathering we will listen carefully to any new proposals that you may have, sir. We will listen carefully to the detailed submissions that some of our sister provinces have been and will be putting forward. We undertake to bring that information back to Manitoba and to ensure its full and complete discussion in our own legislature and of course to make our own proposals as well. We will participate fully in these discussions and in those that we hope will follow.

I would stress, sir, that the Government and people of Manitoba are as vitally interested as I know you and your Government are in maintaining the unity of our country. We will have differences, differences of opinion on various priorities and on matters of substance as indeed I have enumerated some of them today, but those differences, sir, should not be construed as detracting in any way from our fundamental aim of working out a sound consensus among the eleven governments at this table and of achieving the kind of constitutional evolution necessary to our continued unity.

I began, sir, by speaking of that 1968

conference that you and I both attended and there is one other thing about that conference that I think we can usefully recall. I think it is worth remembering the general mood and attitude at that conference and of our country in that year, the year following our centennial celebration. It was a mood of optimism and it was a mood of confidence and the general atmosphere at that conference was one of mutual trust among the governments represented there. At this conference, sir, and in the continuing process that I hope will arise from this conference we must strive to recapture that mood of confidence and optimism and we must work to rebuild that sense of trust amongst our governments in Canada and we must demonstrate our understanding of the fact that constitutions and constitutional arrangements are only a means to the end of maintaining a stable, ordered, prosperous and free society. Sir, we will meet in about one month's time to discuss the economy of Canada and I would suggest to you, Prime Minister, that these two conferences are indeed closely related. In the minds of most Canadians, as other speakers have said this morning, the problems of our economy, of rising inflation and unemployment, take precedence over most of what we are discussing today. That is the fact of life in Canada today. The institutions of Canada are living institutions. The constitutional rules we speak of changing have provided us with the framework within which we have evolved a remarkably successful nation and a remarkably resilient community of people. In the process that I hope will grow from this conference, we have a strong foundation upon which to build. I am confident, sir, that we can achieve the kind of improvements that are needed to preserve and enhance our our unity and the general welfare of our national community.

THE CHAIRMAN: Thank you, Premier Lyon.

The Premier of British Columbia now has the floor. Premier Bennett.

HON. WILLIAM BENNETT: Before getting into our brief remarks which will touch upon the papers we presented to our colleagues in advance of the conference, I would like to take issue with both your historical perspective and perhaps

your arbitrary timetable for we, the First Ministers, to arrive at a solution. While it is true that the First Ministers or governments have been discussing the constitution for over fifty years, as you put it, for a large part of that time, in fact over fifty per cent of that time, the discussions surrounded only an amending formula and it is only in recent years that we as First Ministers and governments have attempted to put before each other the type of detailed package that you have put forward in your proposals and British Columbia has put forward in our proposals and other First Ministers have placed before us for both discussion and decision. Therefore, I believe it would be difficult for any one of us to arbitrarily decide on their own with the weight of material before us, that somehow the discussions have broken down. British Columbia is willing to continue to propose and discuss, and let me say we will continue to meet as often as it is in the interests of our respective governments to conclude this job. Let no one point the finger at British Columbia and say we have been responsible for breaking down the negotiations and it is now time for one government or the other to move unilaterally.

The Government of British Columbia comes to this conference convinced that the people of Canada want and deserve bold and imaginative action to improve the way the Government of Canada and the Governments of the distinctive regions serve them. Goodwill, compromise and a great deal of hard work will be required to establish the basic principles on how this is to be done. You and your colleagues, Prime Minister, have called for this action and we fully agree. My Government believes in the principles on which our federation is based but first, in this unique nation of ours, authority must be shared between the two senior levels of government in such a way that the citizens of Canada can enjoy the most efficient services at the least cost.

Secondly, the federal system must represent the five regions of the country in the institutions of the central government.

In support of these principles, British Columbia is presenting a number of specific proposals.

My government's proposals are founded on the idea that the basic purpose of provincial governments in this country is to develop effective and efficient policies and programs designed for their specific needs. Provincial governments however, must recognize the need for co-operating with a strong national authority in those social and economic programs which bring benefits to all Canadians.

We cannot separate a bad economy based upon uncertainty from problems over national unity similarly based. Confidence in our economic future and confidence in our political institutions go hand in hand. They are inseparable. The feeling of uncertainty about Canada and its future is very clearly having an adverse effect upon our economy. Economic wealth may not bring political security and stability but the opposite may well be true. Much of the institutional structure of this country has an inhibiting effect on our economic performance. Therefore, our proposals are designed to make it possible for the regions of Canada to more fully participate with the national authority in making this country work.

As we discuss today the revision of our constitution, the people of Canada should know that we do not regard this endeavour as a means of serving governments -- federal or provincial. The constitution must serve the people of Canada; it must be the vehicle through which our people obtain superior performance from their governments.

We must not lose sight of the fact that as a result of improvements to our federal system of government, people must receive better services. The disadvantaged must receive better care.

The needs of the Canadian economy must be met more effectively. Canadians must be taxed more fairly.

I believe I speak for the people of British Columbia, and many more Canadians as well, when I say that two basic principles must be followed in constitutional reform. First, we must ensure that each level of government has clear responsibility for those matters with which it can deal in the most accountable and efficient manner. There has been too much intergovernmental bickering, too much insensitivity and too much overlap between federal and provincial programs in Canada. As a basic principle this situation must be corrected through constitutional change. Putting it bluntly, these problems have cost taxpayers too much money already.

Secondly, we must recognize once and for all that Canada is a diverse country. It is made up of diverse regions that are, and must always be, bound together in pursuit of a common cause. That common cause is to ensure that all Canadians can achieve their individual aspirations.

The second principle is, therefore, that our national government must be structured to bring Canada's regions more into the process of national decision-making.

It is these basic principles, and upon careful reflection on the inadequacies of the current system for all regions of Canada, that British Columbia's constitutional proposals are made.

Constitution-making is not the private preserve of any one government in Canada. In order to succeed, all partners in the Canadian family must have a full opportunity to meet, to put forward proposals and to negotiate so that the end result -- a truly Canadian constitution -- is the product of our joint efforts.

We know that there is serious dissatisfaction with certain aspects of Canadian federalism. There are long-standing concerns. They are not related to any particular event nor

are they limited to any one part of Canada.

There are some deep-seated structural deficiencies in the central institutions of federalism. There is a need to review as well, the division of powers.

Too many of the central institutions of federalism are not structured to properly take into account the points of view of the various regions and provinces. Nor is there sufficient appreciation within many of those institutions of the impact their decisions can have on legitimate regional or provincial aspirations.

The division of legislative powers between the two levels of government requires detailed attention. It has been virtually unaltered since 1867 and is therefore, silent on the many technological areas of importance which have come to the fore in recent years. It is out of tune with today's realities.

British Columbia is concerned that we must not adopt a "grab bag" approach on this matter. We must first agree on the principles on which a new distribution of powers would be based before considering powers subject by subject.

There are those advocates of provincial rights who claim that the answer to our problems lies in the wholesale decentralization of powers under the constitution, so as to give a longer list of powers to the provinces and a short list to the federal government. British Columbia does not accept that view. Certainly there are changes necessary to the distribution of powers and more flexibility needs to be given to the provinces in some subject areas. However, there is a danger that too much decentralization of power could result in ten separate states rather than one strong federation.

The more favourable course, in British Columbia's view, is to give regions a strong voice in the national institutions. The result will be that, far from being weakened, the federation will be strengthened, more enriched

and more unified.

In the various position papers which British Columbia has presented, we have made detailed proposals as to how some of our national institutions such as the Senate, the Supreme Court of Canada and major federal boards and commissions, could be changed to better represent the country as a whole.

Perhaps without reading them I could detail what our proposals mean. First of all, in booklet one we outline our general propositions for the constitution with the point that we should not try to codify or put all manner of subjects that could be dealt with by future parliaments and legislatures into a constitution. We should not presume to be wiser today in developing these changes to the constitution; to be wiser than those legislatures and parliaments of tomorrow.

Secondly, in book two we establish consent which we consider is established with the fact that the Senate or Upper House was a House of the regions in the first instance representing what was called the three regions of Canada, 1915 extending to the four regions of Canada. We say that with the realities of today and to give weight to the west who only has one voice out of five or four in the Senate that we should have two out of five and the five region concept which in fact in the geographic and demographic way has been statistically used by the Bureau of statistics since 1926 I believe by the government of Canada.

The other papers that follow deal with the reform of the Canadian Senate which we believe should represent the regions. Let me in talking about British Columbia being the fifth Canadian region, let me not tell you what it is but what it is not because there is a misconception that somehow it means that we are trying to eliminate ten provinces into five regions. That is not our goal. There are historical and political reasons for

our traditional provinces to contribute. The regional concept then is merely for providing that representation in the House where it traditionally was guaranteed representation to counteract the population representation of the House of Commons and that is in the Senate and from that be able to impact on those institutions that we think are so important to bringing the outer reaches of Canada into the centre of developing and dealing with national policy. So paper number three deals with the reform of the Canadian Senate which we will deal with in more detail later in our discussions. Again paper number four deals with the reform of the Supreme Court and again we will be dealing with that in a specific way and paper number five deals with improved instruments for federal-provincial relations.

There are other areas which have been put forward for discussion and British Columbia has responded with paper number six on a bill of rights and how we believe the rights of the people of this country can best be protected and we believe the answer would lie in the legislative capacity of our various houses. Language rights also is the subject of our seventh paper and the distribution of powers is the subject of paper number eight and our final paper deals with the subject that our First Ministers have been dealing with for many years and that is the amending formula and how we can deal with change beyond what we hope to be able to accomplish in these series of meetings that we are embarked upon today.

Now during this conference we will have opportunities as I say to more elaborately detail our positions on these matters. We will also need to reconsider whether we can or should be governed to so great an extent from a national capital hundreds of miles from most of the communities of the country. We need to reassess whether the federal government or perhaps today any government should be involved in virtually every area of our lives. This

process of reassessment will take time but we should begin now.

Restructuring the division of powers along rational lines, clearer language and more definitive terms would lead to lessening the degree of wasteful duplication in government programs and services that now exist. At the present time, there are too many instances of overlapping government bureaucracy between the two levels, lack of harmonization of governments' policies and above all, confusion for the citizens as to which level of government has jurisdiction. A greater degree of federal-provincial co-ordination and harmonization must take place to prevent useless and costly duplication. That is why we have suggested improved instruments for federal-provincial relations.

I want to make a few comments about the process of constitutional review. It must involve genuine consultation so that the conclusions we reach truly reflect the joint views of the participants around this table. Unilateral action is not the way to make constitutions.

Secondly, we must move ahead now.

The time table, I agree, is not open-ended -- but neither ought the time table to be overly rigid. It must be a reasonable one, and I will be saying more on the process of constitutional review later at this conference.

I hope I have conveyed in these remarks the seriousness with which the Province of British Columbia views these discussions. We have come here today to propose national remedies.

We are first and foremost Canadians. It is our wish to remain Canadian and to see our nation grow and prosper.

All regions of this country must play a part in the growth and development of this country, for while we have a centre of power and that centre of power is identified by the federal government, our heartbeat is in many communities and many provinces across this country, and their views, their needs and aspirations must be a part of the decision, the final decision to be made.

THE CHAIRMAN: Thank you, Premier Bennett. I will now give the floor to the Premier of Prince Edward Island, Premier Campbell.

THE HON. W. BENNETT CAMPBELL: Thank you, Prime Minister. I welcome the opportunity to join with my colleagues from the other provinces, and with you, Prime Minister, in participating in this very important conference and a conference of interest to all Canadians.

I now wish to place before the conference the position of Prince Edward Island with respect to the various issues and various items on the agenda for discussion, and while it is not our position

to deal with most of the items in detail, we want to at least comment on some of the major ones in a general way this morning.

Attempts by governments in Canada to renew and repatriate the Constitution have benefited from general public support. Despite lengthy efforts in the past I do not believe that the majority of Canadians doubt that change is possible. Rather, most are convinced that constitutional change will occur, although some may be apprehensive that changes will not be entirely to their liking. A few are concerned that the character of the country will change too much while others strive for substantial and significant changes.

No doubt a majority of those who are observing this process of constitutional review seek greater clarification of where each government stands in order to discern in a broad sense what agreements are possible and what differences remain to be negotiated. This statement summarizes Prince Edward Island's initial opinions on the major issues.

In our view, Prime Minister, it is desirable to have a Charter of Rights and Freedoms included in the Constitution of Canada. Although, the discussion of Rights and Freedoms has not had as much publicity as the proposed House of the Federation or the Monarchy, nevertheless, I am aware that the inclusion of a Charter of Rights has the potential of changing our system to a greater extent than changes in either of the former institutions. I am also aware of the objections by some that the inclusion of a Charter of Rights would challenge the supremacy of Parliament and the Legislatures, and may increase activities in the courts. Notwithstanding

the importance of such objections, I feel that a Charter of Rights is worth these risks in view of the benefits that are possible.

I believe it is a mistake to assume that tradition alone is the best guardian of freedom, especially as our society becomes increasingly depersonalized and adopts more rapidly and completely characteristics of a mass society. With such changes occurring in the fabric of our country, it is conceivable that various groups take action to differentiate themselves or to insulate themselves from change, traditional values and ideas associated with justice and fairness may become redefined. We have seen such processes occur around the globe, even in countries having a parliamentary tradition and there is no reason to assume that we could not experience a similar phenomenon in Canada.

In fact, there are already several examples in the history of our country wherein basic freedoms have been threatened, if not temporarily lost, by the legislative actions of governments. No doubt each of us here can recall examples of laws passed in our respective jurisdictions which encroached upon basic freedoms. In my opinion, had we been guided by a Charter of Rights and Freedoms there would not have been a greater probability that such legislation would not have been conceived, but would not have been passed. This observation must never be construed to imply that Canadians have been poorly treated relative to citizens of other countries. On the contrary, Canadians have enjoyed a great amount of personal freedom. I do feel, however, that it is well to remind ourselves that our history is not entirely without blemish. If freedom is the result of eternal vigilance, then a Charter of Rights will not only assist us to exercise such vigilance, but will also serve as a constant reminder that watchfulness is necessary.

A Charter of Rights in our Constitution would be more than a law. It would become a statement of ideals that could influence the development of thinking of young Canadians and new Canadians. It would be an important source to all who would seek to know Canada and participate in Canadian affairs and it would serve as a guide to all Canadians, assisting them in acquiring and maintaining an appreciation for the basic principles upon which a free society operates.

I acknowledge that a Charter of Rights will not constitute an absolute guarantee of freedom, but I am convinced there is a greater likelihood that rights and freedoms will be respected by our institutions and cherished by our people if a Charter of Rights and Freedoms is enshrined in the Constitution.

These are my general views on the principle of including rights in the Constitution. I would like to comment upon specific aspects of the initial federal proposal, Bill C-60.

Section 8 of the Federal Bill dealt with the equal rights of all Canadians to own property. If a bill such as C-60 were to become law, there is a possibility that Prince Edward Island's legislation regulating the purchase of land by non-residents would be superceded.

Nevertheless, I think it is important to acknowledge, that if Canada is to be more than an association of individual provinces, then all Canadians must share equal rights regardless of where they are born or reside and all must be able to move freely throughout their country without any differences being made because of their origin. Therefore, Prince Edward Island is prepared to consider the proposal that property rights be protected by the constitution.

I hasten, Prime Minister, to point out that Prince Edward Island will not abandon the control of its physical resource base. Farmland, shore frontage, and the unique island landscape are mainstays of the provincial economy and are part of the natural heritage of Islanders and other Canadians. There is no question that such a limited natural resource must be protected. Consequently, Prince Edward Island would definitely maintain powers to control the use of its resources but all relevant legislation and regulations, such as those covering the use of land, could be applied to all Canadians equally.

I want the record to be clear on a further point. Consideration of such a proposal is contingent upon our being convinced that the people of Prince Edward Island would not experience restrictions in any other province other than those laws which are generally applied to all other citizens of Canada.

Prince Edward Island has consistently advocated that Canada requires a strong central government if it is to overcome the natural tendency toward fragmentation caused by such a relatively small population dispersed throughout such a huge area. A strong central government and a strong Canadian identity are necessary if this country is to avoid perpetually categorizing some of its citizens as being less advantaged than others.

There are compelling historical reasons why we cannot, and clear political reasons why we should not attempt to redesign the country into units of homogeneous size. Although some are small, all provinces should be equal and their people have a right to be treated equally in every respect throughout the Nation. Differences in the history of our people and in the scale of our jurisdictions adds a diversity to federal-provincial

relations and to the development of points of view in this country that are as equally important as cultural diversity or any other kind of diversity. (Despite claims by some, the smaller provinces are not over-governed and, indeed, they do work together to take full advantage of economies of scale wherever practical).

But smaller provinces are less likely to have access to great amounts of natural resources and, as long as Canadian wealth is largely generated by selling natural resources, then they can never hope to generate as much wealth as jurisdictions with larger land areas. This phase of Canada's development may subside; wealth and power may shift to other areas of the country. But because we are so diverse there will never be a time when all provinces will have equal wealth.

If nationhood means anything, Canadians must have equal access to opportunity and enjoy national standards for basic services regardless of the rising or falling of the fortunes of the individual provinces. This should be the common birthright of all Canadians and a fundamental principle of the country.

If we are to maintain a strong country and avoid becoming merely an association of provinces, the federal government must have the necessary power to enable it to develop and implement national policies. The Government of Canada must have a distinct presence at home and abroad and all Canadians should, to some extent, feel this presence as well as share a common identity and bond that is characteristically found in a healthy community.

But, we recognize that some segments of Canadian society require special consideration in order to effect changes that more accurately reflect their needs as they mature and develop within the country. Therefore, although Prince Edward Island, with few exceptions, is basically satisfied with the present division of powers, this province is certainly prepared to discuss the concept of the federal government delegating responsibility to the provinces whenever it is thought to be necessary or desirable. There are already many precedents for delegating powers; the criminal justice field, the new Citizenship Act and the Maritime Off-Shore Resources Agreement are but a few examples.

From the point of view of Prince Edward Island most of the recent jurisdictional disagreements are more administrative than constitutional in nature and it is doubtful that problems could be solved by constitutional or other legislative amendments. Regardless of whatever constitutional amendments or agreements are negotiated or however clearly respective powers are delineated, there will never be a substitute for full consultation and extensive cooperation between levels of government.

With regard to institutions, Mr. Prime Minister, the Monarchy is greatly respected on Prince Edward Island and many Islanders feel a personal loyalty and affection towards Her Majesty. Few in Prince Edward Island perceive the Monarchy as inhibiting Canadians to develop and grow. Therefore, it is the position of our government to support the existing role of the Monarchy.

With respect to the Senate, our government is pleased to discuss alternative proposals if it is thought that the Upper House can be made more effective.

I would like to observe, however, that since we feel most difficulties between ourselves and the Government of Canada are administrative rather than legislative, it would seem unlikely that an Upper House of Parliament would be more effective in resolving differences than would the Lower House. Frankly, from our point of view, it is doubtful that any substitute can be found that will be more efficient in solving problems, recently referred to as "intrusions", than face to face consultation between ministers from both levels of government.

If Canada is to retain an Upper House, Prince Edward Island would not be averse to modifying the Senate in order to overcome some of the criticisms that have been identified during its past century.

We would agree that the primary role of the Senate should be to continue to provide a thoughtful second look at legislation developed in the Commons. This is a useful function and, according to its testimony, the Senate's influence has resulted in a large number of beneficial revisions to proposed legislation.

The Senate has also distinguished itself by conducting important and beneficial enquiries which have influenced the attitudes of a large number of Canadians beyond the fields of politics and law. Canada would benefit from continuing to have men of stature who are legally a part of the Parliament of Canada perform such work.

And the Senate acts as a "lobby from within"

in a positive sense, although perhaps accomplishments are not well publicized. Senators, together with members of the Commons, can do a great deal to make the views of their constituents and the interest of their provinces more widely known throughout Parliament.

Given these basic activities, Prince Edward Island would find it acceptable if:

- all Senators were appointed by resolutions of the Provincial Legislatures
- the length of terms were set at five years and each member were limited to two terms.

Prince Edward Island feels that such a procedure would tend to select highly qualified individuals who would be intent upon achieving significant accomplishments during their terms of office, and that legislative appointments would tend to select members with a greater devotion to their native Province than to a specific political philosophy or party.

Notwithstanding these observations, our province is quite open to other proposals and suggestions for the revision of the Upper House.

With respect to the Supreme Court, most proposals for the Supreme Court that are described in the federal bill are generally acceptable to us. We support regional representation and agree with increasing the numbers. It is reasonable from our point of view that judges experienced with the Civil Code should be the ones primarily involved in the decisions respecting the Civil Code. However, we should like to raise a question regarding the Civil Code: since judges having a background in the Civil Code would take part in decisions of cases based on Common Law, would it not be equally wise to have some judges versed in Common Law participate in Civil Law cases? Even though the latter would constitute a minority on such cases, their presence may have an important integrating effect in preventing two bodies of law in this country from becoming increasingly isolated from each other.

My only remaining comment on the Supreme Court is that we do not favour some aspects of the appointment procedure as outlined in the federal bill C-60. We would propose that if all agreed that changes in the appointment procedure are desirable, then we consider referring this matter to a federal-provincial committee of Attorneys General.

Mr. Prime Minister, I want to comment just briefly on the process of constitutional review in concluding my comments.

The process of constitutional review has permitted an examination of differences of opinion between the provinces and the federal government as well as among the provinces themselves. I think it is fair to say that although most differences appear to be federal-provincial in nature, there are occasions when provinces differ more substantially among themselves. I personally would feel distressed if public and honest discussion of these differences were to be interpreted as evidence that our Canadian system were overburdened. On the contrary, it should be clear in the public mind that inability to expose differences would constitute more convincing evidence that our system was not functioning well.

In view of the nature of the differences to which I have just referred, and, since resolution of these differences cannot avoid having a substantial impact on both levels of government, we in Prince Edward Island are of the opinion that future discussions ought to be primarily federal-provincial ones and any mechanism that is devised to continue this process should include both levels of government throughout all stages of the process.

The process of constitutional review involves substantial long term and short term considerations. It is our hope that the long term perspective may remind us that for a great many people the concept of Canada is much more than a tangible

entity, and it is much more than a solution to an economic problem. There are other kinds of union that offer greater economic advantage.

For many Canadians, the concept "Canada" is an ideal that embodies a way of life, an identity, and a camaraderie that cannot be found anywhere else. Such perceptions go far beyond aims of economic advantage; indeed they may compel economic sacrifice.

I believe, Mr. Prime Minister, that the people who founded this country were moved by such a spirit. It is my feeling, and the feeling of many people in Prince Edward Island, that if we possess this spirit in the forefront of our minds and hearts, then the agreements we forge during the process of constitutional reform will certainly be lasting ones.

THE CHAIRMAN: Thank you, Premier Campbell.

Well, we have had a very full morning, three hours of sitting, and I would propose to adjourn now if we have the agreement of the three Premiers who still have to speak on the first item. I see Premier Blakeney nodding.

Then, can we agree to begin at 2:30 sharp. That gives us almost an hour and a half and I would like it, out of respect to the three speakers who still have to speak, that we be here sharp at 2:30.

We will now adjourn until 2:30 o'clock.

The conference is adjourned jusqu'à
quatorze heures trente (14h30).

THE MEETING ADJOURNED AT 1:00 P.M.

FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION

CONFERENCE FEDERALE-PROVINCIALE
DES
PREMIERS MINISTRES SUR LA CONSTITUTION

VERBATIM TRANSCRIPT

(unverified and unofficial)

Afternoon Session

October 30, 1978

COMPTE RENDU TEXTUEL

(non révisé et non officiel)

Séance de l'après-midi

le 30 octobre 1978

OTTAWA

October 30-31 and
November 1, 1978

OTTAWA

les 30 et 31 octobre et le
1er novembre 1978

THE MEETING RESUMED AT 2:30 P.M.

LE PRESIDENT: Alors à l'item un (1) de l'ordre du jour, nous avons encore trois premiers ministres qui n'ont pas pris la parole. Et je commencerai par reconnaître le premier ministre Blakeney .

HON. ALLAN BLAKENEY: Thank you, Mr. Prime Minister. I would like to start by making a couple of comments on some previous remarks. Let me say that I don't think that it would be particularly productive of us if we attempt to apportion praise or blame for previous failures. I know that all of us can identify areas where others may have been at fault with respect to previous failures in arriving at agreement. We should perhaps not be quite so quick at identifying our own responsibility. I think it is not too productive to dwell on that.

I think I agree with Premier Hatfield that, however much the metaphor may do violence to the game of tennis, the game is not in the Prime Minister's court or in my court, but the ball is in eleven courts and we really must approach this effort at constitution building with the knowledge that each of us has a responsibility and that we cannot divest ourselves of that responsibility by indicating that the ball is in somebody else's court. I wanted to say a word or two on the remarks of the Prime Minister of Quebec because they seem to me to contain a perception of Canada which I do not share. He indicated that, let us say, only in Quebec and the Quebecois feel they are a majority. I think it is clear, it is self-evident but not awfully much more helpful than if I said only in Western Canada can westerners feel they are a majority and that also is equally self-evident. What I am trying to say is that there are more than one, there is more than one majority and more than one minority in Canada. True there is a majority of Anglophones and a minority of Francophones and that is a reality, but there

are other realities. When I grew up in the Maritimes we did not distinguish between Quebec and Ontario. It was all Upper Canada and it was all the majority and we were the minority. Now that I am out in Western Canada, most westerners do not distinguish between Quebec and Ontario. It is all "the east" and they are the majority and we are the minority. So there are the geographic majorities and minorities which are every bit as real in Canada as the linguistic minorities and majorities. I think we must approach it on that basis. I think I will say some more about resources in a moment, but when we see taxes on resources which we think are unfair, we see the fruits of those going to Quebec and Ontario and we don't distinguish between whether it goes to Quebec or Ontario. It is all that group of people and they represent a majority of which we are a minority. I merely mention this because it is not fully productive to analyze Canada only as one majority-minority situation. There are several; indeed there are many. It is a part of the truth but in being only a part, it is distortion of the reality of Canada to categorize the country as simply only one minority and one majority situation.

I want to continue by making a few simple statements about why we are here today and what our objective is.

We are trying to fashion a constitution for a united Canada. We are trying to "strike a bargain for a better Canada." We are not trying to remake Canada. That cannot, and need not be done.

The hard, but exciting, reality of Canada is twenty-three million people sharing the north half of this continent, bound together by more ties of kinship and common interest than we are sometimes prepared to admit - a people who have done a great many things in the past and can do great things for the future together.

Our chief weakness in the past, and perhaps our chief weakness today, is that we don't like to talk about what we have done together as Canadians and in the same way we

don't like to plan or to talk at least about our plans for the future together. It takes an Expo 67 or an Olympic Games or Commonwealth Games to make us conscious of the pride we feel as Canadians and of the strong bonds which bind us together.

A good deal of the time we revert to our patented parochial pastime of talking about our differences.

There are differences there - no doubt about it. Certain facts about Canada are inescapable. Consider language, and I know Premier Levesque put considerable emphasis on that. For more than three hundred years the land that we now know as Canada has been a land of two languages and it still is. That is a reality of Canada and I say to those Canadians whose normal tongue is French that you cannot favour Canada and oppose English. That is like being in favour of the arm but opposing the elbow.

In the same way - I say to English-speaking Canadians - you cannot favour Canada and oppose French. That is like being in favour of the elbow but opposing the wrist. Both language groups are, and always have been, essential parts of Canada. All this may seem to be self-evident but it is sometimes forgotten by those who oppose English or French. They sometimes forget that they are thereby opposing Canada, the Canada that is. They forget because they think that they can take Canada and make it over to suit their own desires, but that can't be done. Three hundred years is a long time and three hundred years of history can't be gotten around.

Or take our geography. If our cultural history has shaped our linguistic character so our geography has shaped our regional character. This string bean country of ours, which consists of a few groups of population strung out over more than three thousand miles east and west, with some bulges to the north and a few blobs in the far north, must have - a country like ours must have a strongly regional outlook and indeed it does. It can't be otherwise. That may change and I hope it will as we develop a stronger and more secure national identity, but until it does, our constitution must reflect the

hard reality of regionalism.

I would like to point out, Mr. Chairman, that Saskatchewan reflects many of these regional and cultural realities. We have a French community in Saskatchewan although it is small and dispersed. We also have large numbers of other ethnic groups, Germans, Ukrainians, Polish, Chinese and others. We have one of the largest groups of Metis people in our population, the largest group of any province in proportionate terms, searching for a place in Canada. That is a reality that they might share with the rest of us. Our cultural heritage is in many ways a representative microcosm of Canada. Out of proportion in some ways but strongly representative of the regionalism that is the reality of Canada. There is another reality too. I have touched upon it, the reality of our original peoples, the Indians and the Inuit. Our constitution must reflect - more clearly than it does now - their special position in Canada and their special relationship to the Federal Government.

Or take world economics. In terms of world economics, our economy is small. Measured against the economies of the United States or the Common Market or the Eastern Bloc or Japan, we are tiny, tiny and vulnerable. If we are thinking about our economic well-being, we will not flirt with slicing our economy into even smaller fragments.

If I may summarize then, we are a proud people, we speak two main languages. Our citizens include this land's original peoples, who have special claims upon us. We have our national origins in many lands. We have strong regional loyalties and a need for a strong central focus for our economy. And now we are a people somewhat unsure of our destiny together.

We are gathered here to see if we can make our constitution reflect a little more clearly the realities which are Canada - to help forge that future we want - to strike a bargain for a better Canada.

I am here today with a strong sense of being here before. On many occasions over the years we or our

predecessors have met and talked. The results have not always been impressive. We have had indications of our earlier failures.

At times it seemed that a good deal was going to be accomplished. The meetings culminating in the Victoria Charter of 1971 came close to overall agreement.

The Premiers of the provinces as a group have worked diligently. Recently they have taken major steps to establish the boundaries of necessary and acceptable change. I refer in particular to the consensus reached by the Premiers in Toronto in October, 1976, where wide-ranging agreement was reached on a variety of difficult issues. That conference was followed by a meeting in St. Andrews last year, and in Regina this year, where further progress was made. As Chairman of this year's Premiers' Conference, I can report that all provinces, including Quebec, engaged in the kind of frank discussion and hard bargaining which leads to some optimism about us being able to resolve the constitutional issues which remain outstanding, that leads me to a feeling of some confidence that a new bargain can be struck.

And a new bargain is essential if we are to resolve the serious tensions that all of us have felt.

Take resource management and resource revenues. As we in Saskatchewan see it we are under sustained attack -- and I use those words with care -- sustained attack -- by the federal government.

Mr. Chairman, I mentioned that I had the feeling of being here before. And that is doubly true of the resource issue. At the First Minister's Conference in December, 1976, I spoke of a "systematic and deliberate attempt to destroy, through court action, the provincial rights of resource ownership". I spoke of the remarkable and unprecedented step taken by the federal government when it joined Central Canada Potash Company as a co-plaintiff in a court challenge to Saskatchewan's potash prorationing system. I mentioned the unilateral federal move to make provincial royalties non-deductible as an expense for corporate income taxes, noting that the federal government continued to permit deduction of royalties paid to the CPR or to the State of (say) Montana but not to the Province of Saskatchewan. "The federal government," I said then, "has repeatedly challenged the rights of the provinces to control and receive the benefits from the resources they own".

Just over a year ago I stated our position with some force in a brief to the Task Force on Canadian Unity. "Confederation was a bargain," I said, "which had some advantages for us. But lately the advantages have become harder and harder to detect, as one after another the well-understood agreements are abandoned or attacked." Speaking for all westerners, I wondered why the public revenues from oil should be shared on a national basis, for the benefit of all Canadians, but not the revenues from other commodities. I asked why exports of western oil should

attract a federal levy, the proceeds of which are shared with other Canadians, while exports of hydro-electricity from Ontario or Quebec enrich those provinces alone.

Niagara Falls for decades. Baie James today. Producing hydro power, some for export. Is anyone talking about export taxes? Is anyone suggesting that Ontario Hydro or Hydro Quebec should not be able to set the price?

I have spoken frequently and frankly on this subject, in a variety of forums. So have other Premiers, and when the Central Canada Potash Company brought suit against Saskatchewan, we found at our side the Attorneys General of Alberta, Manitoba, Quebec, New Brunswick, and Newfoundland. We found on the other side, as a co-plaintiff the federal government.

At times I ask myself the question, "Are we being unreasonable on the resource issue? Shouldn't we compromise? Don't the arguments about sharing the wealth of regions with all Canadians have some validity?" The answer to those questions always comes out yes and no.

Sharing the wealth of the country is something that we have always believed in. We're willing to share. We've been the recipients of equalization in the past; we hope to be donors in the future, and we support wide taxing powers for the federal government, to redistribute wealth among individuals and regions.

If more money is needed, then more should be raised -- but on the basis of ability to pay. As we gain wealth from, say, oil we should pay more. But we should pay more because of the wealth, not because of the oil. If others have wealth from hydro power or banking, they should pay too, according to their ability to pay.

Financing our federation is something that must be done by all sides in a fair manner, not by singling out for special federal levies the particular resources of a specific region.

When resources were transferred to the western provinces, it was with the clear understanding that resource revenues would become a "cornerstone of provincial finance". That is a quote from the statements of the day, that it would help to cushion the boom-and-bust cycles of our farm economy. That has happened. Out of Saskatchewan's abject poverty and despair of the depression years as Canada's poorest province, we have been building -- building a stronger economy, a more stable society. Building with resources. It's been a long haul for Saskatchewan and as it appears to us just as our standard of living begins to approach the national average, the rules of the game are changed, the guns are trained upon us.

It is remarkably difficult to get one's self in the right frame of mind to work out a compromise agreement with someone who is pounding you with a club. And that is how we in Saskatchewan feel respecting the resource issue. We are prepared to compromise on many things. We are prepared to strike a new bargain if it leads to fair treatment for all, with rules that are understood, that apply equally to all and that are not changed unilaterally.

We in Saskatchewan have put our proposals before the federal government as one provincial government. We as ten Premiers have put forward our proposals to you, sir, as ten provincial governments following the Toronto meeting. We seek and are entitled to a response in substance. This issue is of crucial importance to Saskatchewan. I will raise it again.

For now I will move to the broader issues before us today. Let me say at the outset that I believe it is extremely important that we reach some agreement in principle at this conference. The people of Canada are becoming weary of conferences of what they see as too much talk and too little accomplishment.

There is another reason why some progress is, in my view essential. Canada is in deep economic trouble. We all know only too well the problems. Unemployment, rising prices, the rest. I believe that one part of our problem is uncertainty over our political future, the point raised by the Prime Minister this morning. To put it simply: The constitution is a bread and butter issue. The reverse is also true. If our economy improves, so will our prospects for national unity. But that does not alter the fact that if we make swift and solid progress on constitutional matters we will help Canadians to find jobs and earn their living. The constitution in that sense is a bread and butter issue.

Let me say what I believe most people will agree with. There can be no substantial rewriting of the constitution if we avoid real issues surrounding division of powers between federal and provincial governments. There are real tensions in Canada. They are not about whether the Bill of Rights should be entrenched or whether it should remain statute law. That is not a point of tension in Canada nor who appoints Senators. That is not a point of tension in Canada. The tensions are there because we as Canadians no longer know what the Confederation bargain is.

That bargain is what must be restated and it will not be done in one stroke. But I believe that there are areas where agreement can be reached, where a new bargain can be struck.

It seems to me that while public discussion continues on some of the newer topics raised, for example, the place of the Crown and the Monarchy or the future of the Senate we can make real progress on a short list of items. Among these I would include:

Communications and some aspects of culture where I believe we could get a wide measure of consensus.

Resource taxation management where I think we may find some compromise arrangement.

Language rights which I know are of considerable concern to many people around the table.

Delegation of legislative powers among governments, particularly to meet the overlap problems identified by the Premier of British Columbia.

The Supreme Court or some other constitutional court.

Entrenching the equalization principle which is something we have talked about - but which I think is a matter of some importance to some provinces and possibly an amending formula. Following that I am not saying at this meeting.

In all these areas I believe compromise solutions are possible, solutions which will convince Canadians that the federal government is not wedded to the status quo, that provincial governments are not wedded to the status quo and that serious regional concerns can be met, that linguistic rights can be protected and that we can do all of these things and do them soon.

I suggest that we do now what we can do now. We for our part are here to work, we are here to compromise if necessary. In short, we are here, Mr. Chairman, to strike a bargain for a better and stronger Canada.

THE CHAIRMAN: Thank you, Premier Blakeney. I will now call on Premier Lougheed for the Province of Alberta.

HON. PREMIER PETER LOUGHEED: Thank you, Mr. Chairman. I would imagine like all other First Ministers here today we have been thinking quite a bit about this meeting and certainly in my mind there came three basic questions as I approached this conference. The first and obvious one: What is it going to be that we are going to try and accomplish? Secondly, we are here as governments and government leaders and how are the people of Canada individually going to be affected by what we discuss and deliberate here and, thirdly and I think appropriately in terms of the results, the implications upon the Province of Alberta and its citizens whom I have the privilege to represent.

When I look at the first question, Mr. Chairman, I do feel that since we are here with the objective of creating unity and harmony it is very important that we approach it with a view that we recognize there are differences, different perspectives and different points of view and that it should not be a putdown of provinces in any way that we do hold to diverse views. It is a very natural part of the Canadian fabric.

I think it is important therefore that we, recognizing our diversity, strive for harmony and strive in a spirit of goodwill recognizing we are going to be approaching these points in various ways with different perspectives and that is what Canada is to me all about.

Now I have noted in my remarks, Mr. Prime Minister, that we are beginning in the search for this consensus and I must admit my puzzlement this morning when I was told we had failed for 50 years and I have now been seven years Premier of Alberta and am getting to be I think more senior than I was when I started. We have been here, I think I feel like I have been here before a lot in seven years on economy and on energy, on fiscal arrangements and many other subjects and yet this is the first meeting we have

been at on the constitution. So to really look at it in that sense, I think the perspective, surely, fairly, has to be that we are here trying to develop a beginning in terms of the post-1971 period of constitutional arrangement.

I guess I was the one who started this analogy with regard to tennis here. This is not my game, I have knocked myself over the course of the luncheon break that really I am not going to use that analogy again. I am going to suggest, Mr. Prime Minister a phrase we usually use in a sport we are a little more familiar with and that is when in doubt punt. I think you have suggested ...

THE CHAIRMAN: First down,

HON. MR. LOUGHEED: Yes you get a first down. I think I suggested, Mr. Prime Minister, that the ball was in your court to produce a third option and my only concern -- I should not say my only concern but my main concern would be the half serve that I thought we received in June was that it did not deal with what has been discussed by other Premiers, the question of the distribution of powers, although we are dealing with it now and you concluded your remarks by saying "the ball is now in our court." I would say and I think you would fairly respond because you referred to it that we followed back with 29 points of recommendations so perhaps as Premier Blakeley said we can leave the analogy aside and say that the ball is in all eleven courts.

Yes, we will get to that. So, I looked at it secondly, Mr. Prime Minister, from the standpoint of the individuals and I know the other Premiers have put it well -- yes, it is important, very important we deal with matters of national unity, but the citizens at large are concerned with the sluggish economic climate in most of the country. We are going to meet four weeks from today and, yes, it is interrelated. I accept that. Very much the view of public confidence around the world with regard to Canada creates a need to remove some of the doubts that we have, perhaps, projected in terms of national unity, but I don't think it is fair to say -- and I know you were not really suggesting that -- simply by dealing with the constitutional problems we are going to wipe away the economic ones, and Mr. Davis, I think, very appropriately dealt with that matter. But in meeting these needs and aspirations of Canadians, surely, Mr. Chairman, we have to recognize that there is widespread dissatisfaction with the federal system, not just in Quebec, as it is working today, and these are coming from the Western provinces and the Atlantic provinces, as well as from Quebec.

I have a note in here that I can't resist saying. It says that, "Ontario readily admits it has been the chief beneficiary of the 1867 Confederation bargain --- "

HON. BILL DAVIS: Mr. Chairman, I never said that.

HON. PETER LOUGHEED: The current Treasurer of the Province of Ontario --- Mr. Chairman, these feelings of dissatisfaction, as you know, and most Canadians know, in Western Canada were crystallized and, I think, fairly well articulated at the Western Economic Opportunity Conference you referred to in July of 1973 in Calgary. I thought at that time that it was an

acknowledgement on the part of the Federal Government that the West had legitimate economic aspirations within Confederation. I have to, frankly, say today and will emphasize four weeks from today our disappointment with the lack of progress.

I am thinking about the conference and I am now convinced not only our economic adjustment is necessary, but it is becoming even more apparent that constitutional as well as economic adjustments are required from our point of view in the West.

I recognize, Mr. Chairman, from the fact that I have been there now for seven years, that Quebecers are concerned with the preservation of French Canadian language and culture. More than that, they desire a greater control of their own destiny to be centred in Quebec City rather than in Ottawa, and they want to be recognized as having a distinct identity. I and fellow Albertans understand and appreciate that. On the other hand, I am confident that those aspirations can be found and realized within the context of a flexible Canadian federalism.

As far as the Atlantic Provinces are concerned, Mr. Chairman, they too have legitimate grievances within Confederation. My mother came, as I mentioned to the Premier of Nova Scotia, from Halifax and I have an empathy for that part of our nation. I understand and our document reflects the very fact that the whole issue of regional disparities and equalization could be enshrined in this Constitution, and there is a reflection of the views, I believe, of Albertans in that regard.

I suggest though, Mr. Chairman, that the real cause of many of these feelings of alienation is one in which we differ. We differ because from our point of view we are a nation of large area and small population where the practical and important decision making is hard

to centralize. In our judgment, as an Albertan, looking at our history and recognizing our current prosperity is so much the result of rapidly depleting resources, we feel very strongly that there has to be an adjustment in our Confederation that gives more strength to the various outerlying parts of Canada and an opportunity to participate fully in the mainstream of Canadian decision making, and for that reason make no apologies about our position as presented here. A feeling the people can look at our province and other provinces to Provincial Governments that are strong and strong enough to stand, and withstand at times, the pressures of the obvious political voting concentration that emanates from the central provinces.

I look next at the question of how this conference affects the people of Alberta. We debated our position paper in the legislative assembly last week. We presented it to give Albertans -- before we came here -- an opportunity to see the positions we were taking, and I am confident that the clear majority of Albertans support the positions we are taking on behalf of the people of our province. We just haven't felt -- I said it on many occasions -- that history, when we look at it, has adequately accommodated our aspirations, our desire for diversification, our hope to avoid reliance on depleting resources to get away from the economic concentration of decision making in that so called "golden triangle" in Toronto and the so called "National policies" in Ottawa.

It is not just a matter of freight rates for Albertans, it is a matter of concern for federal policies in a multitude of areas. We think, when people argue with us, Mr. Chairman, and they say: "You know, YOU are taking a position that you want strong provincial

governments, and you are saying that Canada is far too centralized", and they ask, for example, you know, there are a lot of pretty good ones. I remember, Mr. Chairman, being at your house for a delightful lunch on Thanksgiving Day, 1975, when we were told -- and I think it is fair to say -- we were told we were going to have wage and price controls for all Canadians that night and that was control over the lives of every citizen in this country for a significant period of time, the wages and prices of all Canadians, and a court appointed by the Federal Government confirmed the judgment that the Federal Government could do that, and I believe it was a unanimous judgment. I think that means a very centralized country in terms of decision making, and I don't think there can be a better example than that.

The concerns have been expressed by the Premier of Saskatchewan with regard to some of the other moves in resources, which I won't repeat. I do want to say though, that the provinces have worked on these matters and we have our differences, but in every one of the Premiers' Conferences in which the subject has come up they have expressed concerns, Mr. Chairman, about federal activities in the provincial area of ownership and management of natural resources. Mr. Blakeney quoted the phrase -- I was going to quote the same one -- "The cornerstone of the financial strength of the provinces in the West and the depression, recognition, and feeling we have, the feeling that now, yes, we have some prosperity" even though, as I mentioned, it is not really anything other than precarious, a recognition that resources can provide us with an answer and, surely, it is important for Canadians to understand why we lay such an important emphasis on the provinces through their elected provincial government having truly the opportunity to manage those resources in a way that will strengthen their economies.

Perhaps we can find some common ground tomorrow, Mr. Chairman. There is an argument over the question that resources have to be utilized in terms of after the province has utilized them for their needs within the province, that this second call upon them has to be for all Canadians, and that is accepted, but that doesn't mean that on that basis there is a way in which the Federal Government can in the guise of moving towards that, move into what have been traditionally the ownership and management responsibilities of provinces. I share with the Premier of Saskatchewan my deep concern in that matter.

We, therefore, have come up, Mr. Chairman, with this extensive paper which we presented in some cases very firmly, and in some cases as ideas, and in some areas as measures for discussion. We present it as a view that we hope will be useful in terms of the discussion. They come out of our feelings for six principles as to how we look at the Constitution of this country.

The first one is that the Parliamentary system served us well and, surely, it has to remain the basis of our system of government. I think if there is one thing that is clear by eleven governments here, that principles of Constitutional Monarchy must be retained, but next that the provinces are equal in the constitutional and legal sense within Confederation.

The next, that strong provinces with a strong federal government make a strong Canada; and next, that within each sphere of jurisdiction, one is not subordinate to the other.

Finally, a respect between the two orders of government. The first two, Mr. Chairman, underline our commitment to responsible Parliamentary government and, frankly, I think it has worked on balance well in

this country and that the people are responsive in terms of their elected representatives. I think it is something of which we can be proud that we have taken this huge country, brought in a parliamentary system and a federal state and made it work well for us. I don't think there could be any underlining of this traditional form of government and, with respect, I don't see how we can delegate from elected institutions to non-elected institutions.

Within the other principles we come to one which is, that all provinces are equal in a constitutional and a legal sense within Confederation. No first and second class provinces, in our view. Mr. Chairman, I thought about it over the lunch hour and I was most concerned that when we discussed on prior occasions the matter of the Constitution, and when I read your document, "Time for Action", in the spring there was a recognition that we would have other priorities than the amending formula. I may have misunderstood your remarks this morning, and I hope I did, but I felt that there was almost -- I would be pleased to be corrected if I am wrong -- an implied threat that the pressure will come by the imposition of an amending formula whether some provinces like it or not, an amending formula that is contrary to the position passed in the Alberta Legislature, 67 to 1, which is to the effect that the rights in the ownership of resources by a province -- I look at a Constitution not in two or three years, but in terms of many more years than that -- that they could be taken away simply because that province was small in population.

I just cannot find that an acceptable part of a concept of the confederation that would develop in terms of provinces and/or the provinces are equal and we feel, as I know you know, very strongly about that.

I want to conclude with some observations about strong provinces and I looked for a quote and I was surprised where I found the quote. It was by the late Prime Minister Lester B. Pearson in *Federalism for the Future* and it states, and I quote:

"(We) are committed to the view that Canada requires both a strong federal government and strong provincial governments. The field of government is now so wide and the problems of government are so many, that it is not a contradiction to speak in these terms."

Mr. Pearson went on to make another important point:

"There is another reason for achieving a balance between the powers of the federal and provincial governments: the freedom of the individual is more likely to be safeguarded if neither order of government is able to acquire a preponderant power over the citizen."

And I suggest that that quote is most applicable today.

In conclusion, Mr. Chairman, our position in Alberta is unequivocally one of strengthening the provinces in Confederation and we will have a stronger Canada if we do so. What is Canada? In my judgment it is a model for the world and I am bothered as I know you are with the press on this and that at times. I do feel truly optimistic about our country. It is a country with so much and the economic potential to be so much more. It is a country of relatively few people who by an exercise of will and determination have met challenges that are thrust upon them by this vast land and yet have retained a spirit that I saw in the Commonwealth Games in August, the spirit of Canadianism that is there and is felt very deeply by our young Canadians everywhere. Our essence though is our diversity and from this diversity comes Canada's strength and

the diversity reflects in many ways including a mode of cultural society, recognition of the two basic ingredients of our country in the French and the English, the native people and the role they play.

Finally just one point, Mr. Chairman. It has been raised, and I would like to respond. It is a question of who speaks for Canada within Canada. With respect I suggest we all do, Mr. Chairman, no one of us alone, not just the Premier of Ontario or Quebec or Alberta and not just the Prime Minister of Canada for this is not a unitary state as some would for convenience, wish it to be: Canada is a federal state, always has been and will continue to be and difficult as it may be because it is a partnership between diverse provinces and the federal government, it is not a limited partnership: it is an unlimited partnership of unlimited opportunities if together we can sustain the will of our forefathers and our pioneers to create out of this vibrant diversity a new federalism.

Thank you very much.

THE CHAIRMAN: Thank you, Mr. Lougheed. We will now finally hear from Premier Moores of Newfoundland.

HON. FRANK MOORES: Thank you, Mr. Chairman.

First of all, after listening to the ten spokesmen before me from the nine provinces and central government, I think there is very little to be said in detail of what we are going to be talking about which we will be dealing with in detail over the next few days.

There is one thing that becomes very obvious and that is irrespective of any positions that are taken by any of the individuals but the purpose of what was to be achieved is one that I think we all want to achieve for a better country. The Province of Newfoundland welcomes the opportunity to express its views on our constitution and the possible changes to it. Certainly we approach these discussions positively and in the spirit of cooperation. While any constitution essentially forms the basis from which source,

political and economic activities spring, not all the forces currently being felt in our nation are caused by the problems with our constitution.

Sir, I would suggest in any free country a constitution will only work if there is a collective will to make it work and even the best-conceived set of constitutional arrangements will fail if there is no underlying spirit of cooperation. What we have to do is to agree to make it work. How far we can go and how fast remains to be seen. However, sir, I am tabling what was our opening statement which deals with all the issues that have been raised such as the Monarchy and the reform of the Senate, the Charter of Rights, the Supreme Court and so on, but also I would like at this time to make a few remarks on what I have observed on the various speakers as discussion took place today as well as a few more parochial remarks, I suppose, as far as Newfoundland is concerned. I make them only in an illustrative manner to demonstrate or illustrate what I am talking about.

First of all, I think it has been said by several Premiers today that Canada is a divided nation. Now, whether we are a divided nation because of language or culture or because of economics or because of geography, as has been said, remains to be seen but the fact is, sir, that in my opinion, it will take a substantial change in attitude, will take a great deal more of flexibility and understanding of us all if we are to come to any meaningful conclusion. I also think that when we deal with the constitution we have to deal with it in a comprehensive sense, dealing with all the issues and not just those which are convenient to arrive at a solution on, but also to set up a mechanism for those more difficult aspects of it which we will have to deal with in the future and which we should set up a mechanism for and will continue to deal with.

I would draw your attention to the unique

position which my province holds in the context of the constitutional talks. We have a unique authority, I suppose, respecting the background that we can bring as a very new province of Canada, but by far the oldest community on this continent. We assert this position once more, not just to press for enhanced representation and authority but because we have indeed learned some valuable lessons which I would like to share with you. The Province of Newfoundland and Labrador has been called the Province of Extremes, and I think that is probably a correct expression. We are indeed the oldest community in the country, we have in this generation made the decision to join Confederation. It has been argued that we have gained the most materially from the equalization system, have gained the most materially in the standard of living of our people and the services available to them. We have lost the most as well. We have lost the Hydro Electric revenues to our neighbouring Province of Quebec and their reluctance to renegotiate that contract is probably one of the greatest violations of the spirit of Confederation as we have seen it to date, the greatest loss of all of Section 32 of Bill C-60, If Bill C-60 goes through as it is, and if the federal government has its way, it would be the loss of Newfoundland's offshore resources because they are in that particular bill - I am not talking about this for confrontation purposes, but the explanatory note says that this section would make it clear that Canada includes some territory that is not included in any province at all, such as territory other than territorial waters of Canada.

Some time ago both levels of government, our province and the provincial government and the federal government agreed to refer that particular dispute to the Supreme Court. Well, I looked at Bill C-60 and I thought that maybe at least one section in Phase 2 had slipped very quickly into one section of Phase 1. The fact is that that sort of misunderstanding, that sort of lack of consultation is the sort

of thing that has brought strains that are, in my opinion, unnecessary. Above all, we were conscious that in linking our destiny with yours in effect we were putting a risk on our heritage. It was not, therefore, without misgiving that we accepted the inevitable diminishment of our sense of identity and way of life. I am sure no one here, whether it be a confrontation as to what a separatist thinks when he leaves his province he is flying to Canada. That is still a unique feeling that we have in our particular province.

When we talk of Confederation as our economic salvation, as indeed it was for many have-not provinces at that time, it is interesting to note, however, that we enjoyed a surplus of \$40 million at that time, a quaint notion when we considered the deficit we had. Economics are more satisfactory since then.

Now fortunes of the provinces have changed. We are looking forward to an era of economic upsurge. We could not even have a match in 1949. It has become evident so quickly perhaps that we have not yet had time to adapt but the whole economic balance of power, and therefore to a degree political balance of power in this country, has changed and to be honest it has more than a little to do with why we are here today. Provinces like ourselves and even Alberta until a short while ago, were used to manoeuvring to Ottawa, looking for whatever hand out was available with cap in hand, if I may use that phrase, but are here today to find their rightful place in Confederation. Having all that though, it behooves us to adapt, to learn from other situations, to arrive at a new understanding which may or may not imply constitutional change. The understanding we would all agree will come well before the change and it is the first stage that I would principally seek to deal with.

To provinces like ourselves already and soon to be have-provinces, I would, if I may, offer a sobering thought. If this experience is to teach us anything at all,

it should be that if things have changed, they will change again. If one thing is certain, it is the fact that uncertainty will follow and to have or not to have will be less a permanent condition of this country in the future than it has been in the past. So let us not allow our new-found prosperity, no matter where it is found in Canada, to lead us to make our neighbours less equal in fact or in formula. We in Newfoundland have depended for centuries on a non-predictable harvest, have learned in the hardest of schools the value of interdependence. The successful fishermen in our province have been expected to go to the rescue of the less fortunate neighbours, and that interdependence, that sense of enlightened self-interest was the principal background of our survival centuries before the first sod was turned on the Prairies or the first step by a white man in Upper or Lower Canada or even before the three political parties represented at this table.

It taught us an economic lesson that our sense of general sharing was a valuable thing. We hoped to find the same values in the larger family we joined for better or for worse, for richer or for some of us, for poorer. In line with these observations, my comments today fall naturally into two parts, first, the health of our political system whether one is concerned with our written or unwritten constitution plus with the accountability of government to the people and to the nation as a whole.

Second, the provinces should share with each other in the spirit of the constitution to the advantage of all.

Allow me first to deal with the concept of accountability and at the same time introduce the issues which Newfoundland considers paramount in constitutional debate. The foundation of our political system rests with the feeling of the citizens that they have access to government and that through their franchise they can effect change in the system. One Canada will readily forgive Newfoundlanders for their feeling regarding jurisdiction over control of the fisheries and I only use that as an example. This industry which our forefathers have prosecuted for 500 years is the very reason for Newfoundland's existence. Yet decisions made daily concerning its future are arrived at independent of input by the province. Regardless of these decisions Newfoundlanders are frustrated and confused by the fact that this vital industry is controlled by a government to which they have little access. Our seven federal seats I would suggest do not carry the necessary weight to effect change in government policy over an industry which is our economic cornerstone.

The fact is, sir, that we have to have identification of our regional differences. We have to have identification of our regional aspirations so that there is a true co-operation whether it be in a constitution or whether it be by agreement but most of all there has to be understanding. Government is and should be largely accountable for the conditions of the fishery. We require the tools with the consultation to execute our responsibilities. This is certainly not intended to weaken the central government but to place in the hands of the people the power to influence those things which are important to them. The common perception that government has grown too large, that we are over-regulated, that government is unresponsive can be traced to this confusion in the mind of the citizen as to jurisdiction and who is responsible. A more efficient democratic system would place

more responsibility and consequently more accountability in the hands of the more accessible authority. This concept while it would appear to weaken the central power would in my opinion in reality make it much more effective. A weak central government could not have instituted national programs nor created the equalization concept or could in fact have created this very diverse nation even to the stage we are today. It is a readjustment of roles which we seek and clearly I guess the recent voting trends would more or less confirm that -- the exclusion of Newfoundland from decisions regarding the fishery are as unhealthy to the national fabric as the exclusion of Saskatchewan from decisions concerning potash and Alberta on issues related to oil and gas. Responsibility for the fishery which is the essence of Newfoundland's being must rest in the main with the government of the province. Constitutional change may or may not be necessary to bring about this shift in responsibility but in itself it is sufficient to create the spirit of change being demanded throughout the country on a variety of important issues.

This leads me to a second part of what I want to say which concerns our views on the spirit of the constitution and reflects our position once again giving examples such as use of offshore oil and gas and hydro developments. Newfoundland seeks control of the south shore petroleum because we recognize the immense social, cultural and economic impact this resource will have on our province irrespective of who controls it. We are just as quick to realize that the exploitation of this resource has national and international implications beyond the ambit of any provincial government and legitimate responsibilities of the federal government but certainly no one denies that a resource that can and likely will change the face of a province should not be controlled or have some input from that province. The role of the federal government in this instance is to ensure that Newfoundland's efforts to maximize the wealth and other

benefits derived from this resource are not done to the detriment of other provinces or to the nation as a whole. When Newfoundland becomes a have province as we are confident it will then the national tax system will ensure a fair distribution of our income and wealth is achieved as we are the beneficiaries from other provinces now.

Mr. Chairman, there are a great number of things I want to say in this regard. In recent years Quebec for instance has hardly endeared itself to Newfoundland by refusal to renegotiate the Upper Churchill contract. In our opinion so unjust. As the Premier of Quebec said at a previous conference a contract is a contract but it leads to destroy the contract which is Confederation today. The federal government should have the strength to adjudicate all such injustices to the advantage of the nation as a whole and not just individual provinces. In this sense my government in full knowledge that within the next few years we will be dealing from a position of greater economic strength recognizes the authority of the federal government to adjudicate for the advantage of the whole those areas of dispute which the provinces cannot deal with themselves. The exploitation of a resource such as oil and gas in Newfoundland or Saskatchewan potash insofar as it does not adversely affect the affairs of another province should not be unduly interfered with by the central government.

Let me just summarize, sir, by a home-spun analogy. A family we adopted 30 years ago had an authoritarian but benign parent who made the rules and expected them to be obeyed. A lot of growing up has happened since then and the boys are getting a bit big now to be beaten up so to speak, to smack any more. They want to rewrite the rules and one of them at least occasionally talks about leaving home altogether. In my province the family is a respected institution. Fathers and sons and daughters and mothers in many of our outports have

tested that institution for a long time. When the children grow up they can take more of the load when they can shoulder it. It is an important moment in family life and often brings them closer together. We may have reached that time in our Confederation because if the group of leaders at this table don't face up to the reality of what we have to do for a better Canada as opposed to just a better province then we are in serious trouble and I would like to think that challenge is not beyond us here. Thank you.

THE CHAIRMAN: Thank you very much, Premier Moores. With that we have concluded the first round of statements under Item 1 of the agenda. There are obviously a lot of subjects which could be debated and I think our agenda has been put together with that kind of foresight, that many of the points made in the context of the opening statements will now reappear under the various items and we could at that point, if necessary, discuss the particular arguments in detail, whether they be arguments relating to substance or to process. As Chairman it might not be impossible to discover now some elements of agreement and just tentatively I would put them forth for your consideration and we probably will want to be considering them before adjourning on Wednesday. We do seem to be agreed on at least four points: that the problem of constitutional change is important and that there is a degree of urgency about it.

Second, that it is the responsibility of all of us to try and find solutions.

Third, that all of us should be prepared to be flexible and to compromise.

And fourth, that the governments here should be prepared to devote whatever time is necessary to achieve some early progress. I think that does reflect anyhow the underlying concern shown by all of us. I would not deal with substance now because, as I say, the agenda is leading us right into that under Item 2 but before going to

it I point out two things. The first is that we have encroached in the afternoon time by an hour now which leaves us two hours hopefully to discuss Item 2, Charter of Rights. The second preliminary point is on the agenda itself, are we at this stage satisfied to remain with the agenda as decided or do we want to make any modification of it? I think we are satisfied to proceed with the agenda as agreed to earlier which then leads us to the charter of rights. I will ask the Federal Minister of Justice, Mr. Lang, to make the opening statement which will attempt, at least in part, to engage the discussion with various delegations and I would hope that from now on in we would not have to all eleven speak in turn on every subject in general but that we would be able to narrow the debate to more specific items of concern.

Mr. Lang, would you lead off, please?

HON. OTTO LANG (Minister of Justice): Thank you, Mr. Prime Minister.

Gentlemen, in view of the particular time constraints we are under I may perhaps speak more generally and not quite along the lines of the notes I had earlier planned. I think that many will have observed that the particular Charter of Rights which we have developed for the purposes of Bill C-60, our recent constitutional proposals, the basic structure of the charter is quite familiar to many. It is in a sense a minimum document listing those basic rights and the protection of basic rights which are so important to individuals and minorities in our society. The proposal, of course, to put such rights into a constitution involves the notion that legislatures too can occasionally trample upon the rights of individual citizens with their own specific acts and legislation. That is, I think, a key point in the argument as to the existence of a charter in a constitution.

The constitutional document is itself a form of limitation upon the various legislatures and the Parliament of Canada and the Charter of Rights is an elaboration of particular limitations and it is designed to protect individuals and minorities against the act of carelessly trampling upon. I associate myself with the remarks of Premier Campbell earlier today when he referred to the fact that with government as large and complex as it is in our society now it may be more important than ever to have this kind of protection where the courts can stand as the guardian in favour of individuals who may otherwise be curiously and adversely affected by the action of the legislature.

Of course, to talk about protection of rights in this fashion in terms of a charter is in no way to minimize the fact that for any minority or individual the protection of rights is best assured through positive action which develops equality of opportunity and the full chance to grow and participate in all facets of our organized society. The question, however, is whether a protection of rights in a constitution can add that additional bit which from time to time even in Canada we may see has been put upon citizens by way of legislative action.

Now, of course, to put rights into a constitution, a Charter of Rights, is to add that extra degree of formality and the difficulty with which changes can take place and that in itself is a part of the way in which individuals are assured of their rights. Many of our legislatures as well as the Parliament of Canada have a document which sets out basic rights and the constitutionalizing of that obviously improves the level of protection.

I will not try to deal with the specifics of the Bill of Rights, of course, except to say again that in general it deals with those basic political and civil rights which are traditionally found in documents like this. There are a couple of extra ones, there are a couple of special ones which deserve a special note. One which was referred to, really, with approval by Premier Davis earlier today was the provision that Canadians be free to move, acquire property, earn their livelihood in all parts of Canada, and be uninhibited in this regard. That is a pretty important and fundamental question in any country as a sign of what the country is, that its people be free to move, and that alone, quite apart from the more traditional rights, may deserve the attention of governments looking at a Constitution and looking at the future and the kind of country we would have.

Of course, attention to that really is the other item to which I attach importance, and that is a significant assurance of certain rights with relation to language, the two official languages of this country, so that the right to move, the right to participate in different parts of the country is not just a shallow freedom, but rather more meaningful than that. Our Charter attempted to enshrine certain minimum positions in regard to language, so that in one part of the country or another a citizen who grew up in the tradition of one language could exercise some of his basic rights in other areas and feel at home there. I think, more than ever today we have to be conscious of the importance of that in a country we want to see continue to grow in fairness and in strength.

That, I think, is so fundamental as it reflects the history to which Premier Blakeney referred of three hundred years in this country of those rights in certain parts of the country. Let us also in our freedom to move about find in the country certain basic protections for our position in relation to the official language with which we have grown up.

There, Mr. Prime Minister, is a short treatment of our discussed Charter of Rights, and I would like to leave the discussion.

THE CHAIRMAN: Would anyone like to lead off? We have heard very expressively from Premier Campbell of P.E.I. this morning. I think his views are quite clear. Are there any other Premiers who feel like participating on this?

HON. RICHARD HATFIELD: Mr. Chairman, we support, as I indicated some time ago, the concept of the entrenchment of rights in principle. I think we would preserve the right to make sure, particularly with regard to the position with regard to official languages, that those languages are respected as having equal status in the Constitution as they do in our Official Language Act, and I believe in the Federal Official Languages Act. It is things of that kind, detail of that kind that we would like to be sure of, but in essence I think that we support the concept of -- and would opt in, if that is still necessary to the position that rights be entrenched in the Constitution, both language and fundamental rights.

THE CHAIRMAN: Both language and fundamental rights. Eventually, later in the discussion we may want to distinguish between the two. I think some might express one position on language and others on rights, but at this time I would not like to compartmentalize the debate and I would like to hear views by the Hon. Mr. Davis.

HON. BILL DAVIS: Mr. Prime Minister, the Attorney-General will convey Ontario's point of view

on Ontario's Bill of Rights and it is relatively simple. As I listened to the presentation this morning I can understand the two points of view that have been presented, but our position on that is pretty simple. Our point of view on language rights, and I do not want to compartmentalize them, and once again our position is not dissimilar to that which we suggested in Victoria, the entrenchment of two official languages of Canada.

We are concerned about the federal proposal in terms of opting in, etc., as being unnecessary and cumbersome. It should be clearly stated in terms of language rights just what they are to be, and our position on this. I think this is simple and quite clear.

I did mention in my opening statement a suggestion which I know will not be agreed to by the others Premiers perhaps, but to the extent that language and culture is fundamental, and that education is fundamental to both of those -- well, I know traditionally most provinces have rather jealously guarded the responsibility in the field of education. I think you would go a long way to resolving some of our concerns if we were to entrench in the Constitution, carefully worded as the thing can be done, the right to education in either of the two official languages in this country by young people in any province where the numbers, or whatever phrases may be used, do justify it.

So, speaking for Ontario on the question of language -- and I think we have to get into it in some greater detail -- we really restate the position we took in Victoria which is not too dissimilar to some aspects of your Bill. We are concerned about the distinctions you are making in the language field, we feel they are unnecessary, that is the additional suggestion of entrenchment of language, education, the rights of two official languages, and the Attorney General briefly will deal with our point of view in terms of individual rights, which once again

I recognize sometimes are legalistic problems and I hope we don't get into the question of compartmentalization of entrenchment, whether to entrench or whether not to entrench, because I don't think the individual Canadian recognizes the difference as to which route is better; and I have to say, with respect, Mr. Prime Minister, that there are more fundamental concerns that we need to deal with than the entrenchment of personal rights.

HON. ROY McMURTRY: (Attorney General of Ontario):

Thank you, Mr. Prime Minister. Of course, we in Ontario are confident that all provinces regardless of their respective feelings on the individual positions that have been expressed recognize that the unique distinguishing features of a genuine democracy are the rights and freedoms that its inhabitants enjoy. Of course, individual rights are the cornerstone of our system of government.

Mr. Prime Minister, therefore I think we would all agree that certainly the issue before us is not whether we are for or against individual rights. That, obviously, is not in dispute. Rather, what we are being asked is to consider how best to protect these rights in today's complex society. In effect, our task is to decide what combination of unwritten common law, ordinary statutes, and constitutional provisions will most effectively serve to safeguard the basic rights of Canadians.

In Ontario, the common law traditions that we have inherited from Britain are the source of our rights. Over the years, however, we have defined and supplemented the common law with statutory provisions. You may remember that Ontario was the first province to institute a Human Rights Code in 1962, and to create a Human Rights Commission to ensure that the rights granted by law are enjoyed by everyone living and working in Ontario.

Now, clearly, two schools of thought have developed with regard to this matter. There are those who argue that a constitutional expression of rights is necessary to ensure that they are not breached by temporary majorities in Parliament or Provincial Legislatures. Those holding this point of view would leave it to our courts to determine how to apply these rights in particular political, economic and social situations.

On the other hand, there are those who argue that by defining individual rights in the Constitution, an unnecessary element of rigidity will be introduced into our public life. Social values and conditions are not static, and many of our rights and freedoms must be adjusted in the light of changed and changing circumstances.

This is more difficult to achieve when rights are enshrined in the Constitution and are subject to judicial interpretation. Those who hold this point of view claim that elected representatives, through the legislative process, are better able to respond to new and unforeseen conditions. For example, the passage of the Ontario Human Rights Code in 1962 and the several amendments to it since then are an important and creative legislative response to the social problems generated by the changing nature of Ontario society over the years, and at the present time we are contemplating additional amendments to this Human Rights Code.

Mr. Prime Minister, in considering these two very legitimate points of view, we in Ontario have come to the unqualified conclusion that individual rights must be included in the Constitution and, certainly, for those who have come from countries that have not enjoyed our history of stable and democratic institutions such an entrenchment would be of an enormous symbolic importance,

and I for one, and we in Ontario still recognize the values of the very least of these important symbolic commitments.

Such rights should be those absolutely essential to the maintenance of our parliamentary and democratic system of government, for it is obviously only by maintaining our system of government that we can continue to enjoy our traditional rights and freedoms. This was our view at Victoria in 1971, and it remains our view today.

In closing, sir, I would add that our sense of what is fair and of what every citizen is entitled to expect from society has determined our actions in the field of human rights in Ontario. I am sure that the same spirit of justice prevails throughout the country and all Canadians are committed to the preservation of basic individual rights that cannot be diminished or taken away. I think, with respect, sir, that our task here today is to simply determine how best we can protect these rights so that they may be enjoyed and preserved for generations to come.

THE CHAIRMAN: Thank you.

LE PRESIDENT: Monsieur Lévesque?

M. LEVESQUE: Je voudrais peut-être dire un mot, simplement ceci c'est que c'est évident qu'il y a facilement une unanimité quand il s'agit de parler des droits fondamentaux du citoyen, des droits de la personne, je pense que ça, c'est relativement facile, c'est un peu comme la vertu et la paternité on est tous d'accord qu'il n'est pas question de contester ça, c'est quand vient le moment de décider de quelle façon ça doit se faire, je pense qu'il y a deux écoles puis tout le monde le reconnaît, et puis ça c'est sur le fond du processus, il y a une école qui est celle un peu qui est proposée je pense, qui est illustrée par le projet de Loi C-60, par d'autres aussi, je pense, autour de la table, qui voudraient que le plus vite possible -- ça peut servir à l'éducation des nouvelles générations ou des nouveaux arrivants -- que ça devienne des principes fondamentaux qui sont énoncés dans une constitution qui sont, je ne dirais pas figés, mais qui sont installés là soi-disant pour l'éternité; il y en a d'autres qui aiment mieux que ça puisse continuer selon l'évolution législative, c'est-à-dire le reflet de la société qui continue à changer.

Je pense qu'il y a également un certain nombre d'entre nous autour de la table et j'inclurais le Québec là-dedans qui aiment mieux cette façon de procéder surtout quand on ajoute les droits linguistiques c'est-à-dire des droits qui sont ceux de certaines

collectivités, parce que le moins qu'on puisse dire c'est qu'on voit pas de consensus là-dessus ni autour de la table ni entre les différentes régions du Canada, ce que d'ailleurs le Bill C-60 reflétait lui aussi.

Alors, moi ça m'a frappé que je n'ai jamais autant entendu parler au Canada de droits fondamentaux que depuis que le Québec a passé une Loi concernant les langues, concernant surtout la langue d'enseignement, ça a eu au moins un excellent résultat c'est que tout le monde s'est mis à parler de droits comme jamais auparavant. Même si on en avait un peu moins parlé quand nos prédécesseurs avaient passé une Loi qui s'appelait la Loi 22, mais enfin, je ferai remarquer juste une chose, parce que je n'aimerais pas qu'on calomnie la société québécoise, ça arrive des fois; je ferais remarquer qu'il y a déjà un certain temps qu'existe au Québec sur les droits fondamentaux de la personne une charte, une Loi qu'on considère avec beaucoup beaucoup de respect, qui est une affirmation solennelle du respect qu'on a pour les droits des citoyens, qui s'appelle la Charte pour les Droits et Libertés de la Personne. Et quand on a passé ce qu'on appelle aussi une charte, peut-être que c'est un peu grandiloquent comme titre: la Charte de la Langue Officielle, la Loi 101, on a laissé les deux en interaction, ni l'une ni l'autre n'a préséance. Ce qui veut dire que, en fait, devant les tribunaux, devant n'importe quel moyen d'intervention légitime, on peut en appeler de l'une par rapport à l'autre.

Je pense que c'est un peu dans ce domaine qui est toujours un peu du droit nouveau dans nos sociétés, c'est un peu ce qu'il faut faire, parce que

si j'ai bien compris le consensus auquel on est arrivé à Montréal entre les provinces, en février, je pense, c'est ce que préfèrent aussi les autres provinces, ils considèrent, enfin ils ont reconnu que le Québec avait des problèmes particuliers du côté des droits linguistiques, et je pense que deux gouvernements de suite l'ont reconnu au Québec.

Il y a une pression là, qui exige qu'on en parle et qu'on agisse.

Par ailleurs, ça ne se présente pas de la même façon dans les autres provinces du Canada, c'est pour ça d'ailleurs que nous on a ouvert la porte à quelque chose qu'on appelle la réciprocité.

Jusqu'ici on ne peut pas dire qu'il y a beaucoup de gens qui ont sauté sur l'occasion de s'en servir, mais ça existe, c'est-à-dire une réciprocité qui ne demanderait pas que les minorités francophones du reste du Canada soient partout immédiatement traitées avec la, disons, la même générosité, il n'y a pas d'autres mots, qui existe au Québec, aussi bien avec la Loi 101 qu'auparavant, on n'a pas demandé ça. On a demandé simplement que cette réciprocité s'exprime sous la forme d'une bonne volonté et d'une ouverture à des changements de ce côté-là. Il y a une chose certaine, c'est qu'il y avait un consensus pour pas forcer les gens à s'ajuster, si vous voulez, par décret unilatéral qui prétendrait figer les choses. Je trouve ça dans la conclusion, je trouve ça très bien reflété dans la conclusion du septième document de la Colombie Britannique qui nous dit ceci:

"In conclusion it is the belief of the Province of British Columbia that we need a constitution that is flexible enough on the subject of language to meet the legitimate aspirations of all parts of Canada."

Une constitution qui soit assez flexible sur la question linguistique pour admettre les aspirations très très diversifiées de toutes les parties du Canada.

Et un peu plus loin une seule phrase:

"Broad constitutional language guarantees are not appropriate to all of Canada and could lead to a further aggravation of language difference."

Je pense que je n'ai pas besoin de traduire ça sonne aussi clair et lapidaire quasiment en français qu'en anglais, ce qui veut dire que, quant à nous, on serait plutôt d'accord avec d'autres provinces, pour dire que le moins qu'on puisse dire c'est qu'il est prématuré à notre avis de vouloir figer dans des textes constitutionnels en y mettant la dimension linguistique, une charte quelconque.

LE PRESIDENT: Merci, monsieur Lévesque. Peut-être que je devrais laisser à monsieur Bennett, -- où est-il? -- il n'est pas là pour le moment, le soin de préciser sa pensée, mais dans le texte que vous avez lu, il y a aussi une indication par monsieur Bennett que la province de la Colombie

Britannique veut étendre les provisions de l'article 133 dans la constitution actuelle et je remarquais ce matin que le premier ministre Lyon disait la même chose, et je leur pose la question autant qu'à vous. Déjà la constitution actuelle impose certaines obligations en matière linguistique au gouvernement fédéral et au gouvernement provincial, il y a déjà une sorte de début de charte linguistique qui lie la province de Québec et qui lie le gouvernement fédéral et autant le premier ministre Bennett que le premier ministre Sterling Lyon ont suggéré que peut-être on pourrait bâtir là-dessus et il serait intéressant d'entendre leur point de vue à ce sujet ainsi que le vôtre, parce que vous êtes lié actuellement, les tribunaux déjà en première instance ont interprété une des lois provinciales comme restreignant votre liberté d'agir, il y a une cause devant les tribunaux du Manitoba, actuellement sur la Loi du Manitoba et sur la Loi de 1890, qui pose le même problème pour le Manitoba. La position que nous avons prise dans le Bill C-60, c'est que puisque déjà le Québec est lié à certaines obligations, que le gouvernement fédéral est lié à certaines obligations, ne serait-il pas normal que certaines autres provinces, peut-être le Nouveau-Brunswick et je pense que le premier ministre Hatfield l'a pratiquement suggéré tout à l'heure, peut-être l'Ontario soient également liées.

Since we are right away into language rights, Premier Davis, Premier Levesque, Premier Hatfield, have already made the point of being prepared to accept - referred to it. Premier Levesque didn't suggest accepting it I think at this stage, but I have a 1976 consensus before me which was confirmed by the Regina communique and I quote from it:

"Confirmation of the language rights of English and French generally along the lines discussed in Victoria in 1971" and I think this is great progress indeed and I put it to you now, without going into the whole area of entrenching basic human rights. Does this consensus reached last August in Regina still hold? If so, I think we could make at least some progress in entrenching linguistic rights. I take it it holds also for the Province of Quebec, which is already in a sense bound by Section 133.

M. LEVESQUE: Ce n'est pas moi qui l'ai invoqué, alors comme....

I think I took your name in vain, Monsieur Bennett. I think you are called upon to contribute.

HON.GARDE GARDOM (Attorney General of British Columbia): Thank you very much, Prime Minister. I would like very much if I may to have the opportunity to respond to some of the areas on the Charter of Rights and language rights but dealing for a moment with the question raised by yourself and Mr. Levesque I think, on reflection, British Columbia would have to say there is an inconsistency on Page 26 of our position paper which is Paper No. 7 insofar as it relates to the Province of Quebec. We feel that the principle of extending the language guarantees in terms of federal services is a good one but to put

the Province of Quebec in a different position than any other province is an inconsistency which we are quite happy to admit.

THE CHAIRMAN: After having admitted it, do you suggest that in a new constitution Quebec should no longer be bound by the equivalent of Section 133?

HON. GARDE GARDOM: We feel, Mr. Prime Minister, that the question of the extension of language rights to the citizens of any province can well and best be handled by those provinces. I don't presume to speak for Premier Levesque and the Province of Quebec, but I would offer as an example of the way British Columbia has handled this question, the education facilities which we have already extended to people who wish to have their children taught in the French language and if I may just elaborate, Mr. Prime Minister, it is at the request of merely ten parents in any of our large school districts, the language or the education will be extended to those children in the French language. I think this is an example of what provinces can and will, and I think should, do as reflections of the political realities of the province from time to time. I am sure that if we in British Columbia have extended those sort of rights in a province where only 1.6% of the population speak French and only one-third of those speak it at home, that other provinces would respond accordingly to the minorities within their provinces.

THE CHAIRMAN: Without detailed knowledge of it, I think the provisions that you just referred to in your province are very forward-looking indeed and they do show that progress can be made by provinces acting at their own level on the matter of education. But really there is a deeper question at stake and I, with respect, think that you have not dealt with it. Under the present B.N.A. Act you allude to it in your paper and Premier Lyon alluded to it this morning, there is an obligation on at least the Province of Quebec and for all I know, on the Province of Manitoba, but the courts will still have to judge on that and certainly on the federal government to respect the French and English language in certain areas. As I was saying

to Mr. Levesque a moment ago, there is already a judgment of the Superior Court of Quebec to strike down certain aspects of Bill 101 because they are contradictory of Section 133 of the B.N.A. Act. I don't think you will find the English-speaking minority in Quebec at any rate happy with the suggestion that we could do away in the new constitution with some basic guarantee like Section 133. It is quite obvious from the litigants in Manitoba that the French-speaking minority or some spokesman for it in Manitoba would not be happy with the disappearance of some guarantees. I think we have to address that question in a new constitution. Shouldn't there, beyond the very generous treatment given to minorities over and beyond the constitution by such provisions as you suggest in your province and Quebec is also an example of a province which has treated its minorities pretty generously over the decades, but beyond that, should there be some basic guarantees? Once again I thought that at Regina all of you agreed in very clear language that there should be a confirmation in the constitution of the language rights of English and French generally along the lines discussed in Victoria in 1971. I wouldn't like that consensus to escape us as we begin the discussion. Perhaps we can go further, but can we at least build on the consensus that you all seem to have reached in Victoria -- in Regina a couple of months ago?

HON. ALLAN BLAKENEY: All I can say is that for our part we would be prepared to have either in the legislation or in the constitution language rights of the kind set out in the Victoria Charter of 1971 or more comprehensive ones if it appeared that more comprehensive ones were likely to be helpful in arriving at a satisfactory conclusion to our discussions.

THE CHAIRMAN: Well, shall we continue on language rights for a moment before getting back to human rights in particular? Is there general support for Mr. Blakeney's point of view?

HON. WILLIAM DAVIS: Mr. Prime Minister, our

approach on that was as expressed in Victoria where we made it quite clear that the entrenchment of the two official languages of Canada should be in the constitution, the provision of service to the areas of federal jurisdiction, two official languages. These things have been debated and we are quite prepared, as you suggested as a minimum, sir, whether we can ever find a maximum I don't know, but we are certainly prepared to stick by that particular position. I am concerned about the provisions in the proposed, or at least in the legislation, the question of having, shall we say, two levels of responsibility with respect to languages. I think that was an unwise concept to suggest in a constitution.

I was able to overhear part of the point of view being stated by the Province of British Columbia, and it is the view, Mr. Prime Minister, that we really have been pursuing for some time in the Province of Ontario, and that is as it relates to provincial government services, that we are in the position and I think this really has been reflected by other Premiers on other issues, that the provincial government is the one that is best able to assess how the extension of the services might be established, how we could best deal with it administratively. I am not going to minimize, Mr. Prime Minister, the potential sensitivity of this issue. You are as aware of it as I am, and yet looking back historically in our own province over a limited period of time, it is an area that in our view is very fundamental once again to the rights of the Francophones or Franco-Ontarians in our province and in the field of education I would say that our existing legislation with one or two shortcomings, as most pieces of legislation have, I guess, really does establish the right of the Franco-Ontarian parents to send their children to an elementary or secondary school. I think even the Premier of the Province of Quebec was more surprised but perhaps pleased when he saw the report of the Council of Ministers of Education that roughly 5.5% of the people of the Province of Ontario indicated that French was their mother tongue and that in

the school system 5.4% of the total school population were in the elementary and secondary French-language schools which, I think, is a clear indication, Mr. Prime Minister, of the progress that has been made. It has been made without any great divisiveness with one or two exceptions once again, but I would urge, Mr. Prime Minister, that I sense that the Victoria position as restated by the Premiers is, you suggest, a minimum position but I think it is a very significant position and one that the Province of Ontario would be quite prepared to support as we were seven years ago, plus two months.

THE CHAIRMAN: It was in June, Bill.

HON. WILLIAM DAVIS: I thought it was in October. Seven years and four months. I just say we are quite prepared to do that and for the third time, and I would suggest this is the last time, Mr. Prime Minister, I was hoping to get some response from my colleagues, particularly the Premier of Quebec, as to entrenchment of language rights in the constitution.

THE CHAIRMAN: Well, we can --

HON. RENE LEVESQUE: Est-ce que, monsieur le président, vous me permettriez juste une petite réponse?

LE PRESIDENT: Comment donc, monsieur Lévesque.

HON. RENE LEVESQUE: Parce que je remarque que monsieur Davis souligne l'importance de l'action provinciale et d'une certaine évolution de ce côté-là, parce que bien après Victoria -- moi, je n'ai pas connu Victoria -- et bien après beaucoup d'autres choses qu'on a évoquées, il y a eu une rencontre à Montréal de tous les premiers ministres des provinces au début de l'année, si on me permet -- c'est rapide -- je vais lire le communiqué conjoint qui est sorti sans qu'il y ait de protestations,

à ce moment-là de cette rencontre.

Je pense que ça reflète aussi cette espèce d'étapisme qu'on trouve dans le Bill C-60 à propos des droits linguistiques, alors ça dit ceci: "Reconnaissant leur souci exprimé à St-Andrew's d'assurer le maintien et l'avancement des droits des minorités, etc., que l'éducation constitue la base même sur lesquels repose la langue et la culture, les premiers ministres ont constaté les progrès considérables accomplis depuis quelques années et reconnaissent la nécessité d'améliorer encore la situation."

Comme le souligne le rapport des ministres de l'éducation, on venait d'avoir le rapport dont parle monsieur Davis et qui soulignait qu'il y avait encore beaucoup de chemin à faire, je pense, dans beaucoup de coins du Canada pour rejoindre, à l'inverse le traitement qui est accordé aux minorités, à la minorité anglophone au Québec.

Alors, après avoir constaté tout ça les premiers ministres réaffirment leur intention sur la base, leur intention sur la base du principe suivant et je cite:

"Chaque enfant de la minorité anglophone ou francophone, dans chacune des provinces, a le droit de recevoir l'enseignement dans sa langue, dans les écoles primaires et secondaires partout où le nombre d'élèves est justifié".

Et, ensuite le principe est qualifié, comme on dit en anglais, de la façon suivante:

"Il est entendu, en raison de la compétence exclusive des gouvernements provinciaux en matière d'éducation et aussi des vastes différences culturelles et démographiques, qu'il appartient à

chaque province -- je répète -- qu'il appartient à
chaque province de définir comme elle l'entend, l'applica-
tion de ce principe.

Je peux traduire à l'oeil:

"It is understood due to the exclusive competence of provincial governments in matters of the constitution and also of vast cultural and population differences that it belongs to each province to define, according to its best judgment, the application of the principle."

C'est pour ça que je répète, quant à nous, que ça nous semble un peu prématuré de prétendre installer de façon relative, c'est-à-dire en relativisant une constitution et des droits fondamentaux, -- ça ne devrait pas être relatif -- d'être obligé de relativiser dans des textes constitutionnels des droits comme ceux-là.

Je pense qu'on serait sacrément mieux de les laisser évoluer de la façon dont il était prévu dans le paragraphe de Montréal.

LE PRESIDENT: C'est-à-dire qu'on devrait distinguer entre deux choses, c'est-à-dire les droits linguistiques en général sur lesquels vous vous êtes mis d'accord au mois d'août dernier, de les protéger dans le sens de Victoria, et ensuite les droits linguistiques en matière d'éducation, que vous aviez traités d'abord à St-Andrew's et encore dans le communiqué que vous établissez là.

Alors, il y a une distinction, mais si je comprends bien les provinces sont unanimes à vouloir, à avoir voulu à Regina déclarer que nous protégerions dans une nouvelle constitution les deux langues officielles: l'anglais et le français, un peu dans le sens où ça avait été fait à Victoria.

Did you want to say something?

HON. OTTO LANG (Minister of Justice): This is to take up the question which has been put forward as to whether not only the re-endorsement of what was said at Victoria, but something beyond. I think Premier Davis indicated a willingness to look that way and so did Premier Blakeney and I think we all can be very conscious of the desirability of having in the constitutional documents some indication of retention of language rights. We have had a number of Premiers indicate that in their particular jurisdictions more is being done than is specifically required by the constitution and that, of course, is ideal, a positive forward-looking treatment of language goes beyond the constitution, but surely we can all be very sensitive to the dilemma of a minority if they have no protection against changes in the political atmosphere from day to day.

And we know that that can happen. It happens very quickly and easy in an area as politically sensitive as education is and that really is the question of whether there is not a real gain in setting more than just that out in a constitution along the lines as we did in C-60 where even there we recognized the need for the provinces to make their own judgment about what is reasonable and possible in regard to rights but we said something about a goal and an indication of the target. Now how shallow is the right to be able to move about this country and enjoy in another part of it if the right is there one day and gone the next day as a result of a change in governmental judgment? It is really in that context that I suggest the desirability of looking beyond but certainly of course starting with Victoria.

CHAIRMAN: Could I add to what the Minister has just said, a notion that many forget. I have had a few Premiers this afternoon say that education is entirely provincial. Who says it is not? It is entirely provincial except that the Fathers of Confederation said that in certain cases the federal government can act to protect minorities. In these days we know the history of the constitution, the minorities were essentially religious. Today they define themselves as more linguistic. So I put a plea to you: Shall we do less today -- and here I am back to Premier Davis' minimum and maximum to Mr. Lang's plea now that we go a little further than the minimum -- should we do less today than the Fathers of Confederation did in 1867 when they said "Education is provincial, the provinces should do it but there are some cases where the federal government can legislate in areas of education" and it spelled out section 93, paragraphs (3) and (4). Once again they saw that then against majorities the minorities should

be protected even a Bill of Rights as we suggest or as the Fathers of Confederation suggested by giving jurisdiction to the federal government.

Je le répète, c'est très important de se rappeler que lorsque l'on dit que l'éducation est strictement provinciale, cela n'est pas vrai en vertu de la constitution actuelle.

L'éducation est strictement provinciale sauf, ont dit les Pères de la Constitution, de la Confédération, sauf lorsqu'il s'agit de protéger certaines minorités, et on a précisé dans la Constitution d'il y a 111 ans que ces minorités pouvaient être protégées par le gouvernement fédéral, on le disait pour des minorités confessionnelles, je l'avoue, aujourd'hui on parle plutôt de minorités linguistiques, il se trouve qu'il y a 111 ans, ces minorités étaient quelque peu identifiées l'une à l'autre. Mais le principe est là.

Et les Pères de la Confédération, dans leur sagesse l'ont vu. C'est important que les minorités soient protégées.

Therefore we should in our thinking go a little beyond the minimum which was proposed at Victoria and then discussed in a certain way at St. Andrews at the January Conference that Premier Levesque is referring to. I have the St. Andrews' statement here: "The Premiers agree that they will make their best efforts to provide instruction in education in English and French wherever numbers warrant." That is their best efforts but as Premier Davis said and as Mr. Lang says and as I say and as the Fathers of Confederation said should not we put those best efforts at least to some degree in a written document, the Constitution of Canada?

HON. MR. HATFIELD: Mr. Chairman, I do not understand the point of the Premier of Quebec. I understand with the exception that you mentioned that education is the responsibility of the province but I cannot understand the point because he wanted to make the point some time ago that if we agreed to give certain educational rights to people from Quebec or in New Brunswick they would give certain educational rights to people coming from New Brunswick into Quebec. He feels therefore that the exclusive jurisdiction of the province is not sufficient, that there must be something else and while a reciprocal agreement appeals to him as something else to protect the right why not the constitution or something else to protect the right? When you say it is the exclusive jurisdiction of the province what are you saying? We recognize it is and as long as everybody stays within the province that is fine but there has been a tendency in the last 50 years or so for people to move about in this country and it is important, it certainly was an important principle as far as I was concerned within the Province of New Brunswick. It is fine for people living in one part of New Brunswick, they had certain education rights. When they came to the capital city of the province they did not have those rights because they were not there. The same thing applies with other

things interprovincially. As far as providing education rights in the city of Fredericton it has nothing to do with who has jurisdiction. We have jurisdiction but the rights were not there. The same thing applies within the country, namely this piece of geography that we presently call Canada. Regardless of what happens it seems to me that education rights or language rights especially and the capacity to get an education in that language is so fundamental and so important that the most extreme steps should be taken. Certainly I was of the opinion that the French language was safe and secure in the Province of Quebec. The present Premier of the Province of Quebec did not agree and went further and to some length to establish within the law of the Province of Quebec further protections, further guarantees to assure that, to protect the French language in the Province of Quebec. I understand that and I understand why it was done but why not go further and extend that in case someone from Quebec may have to for one reason or another move to some other part of Canada, that is the best we can do or someone from New Brunswick may have to Quebec or move to British Columbia or what-have-you. I really do not understand hanging this question of jurisdiction.

THE CHAIRMAN: Mr. Levesque.

HON. RENE LEVESQUE: Bien, c'est malheureux parce que monsieur Hatfield, je n'en ferai pas un long débat, parce qu'il semble qu'il y ait seulement deux ou trois d'entre nous que cela intéresse vraiment, mais monsieur Hatfield était avec moi, on était tous les deux à la même table quand on a lu ce communiqué qui semblait unanime, et qui, je ne le répèterai pas, qui dit exactement ce que j'ai dit tout à l'heure.

On peut tous évoluer. Justement parce que je pense que c'est appelé à évoluer, moi, je maintiens simplement que ce paragraphe dit le bon sens, que ça ne devrait pas être inscrit dans aucun texte constitutionnel.

THE CHAIRMAN: Anyone else?

HON. HATFIELD: I don't understand, we did not agree at Montreal not to include it in the constitution. We said that it is a provincial jurisdiction and so it is. Now, if you are interested in jurisdiction protect it by all means but if you are interested in the rights of people to get instruction in the language of their parents, then extend that right, extend your jurisdiction to the larger interest.

THE CHAIRMAN: Well I too like Premier Hatfield have some difficulty in seeing what reciprocity is possible but not basic guarantees. Supposing nine provinces say "Okay, we will exchange reciprocal rights with Quebec in the area of protecting our minorities where there is a sufficient number of them"? Would that settle the matter?

HON. HATFIELD: The agreement we signed with the government of Quebec which we signed in 1967-1968 certainly didn't last very long.

THE CHAIRMAN: What was that?

HON. HATFIELD: It was cultural and educational. It was wiped out very quickly, the terms of it were.

THE CHAIRMAN: I am supporting your argument, Premier Hatfield if a province is prepared to bind itself by contract in certain conditions it is puzzling why it would not be prepared to bind itself by the constitution unless it were not absolutely certain that it wanted to guarantee those rights for a while.

HON. RENE LEVESQUE: Je voudrais répéter ce qui semble assez évident, c'est que, à part vous, pour des raisons que je comprends et à part le Québec pour des raisons qu'on a depuis longtemps et à part le Nouveau-Brunswick, où les récentes élections ont montré qu'il y avait d'autres raisons aussi pour lesquelles on pouvait s'y

intéresser de façon aigüe, ça ne semble pas être un débat qui intéresse l'ensemble de mes collègues ici.

Pourquoi on parle de réciprocité ?

C'est ceci c'est qu'on a toujours ajusté la réciprocité à l'idée qu'il y aurait des étapes qui pourraient se faire, que les choses étaient relatives.

Monsieur Hatfield évoque les accords culturels des années 60, on pourrait évoquer les accords culturels aussi avec l'Ontario, dans les deux cas il était question de beaucoup d'échanges, mais strictement pas de droits linguistiques en ce qui concerne l'enseignement.

Quand on a parlé de réciprocité, qui est d'ailleurs inscrite dans la Loi 101 du Québec, on a dit: On ne demande pas au Nouveau-Brunswick d'avoir des collègues français ou à l'Ontario d'avoir des universités francophones comme il y a des universités et des collègues anglophones au Québec, on sait que cela ne sera pas possible demain matin ni même dans quelques années.

On a dit: on veut, peut-être qu'un jour il y aura moyen de signer des accords de bonne volonté qui étendraient les accords d'autrefois.

On n'a pas eu de réponse jusqu'ici, et comme on n'a pas eu de réponse jusqu'ici sur ces étapes, sur cet étapisme extrêmement raisonnable qu'on proposait, je trouve complètement absurde, et c'est le moins qu'on puisse dire, prématuré qu'on fasse tout un plat pour inscrire ça dans des textes constitutionnels très globalisant, tandis qu'en fait dans la réalité, on n'est pas prêt à faire des étapes tellement, tellement rapides.

Maintenant, moi, c'est ma dernière intervention là-dessus, jusqu'à nouvel ordre.

LE PRESIDENT: Allons voir si c'est vérifié dans la réalité, vous dites le premier ministre Hatfield, vous-même et moi, sommes intéressés, voyons les autres.

Premier Davis, I understood you to say quite clearly that you were prepared to give guarantees of education to your linguistic minority. You write me that in the fall of 1977.

HON. DAVIS: Not only did I suggest that, I was the one that suggested that I would be prepared to see it in the constitution.

THE CHAIRMAN: That is right, that is four who agree.

HON. DAVIS: Premier Lévesque brought the post-secondary field into it. I had made no obligations on the province in regard to secondary field but in this part of the province where we have a relatively linguistic university, the University of Ottawa I can tell you that at the University of Ottawa there have been a number of Quebec students, grade students. I recall the history of it extremely well and it was created to serve the Franco-Ontarians of the northern part of Ontario. Whether it has been totally successful or not is another argument but it was done to serve the Franco-Ontarians and we have moved in the post-secondary area with the same enthusiasm but because of the unique character of universities we have not legislated as you have not legislated I think. We have it in our community colleges but not by legislation.

THE CHAIRMAN: Okay, but as far as the guarantee is concerned we have Premier Hatfield, we have yourself, we have myself, and I understood Premier Blakeney to say that he was agreed. Premier Blakeney, can I put you down?

HON. BLAKENEY: We said first we would go beyond the Victoria Charter and the answer is yes we would go to the extent of including in the constitution some educational guarantees for two languages but not necessarily the C-60 as we understand it, but yes we agree in principle.

THE CHAIRMAN: Just responding to Premier Levesque who says it does not interest anybody except perhaps those three. Now we are up to five. How about you, Premier Campbell?

HON. CAMPBELL: Six.

THE CHAIRMAN: Premier Lougheed.

HON. LOUGHEED: Mr. Chairman, I believe as we stated in our submission we are quite prepared to go along with the principles contained in the Official Languages Act of Canada and having it recognized in the constitution but as far as the educational side is concerned we have taken the position in Montreal to use our best efforts which we are prepared to do and which we are doing in both the statements of intention in New Brunswick in the summer of 1977 in Montreal on February 23rd, 1978 was the position we knew in our province. We have 2.4 per cent who are basically French-speaking in our province and we look at it on the language side as something we should do in terms of the best efforts of the people in our province.

THE CHAIRMAN: So I guess I can only put you down for half then. Somebody behind me says "They can't afford it." Well, maybe I end here although I don't know. I still return to something that Premier Lyon said this morning about building on section 133. I take he is not referring to languages and the manner of education but just generally.

HON. LYON: Generally, Mr. Prime Minister without entering your honour list I repeat what I said this morning that I think what one might term the bullet approach rather than this whole anachronistic paraphernalia of a charter is much the preferable way if what is being sought by the eleven governments is some restatement to reflect the reality of linguistic rights in Canada today then let us look at 133 and let us do it there.

But let's not put onto ourselves this whole extra baggage of a charter which -- I have another speech on that if you want me to make it, but which has so many elements to it which are fundamentally alien to our parliamentary system. On the linguistic rights, I repeat what I said this morning. Let's look at 133, we are prepared to treat on that matter at any time.

THE CHAIRMAN: Well, 133 imposes on Quebec some very substantial obligations as they have found out, obligations regarding not only the legislature and the printing of statutes, but obligations regarding the use of languages in front of the courts. In our Bill C-60 we wouldn't have gone as far as even Premier Lyon seems to want to go in extending 133 to more provinces. We had suggested that, perhaps, it was only realistic to build on Section 133, apart from Quebec, in New Brunswick and in Ontario, those three provinces together comprise something like, I think, ninety-five per cent of all French speaking Canadians in Canada, but I leave this to you if you want to go further.

You see, the dilemma that we had to face in drafting C-60 is that Quebec now is under some very, very serious obligations by virtue of the Constitution. It is the only province, plus perhaps Manitoba -- the courts haven't told us yet -- to incur these obligations, and in a new Constitution, if we are going to be fair, either we should discharge Quebec from these obligations, which I don't think would make me very popular with the English speaking minority in Quebec, or we at least extend the obligations that Quebec is under to, perhaps, the two neighbouring provinces, but I leave you with the dilemma, and you know how we solve it in Bill C-60.

Perhaps Premier Lyon is suggesting an even more generous treatment, and I just leave that on the table. We can go further with it at some other occasion. That, I think, would deal with languages in general and I think I come back justifiably to the unanimity of provincial views as stated in Regina Communique No. 2 last August. That, I hope, will not be undone and will provide at least a minimum guarantee along the lines provided in Victoria in the use of French and English across the country. It is a good start.

In the area of education there seems to be some disagreement between Premier Levesque and Premier Hatfield as to what his statement of last January meant. I leave it with you. I repeat, under the present B.N.A. Act, the federal government has the right to protect minorities in the area of education. It would seem to me, 111 years later, that it would be difficult for us to say that that right should be given up by the Federal Government unless it is to be entrenched in some other way in the Constitution. But perhaps we have said enough on languages in particular, and there may be some other provinces which want to state their view on the Bill of Rights in general.

We have heard Premier Hatfield, Premier Davis, support the idea of an entrenched Bill of Rights. We have heard -- if I understand correctly -- Hatfield, Davis, and certainly Campbell. I think Premier Buchanan.

HON. JOHN BUCHANAN: Thank you, Mr. Prime Minister. I was afraid for a few minutes there you were going to get me involved in the other debate and I was rather concerned. I didn't know whether I should go further or back up, because I didn't really know where we were at the present time, so I will confine myself to the Charter of Rights and Freedoms.

Just to repeat what I said this morning, it seems to us that rights and freedoms should not be incorporated into the Canadian Constitution unless and until they apply with equal force to all Canadians wherever they reside. We submit that it is misleading to put into the Constitution rights and freedoms of Canadian citizens binding on one or more governments but not on other governments. We certainly do believe that there will be a time when entrenchment of rights should be in a Constitution and will be the ideal situation.

We also believe that unless and until there is unanimity and definition of rights, adequate definition of rights, that rights of citizens can be protected by provincial legislators on those matters coming within the jurisdiction of the Provincial Legislature. I suppose I could just repeat or read what was in the Alberta document pointing out that the best guarantee of rights is a vigilant legislature. But in all, we certainly are committed to the protection of the rights of our citizens and equality and the dignity of our citizens. We are committed to the entrenchment of those rights within a Constitution when it covers all of the provinces and when those rights are adequately defined.

THE CHAIRMAN: Premier Lougheed, Mr. Lang wanted to make a comment.

HON. OTTO LANG: I just want to observe, it should be, I hope, understood that unanimity and agreement by all of us which would have the rights and other things apply in all cases is certainly our first choice as well. I think the real question is if that unanimity were not possible in regard to some of these matters, it might be possible to make some progress on others and still have available over time the spread of that unanimity that might not exist in the first instance.

THE CHAIRMAN: Would you sort of agree with that?

HON. JOHN BUCHANAN: Yes.

THE CHAIRMAN: Premier Lougheed.

HON. PETER LOUGHEED: Mr. Chairman, on this issue Alberta certainly can see in a sense both points of view that have been expressed and expressed well here. The Premier of Manitoba, among others, has pointed out the nature of the way in which we have operated as a country in terms of freedoms, and I believe a number of people have considered this subject and make a pretty good argument. It certainly seems a good one to me, that when you take south of the border and see the American experience and you look at the fact that the courts seem to be very extensively involved in the matter of what has become social policy arising out of the Charter of Rights, and certainly not something that is what we would like to see in the Canadian way.

We think that as elected representatives we should not be ducking our responsibilities and saying, as I think it is fair to say most observers have expressed, we have been told from time to time in the United States by Congress to the courts and they say: "Well, we can't very well deal with it. The Supreme Court of the United States will." I think they face serious difficulty as a result of that.

I think it is a good argument against putting in a Charter of Rights and enshrining it in the Constitution. In our case, in Alberta, there is a second reason which is, perhaps, hard to communicate. We as a government made the question of a Bill of Rights the very first piece of legislation we brought into our legislature, and we have gone further than, I think, anybody by making it a piece of legislation that takes primacy over every other piece of legislation in our province. It can be argued, of course, you can pass a

law that says: "Notwithstanding the Alberta Bill of Rights such and such can happen," but that is something that is not going to be something that would be easy for any Alberta Legislature in the future to do. They will be, I think, very, very cautious about doing it and because of that we are concerned that if we took the rights that we have and put them into a Constitution, that the vigilance that is necessary by our legislators in future years might be weakened in the sense that because it is, perhaps more fragile, because it is there within our own law and would take away from the legislature, but if one were perhaps aware of, perhaps, the recognition of the respect for human rights, might lessen over time. It is a difficult position to explain, but it is one you more feel than you can describe logically.

On the other hand, we certainly can recognize the other side of the argument here and would want to leave it at that point for the moment.

THE CHAIRMAN: Thank you, Premier Lougheed.

Mr. Blakeney.

HON. ALLAN BLAKENEY: Mr. Prime Minister, I am going to ask Mr. Romanow, the Attorney General and Deputy Premier to answer.

HON. ROY ROMANOW: (Attorney General and Deputy Premier): A lot has already been said, and I am not sure that I can add anything particularly new, other than to stress the fact that, obviously, the issue in our judgment is not human rights per se. Saskatchewan, like all of us, is very much in favour of human rights. Indeed, I think I can say the record in our province is something we can be proud of.

We were sort of talking about the First Bill of Rights, and I think the First Bill of Rights in any jurisdiction was Saskatchewan's in 1947 under the then Premier, Tommy Douglas, and we have had other

legislation, Fair Employment Practices, and Fair Accommodation, and the like. The issue is not human rights per se, but whether those human rights should be entrenched. We say to entrench the rights in the constitution is not an item to come down squarely on one side or the other, but this is the view that we are sliding down. To entrench the rights in the Constitution is to put them all for all practical purposes beyond the jurisdiction and the reach of legislators or legislatures.

In effect, having enshrined them once and for all, fizzled, as you will, by this kind of entrenchment, it is then up to the courts to interpret what those rights mean over time and in the face of changing circumstances. We are not convinced it makes much sense to transfer to the judiciary the power to interpret sensitive questions of social policy. We think it should remain as it is now, although somewhat imperfectly run from time to time by the elected representatives who are accountable to the people.

I agree with comments made by the Premier of Alberta. He has experienced and shed some light on the implications of entrenching rights. The Minister of Justice talked about the courts as a guardian, and if one takes a look at an analysis of some of the Supreme Court decisions over history in that country, I think there is some cause for concern for entrenchment and for the subsequent interpretation of the Bill of Rights by an appointed body. I think there are many examples. Does anyone, for example, seriously believe the court should have the power to impose bussing, for example, to achieve racial integration in schools? That is, obviously, a very sensitive issue of social policy and probably best left in the hands of the elected legislators, or to take the most common recent decision,

the Bakke case at the University of California which struck down an affirmative action admissions policy to the University of California Medical School.

Would anyone seriously argue the Supreme Court of Canada should be establishing, for example, admission policies for Canadian universities in the interpretation of an entrenched Bill of Rights?

In Saskatchewan, for example, for some years now I believe the government has in effect discriminated if I could put it that way, against our Indians in a number of areas, granting of fishing licenses, trapping permits in Northern Saskatchewan and so on and so forth. Recently we signed an agreement with a major mining company for a new mining project in Northern Saskatchewan and part of that agreement requires that by 1982 fifty per cent of the employees be northerners, defined as people who have lived in the north for fifteen years, most of whom would be by definition Indians status or non-status. Now with an entrenched Bill of Rights, and if you judge by the American experience, policies like those might be struck down by the courts as being discriminatory and yet I think they are probably the correct policies for the people of the Province of Saskatchewan, who would be prepared to defend and would defend them in fact on social, cultural and moral grounds and I would doubt that the people of Saskatchewan would wish to give a court the power to tell the elected provincial government that it cannot adopt these kinds of policies.

In Canada some would argue, Prime Minister, that our greater need is to encourage affirmative action programmes to redress some social injustices and the proposed charter, indeed any Bill of Rights, might make it difficult to pursue that goal. So I guess what I am saying here is that in our system our rights and freedoms are better protected, we think, by the traditional parliamentary process than by the principles of justice that we have inherited in our parliamentary system of government. I am not sure of the answer to this, but perhaps I can close off by saying I don't know if there is a parliamentary democracy that does have an entrenched, British parliamentary democracy that has an entrenched Bill of Rights. I stand to be corrected here, but probably not. I think the answer being no to that indicates the kinds of decisions taken elsewhere indicate that the concerns that we have expressed here for the parliamentary system and the protection of

those rights in the legislators' hands.

THE CHAIRMAN: I can think of at least one parliamentary democracy. It is India. Who said 'Ha?'

HON. ALLAN BLAKENEY: I said "Ha." thought you had in mind the protection of human rights.

HON. OTTO LANG: I was just going to observe, Mr. Chairman, that I think Mr. Romanow makes an important point on the question of whether a Charter of Rights will sometimes strike down affirmative acts in terms of minorities and other privileged groups. It is, of course, almost a drafting question to ensure that that was not so and in our own legislation of human rights we have so provided expressly and that can be done here too, although not as yet.

HON. FRANK MOORES: I will ask Mr. Hickman, the Minister of Justice, to speak for the Province.

HON. T. ALEX HICKMAN: Mr. Chairman, what I have to say is pretty much repetitive of what has already been said by representatives of several of the provinces. I would not wish the viewing audience to have any ideas that we are now trying to establish for the first time certain basic freedoms and rights in Canada. We already have them. As I understand this conference, we are deciding whether or not the basic human rights and freedoms that already exist in this country should now be entrenched and the divergent schools of thought that have been so well articulated here this afternoon indicate to me that a Canadian will have very little to worry about if we do not make the kind of changes suggested in the Charter of Rights and Freedoms that you have placed before us.

The position of the Province of Newfoundland is that the freedoms that were set forth and agreed to in Victoria, we have no objection to seeing these entrenched in the Bill of Rights. On balance we come down in favour of entrenchment. We think we would be fooling ourselves if we believed that simply by entrenching it and making it part of the non-legislative process that we are really precluding governments in the future or legislators in the future if they

wanted to, to invade certain human rights and abrogate them, that we are making it impossible for them to do it.

I am sure that if you examine the constitutions of some of the the countries outside the free world, you will find that they have written in their constitutions certain basic rights and freedoms that on the face of it would guarantee absolute freedom and liberty of the subject, but in point of fact if you look in the Soviet Union and some of these other places where they do have these freedoms entrenched, you will find that by some manner of means they have been taken away. So it would not be prudent for anyone to think that this would mean that someone could not abrogate them in the future.

That is right even in India.

We have some apprehension over the legislators and legislatures and parliaments abrogating the policy-making role that must be ours to the courts of Canada and this is bound to happen. Apart from the experience in the United States of America we have had the occasional experience in this country already. I need only point to the decision of the Supreme Court of Canada in the B.C. Off-Shore reference case and any similarity to law there is purely coincidental. It was a policy-making decision and if we are prepared to live by that approach and run the risk the policy-making may be removed from us, then so be it.

Having said all of that and expressed the concern of allowing other bodies, apart from parliament the responsibility of interjecting policy considerations, the Province of Newfoundland is prepared to go along with what I suspect is the majority opinion here, to have it entrenched in the constitution.

HON. WILLIAM BENNETT: The Honourable Mr. Gardom will speak.

HON. GARDOM: Thank you very much, Mr. Prime Minister. I at the outset would like to point out that

it is sometimes dangerous to talk about entrenchment of rights in the negative without being cast in the position of being against rights per se. However, we will run that risk and join, I think, my friend, Mr. Romanow - and I must say Mr. Prime Minister, he is much more cheerful today than he was three or four weeks ago when I last saw him - and Premier Lougheed and others in pointing out I think the obvious that the entrenchment of rights in the constitution is no guarantee that those rights will protect the individuals in the nation and like Mr. Hickman, I would just indicate the obvious example of the Soviet Union who have, I am told, one of the finest drafted constitutions in the history of mankind, particularly in the area of rights, and yet those rights somehow do not filter down to the people that they are in place to protect.

Now, Prime Minister, I think that the essential question that we must face here is whether or not as a nation we are prepared to depart from the principles of parliamentary democracy, particularly the principle of supremacy of parliament to take the question of rights out of parliament's hands and of course the supplementary question is whether or not we are prepared to hand over to our courts - and often as I think has been pointed out in a negative way - the power to legislate in the field of social legislation and to, in effect, Prime Minister, ascribe to them wisdom in this particular area that we deny elected representatives of the future.

I think the second question, Prime Minister, that we must ask ourselves is, are we legislators of today so sure of ourselves as constitution makers that we are more progressive on human rights than the legislators of tomorrow, that we are prepared to, in effect, cast in stone the constitution guaranteeing rights. Can we say with certainty that courts interpreting rights in the future will always be current in their thinking and that no Dred Scott case, such as

occurred in the United States where slavery was sanctioned in the name of private property, that no such cases will come forth in the future. So I think, Prime Minister, that British Columbia's position can really be summed up in this way: we of course are in favour of the continued extension of rights that we have inherited through centuries of British parliamentary democracy and we are very concerned that these rights remain with us for all times, but we do not feel that the way to accomplish that is to enshrine these rights in the constitution and place beyond the elected representatives of the people the right of securing the privileges and rights of the individuals.

So, Prime Minister, while we do not want to be penalized for the risk we ran in appearing to perhaps be against rights, we are running that risk in saying that while we are very much in favour of the extension of the rights now and for ever more, we feel that the downside risks of entrenching them in a constitution are so serious as to give us cause for very great concern indeed.

HON. STERLING LYON: There is one point with respect to 133, if I could revert to that for a moment. You left the implication that I was perhaps, on behalf of Manitoba, prepared to go further than my words. I want to reiterate lest there be any misunderstanding that what I said this morning holds, that if we are to enshrine linguistic rights in the constitution, let that be done by direct amendment to 133 and let us treat here or between the Attorneys-General at subsequent meetings on those amendments which would reflect, as I said this morning, the reality of linguistic rights in Canada today. You see, that leads into my broader argument of course with respect to the whole concept of charter, namely, that the minute you entrench you immediately restrict and we are now in a situation where you are talking about linguistic rights that were placed in the constitution in 1867, which do not reflect today the reality of linguistic rights, so we must achieve some means of amending it. So on that broader topic, Mr. Prime Minister,

although I feel that Manitoba's position is probably reasonably well known from my statement this morning, perhaps I could expand a bit. It has been, of course, fashionable to abdicate the entrenchment of certain so-called basic fundamental rights as part of the Canadian constitution. The advocates of entrenchment overlook the fact that these rights very often I should say, overlook the fact that these rights exist in Canada and have done so for well over one hundred years without too much apparent threat. We are not thereby creating a new Canada in which rights must be stated if they are to exist but rather we are confirming the continuation of Canada as a country in which the rule of law prevails and the rights of Canadians are guaranteed by our system of government.

The debate, therefore, as all other speakers I believe have indicated, is not on the issue of the existence of rights or even of guaranteeing their continuance. The question is how best to recognise and enforce the rights. The rights of Canadians are those determined by the totality of the law, both federal and provincial. To classify rights as fundamental is to relegate — some other rights to the category of second class rights. Entrenchment of rights does not guarantee their continuance. I think all speakers agree with that. A private amending legislation pursuant to the formula. On the other hand, where the right is part of the constitution because it is inherent in the ordinary law, the right is one which can hardly be destroyed without a thorough revolution in the institutions and matters of the nation. Quite apart from the danger of creating first and second class rights, there is the danger of categorizing rights within the classes. Of course we acknowledge that no right is universal and no right is immutable. History demonstrates that rights and freedoms change. Of course they do. The right of a husband to the use of his wife's property is no longer accepted in our society in Canada today but historically that was part of the basic property right. Entrenchment inhibits growth. Today's concepts should not deter the expansion of rights or bind us from democratically inspired change. I think that that is exceptionally important.

I was reading the Joint Report, Prime Minister, of the Senate and House of Commons on Bill C-60 and in the section where they came to an agreement with respect to entrenchment of rights, they immediately started making exceptions. They said, "Of course, if we put these rights in, we must then put in some exception that will look after the disadvantaged," somewhat along the lines of what the Attorney-General of Saskatchewan was just mentioning. Of course the process then continues because once you entrench it, once you carve it in stone, it is there and it is not responsive then to the democratically-inspired social, political, economic changes in a country which is a fluid kind of

change that goes on which is natural and which parliaments respond to. The entrenchment of rights involves the definition. The definition process immediately limits rights to those defined and creates rights beyond - sometimes beyond realistic enforcement. Of necessity the rights must be stated broadly when the extent of the right is left for determination for the courts, unless the practical sovereignty of parliament and the legislature is curtailed. The role of the judiciary is thereby transformed from interpreter of the law to determiner of the law and there is then a partial transfer of the law-making function from the elected, or as I said this morning, really from the people to the appointed. I really think that that is anachronistic in 1978 to suggest that we should be considering that kind of a transfer from democratically-elected people to those who are appointed, whether by the legislature or by parliament. The present system's strength lies in the fact that rights are recognised in actual circumstances in which they can be enforced. They emerge as specific rights and not as generalizations. For recognition of our rights by judiciary is too slow in the evolution process. The legislative body can provide for instant recognition by legislation. That is the history of our system. Thus a married woman's right to interest in property acquired by the husband during the marriage can be recognised as it has been in most provinces across this country. Such legislation might well infringe upon the husband's right to the use and enjoyment of his property, if that right was beyond the power of the legislative body. So you see the absolute need for flexibility to remain as an essential feature of our existence.

The rights envisioned for entrenchment are broad generalizations which like motherhood cannot fail to obtain universal acceptance. We all believe in them but by entrenching them do we ensure their enjoyment? I think the answer based on history is clearly no. Can we ensure that the rights will be recognised in the manner and to the extent which we wished when

the circumstances in which an attempt to deny them are challenged? Do we not, sir, fetter our ability to determine the manner and the extent of their enjoyment to ensure their enjoyment does not infringe upon the common good?

It is one thing to recognise broadly-stated fundamental rights such as Canada did when it became a signatory to the United National Universal Declaration of Human Rights. It is quite another thing to give the right so stated the force of law beyond the reach of parliament. Such rights are better observed in spirit in the day-to-day law-making process and certainly the adoption of such statements has not proved effective as other speakers have indicated because the means of assuring that such rights will not be denied. The extent to which the rights appear to exist in some countries which have adopted the Universal Declaration of Human Rights leads, as all other speakers have indicated, leads to doubt as to the value of such a declaration. I agree with Premier Lougheed and with others who have said that freedom is earned by eternal vigilance and cannot by enactment be guaranteed for time immemorial. Basic human rights which we have inherited from longstanding tradition and acceptance are of more value than abstract statements open to unintended interpretation by always well-meaning courts. Defining rights tends, as I have indicated before, to restrict them and there is no guarantee against their abuse. Human rights are not static, they are always in the process of evolution and the best guarantee of freedom is the sovereignty of a democratic legislative body.

Prime Minister, if a further statement be needed, that is in large measure a reiteration of what I was attempting to say in the capital forum this morning and I reiterate again not in any spirit of confrontation whatsoever, but I think disservice would be done to this meeting on the constitution if the federal government would abandon as a pre-condition to its discussions of new constitutional change the idea that we must have a Charter of Human Rights.

THE CHAIRMAN: I think anyone who has been in politics would have reflected on these matters a great deal and I would expect in the twenty minutes we have left this afternoon that we would not bring each other to change our minds very much. I am a little disturbed by Premier Lyon's last condition that as a precondition of progress we abandon this when one notes that our approach has been supported at least by four or five Premiers present. Let me say Premiers Hatfield, Davis, Campbell, Mr. Hickman, and I understood Premier Buchanan to say that he would at least progressively go in that direction. Regardless of the count, I just want to point out that we don't expect to convince you who disagree, but I don't think it should be a precondition that we drop the idea as concerns ourselves or perhaps those provinces that want to go along.

The second point I make is: as to the argument that when we codify rights we restrict them. Here again I think it is a question of drafting. We can, as Mr. Lang said in answer to Saskatchewan's Mr. Romanow, we can include affirmative action as permissible. We can make it clear, as we attempted to do in Section 26 of our Bill C-60 that we are not abridging or abrogating from any rights or freedoms not declared that might have existed or might exist.

The third point is on - once again I am not stating this to convince anyone, but just to explain our own position. The third point is this constant referral to British parliamentary democracy, to the supremacy of parliament as practised in the British system. It is practised differently in different places as I pointed out in referring to the specific case of India, which in my view is a very great and laudable experiment in democracy in a country where it is not easy, but you don't have supremacy of parliament as we know it when you have a federal system and when you have a written constitution. If you have a written constitution, parliament is not supreme in all those areas entrenched in the

constitution. A perfect example is Section 133 and I think I understood you, Premier Lyon, that it is something we might build on but that without any firm undertaking at this stage on anyone's part, but we are bound by Section 133, whether we like it or not. Parliament is not supreme in this particular area, nor is it supreme when it says that we can't prolong an elected parliament's life longer than five years. We can't just pass a law without a majority and say we will go six or seven years. It is too bad, but that is the reality. So I think you understand vividly that the argument about parliamentary supremacy does not hold in a country which has a written constitution. It is a question of more or less how much more do we put in? We already have a certain number of political rights guaranteed in the written constitution, certain linguistic rights guaranteed in the constitution, Section 133. The question is: should we put a more or a bit less. Nor have we derogated from the British parliamentary system.

I will repeat I don't think we would attempt to convince each other at this stage, I just suggest that we leave it open to permit progress of those who want to make progress in this area. Maybe it will be difficult if the majority of us don't go along, but certainly we are free to entrench insofar as, or to constitutionalize insofar as several of us are concerned and I think that question should be left open and not put in - not dispensed with at this stage.

Are there any further remarks on this?

HON. ALLAN BLAKENEY: I don't want to get into a discussion with you on whether or not the parliament is supreme but about the supremacy of parliament, in a federal state parliament is not supreme. I think the essence is whether or not the voter can vote and if the government he votes in can change the current situation. That is the essence of supremacy of parliament. While it is true that in Saskatchewan you are going to have to vote for two governments, between the two of them

you could change anything, but if you entrench a Bill of Rights that is not so, you are going to need the whole range of governments that need to amend the constitution, and it is simply not accurate to say the supremacy of parliament does not hold parliament together with the legislature.

THE CHAIRMAN: Do you agree I could prolong the life of this parliament for a couple of years? If you and I agree, we could prolong the life of the federal parliament for a couple of years?

HON. ALLAN BLAKENEY: All I can say it was done in Saskatchewan with the Liberal government back in --
(laughter)

THE CHAIRMAN: But surely this is a misreading of Section 92. There is nothing preventing you from doing it in Saskatchewan. Perhaps there should be, but there is something that prevents us from doing it nationally.

HON. ALAN BLAKENEY: While what you are saying is true with respect to those things, what I am saying is that all of those rights you wish to put in the Bill of Rights will move them from a situation where they could have been changed by Parliament and legislatures to a situation where they will not be able to be changed by Parliament and Legislature, and that is surely a substantial derogation from the substantial -- if you don't want to call it -- "supremacy", the previous rights of The Crown.

HON. OTTO LANG: Mr. Prime Minister, I think there can be little doubt that in a very real sense what a Constitutional revision in regard to a protection of rights does is transfer some rights to the court to say that certain things legislatures have done are wrong and are not valid on the basis of interfering, after all, with individual rights and freedoms, which when read as a Charter virtually no one can disagree with. Of course, I think it is important, as Mr. Blakeney just . . . to, that one would not think of entrenching a Charter of Rights unless one had in mind an amendment procedure for the Constitution as well. I say that recognizing that that is a limited way around the difficulty to which Mr. Blakeney has referred.

But I would simply ask Mr. Blakeney, and I think it is important to get the question of rights and how we protect them in the Canadian context, and not refer to some other country who are having them in a Constitution that did not work very well, because I don't think we argue that fairly about Canada, and all our traditions about the role of the courts and the role of our democratic institutions. They are part of a very important package, but I do want to come to Mr. Blakeney's last observation which is, that after all, supremacy of

Parliament means you move out the government and thereby you restore individual rights which may have been trampled upon.

The big question is whether that is really an adequate remedy having regard to the narrowness that may have occurred in the infringement of particular rights in relation to a very small group of individuals or a minority which may not be able to bring popularity to its cause in the short run. Now, if such a minority has its rights trampled on by any legislature, then is it not important that some further protection exists?

Now, Alberta has tended to provide for that, and so have some other Bills of Rights with their provisions that even their own legislators have to at least express their concern by saying: "This is done even though we are overriding rights as expressed in the Charter". It may be that some such clause in the Constitution is all we can put and that with relation to the Charter would dramatize the effect that that was being done, but I don't think we should in this day and age overestimate the danger of individuals or specific minorities having their rights trampled, and rights which we all in general agree should not be trampled on because of a specific pressure point in our particular area of the country at a particular time, and that that individual or that minority may be too small and incapable of having that balance redressed quickly even at the next election two or three years later, and there the courts can play their role.

I would say one other thing: I don't even think we should necessarily go to the United States as an example of how our courts will look, because I think there are traditions even in regard to the self-discipline our courts ordinarily apply that may be important here,

but I don't suppose I should get very far into that argument.

HON. ALLAN BLAKENEY: The cost of having that defense of minority rights is to permit the courts to deny the rights sometimes of massive millions of people as they did in the United States in the 1920s and 1930s, when it was thought that it was unconstitutional to have minimum wage laws, unconstitutional to have hours of work laws, and who was to know that the next generation of judges in this country will be any more enlightened than that group of Supreme Court Judges were in the 1920s and the 1930s? That country was subjected to the unseemly performance of a federal government attempting to subvert the court and the court becoming a very rabid controversial political subject, and this is what we invite when we entrench Bills of Rights, and pass from the political level which is set up to fight these battles into the judicial level where it is not set up to fight these battles, but when we move them into that arena -- and as I say, that is a very real and considerable risk for us to undertake, and as I say, has not been undertaken by any other parliamentary democracy, possibly with the exception of India.

HON. STERLING LYON: I think we have to leave aside the proposition that others have spoken of as well as myself. I think that the clear onus is on the person who advocates change to demonstrate, and to demonstrate very clearly how the rights of Canadians today are being trampled upon under our present system. I would be most interested to have the Minister of Justice tell us of those instances that he is aware of in the last decade in which he has been very active in Parliament and so on, in which the individual rights of Canadians under our present parliamentary system are in some way less than they would be if we were to embody this Charter into the Constitution of Canada.

HON. OTTO LANG: Well, Mr. Chairman, there are examples, I think, historically. I would not want to engage in that attack on any current legislation or any province in relation to that matter. I think the same thing is a problem without the history of it unless I have a complete list. I think the issue really does come down, fairly narrowly, it seems to me, Mr. Blakeney's observation about the cost of protection and the fact that occasionally the court may go wrong in upholding the right to freedom -- if you will pardon the expression -- the freedom not to be arbitrarily detained and imprisoned in upholding rights of that sort. The court could conceivably apply them in some way that runs against a policy and program that is good.

I say, again, at that point in time a more flexible amending procedure can help a country out of that particular box, but how many more oftentimes individuals may be protected against arbitrary action and arbitrary arrest which may be for good purposes written into the law?

HON. PETER LOUGHEED: I would just like to enquire of Mr. Lang whether there was a germ of a new thought there that might respond to the different points of view in the sense that if he put into a Constitution a Charter of Rights, if you like, using that example from the federal point of view, the Canadian Bill of Rights and another point of view, the Alberta Bill of Rights, or something, that we are able to work out, and then to maintain the supremacy of the legislatures and the parliament provide in it that when it is a matter that deals with the federal jurisdiction the only way that it can be dealt with is for the Federal Parliament to pass a bill that says: "Notwithstanding the provisions of", and have to face the public on that as we have to

do today provincially in Alberta, and hence meet -- and that is what we have to do in Alberta -- meet the affirmative action of concerns the Attorney General of Saskatchewan is referring to. That strikes me as a different approach than, perhaps, anybody has been discussing before.

So, I raise it as to whether or not coming out of Mr. Lang's comment, was some way of resolving the different points of view that are here.

THE CHAIRMAN: Well, I would think that if progress can be shown in that direction, some provinces might well want to adhere to a Bill of Rights such as a mini or modified Bill of Rights of the type that we have in Bill C-60, and say that we will only

I would think, a very large step in the right direction. You know, those who believe that they should bind themselves entirely might well do so, others could do it in that way; and I welcome the undertaking to think it through perhaps on the part of some of you.

My Lyon suggests the legislature passes a law which derogates the Civil Rights law of the country by way of example, let the people have no recourse. Of course, he understands quite well that the people have the greatest recourse that can be accorded to them in the history of man's organization of the running of public affairs and that is to get rid of that government, to get rid of that group of legislators who prevented that event to take place. But when you appoint a court which is beyond the reach of Parliament, when your appointed court does something that is offensive to the human rights of a group in the country, who is to get at them? What access do the people have to them? And that is why I say it is anachronistic in this age that we should be talking about removing from Parliament -- when I talk about "Parliament", I am talking merely about

the people who are elected democratically by the citizens of Canada -- removing from the reach of the people of Canada those who may do violence, or who may do offense, and courts have been known to do that to the Civil Rights of part of our nation.

HON. BILL DAVIS: Mr. Prime Minister, what I just observed -- may I just make an observation on the remarks of the Premier of Alberta, which I thought was a very good suggestion and which you agreed with at the time and said you were going to consider, I would have great reluctance on something as fundamental as rights because it is not a question of rights, but how we protect them after all. The thought of some provinces where someone may be able to opt in and some may not, I think would be almost impossible to administer. I think it would be very difficult for the courts.

That is a thirty second reaction to the Premier's creative suggestion, and I just urge you, sir, if you are seriously thinking about it, to think about it seriously in the light that I would not think it will work.

HON. PETER LOUGHEED. Mr. Chairman, I am not sure that Premier Davis really followed the point that I was making. I was not really talking about the question of the absence of opting in or not; I am just trying to say that there are different points of view here, some who would favour entrenching human rights in the Constitution, and other who would not, and I was just saying that those of us who have some apprehension about it might follow the concept that these rights are enshrined in a Constitution, but if it is a matter of legislative supremacy it would provide such a Charter, but if it was a federal matter, a Federal Parliament could have a provision which is identical to the one we have in our Alberta Bill of Rights, stating: "Notwithstanding the

provisions of the Charter", and have to face the public on that matter as we would in the province, although we take our Bill of Rights and we put it in a Charter and it is really no different for us, because right now we are in the position that we have a Bill of Rights, we have not yet done this in seven years, but we could do it tomorrow, and we come in with an Act and it says: "Notwithstanding the Alberta Bill of Rights", but I say to the Premiers one would do that with great care and one would have to be very, very convinced that it was something of either an affirmative action program or something that could be wholly justified.

So I really wasn't talking about the mixed bag of Premier Davis, some in and some out, and some in and some out notwithstanding.

HON. WILLIAM DAVIS: I now more clearly understand it, Mr. Prime Minister. I still think with respect it is a very complex solution that I think in the long run would not be that workable if I can offer that instant reaction.

THE CHAIRMAN: I am sorry to hear you say that because we are back at the difficulty I pointed out this morning, that we won't be able to act except with unanimity and that is what has prevented us from acting at least in the area of patriation for fifty-one years and that may prevent us from acting in the area of division of powers and in the area of setting up Bills of Right. We all talked about a pluralistic society and differentiation between us. It would be preferable if we all undertook at the same time the same undertakings, but if we are saying now as regards something as basic as the Bill of Rights that we won't go that route unless everyone agrees, then we are really saying that we are going to be in the status quo with the constitution for a long while to come. I think we would be best to record for ourselves at any rate the nature of agreement and disagreement there is with this procedure and not attempt once again to convert each other but not give up our positions too readily just because every Premier doesn't agree with us. Having recorded the various positions, then towards the end of the conference we can see what we do with them but we have made some, I think, lasting progress, at least in the area of language, as you stated it at Regina, and perhaps some partial progress in some provinces in the area of education and perhaps some partial progress for some provinces in the Declaration of Human Rights.

HON. STERLING LYON: Along the lines of what I was discussing this morning, determining those matters which are crucial, if you were to ask the eleven governments how crucial to Canada is a Charter of Human Rights, I have my

own idea as to what the answer would be, but perhaps it would be different.

THE CHAIRMAN: How many provinces have adopted Charters of Rights? Probably six or seven.

HON. STERLING LYON: Yes, we have one.

THE CHAIRMAN: All of them perhaps. Anyhow, I think eight out of ten - it is obviously rather crucial in our -- as a subject matter.

HON. STERLING LYON: It is not crucial to this process. It is not.

THE CHAIRMAN: No indeed, it is not, nor are many other things. The question is, can we progress on some things and this afternoon I am hoping to record that we may have progressed at least on languages - all right, let's leave on the table whether or not we have progressed on rights. We will see tomorrow if we have progressed on the division of powers. If we are all prepared to meet again at ten o'clock in the morning and in the meantime there is a general reception out here, Mr. Davis. All the delegates. Do we invite the observers too?

THE SECRETARY: Yes.

THE CHAIRMAN: The observers are invited to a cocktail party across this glass window here. Do you have any other announcements, Mr. Davis?

THE SECRETARY: No.

LE PRESIDENT: Alors, la conférence est ajournée jusqu'à demain matin, dix heures (10h00).

THE MEETING ADJOURNED AT 5:30 P.M.

FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION

CONFERENCE FEDERALE-PROVINCIALE
DES
PREMIERS MINISTRES SUR LA CONSTITUTION

VERBATIM TRANSCRIPT

(unverified and unofficial)

Morning Session
October 31, 1978

COMPTE RENDU TEXTUEL

(non révisé et non officiel)

Séance du matin
le 31 octobre 1978

OTTAWA
October 30-31 and
November 1, 1978

OTTAWA
les 30 et 31 octobre et le
1er novembre 1978

THE MEETING COMMENCED AT 10:00 A.M.

LE PRESIDENT (HON. P.-E. Trudeau): Messieurs, dames, bonjour. Bonjour aussi chers téléspectateurs à supposer qu'il en reste encore après les difficultés techniques de Radio-Canada hier. Ce matin, on doit commencer à discuter du partage des pouvoirs et dans l'après-midi nous parlerons des institutions.

Pour ouvrir le débat sur le partage des pouvoirs, je ferai appel au ministre fédéral des affaires intergouvernementales le senior Lalonde.

HON. MARC LALONDE: Monsieur le premier ministre, je voudrais tout simplement pour aborder cette question de la répartition des pouvoirs, faire un sommaire rapide des différentes façons pour les gouvernements d'aborder cette question fondamentale.

Evidemment, cette question elle est en effet fondamentale à la discussion que nous avons entreprise depuis hier. D'ailleurs, elle est au coeur même du fédéralisme canadien car sans cette question on ne pourrait à proprement parler de fédéralisme. Pour les gouvernements provinciaux son importance apparaît assez évidente lorsqu'on considère les positions adoptées par

les premiers ministres en 1976 et de nouveau en 1978.

Et je puis vous assurer que nous avons étudié ces propositions de 1976 et 1978 avec soin. En ce qui concerne le gouvernement fédéral, je me rappelle combien d'efforts nous avons déployés pour tenter de résoudre cette question lors de la révision constitutionnelle qui a été entreprise entre 1968 et 1971.

Je pense que nous avons fait des progrès au cours des années surtout dans la définition des problèmes. Mais, il est évident que nous devons aller beaucoup plus loin maintenant.

Nous entamons ces nouvelles discussions sur la répartition des pouvoirs conscients des problèmes qui lui sont inhérents, conscients aussi des divergences d'opinions et des différences de perspectives, soit entre le gouvernement fédéral et les provinces, soit entre les provinces elles-mêmes, mais quand même avec l'espoir que nous pourrions nous entendre avec vous sur plusieurs questions.

En prenant le temps nécessaire, j'espère que nous pourrions en arriver à un accord général sur la répartition des pouvoirs législatifs dans la majorité des cas que nous aurons à traiter. Dans notre examen des diverses possibilités, nous voudrions sans doute tenir compte de quelques notions importantes et ici je me réfère à plusieurs de vos propres déclarations.

Tout d'abord, il faut accorder au gouvernement fédéral les moyens de promouvoir et de défendre les intérêts du Canada dans tous les aspects des affaires étrangères.

Deuxièmement, il faut accorder aux provinces les moyens de faire progresser le bien-être des citoyens ainsi que la diversité et l'enrichissement culturel, que ce soit par le biais des services d'éducation, des services de santé ou tous autres services connexes.

Il faut reconnaître aussi au gouvernement fédéral des pouvoirs suffisants pour redistribuer les revenus entre les régions, réglementer les activités inter-provinciales et inter-nationales, maintenir une économie nationale dynamique sans laquelle nous ne pourrions pas faire concurrence aux économies très efficaces et très concurrentielles de la Communauté Européenne, des Etats-Unis et du Japon.

Il faut reconnaître aux provinces des pouvoirs suffisants dans la gestion des ressources naturelles, dans la formation et le déploiement de la main-d'oeuvre, dans la planification de l'expansion industrielle dans leur territoire.

Enfin, il faut reconnaître qu'un ordre de gouvernement peut être mieux placé que l'autre pour offrir au public un service particulier ou toute une gamme de services et par conséquent qu'il devrait disposer de toutes les ressources nécessaires à cette fin.

Nous acceptons tous ces notions fondamentales, du moins en principe, dans le document de travail que son gouvernement déposait sur la réforme constitutionnelle, le premier ministre déclarait, le premier ministre Lougheed déclarait en particulier: that "The Federal

government should be endowed with sufficient powers to foster national identity, ensure national security, and promote national economic well-being."

Et il ajoutait: "Because the federation is predicated upon diversity, the provinces must possess the powers necessary to meet their individual cultural, social and economic needs." (Fin de la citation).

Une autre façon d'aborder la question de la répartition des pouvoirs pourrait être fondée sur la notion que toute répartition éventuelle des compétences devrait être évaluée en fonction de la mesure dans laquelle elle pourrait favoriser la réalisation d'un ou de plusieurs objectifs principaux, chacun de ces objectifs pouvant idéalement faire l'objet d'une évaluation objective.

Je pense par exemple à des objectifs comme la prestation la plus efficace possible des services gouvernementaux en soi, en fait, une optique fonctionnelle qui déterminerait quel gouvernement est le plus apte à livrer les divers services à la population. Un autre serait de maximiser l'autonomie pour les collectivités commerciales. Un troisième, la participation maximale des citoyens à la conduite des affaires publiques.

On peut concevoir d'autres façons d'envisager la question, par exemple dans l'un des documents de travail qu'il vient de publier, le premier ministre Bennett a proposé trois critères de base pour l'étude

de la répartition des pouvoirs, à savoir la nécessité d'atteindre un équilibre convenable entre les facteurs d'unité et les facteurs de diversité, le partage des avantages entre tous les canadiens et l'efficacité des gouvernements.

Voilà certains des facteurs dont nous devons tenir compte au moment d'arrêter des décisions sur la répartition des pouvoirs. Mais dans bien des cas précis et je dirais même peut-être dans la plupart des cas ces facteurs ne nous indiqueront pas clairement où se situe la limite entre les rôles des deux ordres de gouvernement. Ils nous éclairent certes, mais ils ne déterminent pas à eux seuls les choix et les compromis difficiles que nous serons appelés à faire si nous voulons exécuter notre engagement commun de renouveler la fédération, car nous devons analyser ensemble non seulement les divers facteurs objectifs que je viens de mentionner, mais aussi d'autres éléments qui eux, sont en quelque sorte, plus subjectifs.

Par exemple: le genre de société que nous voulons maintenir et bâtir ensemble dans ses dimensions nationale, régionale et provinciale.

Un siècle d'existence et d'histoire commune, de gouvernement tout de même efficace, car nous ne devrions pas écarter à la légère la pratique et l'expérience constitutionnelle des 111 dernières années.

Les opinions et les préférences des citoyens, les propositions qu'ils ont faites en particulier devant le groupe Pépin-Robarts -- qui a siégé au

travers tout le Canada récemment -- et qui a eu l'occasion d'entendre des milliers et des milliers de citoyens et aussi des centaines de groupes représentatifs.

Enfin, la poursuite des relations harmonieuses entre les gouvernements, car ce sur quoi nous nous entendons devrait coller au réel et constituer un cadre susceptible d'améliorer les relations fédérales-provinciales.

Il nous appartiendra d'harmoniser les nouveaux éléments qui auront été mis en oeuvre et mis en lumière en analysant la répartition des pouvoirs. Ce sont nos décisions collectives qui seront soumises en temps opportun à l'examen et à la décision du Parlement et des assemblées législatives provinciales.

Nous sommes prêts, j'en suis convaincu, à évaluer les choix qui s'offrent à nous en pensant à ce que les canadiens gagneront plutôt qu'à ce que les gouvernements prendront. Quelle que soit la façon dont nous aborderons la question de la répartition des pouvoirs, nous serons toujours aux prises avec le problème de l'interdépendance des gouvernements et la meilleure manière de régler ce problème; trop d'interdépendance au sein d'une fédération et il deviendrait difficile pour chaque gouvernement d'agir; trop peu d'interdépendance et le citoyen peut devenir victime de mesures contradictoires prises par les deux ordres de gouvernement.

Nous pourrions choisir, comme l'ont fait d'ailleurs les Pères de la Confédération, de répartir la plupart des pouvoirs en deux catégories qui s'excluraient

mutuellement soit une pour chaque ordre de gouvernement. Cette solution obligerait toutefois les gouvernements et les tribunaux à définir constamment les limites des pouvoirs ainsi assignés, ce qui entraînerait des tiraillements dans les cas difficiles, d'ailleurs on a vu cette situation trop souvent depuis 1867.

Nous pourrions aussi songer à placer certains domaines sous compétence conjointe avec suprématie fédérale dans certains cas et suprématie provinciale dans d'autres. Du point de vue juridique, cette solution laisserait beaucoup moins de place au doute -- le droit provincial l'emporterait sur le droit fédéral dans le second cas et le droit fédéral l'emporterait sur le droit provincial dans le premier cas.

Toutefois, cette façon de faire pourrait également causer encore plus de désaccords entre les deux ordres de gouvernement: voulant tous deux légiférer dans le même domaine, chacun s'irriterait de la présence de l'autre.

Les deux solutions méritent donc d'être étudiées attentivement et les deux figurent déjà dans notre constitution. Enfin, les deux ont une incidence importante sur la question de l'interdépendance.

Nous pourrions aussi examiner d'autres moyens d'aborder les problèmes d'interdépendance, par exemple la délégation de pouvoirs législatifs entre gouvernements.

Ceci dit, par où devrions-nous commencer? Les premiers ministres provinciaux ont demandé que soit

étudiée au plus tôt la série de sujets énoncés dans leur consensus de 1976 et repris dans le communiqué de Régina.

Je ne mentionnerai que les sujets qui sont du domaine de la répartition des pouvoirs en laissant de côté les propositions provinciales sur les droits, la Cour suprême ou autres sujets du genre. Ce sont les suivants: L'immigration, la taxation des ressources, le pouvoir déclaratoire du Gouvernement fédéral, la création de nouvelles provinces, la culture, les communications, le pouvoir de dépenser du Gouvernement fédéral, point d'ailleurs que le Gouvernement fédéral lui-même avait déjà soulevé durant la période de 1968 à 1971.

A Régina cette année les premiers ministres ont ajouté une autre liste de terrains d'entente à étudier le plus tôt possible et ce sont les pouvoirs fédéraux de réserve et de désaveu qui sont déjà abordés d'ailleurs dans le projet de Loi que nous avons déposé au Parlement au mois de juin connu, mieux connu sous le nom du Bill projet de Loi C-60.

Deuxièmement la restriction du pouvoir fédéral de mise en vigueur des traités.

Troisièmement des pouvoirs provinciaux convenables dans le secteur des pêcheries et

Quatrièmement, la confirmation et le renforcement des pouvoirs provinciaux dans le domaine des ressources naturelles.

Vous avez également ajouté une troisième liste formée d'autres questions telles que: le pouvoir

d'urgence du gouvernement fédéral; l'accès officiel des provinces au champ de l'impôt indirect; les pouvoirs résiduels du Gouvernement fédéral; la délégation des pouvoirs législatifs entre gouvernements.

Ces trois listes renferment au total une quinzaine de questions dont un petit nombre pourraient être réglées rapidement et facilement. La plupart, vous en conviendrez avec moi, exigeront toutefois une somme considérable de travail si nous voulons mettre au point, à notre entière satisfaction, une répartition des compétences qui soit meilleure et durable. Ces listes dont d'ailleurs loin d'englober toutes nos préoccupations.

Du point de vue du Gouvernement fédéral, il y a d'autres problèmes que nous aimerions voir traités non seulement dans les domaines que vous avez mentionnés à Regina, mais aussi dans d'autres domaines. Et j'en énumère ici simplement quelques exemples qui ne sont pas limitatifs: La question des pouvoirs d'urgence dans le domaine économique; les barrières non tarifaires au commerce interprovincial et international; la compétence dans le domaine des affaires étrangères; la réglementation de la concurrence; le trafic interprovincial dans le domaine du téléphone et des télécommunications; la question du mouvement interprovincial et international de l'électricité, du pétrole, du gaz et d'autres minéraux, y compris celle des droits de passage; le problème de la compétence en matière de salaire minimum; les offices de commercialisation; la réglemen-

tation de l'industrie canadienne des valeurs mobilières; le droit ou l'obligation d'engager des dépenses pour réduire les disparités régionales.

Nous voulons étudier avec vous la meilleure façon de préciser ou de déterminer pour la première fois, les champs de compétence du Gouvernement fédéral et des provinces et dans certains cas les limites à imposer à l'action autonome des provinces dans ces domaines et peut-être dans d'autres secteurs importants.

Evidemment, la liste des préoccupations fédérales et provinciales est longue. Un examen approfondi des points mentionnés et de tous les autres pouvoirs représente un travail d'au moins deux ans, peut-être plus.

Nous sommes prêts à entreprendre cette tâche avec vous et à y consacrer toutes nos énergies. Nous sommes clairement disposés à examiner toutes les questions que vous avez soulevées.

Merci, monsieur le Premier ministre.

LE PRESIDENT: Merci, monsieur Lalonde.

I would now invite the Premiers to take the floor on divisional powers. Premier Blakeney.

HON. BLAKENEY: Mr. Prime Minister,

I would like first to thank Mr. Lalonde for his comprehensive paper. I noted that he had indicated and it is clear from the paper that there has been a good deal of study on the position of the Premiers, more particularly the position set out in the letter from Premier Lougheed on October 14th, 1976 which was confirmed or the consensus contained therein which was confirmed at our meeting in Regina in 1978.

I do want to mention, not by way of being provocative but by way of straightening out the newspeople that we have had no reply to that letter. We are not critical of the fact that we have had no particular reply to that letter because there have been many, many changes in the scene during that period of time, notably changes in the government of Quebec and elsewhere which made it difficult to make one's position firm. But there were some suggestions in the news reports that the Prime Minister was critical of the Premiers for bringing about delay in the resolution of the constitutional process. I know that was not the case and obviously could not be the case in the face of a letter which went unanswered for two years.

I do not want to make that point other than to say that clearly this is a difficult problem, nobody is accusing anybody of delay, we are working to arrive at a solution and we propose to continue to work to arrive at a solution. We thank Mr. Lalonde for outlining the areas that the Premiers have dealt with in the 1976 consensus and we think it a useful contribution or I do at least to have Mr. Lalonde outline areas where federal powers may need clarification or amplification.

I think from my point of view and I suspect from a good number of the other Premiers' points of view, perhaps the best way we could proceed would be for me to suggest that Premier Lougheed be asked to outline a little

more fully what the 1976 consensus consisted of as outlined in his letter of October 14th, 1976 and we could perhaps move from there.

THE CHAIRMAN: Just on your question of letters I would point out to you that your information is not quite correct, Premier Blakeney. I did not answer that letter immediately in October. I was leaving for Japan and I answered it in quite some detail in January, some four months later.

HON. MR. BLAKENEY: We did not receive an answer in substance, I want to make that clear.

THE CHAIRMAN: You did not get the letter in substance.

HON. MR. BLAKENEY: Let us get the letters out and we can all look at them and we can judge whether it was answered or not.

THE CHAIRMAN: What I said was in April, 1975, I made a proposal to the Premiers at a private dinner that we repatriate the constitution. A year and a half later you answered that proposal after two interprovincial conferences. You answered that proposal a year and a half later saying "We will only patriate the constitution if you give us some powers". Four months later I gave you a substantive answer.

HON. BLAKENEY: That is right and substantive as I say, we will let everybody judge but I think when everybody does judge you will find that all of us or none of us has been guilty.

THE CHAIRMAN: The point that I think we will have to return when we discuss amending procedures and patriation of the constitution is do we consider it as a good thing in itself or do we say it is something that is only good for the federal government and we will do it if in an exchange would they give us some powers? I suggest that is exactly what happened with one province at Victoria in 1971. We had all agreed

on patriation and amending and then one province said "Okay, but I will only do it if you give me some powers". That was bad enough but then I suggested all the provinces did exactly that in the letter of October, 1976".

And they said: "Sure, we will let you bring back the Constitution to Canada, providing you give us these -- whatever it is, five or ten powers." I suggest we will have to make up our minds as to whether or not patriation is a good thing in itself, or if we only do it in exchange for a price that the Federal Government will have to pay. Essentially, that was the difficulty in my answer of January.

HON. ALLAN BLAKENEY: Forgive me, Mr. Prime Minister, but in my personal judgment patriation is a good thing but it is far from at the top of the agenda. It is not what is upsetting people. With all deference, the vast majority of people don't know that we have to go to Westminster and don't care very much. What they want to know is which government is rendering a particular service to them and which government is taxing them.

THE CHAIRMAN: That is the point I was making yesterday in my opening statement, but as we see, there are about fifteen powers that the provinces want to see limiting Federal Government jurisdiction and there are about ten where we might like to limit yours. If we wait until these twenty-five areas are settled, we will be another hundred years before patriating our Constitution. That is why I think we have to make up our mind if it is a good thing in itself to patriate the Constitution.

HON. RICHARD HATFIELD: I think it is of extreme importance to the soul of this country that we have the Constitution and we have it within our country. I think that patriation of the Constitution has to be very important. It may not win in a Gallup poll or a popularity poll, but I happen to think that it is evidence of political immaturity, the lack of political leadership in this country that we have not got our own Constitution within the country, and I feel very deeply about that.

HON. PETER LOUGHEED: If people want to feel deeply, I feel deeply too about the fact that we have a federal state and we have not talked about the Constitution and we want to talk about patriation. I agree completely with Premier Blakeney that it is not uppermost in most Canadians' minds or on their list to discuss the question of the Constitution and to put aside the distribution of responsibilities as between the two levels of government. It just doesn't wash and I have your letter of January, 1977, which was the way which, with respect, Mr. Prime Minister, you suggest you responded. You basically say that the most significant modification we would suggest is that we should not -- we adhere to the limited exercise entered any way into the distribution of powers. If that is a response, with respect, I find it hard to understand.

THE CHAIRMAN: Premier Lougheed, we really can't do this without recalling how the operation started. When we met in April of 1975, we had reached agreement, at least I understood it to be agreement, that having failed at Victoria, we should at least in the long process that went between 1968 and 1971 where we included separation of powers, division of powers, limitation on the federal spending power and so on, having failed that we say: "Can we do just one thing?" Here I agree, of course, with the Premier of New Brunswick, Premier Hatfield: "Can we do one thing? Let's bring it home." We had almost done it at Victoria. Let's do it.

My point is that that exercise, once again with respect, I suggest we had agreed to a simple patriation, whether it was high or low on one's priorities may be debatable, but this is how we had begun the exercise and it ended up with the provinces saying: "Well, sure, you can bring it back. It is something you want to do, but we will only let you do it if you give us 'A', 'B', 'C' powers." That is why my letter of January, as I was

telling Premier Blakeney, was saying we were really changing the nature of the debate which began in April of 1975. We can do this. Mr. Lalonde is sitting in this morning. We are prepared to discuss division of powers. We have once again done that between 1968 and 1971. We had put a lot of proposals on that table, so it is not that we are not prepared to do it. It is that we said we will never patriate very quickly if we have to agree on all this division of powers first.

I was going back once again to the operation which we had agreed on in April of 1975.

HON. PETER LOUGHEED: I had a very different understanding of the April, 1975, discussions. We were into a process you initiated, Mr. Prime Minister, which was to look at patriation and the amending formula but there was no undertaking, and certainly in my mind and I doubt in the minds of many Premiers, that we were not going to be discussing, obviously, with that the question of the distribution of powers, and when we met as Premiers in Edmonton in the summer of 1976 and followed that up with extensive discussions in Toronto in early October of 1976, quite obviously we went into and discussed the matter of the distribution of powers. That is why the document was presented on behalf of the ten Premiers at that time.

THE CHAIRMAN: Mr. Davis.

HON. WILLIAM DAVIS: Mr. Chairman, I would hope that our discussions on what I think is one of the basic issues of these three days won't sort of bog down in terms of who did what and when. In fairness to the Chairman, looking at it historically, in fact in 1971 we came very close. Mr. Chairman, what you face is that some people around this table were not present then. Points of view change in this process. Perhaps

even your own. I must say to Mr. Lalonde, that looking at the paper he presented this morning on the assumption that the Government of Canada is serious about considering these items that he has presented, I find it one of the more constructive and encouraging positions taken, and I think what we have lacked in the past three or four years is really a form of meaningful consultation on the issue of distribution.

I think some of us, sir, have held that the objective of the Government of Canada, which objective I share completely, that is, the one of patriation, probably had a higher priority in your minds than the question of distribution, and I don't think the position the Premiers took in 1976 is less than logical.

I think you, sir, must understand that some provinces have some pretty strong views on distribution and that these should be considered at least in consideration with any question of patriation. I am also realistic enough to realize we won't get total unanimity on this. I would hate to see patriation delayed because every single item we presented has not been adjudicated. I think really, surely, the purpose of this meeting is to move through Mr. Lalonde's document in a constructive positive action, because if the Government of Canada is serious and sincere about it, I think there is enough here to come relatively close to resolving some of our problems.

I would also say, though, Mr. Prime Minister - and I do not want to be in any way provocative - but I was impressed with some aspects of your remarks, I don't mean with all of them - I disagree with a few - but the sense or urgency that you really conveyed to all of us I think we needed in part at least, to what you feel is the political situation in this country, particularly as it relates to our sister province of Quebec. And going back to 1971, some of us - and I can only speak for myself I guess - I think were sufficiently flexible on the one issue of power to really make it possible for the then Premier of the Province of Quebec to accept and to join in a consensus. The fact that it was not so thereafter is a matter of history that I think all of us regret, but I in no way wish to put the Premier of Quebec on the spot. I think that if a part of the urgency relates to that province, I, for my own purposes before we get into a discussion, (we have some points of view that I hope will be helpful), I really would like to hear from the Premier of the Province of Quebec from the hypothetical situation that he so enjoys at these federal-provincial conferences that he is beginning to see the merits of dealing within confederation, that he sees all the positives that we all see from our points of view, that in the hypothetical situation that the Province of Quebec remains within this nation, one that I most sincerely endorse and I speak for all Ontarians, I hope, I would like to hear from the Premier of Quebec what he would like to see to help me in my analysis because quite honestly once again in historical terms, much of Ontario's participation in these discussions, going back to 1964, 1968 and 1971, to find a solution to our constitutional problems that would have particular interest in the Province of Quebec, I think more recently in the resource field and some others where other provinces are, I think now with great validity, expressing a concern and an interest - I do not say that interest exists with everyone, but I really think that so much of our discussions have related to what I could never identify in specific terms

as being the final position of the Province of Quebec because it tends to alter sort of year after year, I would like to hear from the Premier of Quebec really what he would like to see in terms of distribution, what he sees within the existing framework that could be altered that could make a changed constitution acceptable in the hypothetical situation that I hope will become the realistic situation as I say, that he finds the ultimate future of his province lies within confederation and - well, I don't want to in any way suggest what the order of speaking should be - it would help me in my reaction to Mr. Lalonde's paper and it would help me if I could hear from the First Minister of the Province of Quebec.

THE CHAIRMAN: Mr. Levesque, Mr. Davis is asking for help.

HON. WILLIAM DAVIS: We hope that he remains within the constitution and continues to attend these conferences.

L'HON. RENE LEVESQUE: Je remercie du fond du coeur monsieur Davis de sa paternelle insistance.

Ecoutez, je voudrais quand même très rapidement, répéter l'essentiel de ce que j'avais à dire hier, peut-être préciser un peu.

Tout d'abord, on n'est pas ici, représentants le Québec, pour faire des marchés. Donc, on n'est pas venu avec une shopping list", on est venu ici avec un dossier.

Ce dossier-là représente la continuité à laquelle tous mes prédécesseurs se sont attachés et cette continuité c'était une défense pas toujours facile, pas toujours bien comprise non plus, des droits et des compétences qui nous paraissaient essentielles au niveau québécois et aussi un effort constant pour tâcher d'accroître ces compétences.

Je pense que, et ça surtout pendant les

années 60 et 70, ça s'est soldé par un échec. On a vu au contraire une tendance de plus en plus claire à l'ingérence, aux intrusions. Je pense que d'autres l'ont constaté aussi, nos collègues de l'Ouest canadien ont énuméré en 1977 sous six grandes têtes de chapitre quelque chose comme 35 sujets concrets, sur lesquels ils trouvaient que vraiment on avait exagéré au niveau fédéral, c'est le moins qu'on puisse dire.

Maintenant, je retrouve quelque chose qui est curieux, quant à moi en tout cas dans le texte de monsieur Lalonde tout à l'heure.

Monsieur Lalonde a très bien, très concrètement -- je reprends son expression -- donné la définition des problèmes. Ca, c'est un exercice classique. Pour définir les problèmes, l'expertise ne manque pas autour de la table, ça fait une centaine d'années en ce qui concerne le Québec qu'on définit les problèmes. Ce sont les réponses qui ne viennent pas.

Maintenant, ce que j'ai trouvé frappant dans le texte de monsieur Lalonde, je dois le dire, c'est qu'on nous parle d'une dizaine de pouvoirs, monsieur le président de la conférence nous avait d'ailleurs annoncé ça par avance hier, on nous parle d'une dizaine de pouvoirs qu'il s'agirait de préciser, d'amplifier du côté fédéral.

Là, je voudrais dire une chose très simple là-dessus, au nom du Gouvernement du Québec et encore une fois de notre continuité à l'intérieur du système actuel: on n'est pas venu ici pour faire du

"trading", autrement dit: "Passe-moi ceci et puis, moi, je vais te passer ça."

Il n'y a aucun de mes prédécesseurs qui a jamais accepté -- que je sache -- excepté un seul pendant la deuxième guerre mondiale, c'était censé être provisoire et puis on sait que le provisoire dure encore, il n'y a aucun de mes prédécesseurs qui a accepté de réduire les compétences ou les juridictions de l'Assemblée Nationale ou de l'Etat québécois.

Et je dois vous dire que ce n'est pas votre serviteur qui va commencer.

D'autant plus, j'ajoute qu'il me semble qu'il y a quelque chose de passablement déséquilibré dans le tableau que dressait monsieur Lalonde. On laisse l'impression sur une dizaine de points qu'Ottawa manque de moyens, comme on dit en anglais: "Passez-moi le mouchoir, je vais pleurer!" qu'Ottawa manque de moyens.

Bien techniquement il est sûr que sur tel ou tel point ça peut se discuter, seulement ce que je veux dire quand je dis que ça déséquilibre le tableau, c'est qu'on est devant au moins quinze ou vingt ans de centralisation, en particulier ceux qui peuvent marquer une société, commencer à orienter l'avenir, de ce côté-là le Gouvernement fédéral ne s'est jamais gêné, depuis des années et des années, pour multiplier les ingérences, la création d'organismes nouveaux, la création de ministères dont on se demande très souvent à quoi ça rime, à quoi ça sert, et on vient, on nous arrive avec un tableau où on dit: "Mais oui, mais il

y avait une dizaine de points techniquement très importants, sur lesquels on aimerait discuter d'une expansion de pouvoirs fédéraux."

Mais, moi, il me semble que de toute façon, c'est presque une caricature de la réalité.

Si on est réunis ici, ça a été ré-affirmé ce matin, moi, je n'ai pas participé à ces réunions-là, si on est réunis ici c'est aussi pour avoir une réponse comme monsieur Blakeney l'a dit clairement.

Tout à l'heure monsieur Lang était censé nous expliquer le consensus de 1976, mais il y a eu des détours, qui ont été accidentellement, qui sont arrivés accidentellement en cours de route, j'espère qu'on reviendra au consensus de 1976.

Nous, on a endossé ce consensus et on l'a élargi cet accord sur un certain nombre de points au moment de la conférence de Régina.

Et, il nous semble quant à nous que s'il y a quelques bonnes volontés du côté fédéral dans cette question, central dans n'importe quelle fédération, du partage des pouvoirs, la réponse devrait venir -- je ne recommencerai pas le jeu de tennis pour savoir qui a la balle dans son camp -- mais, la réponse devrait quand même venir du Gouvernement fédéral et d'Ottawa.

Maintenant, cela dit, j'ajouterai simplement ceci: on n'est pas venus ici au nom du Québec pour entretenir un faux suspense, ni pour cautionner

quelque chose qui ressemblerait à un ultimatum qui serait remis au référendum du Québec.

On refuse, quant à nous, d'en faire une espèce d'urgence panique, même si certains voudraient se servir de ça, dans quelle intention, je ne le sais pas.

Et, je voudrais dire que je suis gré à nos collègues des autres provinces, qui ont parlé avec respect hier de cette échéance qui s'en vient au Québec, c'est-à-dire qu'il y a un référendum que les québécois vont avoir l'occasion, pour la première fois de leur histoire, de décider de quel genre d'avenir ils veulent, et c'est, c'était tellement important que nous on refuse d'en faire une panique justement.

Et, je remercie ceux de nos collègues qui justement ont refusé de se faire "bulldozer" enfin c'est ce que j'ai cru comprendre hier, dans un domaine aussi important que celui qu'on discute.

Moi, je dirais simplement ceci: s'il y a des progrès, s'il y a des progrès qui se font, des progrès concrets dans le sens d'un accroissement, là, où c'est absolument essentiel à notre point de vue des pouvoirs, de l'initiative, de la responsabilité des provinces, en temps et lieu, quand le moment viendra, les québécois pourront juger de ce progrès en même temps qu'ils auront à prendre leur décision.

Et, moi, il me semble qu'il y a déjà un bon bout de temps qu'on attend pour voir si monsieur Lougheed pourrait avoir la chance d'expliquer, moi, je n'ai pas participé au consensus de 1976, mais je serais

très intéressé de voir celui qui, à ce moment-là, était président de la conférence des premiers ministres, le premier ministre de l'Alberta compléter la réponse que donnait tout à l'heure monsieur Blakeney qui est le président de cette année, et peut-être que même monsieur Davis pourrait en faire son profit, parce qu'on a participé à tout ça.

L'HON. MARC LALONDE: Monsieur le Premier ministre, peut-être juste un point de clarification ou peut-être de mise au point, pour mettre les faits clairement sur la table.

Quand le Premier ministre Lévesque dit que le seul amendement qui se soit produit à la constitution ça a été en période de guerre et que ça devait être temporaire et dans des circonstances spéciales, je lui rappellerais qu'il y a eu des amendements à la constitution avec l'assentiment du Premier ministre Duplessis concernant les pensions de vieillesse et du Premier ministre Lesage concernant la sécurité de vieillesse et que ces amendements-là ont été faits avec l'accord de la province de Québec durant cette période.

Alors, quand il réfère comme le seul exemple, un exemple qui serait survenu en temps de guerre, il ne donne pas les faits tels qu'ils se sont produits en réalité.

Quant aux questions des ingérences, c'est une question que nous avons débattue et discuté déjà, les ingérences de part et d'autres, d'ailleurs dans

les deux sens. Il y a un certain nombre d'ingérences qu'on connaît aussi de la part des provinces dans les domaines fédéraux tout autant que des ingerances, entre guillemets tout le temps, mais des provinces dans les domaines provinciaux et c'est ce qui s'est appelé chevauchement, ce dont vous avez parlé à Régina et ce dont nous-mêmes nous avons parlé dans notre document de travail intitulé: "Le Temps d'Agir".

Et c'est là que nous avons suggéré, que vous avez vous-même suggéré que les gouvernements s'assoient de façon à réduire ces chevauchements le plus possible, peut-être pas de les éliminer, parce que ça ne sera probablement pas possible de les éliminer complètement à l'intérieur d'un régime fédéral, mais au moins de réduire les chevauchements et les secteurs où évidemment il pourrait y avoir du gaspillage de ressources humaines et de ressources financières.

Alors, cette étude-là, nous l'avons proposée, nous sommes très intéressés à la poursuivre, mais encore là, je pense qu'on va se rendre compte que ce phénomène se produit dans les deux sens et ne résulte pas soit d'une tentation des provinces d'envahir les champs fédéraux ou d'une décision fédérale d'envahir les champs provinciaux, mais résulte dans la plupart des cas de la volonté des gouvernements respectifs de remplir le mandat qu'ils ont en vertu de la constitution dans différents secteurs et différents domaines.

Et si on peut réussir, avec nos discussions à réduire ces chevauchements-là, nous serons les

premiers à nous en réjouir, nous avons d'ailleurs déjà commencé à prendre des mesures dans ce domaine, dont vous êtes au courant, de façon à réduire ces chevauchements.

Alors, je pense qu'il ne faudrait quand même pas dépeindre un tableau qui serait tout simplement, qui présenterait tout simplement un côté de la situation, je pense que je tenais, monsieur le Premier ministre, je croyais qu'il était important d'apporter cette correction à ce moment-ci.

HON. WILLIAM DAVIS: I just want to add a word or two to what Premier Levesque has said. I have some slightly greater insight after listening to him and I will be interested in his reaction to the consensus that Premier Lougheed will tell us about. The only point that I would make to the Premier of Quebec is that Ontario did not come here to bargain. Hopefully, Mr. Prime Minister, we are here in an intelligent, logical way to start the process of determining the truly Canadian constitution and I am not here to say, "If you will give us that, we will agree to this." We are interested in achieving what is logical and intelligent and whether you can achieve as reasonable a degree of consensus as you can, and I think if we sort of treat it on the basis of trade-offs, we are not doing anyone a service. Surely our objective must be to as intelligently as we can, decide which government can do the job best and has the resource to do that particular job the best, and our presentation after Premier Lougheed and others have made their points of view, sir, will not get into a bargain. We are not here to bargain, we are not here to bargain.

THE CHAIRMAN: Premier Lougheed everyone seems to think that as Chairman of the 1976 Conference you should take the floor.

HON. PETER LOUGHEED: Mr. Chairman, I will do it in a way that is always difficult for me as I am sure you will find in attempting to describe the meeting and the results of it in relationship to what occurred as distinguished from my peculiar Alberta point of view, and I will reserve that for later if I can.

But, Mr. Chairman, perhaps the easiest way to follow it is you just kept open Page 6 of Mr. Lalonde's document which shows the subject and does, I think, appropriately exclude the items which are being dealt with under other subjects.

When we met on the basis of discussing patriation, we met on the basis of discussing patriation and the amending formula but at the initiative of yourself, Mr. Prime Minister, and you recall that in a letter that I wrote you I did say this, that I think was understood at least by all the Premiers, and this is my letter to you of October 14th, 1976, which says this:

"You will also recall that when the Premiers had private discussions on this matter at your residence during the evening of June 14th, 1976, you indicated you would be prepared to accept any proposal which had been unanimously agreed to by the Provinces."

And then we went on on patriation and we said:

"All Provinces agree with the objective of patriation. They also agreed that patriation should not be undertaken without a consensus being developed on the expansion of the role of the provinces and/or jurisdiction in the following areas: culture, communications, Supreme Court of Canada, spending power, Senate representation and regional disparities."

And then there were a number of matters unanimously agreed to. The first matter and I have some difficulty going from memory now, was a greater degree of provincial involvement in immigration. My recollection was that the former Prime Minister of Quebec presented that and the response by the other Premiers was positive to it.

The second matter was the strengthening of jurisdiction of provincial governments of taxation in the areas of farm reproduction, mines, minerals and forests and my recollection was that was initiated by both the provinces of Saskatchewan and Alberta.

The fourth item was the provision that the declaratory power of the federal government to declare a particular work for the general advantage of Canada would only be exercised when the province affected concurred.

The fifth item here is the creation of new provinces. I then listed on behalf of the ten Premiers a number of areas in which we did not have unanimous agreement but we had a fairly high degree of consensus. The ones mentioned were culture, communications, spending power and I am a little bit lost in this discussion that the issue of regional disparity and equalization doesn't seem to come up here. Maybe Mr. Lalonde has a reason for that coming into another part of the discussion. So those were the items that we dealt with in those three extensive meetings in 1976 and since that time. The Premiers met in Regina in 1978. There had been some intervening events particularly in the areas of resources and I think it would be now appropriate if I could, to throw it back, into the Premier of Saskatchewan, who chaired the Regina conference and looking at page 6, Mr. Chairman, there were the additions that Mr. Lalonde has appropriately raised.

THE CHAIRMAN: Premier Blakeney.

HON. MR. BLAKENEY: I don't think I need to add a great deal. I think that we did deal with the reservation and disallowance which I believe is a matter

which has been dealt with on a good number of occasions and is generally thought to be obsolete. Limitation of the federal power to implement treaties, this is I think having to do with a clarification of the matter since I think the state of the law as we all understood it is relatively satisfactory but it looks as if it may change with comments, just judicial comments here and there, a poor case, with a little comment on labour conventions and maybe this is just a need to get a possible clarification there. On an appropriate provincial jurisdiction with respect to fisheries. While I am hardly the one to dwell too extensively on that, I think I can maybe -- some of my other colleagues could dwell more fully on that if required.

Confirmation and strengthening of provincial powers with respect to natural resources, that will be familiar ground by now. Essentially I think at Toronto in 1976 we agreed upon specific wording to deal with the then emerging problem of direct and indirect taxation and getting revenue from natural resources. Between 1976 and 1978 other hazards have appeared, an extension of the previous interpretation, that is at least our view of the matter of the trade and commerce clause as it was referred to in the *Seguin* case and subsequent to Regina being referred to in the *Central Canada Potash* case. A confirmation and strengthening -- there were a number of other topics dealt with, the federal emergency power and here there are a number of points of view on that, but my own view and I believe it is shared by others is that the power ought to be one used -- if Parliament is going to use the power they should state they are using it, let's put it that way, the position outlined in the minority judgment on the anti-inflation case.

Formal access of provinces to the field of indirect taxation, that is familiar grounds and so it was a subject of a good deal of discussion between 1967 or 1968 and 1971 and the problem surrounds being assured that this

does not get you into the customs and interprovincial trade area where I think all the provinces agree they ought not to be able to levy customs duties overtly or covertly and indirect taxation has some definition problems.

The federal residual power and the delegation of legislative powers between governments, the delegation one is one I think there is a great deal of support for that among the Premiers, not necessarily that it will solve all our problems but it might allow us to enter into agreements, possibly ratified by legislatures and parliaments to deal with areas of overlapping jurisdiction and then we would not run into the problem of a court holding that we were entering into an agreement beyond our legislative powers and that strikes us as just a sensible way to attempt to get a better value for the taxpayer's dollar. It is one of these gray and overlapping areas. I think there is a wide measure of support for that all around the table, but no one I think is holding it out as being a panacea, just a useful tool. I think those are the other items we dealt with and I don't want to take more of the time because doubtless people will want to talk about individual powers, individual issues.

THE CHAIRMAN: Premier Blakeney presented in a reasonable tone indeed you can make a very good case for examination and perhaps partial or total transfer of powers here and I hope we will have an occasion later on in a reasonable tone to indicate that there has to be some limitation to the federal power of, shall we say, spending or declaratory power, but the existence of those powers, going back to the beginning of Confederation, have been extremely useful and we shouldn't destroy them lightly. This is an argument we wish to make, but perhaps following your suggestion it would be well before we indicate our point of view to hear from other provinces who feel strongly about one or other of this list

or perhaps who want to add other items to the list. Peter Lougheed.

HON. PETER LOUGHEED: We are confused about our process here, Mr. Chairman. We have a long list and the federal government have a list too and I find it regretful that we don't have a sub-agenda, frankly, in this area.

THE CHAIRMAN: Well, I think we will have to by the end of the morning take out of this list those areas where we think we are most likely to reach agreement fairly soon. I think that would be in your interests and in ours. There are some subjects like delegation of legislative powers between governments of which I see the utility, but which I don't think we can decide to do very quickly. I mean within the next month or so. It would take a great deal of study and work by our Departments of Justice; whereas perhaps something like the access of the provinces to the field of indirect taxation, well, we could put this on a sub-agenda and say "Look, we can decide this hopefully very quickly" because you will recall that our government back in 1969 had offered to say that this field should be accessible to provinces as well as to the federal government and we have a lot of work done on that and positions ready. I think we all agree that transfer of indirect taxation powers to the provinces should not be done in such a way as to be a barrier or a hindrance on interprovincial trade or for that matter on international trade. We don't want one province to be able to raise tariffs by way of indirect taxation against consumers or producers in another province in protecting one's own consumers. But I say there is a lot of work and thought going into that and I think we could make progress. On the immigration, which is first on your list of the 1976 consensus, we know now it is a joint power and I don't think you would argue that the federal government should give up its jurisdiction completely over immigration. That wouldn't make sense and I know it is not your position. So

it is really asking ourselves how we can best exercise this joint power. As you know, the federal government has since 1976 reached agreements with more than one province. Certainly Quebec and Nova Scotia and Saskatchewan. So we don't know what more you want there, but we are prepared to put it on a short list and see if there is anything we could write into the constitution beyond saying that it is a joint power, as it is, and therefore administrative solutions should be found.

On resource taxation I --

HON. ALLAN BLAKENEY: Offhand, I was somewhat facetious to my colleague here, if you have got to deal with Quebec on immigration I think it is a dead letter because I think that probably deals with the issue.

THE CHAIRMAN: We have a deal with Quebec. We have one which goes back to Mr. Duplessis day when Mr. Gabias was a member of immigration in Quebec and I think it has been renewed under Mr. Bourassa and it has been renewed with the present government just about -- it was all approved about a year ago.

HON. ALLAN BLAKENEY: I see.

THE CHAIRMAN: Resource taxation I said yesterday we think we agree with you that resources are absolutely fundamental to the provincial economies and you should have whatever taxation rights you want. We also think and I believe particularly the have-not provinces would agree on this, that there should be some access to the wealth of resources by way of taxation or otherwise by the federal government. Otherwise we would not be able to redistribute wealth within the country and I know you agree with that.

We have already a situation where the richest province in Canada has no sales tax and the poorest province in Canada I believe has a 10 per cent or is it 9 per cent -- 11 per cent sales tax.

HON. WILLIAM DAVIS: Mr. Prime Minister, we have no Heritage Fund, unfortunately.

THE CHAIRMAN: So we think we can make progress on it. On that, protecting the rights of the provinces in a more explicit way, but we hope we will be able to do that in a way which will say no matter how great the wealth of any province, it won't be an impediment on the federal government getting some benefit of it for the purpose of redistribution to the poorer provinces.

On declaratory powers -- well, let me say it was put in with good purpose by the Fathers of Confederation. I understand it has been used some 340 times just to unify the railway system in Canada, to take little bits of lines and put them together, and thank God we have that power: Otherwise, we would be like Australia which had to change goods five times when shipping them from Perth to the other coast because each had a different railway system. Well, thank God the Fathers of Confederation put this power in so that the Federal Government could take up these lines and join them together. But that does not mean that we think it should be exercised arbitrarily or without cause. We think it should only be kept in some way which would hypothetically prevent one province from blackmailing the rest of the country by saying, for instance: "Everything going through a pipeline or an electric line into my province, we won't let it out." I think it is important that there be some power in the Federal Government to make sure that there, indeed, can be interprovincial and international movement of goods without one province being able to say: "Well, you know you won't take gas from the West through Ontario to Quebec or the Maritimes, because we will stop it in Ontario."

What do we do? Do we expropriate the line, or do we use it as a voluntary power? Of course, Ontario would never think of doing that sort of thing.

HON. OTTO LANG: There is one very good case wherein a declaratory power was used, and I think Mr. Blakeney would say it was -- well, rather that was in the setting up of the Canadian Wheat Board and its powers and ensuring that the individual elevators were within the broad ambit of that operation. It can be very useful, indeed, in certain cases.

HON. ALLAN BLAKENEY: If I may interject for a moment, because I think this is a useful time to say something on that. That may be a place where, let us say, derogation or something might work. With respect to the application of the declaratory power, we agree wholeheartedly that the freight handling system is national and ought to be national. We ran into a whole series of fringe areas of occupational health and safety in grain elevators and the like where none of us know. We are all over this in uranium and we are all over it in grain handling, but there ought to be a way to sort that out, I think, without having umpteen legal cases. Those can be worked out.

THE CHAIRMAN: I quite agree, they can be worked out, but I think we could have that on a short list or a sub-agenda so that we could get results, hopefully, within a few weeks or a very few months.

The last item on your list is the federal spending power. You will recall that our government itself raised it in the 1968 and 1971 discussions and the proposed ways in which it could be limited, or perhaps should be limited, and we are prepared to put that on the short list and revise those discussions. It is something, I believe, that came out of us. We said: "Well, we are prepared to limit the federal spending power. We would not want to see it disappear completely because, after all, it is by virtue of the spending power that we have equalization grants." So, I am sure we would not -- or most of us would not want those grants or that ability to disappear. It is by virtue of the spending power that we have Family Allowances.

I do not think, particularly, if the administrative arrangements that we have embarked upon

in the various provinces to submit the Allowances to various provincial priorities, I don't think we would want to see that disappear, but we are prepared to limit it.

Reservation and disallowance, which is at the top of your Regina list -- well, you know they are already in Bill C-60, and we said: "We will give up that power, vis-a-vis those provinces who accept the Bill of Rights." Well, we can discuss that. Maybe it should not be given up unequivocally, but let us debate it.

I am not sure about indirect taxation, to give up the power and accept some obiter dicta of the courts. I do not sense as great urgency in looking at that as the matter of taxation or declaratory power. The Federal Emergency power ---

HON. PETER LOUGHEED: How about Fisheries and Resources?

THE CHAIRMAN: Resources, I did mention when I was discussing the 1976 consensus.

HON. PETER LOUGHEED: Mr. Blakeney, I think, put it well, that it was on in 1976 with regard to the matter of indirect taxation which you responded to, but it was raised again and worded in a different way relative to 1968, so as our position paper makes clear, that has got two aspects to it. It is not just a matter of resource taxation.

THE CHAIRMAN: I agree, but I think I attempted to deal with both; first, by talking of indirect taxation, and the second by saying, surely we must all agree that at some point there should be some benefit to the people of Canada from the resources in another province, and Premier Blakeney agrees with that, and I am sure Premier Moores would want that to

be true, and a lot of the Premiers. I think that was the burden of Premier John Buchanan's speech yesterday, but because they are little provinces they do not have that many resources and there should be some process whereby part of the benefit of those resources can accrue to have-not provinces.

MR. PETER LOUGHEED: There is no question, it has been put twice yesterday, there are many effective ways of doing that, certainly, through the taxation system, but the point is, I am not sure I am following as you are going down, very quickly, this list. You are saying: "This is a matter we would put on a short list for discussion". If that is what is happening, that is fine, we will come back to it.

THE CHAIRMAN: What I am really leading up to is suggesting that we take out of this long list some fifteen items, we take out the five, or half dozen or so that you feel are important to various areas of the country and on which we feel there can be fairly rapid movement as in the examples I have given, and so I say let us get to work and ask our Ministers of Justice, and Attorneys-General, or Ministers of Interprovincial Affairs to come up with a very, very rapid and quick report on that, and "Yes, it can be done, and this is how we suggest it be done." And if we meet again in January we can, hopefully, do all those things.

But I do not think anyone would expect us in the communique tomorrow to draft a Constitutional Amendment which would be final. I think we realistically have to have a few people work at it.

HON. FRANK MOORES: Mr. Chairman, there was the Fisheries section now, which was skipped over as well. That is the proper attitude if you leave it open to suggestion, because we feel, as do all other provinces bordering on the sea, east and west, I think, very strongly that there should be more provincial involvement in the administration of a resource that is primarily used by the people in those areas.

One other thing that you have just said -- a step in the right direction, of having these identified in my case for the first time from the Federal Minister of Government Affairs. It is certainly a step in the right direction, and I think if we are going to deal, as you are saying we should go with the short list, but if we are going to handle all this in any detail we will be here forever and eternity, but the business of getting the eleven Attorneys-General together to come up with, first of all, an agenda list -- are you talking about doing that very quickly during this meeting? Are you talking about having not only a short list but some sort of a consensus for the January meeting?

HON. OTTO LANG: Prime Minister, if I may, the example of Fisheries is an interesting one which would likely require some of the same kind of work that was applied in the case of Immigration, it seems to me. In other words, there is such an obvious federal involvement responsibility given its international aspect quite apart from other things that it may need that sort of development and work.

I think in some areas, such as the resources, indirect taxation, and the principle which has been stated a couple of times, namely, that the power to assure equalization and benefit of wealth in

all parts of the country having to be associated with the solution to these two problems, what may be important if there is going to be a working group, is that the working group of Attorneys-General or whatever know that it is, indeed, a firm and accepted principle in this group that we will be trying to accomplish both objectives. I think the technical work could be done if the objectives are known.

HON. PETER LOUGHEED: Mr. Chairman, I am sorry, and maybe it was a misunderstanding of your procedure, but we are going down now and we are saying: "All right, let us get a short list for a sub-agenda." I don't know why it didn't happen before but in any event, that is fine, that takes care of five or six items. But then to say: "Okay, we will now have a group of Ministers go off somewhere and deal with that matter", these documents that have been presented to the Federal Government and to all the people involved, came out of the discussions at Premiers Conferences, particularly the last one a number of months ago; and surely, in the time we have this morning we should be finding out what the attitudes of the governments are here and whether they are flexible or not. If they are inflexible, some of us would like to know. I just can't see that the most important subject to many provinces on the entire agenda on the Constitution is the one we put off to Attorneys-General.

THE CHAIRMAN: I thought I made it quite clear that we are prepared to be flexible, to use your word, on just about all of these. I have just said on the Federal Declaratory Power, would it be bad to see it limited. On indirect taxation we are prepared to see it go to you. On the spending power we are prepared to see it limited.

I repeat, we proposed to limit it ourselves in 1969.

HON. PETER LOUGHEED: Are you prepared to respond to the Premier of Saskatchewan on his remarks as with regard to the taxation powers relative to resources?

THE CHAIRMAN: Yes, I am. I think Section 109 of the B.N.A. Act should be clarified to make sure that the property of those resources is indeed that of the provinces. I don't think the Premier of Saskatchewan is arguing that this should go so far as to say that once the province has taken the resource out of the ground, or the sea, or the air, or wherever, it can also have jurisdiction on international trade and on interprovincial trade. I doubt whether the Premier of Saskatchewan is suggesting that. If he is, well then, indeed, we are going to have to have a discussion, because a country cannot act in unison, for instance, at the multilateral trade negotiations, and say: "Well, here we are in Geneva, but the Federal Government would like to protect Ontario with these tariffs, but of course this does not apply to Saskatchewan where they would like to protect their resources."

I mean I am making an obvious argument ad absurdo. There has to be, if you are going to have a country at all, the power to regulate international trade. I mean even the Common Market proposed by Mr. Levesque's government, if I remember correctly, suggests that after separation they will embark upon a Common Market which presumably will have a common tariff between countries, so we can't accede to this request if it means tariffs will be set province by province. Therefore, international trade has to remain under federal jurisdiction and inter-provincial trade; otherwise we indeed will have tariff barriers between the producer in one province and the consumers in another but this doesn't mean once again that Section 109, which is of great concern to you regarding resources, shouldn't be clarified to make sure that the province indeed has total control of its resources within its province.

HON. WILLIAM BENNETT: I was encouraged by the statement of Mr. Lalonde this morning because in our view I think he has responded to the Premiers' agenda that is, the items that we put prominence upon in our letters in which we say we have, in some cases, a grievance and in some cases consensus which, in my view, not all of us have agreed upon but agree there should be full discussion. I think you have responded, if that is what you intended, so we could now proceed with our items and we have - you have put them in priority, and I would hope in the process that we could perhaps add others onto that list as part of the priority. Making a start, British Columbia's view is that this conference, while useful for identifying to the public our concerns which many of us well know from our other conferences, really could set in motion the way we deal with them. Up until now it has been getting our priorities and some understanding that you are prepared to deal with our concerns. That is why British Columbia didn't re-identify our shopping list, as it were, at this

conference, because we feel that we should move along with the items we have already identified as Premiers which have been contained in letters and that we should develop then the principles by which we are going to deal with them in any future action and that we should get along with the process.

I am concerned by some of the statements that perhaps yourself, Prime Minister, or others consider meetings that have taken place in the past, whether they be the Victoria Conference or others, as a plateau to negotiate from because those meetings were inconclusive. They are certainly useful in the historical way, but many of the Premiers of today were not part of the governments at that time, as some of the Premiers here today were not part of the governments that met in 1975 or 1976 and elsewhere. I am of the view now that the way to go and the encouragement Mr. Lalonde has given us in dealing with our agenda, that you are prepared then to move from those areas, is to move from this conference to resolve them.

I feel very strongly that we could never resolve them because the items will carry from different provincial governments different viewpoints even though Premiers have collectively made them an item of priority. I must say there are different viewpoints when we get into the discussion and the degree of dealing with some of these subjects, so it is British Columbia's view that we deal with these items. Our position paper on the distribution of legislative powers hasn't contained a shopping list but the way we go about dealing with the list we have already identified. I for one am pleased to see that you are prepared to move - I consider this a commitment to respond to our agenda from the letter of 1976 and the further meeting in 1978. Was that your intent?

THE CHAIRMAN: Can I perhaps read some notes I have here which put some of the things I have been saying at least in a formal way? It does not deal with, I think, the very logical question that your brief raises about what are the

principles which are going to underlie the division of powers? Will it be functionalism or greater access by population and so on? But I personally would be happy to have that discussion either now or later today, but for the purposes of the specific list that Premiers Blakeney and Lougheed at the times of their respective chairmanships have drawn up, I would ask your permission to read a list of things on which I think there can be movement and the process that would permit that movement.

As I said at the outset of this Conference, and many of you have expressed as well, we have to demonstrate to ourselves and to our fellow countrymen that early progress can be made on important constitutional questions. It is a complicated discussion. There are so many subjects to be dealt with, and so many factors to be taken into consideration that obviously it is a major task. I would suggest a way in which we could organize that task and I realize that I may be encroaching a little bit on tomorrow's agenda on process and method, on that items on tomorrow's agenda, but I would just suggest a process so that at least we can go to what Premier Lougheed has called a short list or a sub-agenda.

I think we would have to put in place some kind of special and effective arrangement to enable our joint effort to go forward as rapidly as possible over the next couple of years, the timeframe that Mr. Lalonde mentioned. It would also seem essential, if early progress is to be achieved, that some sort of a priority list be prepared and I think that is what you have in mind, which can serve both as a guideline and as an objective for the next few months. I would like to offer then consideration of a mechanism and of an agenda for change.

Nous pourrions créer un comité sur la constitution qui se réunirait fréquemment dans les prochaines semaines et régulièrement au cours des mois suivants.

Ce comité pourrait se composer des ministres des Affaires intergouvernementales et des procureurs généraux assistés de fonctionnaires.

Ces ministres pourraient s'adjoindre, au besoin, divers collègues, au moment où ils étudieraient certains pouvoirs particuliers. Les pêcheries par exemple, je voudrais que le ministre fédéral des pêcheries soit présent lorsque nous discuterons cet item-là.

Chacun de notre côté, nous pourrions faire en sorte que notre Cabinet étudie rapidement les points en litige, même durant la tenue des réunions ministérielles, afin que le processus décisionnel devienne une question de semaines et non de mois.

Au cours de la présente conférence, nous pourrions tenter d'en venir à un accord de principe sur un certain nombre de modifications hautement prioritaires dans le domaine de la répartition des pouvoirs.

Le comité sur la constitution dont j'ai parlé, pourrait ensuite procéder à un examen intensif de ces questions afin d'élaborer des propositions détaillées auxquelles nos ministres responsables auraient éventuellement souscrit et sur lesquelles nous pourrions nous pencher et nous prononcer au cours de notre prochaine conférence constitutionnelle disons au mois de janvier 1979.

Nous pourrions aussi établir une deuxième liste de questions prioritaires ou demander au comité sur la constitution d'en dresser une, afin que

des travaux soient entrepris sur les nombreux points que nous voulons examiner ensemble. Nous ne demandons qu'une chose en retour: c'est que vous et vos gouvernements vous engagiez à accomplir des progrès rapides sur les autres aspects du renouvellement de la constitution dont nous discuterons plus tard, et à parvenir, dans une large mesure, à une entente avec nous dans ces autres domaines.

To underline our commitment, and also to help in the setting of the priority list to which I have just referred, I wish to make specific proposals to the conference. These proposals are drawn from the lists which you, Premiers, have conveyed to me through Premier Lougheed's letter of October 1976 and Mr. Blakeney's letter of August 1978. Their selection has also been influenced by the views -- and I might add in most cases, the strong views -- which some of you have individually expressed in our correspondence. Finally, they reflect the federal government's own assessment of what changes, among those you have proposed, are not only desirable, but also achievable over the coming months.

First I propose that we agree in principle, at this conference, to seek an appropriate method to place limits on the use of the federal spending power. At the same time I would just throw it out because it might not be too much of a duplication, that consideration could be given at the same time to the limit of the provincial spending power in areas where it interferes with federal priorities. Provincial governments have argued for years that the unrestricted use of this spending power by the federal government creates difficulties for the provinces. The federal government recognized as long as a decade ago that the limitation of this federal power would be in keeping with the spirit of Canadian federalism and our recent budgetary difficulties have further reminded us that the lack of constitutional restriction on the federal power to spend is not always an unmixed blessing. Therefore, I put it to you that in this, as in other areas, the time for action has come. Subject to your agreement, I am willing to direct federal representatives on the Constitutional Committee to devise, in conjunction with your representatives, appropriate restrictions on the use of the federal spending power for payments to other governments and also to institutions and persons, where payments to those might significantly affect the affairs of provincial governments.

The only caveat that I would make on this proposal is that, in our view, restrictions upon the federal spending power should not deprive the federal government or parliament of effective means to achieve such national goals as equal treatment of Canadians regardless of their residence, and alleviation of disparities among provinces and regions.

Second, I therefore propose that we agree in principle, at this conference, that the constitutional obligations of the federal Parliament regarding equalization and regional development be made explicit - indeed, more explicit than in our original proposals of last June. We had put something in the bill we put before Parliament on equalization and regional development. We are prepared to look at a more explicit text. We could consider that point if the provinces are willing, of introducing the notion of regional development even within provinces. I am thinking, for instance, of grants to municipalities or that kind of thing, the principle of regional development is good across Canada and maybe it could be considered within a province, but it is something we could consider. This has been a long-standing concern of the less affluent provinces, particularly in the mid-Atlantic region. I was also encouraged to note that the more affluent provinces have explicitly or implicitly supported the concept of benefit-sharing for all through the federal government.

Third, I propose that we agree in principle to devise a constitutional provision which would meet provincial concerns about the possible abuse of the federal declaratory power. There is the view expressed by the Premiers in the "1976 consensus" and there is also your new proposal, Premier Bennett, in this regard. I suggest that we instruct our representatives on the Constitutional Committee to come up with a procedure which might be acceptable to us all. In saying that, however, I want to make it clear that I think there must be some means by which the interest of the total Canadian community can be protected if, at some future time, a provincial government were to act in a way

that would be quite contrary to the interests of the country as a whole. I have given some hypothetical examples in the discussion a moment ago. We have to envisage undesirable possibilities at a provincial level just as much as at the national level!

Fourth, I suggest that we agree in principle to revive the proposal made in 1969 by the federal government that provincial legislatures be allowed, within certain limits, to levy indirect as well as direct taxes. There was consensus at your meeting in Regina that "formal access of the provinces to the field of indirect taxation" is a matter "requiring early consideration" and I would agree that the time for action has come. The only conditions that I must make, as Prime Minister of the whole federation, are that the relevant constitutional provision be so drafted as to ensure that provincial taxation would not create impediments to interprovincial and international trade, and drafted in such a way as to substantially confine the burden of each province's taxes within its borders.

You probably would agree that we should not use indirect taxation so that it be levied on the consumer in other provinces.

Well, I see there are some doubts but that is a subject matter that we can debate or discuss.

Fifth, I propose that we agree in principle to clarify the respective powers of federal and provincial authorities in respect of:

- the control, management and taxation of natural resources;
- the control and regulation of inter-provincial and international trade.

The object, of course, being to ensure that both orders of government can acquit themselves of their responsibilities effectively, and that a fair share of the benefits from natural resources accrue to the people of the province where they are found, without depriving other Canadians of a reasonable share of these benefits. This is an aspect of the distribution of powers on which you, Premier Blakeney, and you, Premier Lougheed, hold strong views. Accordingly, I suggest that we and our colleagues not only agree to talk about it, but also try on an urgent basis to resolve the issue.

Sixièmement, je propose que nous convenions en principe de supprimer les obstacles constitutionnels à l'unification du droit de la famille sous juridiction provinciale.

Voilà une question de politique sociale qui intéresse vivement votre gouvernement, monsieur Lévesque, et le vôtre aussi monsieur Davis, en outre, la plupart des procureurs généraux qui se sont efforcés de

moderniser et de réformer nos idées sur le Droit de la Famille et notre façon de l'envisager, se sont heurtés à des difficultés qu'il n'est pas facile de surmonter, dans le contexte constitutionnel actuel.

Pour faciliter, au niveau provincial, ces changements si nécessaire, le gouvernement fédéral est disposé à envisager de modifier considérablement les pouvoirs qu'il détient en matière de mariage et de divorce.

Septièmement, je propose que nous convenions en principe du fait que les communications constituent un des domaines dans lequel les deux ordres de gouvernement ont des intérêts légitimes et raisonnables. La constitution en vigueur, telle que nous aux tribunaux l'ont interprétée depuis des années semble attribuer presque tout ces champs de juridiction au Parlement du Canada. Nous croyons toutefois que la réalité contemporaine et l'avenir tel que nous pouvons le prévoir exige une réponse plus nuancée.

Plusieurs aspects de ce domaine semblent clairement d'envergure nationale. D'autres sont de nature plus locale. Nous croyons qu'une constitution renouvelée devrait en tenir compte et que nous devrions tenter d'élaborer ensemble de nouveaux accords constitutionnels qui satisferaient les deux ordres de gouvernement.

En raison du caractère complexe de ce domaine et de sa rapide évolution technique, il nous

sera vraisemblablement difficile d'en arriver, dans les prochains mois, à des conclusions définitives sur la forme que devrait prendre dans l'ensemble une nouvelle disposition constitutionnelle.

Nous estimons cependant qu'il y a tant de certains aspects de la question sur lesquels nous pourrions nous entendre rapidement. Je propose donc d'ajouter la question des communications, à la liste des sujets prioritaires qui réclament un examen urgent.

Je suggère de mettre le plus tôt possible les propositions à l'ordre du jour du Comité sur la constitution, tout comme les importantes questions que soulève le projet de Loi C-60, notamment celle des Droits et Libertés et celle de la Cour suprême.

En fait, j'espère que le Comité pourra examiner toutes ces questions, en plus de la question de la formule d'amendement constitutionnel, d'ici notre prochaine conférence. Un travail beaucoup plus poussé reste à faire sur ces divers aspects de la réforme constitutionnelle que sont les Droits, les Pouvoirs et les Institutions.

La combinaison d'éléments que je viens de proposer a été choisie parce que j'ai la conviction qu'elle pourra, si toutes les parties font montre de bonne volonté, servir à démontrer aux canadiens que la réforme constitutionnelle peut véritablement être mise en route.

Finally I stress that the above proposals do not exhaust the federal government's views on distribution of powers. There are many areas where we will be ready to consider new arrangements to enable the provinces to better serve the people. There are other areas where we will ask that adjustments to the federal Parliament's jurisdiction be considered, so that it, too, may promote more effectively the interests and well-being of all Canadians. The federal government would hope that items from both categories would be included on the second priority list which I have suggested we draw up. As I have said many times before, everything is "discussable" and negotiable, as long as we are talking about arrangements that fit within a true federation.

Well, what are your reactions to these suggestions?

HON. WILLIAM DAVIS: My reaction, sir, that you have perhaps properly so moved from distribution of powers to the agenda item as to the process tomorrow morning and from our standpoint at first glance I think we see merit in the general principle in the way you are suggesting it. I know that British Columbia has some views on process and we do too which I would like you to consider. I think, sir, that in terms of the process -- and that is really what you are talking about -- you are indicating that just about everything is on the table that this committee would review the various points of view of the various governments and in turn that would become the document that we would work from at whenever our next meeting may be.

I have no objection to the general approach, although there are some refinements to the process that I think might be considered. Perhaps, sir, if you had had this statement earlier our meeting could have been two days rather than three, I don't know. I sense a degree of

flexibility that I have not seen evident at these constitutional discussions on previous occasions. I think that in general terms we accept the principle but I think that there should be some opportunity to discuss certain refinements that some provinces have suggested in terms of the process.

THE CHAIRMAN: Well, I indicated in my opening remarks that I really was not attempting to pre-empt the item tomorrow on the agenda regarding processes and I apologize that I slipped that in, not in order to terminate the discussion.

HON. WILLIAM DAVIS: No, I think it moves the process ahead. I have no quarrel with it.

THE CHAIRMAN: If we want to discuss processes in detail, including the ones I am suggesting here, there is time to do it on the agenda tomorrow morning and I know several of you want to make important points on that. It might well if you do not consider this morning's meeting one where we will agree on this process, we may want to change it by tomorrow, but one where we might want to look at the list that I have made, the short list and argue for or against inclusion of items on it, additions of others or refinement of some. I just point out that we should attempt to move in certain limited areas. If we attempt to do everything at the same time obviously we will not make progress before the two years that Mr. Lalonde is talking about but if we can single out the areas which are important to various groups around the table, Premier Moores, perhaps the Maritime Provinces too would want to see something firmer on equalization. Premiers Blakeney and Lougheed want to see something firmer on resources. I indicated maybe Quebec and Ontario are interested in the social aspects of family law. All of us are interested in the limitations of the federal government in dispensing power and declaratory power. All of you are interested in direct taxation. I have tried to single out those areas which seem more urgent and which will cover the

concern of the country, various parts of the country and in return I suggest that we look once again at the amending formula and some aspects of C-60 -- not the whole bill but the approach and I would exclude the Senate. It is not on my short list because although we will be discussing it this afternoon I realize that until the Supreme Court has made its decision probably the Premiers would not want to discuss that, at least not make it on the short list so I have left it off but I have put the Supreme Court on because I would think that within a month or two we should be able to reach some form of consensus on the Supreme Court; in other words, I have put on the short list a little for everyone but particularly drawn from things that hopefully can be moved on within months rather than years.

HON. RICHARD HATFIELD: I think you have made a very positive restrictive move here. I particularly am impressed by the fact that while we recognize or the government of New Brunswick recognizes that federal spending power must be clarified and we are prepared to discuss that we like the caveat that you have put in there that we must never lose sight of the fact that the federal government must have the power to ensure that Canadians have opportunities regardless of where they live in this country. I think it is very good and I am quite anxious to get on with the discussion on this basis.

THE CHAIRMAN: Premier Moores.

HON. FRANK MOORES: Mr. Chairman, just one thing. We are certainly concerned about equalization but I would like to speak about resources for a moment.

In that regard in your opening statement in this paper, in the verbal comments you made which is not the paper you mentioned -- I do not want to be specific but you mentioned that fisheries was the type of thing that this committee could look at with the Minister present, if I heard you correctly. This is not in the formal document.

Are we going to have the formal document?

THE CHAIRMAN: Fisheries may take a little more time to agree on than indirect taxation and that is why I am saying let us put it perhaps on the second list rather than on the first.

HON. FRANK MOORES: Well, when you mention that, sir, I would like to say that three things come to our attention which are very important to us from a resource point of view and as I say they are not as easy to overcome as some of the others. One is the fishery involvement by the coastal provinces. I understand the Minister of Justice's point that it has international ramifications but I suggest so does most minerals or any other resource for export also have ramifications such as the 200-mile limit under Canada's jurisdiction. I suggest that the coastal states have a very, very important interest on how that is operated. That is of urgent concern I think to all the coastal states.

The other one that worries us is when we talk about -- you mentioned this morning the total control of resources. I was delighted to hear that comment clarifying the limits of offshore resources, one which concerns us particularly, and probably British Columbia as well and the Maritime Provinces would agree but in section 32 of Bill C-60 it makes it very clear that the territorial waters will revert to federal jurisdiction. Now, is that territorial waters not down for discussion by the provinces?

THE CHAIRMAN: By that section of Bill C-60 we did not intend to solve the question of jurisdiction or ownership of the 200-mile shelf. What we really were saying in there was that it is part of Canada. Whether it comes under provincial jurisdiction or federal jurisdiction is something the courts can decide and that we can discuss in the new constitution, but we felt it important in drafting C-60 to affirm the new reality

that there are offshore resources which in international law belong to the riparian country. Whether or not they are under federal or provincial jurisdiction is something we did not attempt to settle in that draft. So that question is open.

HON. FRANK MOORES: That would be open for discussion under your No. 5 here as a subject for discussion under that particular aspect of your suggestion in the paper you have just read?

THE CHAIRMAN: Well, we discussed this subject between 1969 and 1976 or 1977 and finally we reached agreement between three provinces and the federal government on the East Coast and the courts decided it on the West Coast. All this has covered a period of ten years before we finally reached some kind of an understanding on the East Coast, not to debate ownership but to debate joint administration and we were successful. I think it would be unwise to hope that before shall we say our January meeting we are going to open that question, debate it at length and then settle it to the satisfaction of both parties. That is why in that kind of question we are prepared to discuss it, as I say we have been doing it for many years, but I do not think we can attempt to solve it by January whereas the other things on the short list I think we can settle by January.

HON. FRANK MOORES: Mr. Chairman, to us it is obviously of critical importance. The other point I might just make, I was delighted to hear you say this morning that our electricity could get access to other markets in other provinces which was in the national interest. I am sure Mr. Levesque was listening to that. It is one thing to have a declaratory power but I am hope you will have the courage to use it.

THE CHAIRMAN: Well what are you saying Premier Moores, that we should use declaratory powers or expropriatory powers? What are your problems with

Premier Levesque? Has he refused to let electricity go through his territory? I don't think so.

HON. FRANK MOORES: My problem with Premier Levesque, sir, is just slightly different to yours but that would seem to be the case.

THE CHAIRMAN: Well I don't know, you meet every year between provinces. I am surprised you did not settle this at Regina. You have agreed on so many things, why didn't you and Premier Levesque agree on transmission of electricity?

Why didn't Premier Davis and Premier Levesque agree on the mobility of construction workers? We are willing to help. Can we use the declaratory power?

HON. FRANK MOORES: People's lives change, lots of things change.

THE CHAIRMAN: We could use it on construction sites.

Premier Bennett, and then Premier Blakeney.

HON. WILLIAM BENNETT: Prime Minister, we were in agreement with the proposal generally. What I am concerned about is the fact that it is not included -- does this preclude our ability to deal with the institutions, that is, include them in the discussions which we in British Columbia place great importance upon? That will be coming up this afternoon. We haven't dealt with it yet, but it is a large part of British Columbia's presentation to this meeting, and the institutions though are not included in this list and we place high priority on them.

THE CHAIRMAN: I am sorry. In one of my paragraphs here I did say that we would hope we would look at least at the Supreme Court as one institution, and I included the Bill of Rights. I suppose it is not an institution, but this afternoon we will look at the Senate, and if we make progress I would be very happy -- I think you have some very positive ideas on that -- I would be very happy to see them put on the short list if such is the consensus.

HON. WILLIAM BENNETT: Three times I have heard mention of a January meeting of which I am not aware.

THE CHAIRMAN: Well, we haven't decided the date, so I will remind you that when we had dinner on Sunday night we did talk of January. I remember some Premiers making the specific point that it shouldn't be too early in January, with which I agree and it was said: "Let's have it toward the end of the month."

HON. WILLIAM BENNETT: That was at the end of the table I wasn't at.

THE CHAIRMAN: Where were you sitting? Maybe you dropped your napkin at that time. You know, we are not bound to any dates. We did discuss it the other night, and I thought there had been a general feeling, if we want to move on this, as some of you have been demanding urgently, I believe even you had an election campaign where you demanded quick movement, didn't you, Premier Blakeney? Is January too late for you?

HON. ALLAN BLAKENEY: That is all right.

HON. WILLIAM BENNETT: I am not denying the urgency or the fact that we can move, but it is just that at our end of the table -- I guess Premier Lougheed was there -- I wasn't aware that this had come up and it has been mentioned, I think, three times this morning. I just wanted some clarification.

THE CHAIRMAN: In fixing a date, we will look at it before adjourning tomorrow afternoon and we will see if we have got a fairly long list, maybe January is too soon. If it is short, maybe January is about right.

I have Premier Blakeney, and then Premier Buchanan.

HON. ALLAN BLAKENEY: All I want to say, Mr. Prime Minister, is that we are very encouraged by your statement. We naturally are cautious because it will depend upon details, but if the further developments reflect the spirit of your paper as I take it, then I would be very encouraged about our prospects of resolving the difficulties. I am sure all of us might want to add to the list, and I could think of things to add, but there is nothing absolutely pressing.

May I just take thirty seconds to raise a rather abstruse point? It seems that you feel we will not be able to deal with delegation because of the need to do the legal work involved, and I accept that. I am troubled by what I see developing in Canadian jurisprudence.

THE CHAIRMAN: Let me make the point plain, that some forms of delegation, obviously, are possible, we delegate now, I think, to the Province of Quebec administration of Fisheries regulations, and he wants us to take it back. We can do that.

L'HON. RENE LEVESQUE: Je voudrais simplement, non, monsieur le Premier ministre, monsieur le président, je voudrais tout de même corriger l'impression que vous développez, c'est vrai qu'il y a une entente depuis les années 1920 à propos des pêcheries, 1922, qui a été renouvelée d'ailleurs en cours de route, c'est vrai aussi que vous bâdrez terriblement à chaque fois qu'il s'agit de l'appliquer, et ça, c'est autre chose. Et c'est arrivé encore depuis deux ou trois ans.

LE PRESIDENT: La question des délégations....

We can delegate now, but I think the point that you are raising is not delegation of administrative powers, but delegation of ---

HON. ALLAN BLAKENEY: The whole system of road transport, the whole elaborate system.

THE CHAIRMAN: When we get into legislative delegation, this indeed could change the nature of our Confederation and I think we should examine that in some detail.

HON. ALLAN BLAKENEY: May I just pose a point to you for thirty or forty-five seconds? I am sort of concerned about the way the jurisprudence has been developing with respect to a couple of the enumerated powers in 91, and I think of trade and commerce and common criminal law as two.

The problem is not what the provinces are proposing to do interferes with anything the Federal Government is doing, or has any intention of doing, but that the courts are interpreting, let us say, criminal law -- I will use criminal law because I am not involved -- in such a broad way that is inhibiting the provinces from doing things which I think the Federal Government has not the slightest intention of doing.

I will instance one, and it is a bad instance because the judgment was the other way, five to four, but I think that the Nova Scotia MacNeil case, if it had gone the other way, four judges felt that the censorship of movies was a matter for criminal law. I use that because I think it would be somewhat startling, both for the public and also for the Federal Government -- I think it is not a part of the Federal Government's program to enter into the censorship of movies, and yet

had that judgment gone five-four the other way, we would have found the Provincial Government inhibited from doing something, which I think the Federal Government had no intention of doing.

Really, what I am suggesting is that the draftsman perhaps used concurrency more so that the Provincial Governments can do things unless there is an overriding Federal Statute. I am not in any way trying to broaden provincial jurisdiction vis-a-vis federal action, but broaden provincial jurisdiction vis-a-vis perceived federal action by wide interpretations of a couple of the 91 powers. As I say, it is an abstruse point and I simply make it.

HON. OTTO LANG: The specific example is one where one should observe that the court may have to, after all, interpret the law and apply it, and in that particular case I am sure we would have been rather eager to find a way to amend the law to restore censorship power to the provinces if it had gone the other way.

In other cases, however, in such cases as, for instance, the interpretation of the trade and commerce power obviously we are into a very fundamental issue as to what is required in Canadian legislation Canada-wide, and what has to, therefore, be limited in the hands of the provinces. That is not a small subject. That is a very, very major one. It may be that there are times when the federal position before the court sounds as though it is strange because we don't seem to have any interest in doing a specific thing about the area, but it is partly to protect the broad principle and the next case where it can arise and it would interfere seriously with what Canada needs to do as a country.

I think that there may well be techniques which can be found which would permit clarification of the provincial piece of legislation with federal sanction, if necessary, which could overcome this difficulty in specific cases, but I am not sure that the big question is going to be settled very quickly.

HON. ALLAN BLAKENEY: We are looking for a delegation to be able to do it if we run into these areas. I will not go into that. It is a narrow point.

HON. JOHN BUCHANAN: Prime Minister, representing a province where the fishing industry is vitally important and some 25,000 persons indirectly are employed, we certainly strongly endorse Premier Moores' view that Fisheries should be included as a matter to be discussed by the Constitutional Committee and in accordance with the Regina consensus. Also, we feel very strongly that the subject of minerals under the territorial sea should be discussed, and I would like to bring to your attention, sir, that the memorandum of understanding or agreement which you mentioned, is presently under review by the Government of Nova Scotia.

THE CHAIRMAN: On your first point, Premier, of course Fisheries are important to the people of the coastal provinces, but I am told that fish refuse to stay within the boundaries of the provinces and they move around a lot. We have this problem in international jurisdictions where the fish may spawn somewhere in the North Atlantic, and then come and breed some other place. We have to have international regimes to discuss this.

We have the problem, as you know, of George's Bank where the fish move across the United States side to our side, wherever that line is drawn, but for that reason I think none of you would suggest that Fisheries should not be under federal jurisdiction. You are, presumably, asking for some kind of delegation of either administrative or other powers so that you can be involved insofar as your province is concerned.

HON. JOHN BUCHANAN: We would certainly have no intention of asking the Federal Government to leave the field of Fisheries, but I think there could be many options that the Constitutional Committee could consider, joint federal-provincial arrangements and agencies on decision-making in the Fisheries. These are the matters, I think, the Constitutional Committee could rightly discuss and come to some agreement on.

THE CHAIRMAN: We would certainly be willing to discuss them. The Fathers of Confederation gave different jurisdiction over Fisheries because, I repeat, they were not like trees in the ground or resources in a mine. They move from province to province, or from the territorial sea of one province to that of another, but we are happy to discuss it. When I made the short list, I say this to you and the others, I was not intending to exclude discussion on Fisheries or on the offshore. I was just trying to limit it to the things on which we can move quickly.

The others will remain, of course, on your list; and I repeat, when the time comes we will have a few things to put on the table ourselves which Mr. Lalonde alluded to.

HON. FRANK MOORES: What we are asking for, and I think this is what Nova Scotia's position is as well, is that under the thing here, the control and management of natural resources, fish and offshore oil and gas should be considered under that for that committee to take a look at. That is what we are asking, if it is possible.

THE CHAIRMAN: I would certainly be prepared to include that under that item.

HON. MARC LALONDE: I see two problems. First of all, on the question of offshore and of Fisheries, as you said, if we include it under natural resources as a matter of top priority in terms of Constitutional Amendments, I doubt we will be able to proceed as fast on these issues, which you yourself said it took ten years to evolve the thing between the various provinces, British Columbia and the Eastern Provinces.

Particularly on the question of Fisheries, I have the impression that what you have in mind is some administrative arrangement more than Constitutional changes as such, of jurisdiction, that there would be some mechanisms whereby we would have some say in the administration of Fisheries. Are you really thinking in terms of a Constitutional Amendment to the question of Fisheries?

HON. JOHN BUCHANAN: Any arrangement which was made would be much more secure in the Constitution and, Mr. Lalonde, I believe that as far as Nova Scotia is concerned, and probably Newfoundland, that these matters are top priority and should be included.

HON. MARC LALONDE: Well, if you are talking in terms of a constitutional amendment in this particular area, the only thing I would want to say at this stage is that we are going to increase the whole question of duplication in this whole field and you can't come around and complain about duplication and at the same time say, "We will have to have more areas like this where there is the clearest jurisdiction that has been established and where unavoidably in an area like this it is going to be very, very difficult to avoid a certain amount of duplication once we start having a broad participation by two levels of government in it." If that is what you have in mind then of course we cannot refuse to talk about it, but I think there are lots of problems arising in the area of fisheries that do not arise when you are talking about forestry or mines or resources which are quite clearly inside the borders of the province and obviously don't move.

HON. WILLIAM BENNETT: It is of great importance to British Columbia, and we particularly can clear up the area of jurisdiction because we do not have even any other provincial government on the west coast. We are the west coast and as such fishing is a very important resource and we include it amongst our resources and the major part of our economy is such that I think it would be very useful then to deal with it while we are dealing with the resource question and also the other areas that Mr. Buchanan mentioned, and particularly for British Columbia where fishing is unique as compared to the east coast.

HON. MARC LALONDE: My point would be that even if you were to put them under resources, one should not expect a fast resolution of this particular question as fast as you can have it for mineral resources, for instance where the situs of the resources are so easy to define and you do not have all the problems of international law involved and negotiations with border countries and all that. Well, you know, I would only say at this time that negotiations on this particular

issue are bound to be more complex and lengthy than they would be on the question of mineral resources, for instance.

HON. FRANK MOORES: Mr. Chairman, I do not mean to dwell, but it says here to clarify the respective powers and this is what we are looking at. We want to sit down and discuss that and at least come to some kind of position. I don't think there is any harm in that. That is in regard to fish and certainly gas and oil would very definitely come under Canadian jurisdiction.

THE CHAIRMAN: Let us keep in mind that there are already a lot of things on this short list including several things of interest to you, Premier Moore. If our Attorneys General and Ministers spend a lot of time discussing fisheries, knowing that it won't be resolved in time for our January conference, they may not have the time required to look at the other subjects that are on the short list. That is the only reason for my hesitation in including it but if there are not too many requests to lengthen the list, I would be prepared to add that item. So let us go ahead with Premier -- excuse me, I had recognised Premier Lyon earlier.

HON. STERLING LYON: Well, Prime Minister, in a general sense, we applaud and support the suggestion that you have made this morning as to the process by which we might begin to rationalize the discussion of the constitution. I say that sir, not only because it reflects the suggestion that we made to you yesterday to establish these very priorities, but because I think it also reflects, if I may say so, in my view and earnest of your statement yesterday, that you were prepared to be extremely flexible about Bill C-60 and if that indeed is what we are hearing this morning as a manifestation of that flexibility, then you are to be congratulated because there are many aspects of Bill C-60 that should be put on the back burner and left over for a long time while we get on with the real things that are of concern in the constitution.

So we would support that process, the idea

of a Committee of the Constitution composed of Attorneys General or intergovernmental affairs Ministers. We would support it, sir - this should be known to you and it has been said, I think, by others around the table this morning - with the fundamental idea in mind that the federal government must also be accorded those powers within the constitution to enable it to carry out the accepted responsibility of the national government. There has never been any question in Manitoba's mind as to that point. Our history is in some ways a living manifestation of our support for unfettered power for the federal government in certain delineated areas to do things in the national interest. At the same time, social and economic changes have made it apparent that the divisions as between Sections 91 and 92 could stand some review and could be made more than temporary and more relative to the actual positions the provinces find themselves in. I do not have to make the brief on behalf of Premier Blakeney or Premier Lougheed with respect to control of resources by the Provinces. We in general terms, support that position of Premiers Blakeney and Lougheed, and would be happy to see it discussed at this meeting.

I think it would be helpful in pursuance of the suggestion that you have just made if Mr. Lalonde or yourself could enlarge to some extent, if not here this morning, then shortly after this meeting, on the list of subjects contained on Page 7 of Mr. Lalonde's statement to us this morning of the matters which the federal government would like to see addressed in the fields that it has enumerated because I think we are now beginning to get down to cases to see what we are talking about and this really is desirable if we are going to reach that kind of consensus about which all of us were speaking yesterday.

So, in summary we welcome this kind of approach because we think it is a common sense approach, it will reflect the real priorities of constitutional discussion as manifested in the statements of the provinces in 1976, Regina, 1978 and so on and I think will put us much more quickly on a

path to arriving at those areas where there is agreement and at the same time will permit us to relegate to the sidelines those matters that (a) are not crucial, (b) that are not substantial and (c) that are really extraneous to making the kind of progress that all of us wish to make in this process.

THE CHAIRMAN: Premier Lougheed.

HON. PETER LOUGHEED: Mr. Chairman, probably from the observations I have heard around the table, I am the least encouraged by the developments here this morning. I was more encouraged by what you said, Mr. Chairman, verbally in your remarks so I will look with interest at the transcript, than I was when I saw the document. But the document itself and the caveats particularly with the items that concern Alberta which are of course the fifth one and the fourth one in particular, seem pretty significant in the caveats that are placed there. So we will watch with interest and some heightened concern discussions that will ensue between now and the next meeting.

I did want to just ask a follow-up question to what Premier Lyon has said and I am not sure whether it is left. That is an interesting list Mr. Levesque referred to on Page 7 of Mr. Lalonde's statement. Where do those matters get into the process?

THE CHAIRMAN: They were free or magnanimously prepared to put them in the second list rather than the urgent list. We just want to make it clear, if we are going to discuss functional federalism or whatever approach B.C. proposes, there are some powers which should be affirmed at the federal level as well as at the provincial level, but we do not insist on putting any of these on the list for the first group studies. I hope the Attorneys General or Ministers, when they get together, will themselves refine this list and see, for instance, if on my list of seven or eight things, they will say: "Well we could easily add fisheries say, and do it in time" or on the contrary, they would say, "Well look we can't possibly do whatever it is following the declaratory power in time, so let us take that off the short

list but let us draw up a second list so that when we do meet at our next conference we have not only a report on the short first list, but we have a recommendation from our Ministers of what they should be looking at next." We can say, "Those are the second priorities, so please get on with it."

Well, maybe we can have an early lunch, if there is nothing more to be added on this.

L'HON. RENE LEVESQUE: Monsieur le président...

LE PRESIDENT: Monsieur le Premier ministre.

L'HON. RENE LEVESQUE: Monsieur le président, je ne prendrai pas beaucoup de temps, je ne pense pas que ça retarde beaucoup le déjeuner.

LE PRESIDENT: On a jusqu'à une heure (1h00), en fait, je ne voulais pas couper la parole à qui que ce soit.

L'HON. RENE LEVESQUE: Bien, écoutez, moi, j'ai entendu avec beaucoup d'intérêt non seulement le texte que vous avez débité, mais aussi les remarques que vous avez ajoutées.

Je dois dire que ça représente sûrement un effort soigné, et je le suppose, assez prolongé de préparation.

Nous, ça ne nous donne pas beaucoup de temps pour nos réactions, alors je dois faire des remarques préliminaires, un peu comme la liste que vous avez établie.

Je pense que c'est une liste dont personne ne peut dire qu'elle n'est pas intéressante. Vous avez dit vous-même que cette espèce de salade de premières urgences que vous envisagez, là-dedans on trouvait un peu quelque chose

pour tout le monde. C'est vrai. Et nous, on n'est pas ici pour refuser ce qui passe. Tout ce qui passera pendant les mois qui viennent, on l'a dit avant d'arriver à Ottawa et je le répète, il y a certaines choses qui sont là depuis 1968, 1971, qui sont la reprise de projets, je pense, sur le pouvoir déclaratoire et sur le pouvoir de dépenser plutôt et sur les questions fiscales. Et il y en a d'autres qui s'ajoutent.

Je voudrais noter une chose simplement du point de vue québécois: vous avez un passage sur les communications. Ca, je pense que tout le monde le sait, on n'est pas les seuls autour de la table, mais tout le monde sait à quel point ça touche directement les intérêts culturels, ce qu'on peut appeler l'identité du Québec.

Evidemment, le passage que vous avez sur la communication, il est rempli de nuances, comme il y en a d'ailleurs ailleurs dans le texte. Je voudrais m'en servir pour illustrer une chose qui est une première réaction. C'est qu'il y a quand même des distinctions à établir et une qui nous paraît fondamentale.

Hier, monsieur Blakeney disait que pendant son enfance, qu'il était dans les Maritimes, qu'il ne voyait pas très bien la distinction entre l'Ontario et le Québec, et puis ensuite il dit: "Quand je suis devenu un adulte, j'étais dans l'Ouest, et je me demandais encore qu'est-ce que c'était que la distinction entre l'Ontario et le Québec."

Je pense qu'il y a eu un exemple ce matin qu'il y a moyen de distinguer l'Ontario et le Québec

et même Terre-Neuve.

Autrement dit, il y a des grandes provinces, des provinces qui sont petites, il y en a qui sont plus riches, il y en a qui sont moins riches, et chacune, et c'est là que se trouvent toutes les distinctions, toutes les différences, chacune arrive souvent -- et c'est normal -- avec ses priorités par exemple on parle de pêcheries, ça touche également le Québec, on parle de potasse ou de pétrole ou de forêts, on parle d'industries manufacturières et tout ça c'est la diversité régionale.

Mais pour répéter ce qui a été dit hier, il y a depuis trois cents ans une autre distinction qui, à mon humble avis, est plus fondamentale que celle qui touche les sujets dont on parle.

Il y a la distinction qui est établie par deux traditions historiques, deux langues, deux environnements culturels, si on veut qui ont créé deux sociétés distinctes.

Alors, nous, c'est ce qu'on appelle souvent le statut particulier, sauf dans les communications, où comme je l'ai dit, il y a certaines choses nuancées, qui ont été exprimées par le président dans sa première salade préliminaire on ne trouve pas beaucoup le reflet de cette insistance constante de tous les gouvernements québécois sur les éléments de statuts particuliers, ça, on aura peut-être l'occasion de voir comment ça se développera dans les semaines ou dans les mois qui viennent.

La seule autre chose que je voudrais ajouter c'est ceci: c'est qu'il y a beaucoup de caveats, comme on dit en anglais ou en latin, dans le texte qui nous a été soumis il y a quelques instants. Il y a plein de nuances aussi.

Et puis, il y a également, encore une fois l'évocation de la contrepartie. Par exemple, je prends simplement un passage du texte que le président nous a lu et qui est celui-ci: "Dans d'autres domaines, nous demanderons d'envisager la révision des compétences du Parlement fédéral, de manière à ce qu'il puisse à son tour, mieux défendre les intérêts de tous les canadiens et assurer leur bien-être."

Evidemment, c'est tellement vaste que ça peut englober n'importe quoi, et puis ensuite il a été de nouveau question -- j'espère que je me trompe -- que ce n'était pas une espèce d'attitude donnant-donnant, voici la salade préliminaire que nous discuterons, à condition que -- mais il a été question de nouveau de la formule d'amendement, qui comme on le sait est un des terrains les plus glissants, traditionnellement, dans tout ce qui touche de près ou de loin le rapatriement de la constitution.

Je vais répéter ce qu'a dit monsieur Davis, on n'est pas ici pour "bargainer", je ne crois pas qu'on fasse du "bargaining" systématique, mais je vois très clairement par exemple comme première impression qu'on va avoir des choses à surveiller en cours de route.

Il y a un excellent proverbe anglais qui dit: "The proof of the pudding is in the eating."

LE PRESIDENT: Caveat emptor.

L'HON. RENE LEVESQUE: C'est ça, c'est en mangeant le pudding que l'on va voir s'il y a plus de cailloux que de raisins!

Moi, en tout cas, j'ai l'impression que pour le moment et jusqu'à nouvel ordre, on ne peut pas, je pense, avoir le droit de se prendre ici autour de la table pour les nouveaux Pères de la Fédération mais il y a quand même une chose qu'on doit noter, et qu'on note, je pense, honnêtement, nous, du point de vue québécois, c'est que quelque chose enfin semble bouger un peu et on est là pour enregistrer le moindre mouvement et puis, pour prendre encore une fois, pour prendre ce qui passe.

Et, je dois ajouter une chose tout de suite, c'est que comme le président a empiété un peu, il l'a admis, sur le sujet de demain matin, qui est celui des méthodes, des procédures de la façon de continuer, moi je dirais simplement ceci: ça nous donne jusqu'à demain matin pour examiner un peu les implications, mais normalement il n'y a pas de cachette là-dedans, le Québec, quelle que soit la structure pour les semaines ou les quelques mois qui viennent, normalement le Québec sera présent dans cette opération, parce que là aussi, pour les raisons que je viens de donner, et puis beaucoup d'autres qu'on va trouver en cours de route, là aussi il s'agit pour nous, dans

le contexte actuel, de défendre les intérêts du Québec, et chaque fois que l'occasion s'en présente d'amplifier ses pouvoirs.

LE PRESIDENT: Eh bien, vous avez la tâche relativement facile de défendre les intérêts du Québec, nous au Gouvernement fédéral nous devons défendre les intérêts du Québec et de Terre-Neuve et de la Nouvelle-Ecosse et du Nouveau-Brunswick....

L'HON. RENE LEVESQUE: Surtout ceux d'Ottawa!

LE PRESIDENT: Ottawa n'a pas d'intérêts, Ottawa est un gouvernement pour l'ensemble du pays y compris les québécois.

Alors, non, j'admire que vous fassiez comme premier ministre provincial votre tâche qui est de défendre principalement les intérêts provinciaux, ce qui était, comme vous le disiez hier, le but et l'objectif de messieurs Taschereau, Duplessis, Lesage, Godbout, etc.

Malheureusement ou heureusement, nous nous ne pouvons pas penser uniquement à l'intérêt d'une province, quoique jamais l'intérêt d'aucune province ne nous échappe, nous devons penser à l'intérêt de toutes les provinces, c'est-à-dire des citoyens de toutes les provinces et des deux territoires et des poissons dans la mer territoriale.

Alors.....

Well, why don't we adjourn now and we could perhaps come back at 2:00 rather than 2:30. Did you have enough time yesterday? Would you consider 2:00 or 2:15. All right, the conference is adjourned until 2:15.

Conference adjourned jusqu'à 2h15 (14h15).

THE MEETING ADJOURNED AT 12:45P.M.

FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION

CONFERENCE FEDERALE-PROVINCIALE
DES
PREMIERS MINISTRES SUR LA CONSTITUTION

VERBATIM TRANSCRIPT

(unverified and unofficial)

Afternoon Session
October 31, 1978

COMPTE RENDU TEXTUEL

(non révisé et non officiel)

Séance de l'après-midi
le 31 octobre 1978

OTTAWA
October 30-31 and
November 1, 1978

OTTAWA
les 30 et 31 octobre et le
1er novembre 1978

THE MEETING RESUMED AT 2:15 P.M.

THE CHAIRMAN: We have reached the fourth item on the agenda, ladies and gentlemen, and that is the item institutions. We could, following Premier Lougheed's idea of this morning of having sub-agendas we could perhaps agree at the outset on the order in which we want to discuss these. For the purposes of hopefully a short discussion I would propose that we start with the Upper Chamber, the Senate. Then we can go on to the Supreme Court and then go on to any other institution you want to discuss. I understand some of the provinces are interested in discussing the Monarchy. We can do that at that point. If this order does not suit you, I would gladly change it. I think probably the longer of the discussions will probably be on the Senate and Upper Chamber unless there is suggestion to change it, I would propose to start with that. We have got three hours ahead of us and I think we will be able to cover these subjects and hopefully more in the time we have. Is that agreed then?

THE FLOOR: Agreed.

MR. CHAIRMAN: On the Senate I have very little to say by way of introduction. Perhaps two preliminary points. The first, as we all know, is that the federal government, after consultation with the Provincial Attorneys General and with the opposition in the House of Commons have framed some terms of reference to the Supreme Court so that they could judge whether or not modifications to the Senate came within federal jurisdiction or whether it was an area of joint jurisdiction. I don't propose that we attempt in any way to pre-judge that decision. Certainly I can give the unequivocal assurance that we would not propose to proceed unilaterally with any movement on the Upper Chamber, except with the consent of the provinces until the Supreme Court had given its decision.

I say with the exception -- except if we have the agreement of the provinces because if, for some -- in some way we can agree on how the Senate should be changed, then the reference of the Supreme Court remains academic and presumably they would not even render their judgment if we could change it by agreement. Then the Supreme Court doesn't have to tell us if it is under joint jurisdiction or not. We would agree to do it jointly. So that is the first comment.

The second comment is that we agonized somewhat over the particular way in which we should include the reform of the Upper Chamber in Bill C-60 and I repeat what I said yesterday, that these proposals are not carved in stone. I think what we should attempt to do is first see if we have -- if we can share the goals, share common goals in the use of a second chamber and, if so, we can look at particularities. Rather than read my introductory notes, I have in mind to read from the British Columbia proposals, Paper No. 3, "Reform of the Canadian Senate" which I think says in a very excellent way the kind of problem that we think we are faced with at all levels of government. Right at the beginning: "In that paper Premier Bennett asserted that the fundamental problem with Confederation today (I am quoting) is that the federal government, in formulating national policy, does not understand and, therefore, does not take account of important regional needs and aspirations ... There are two basic ways of solving this problem (the paper goes on): "the first is "An increased decentralization of powers." We have discussed that this morning. The second is "a major reform of federal institutions to provide for a greater provincial voice in those institutions." Then it goes on to say: "Although others, in their discussions of constitutional reform, seem to focus on the decentralization of powers as a solution, the Government of British

Columbia considers that reform of federal institutions is a more pressing matter." Then a few lines later on page 8: "It is British Columbia's view that the major Senate reform should be the main feature of the overall reform of federal institutions." We agree with this view very much and it was with that in mind that we proposed reform of the Senate, that we proposed as far back as 1969 that Senators would be appointed with the view to increase the feeling across the country that they are more represented at the level of the central government institutions. I think it was Premier Blakeney who again this morning or was it yesterday afternoon brought up the numbers argument and no matter what happens the central provinces, Quebec and Ontario, in terms of numbers of members in the House of Commons have the central decision-making powers because their numbers outweigh those of the east or the west. Our attempt in proposing reform of the Senate was to put in this Upper House a greater representation of regional feelings in order, as I said yesterday morning, to attempt to remedy in some way these feelings of alienation or of lack of power in the centre. I repeat Premier Bennett seems to be addressing himself exactly to that problem. Once again, rather than take your time in saying what our proposal was in C-60, I would, if Premier Bennett is willing, give him the floor to take us into a fresh approach at solving this problem of lack of representation in important regional needs and aspirations.

Would you care to lead off, Premier Bennett?

HON. WILLIAM BENNETT: Thank you, Mr. Prime Minister. As I indicated in my opening remarks yesterday, if the feelings of regional alienation and remoteness from the nation's capital re decisions which are made in them are going to be alleviated, it will be necessary to do some basic restructuring to some of the central institutions in the country.

In our view, the Senate of Canada is one such institution. The Senate was originally intended to perform two major functions; first, to act as the chamber of sober second thought in the federal law-making process and this function, in our view, it has performed fairly well or reasonably well over the years.

However, its second main function was to give a strong voice to the provinces in the formulation of national policies and law-making. I think history shows that the Senate has not effectively distorted this second function. We deal with all of these alternatives and how we propose our Senate in our Book 3, but rather than read them all, Prime Minister, I have a few notes which I would like to address to this meeting to briefly make you familiar in as brief a way as possible with what the Book, our research, has brought us to.

British Columbia is proposing (1) substantial changes to the Senate's role (2) changes to the appointment process of Senators, and changes, of course, in the basis of representation in the Senate. We are saying that these be made so that the Senate can become a more effective instrument in representing provincial and regional interests within the federal

law-making process. This was the path, this was the role originally assigned to the Senate by the Fathers of Confederation.

Firstly, as to the appointment process, British Columbia believes that all Senators should be appointed by the Provincial Governments.

We would do well to remember that Canada is the only federation in the world in which appointments to the Upper House are made by the Federal Government alone. For reasons which appear obvious in what I have to say later in my remarks, the leading Senator from each province would be a Provincial Cabinet Minister. All other persons of stature would be Senators -- would be persons of stature and ability drawn from all walks of life within the province and having a broad appreciation of both provincial and national interests. The tenure of all Senators provincially appointed would correspond with the life of the Provincial Government which appointed them, which, if we look at the historical average in this country, would approximately run about eight years.

It would be expected, however, that if individual Senators were of such acceptability and held in high regard, the terms of their appointment could be extended through succeeding Provincial Governments.

As far as the role which such Reform of the Senate would have, British Columbia's paper sets out in some detail this matter. In short, all federal laws would fall into either category 'A' or category 'B' matters. Category 'A' matters are those which are of prime concern to Provincial Governments, and there are six such matters included in that list.

The first is approval of appointments to the Supreme Court of Canada. I will elaborate on that part later when we deal with the Supreme Court and our proposal for it.

Secondly, the approval of appointments to major Federal Government agencies and commissions. This involves the other institutions that, in fact, deal with national policy but quite often are unable to express views of a provincial or regional interest. I can think of the CTC or the CRTC, Bank of Canada, and others in which regional or provincial appointment will broaden the scope of such national institutions and make them more responsive to regional needs.

The third area is Amendments to the Constitution of Canada, and again we will be dealing with this when we get to our amending formula, but the reconstituted Senate as we see it would be the instrument by which we resolve and deal with Amendments to the Constitution of Canada allowing that it has such provincial representation.

The fourth area on this phase would be any federal laws to be administered by the provinces, and I guess the Criminal Code would obviously be an example of this.

A fifth would be the ratification of a declaration that a work is to be for the general advantage of Canada under Section 92(10) of the B.N.A. Act. Now, what this would do, the Senate would act as a bridle on the power, the declaratory power of the Federal Government without ever taking away their ability to act in the national interest. This would provide the Senate as a regional and provincial representation, would give the provinces

directly, because this is in column 'A', a chance to consult, to deal with such a federal declaration in the national interest.

Sixth would be the approval of the use of the Federal Government's spending powers in areas of provincial jurisdiction, and again we are all familiar with spending programs or programs that the Federal Government initiates that involve spending powers of provincial jurisdiction and in the past have drawn in provincial governments into those programs which, had there been better consultation and better opportunity to have it developed as part of the national policy with regional or provincial discussion, perhaps such programs would have been not brought in more slowly but more effectively represented all parts of the country.

In these matters, No. 8, the leading senator from each province, who would be a Cabinet Minister, would cast a block vote, presumably on the instructions of the provincial government. The reason for this block vote proposal is that the items contained in Category A that I have enumerated are clearly matters of provincial government concern as distinct from matters of provincial government interest generally. One would anticipate that less than five per cent of all federal laws would fall in Category A; all other federal laws would fall within Category B and on those matters all senators would have the vote and would not, except for the Cabinet Minister, be instructed as to how to cast their votes. They would vote as free agents in the national and in the provincial interest.

Thirdly, as to the basis for representation from the various parts of the country, we concluded that equal representation from each province was inappropriate in the Canadian context. We also concluded that representation based on population was inappropriately placed and would merely reaffirm the centre of power in Canada which is already expressed in the popularly-elected House of Commons. Representation in that House is based on population. We concluded that the most appropriate method of representation was based on regional representation predicated on a five-region Canada.

Regional representation has always been the basis for Senate seats in Canada. In 1867 Section 22 of the B.N.A. Act provided representation in the Senate based on a three-region Canada; the regions at that time were the Maritimes, Atlantic Provinces, Ontario and Quebec. In 1915 that section was amended to express the realities of the day by having in the Senate representation on a four-region basis. At that time the four regions were the Atlantic, Ontario, Quebec and the West. The West at that time being everything west of the Ontario-Manitoba border, about fifty per cent of the land mass of this country. What British Columbia is calling for now is

recognition of that evolving regional concept to recognise the realities by basing Senate representation on five regions of Canada. This would, in effect, give to that large area that was developed, the Western Region, instead of one-fourth of the Senate appointments, it would - representing the Canada we now know, the growth and development of the Western Region would now give the West two-fifths of the representation in the Senate.

Finally a desirable side effect of such an institution is likely to be that both levels of government will consult with one another at a far earlier stage on policy formulation, so as to ensure the measure of support that would be necessary in the reformed Senate.

Although Category A matters provide for an absolute veto, it is unlikely that those veto powers would be frequently utilized. The degree of give and take in early consultation would provide, or would make it unnecessary to use those powers. Experience has shown that even with our own Senate where in fact the Prime Minister, if I understand it correctly, has the power of an absolute veto today, that has not been exercised. It has not been exercised. Federations and Upper Houses in other federations have indeed not had to make extensive use of either a suspensive or absolute veto but, in fact, have - that has provided the basis by which consultation has taken place in advance and that is what we are looking for in our proposal for the Senate, an opportunity for consultation between the regions and the provinces, consultation in developing national policy but rather than having confrontation in such a Senate, the Senate would be the mechanism by which that national policy could be developed as opposed to unilaterally-developed federal policy in the name of national policy.

That is our reason for proposing such a Senate, to provide for fairer representation under the realities that Canada has become today, to mean the tradition of

regional representation to counteract the representation by population that takes place in the House of Commons but furthermore to provide the opportunity for input at the centre. The outer reaches of the country feel that they do not have it at the present time. I have said that the answer isn't in massive decentralization so as to emasculate the federal government. We believe in a strong federation. Yes, some decentralization can take place and this morning we dealt with the way in which that could come about, but far better in strengthening this country in building a stronger federation is to provide the opportunity for input at the centre, for a development of an expression of regional representation within national institutions. We believe then the heart of providing that regional representation is our proposal for the reconstituted Senate. From that will flow our opportunity to have the various parts of the country heard in the other boards and commissions, national institutions in which national policy and policies must be developed but which, from time to time, will have to take into account the considerable differences and diversity of the regions they are called upon to adjudicate in.

This, simply put, is British Columbia's proposal for a reconstituted Senate.

THE CHAIRMAN: Thank you, Premier Bennett.
Premier Davis?

HON. WILLIAM DAVIS: Just very briefly, Mr. Chairman, Mr. Wells perhaps a little later will express some of the views of the Province of Ontario. The only two or three general items I would like to suggest after listening to Premier Bennett's what I think is a very imaginative and constructive proposal that is in many respects similar to the proposals developed by the Advisory Committee of the Province of Ontario, although the name was somewhat different, the House of the Provinces, the objectives by large are the same but with some alterations in terms of membership.

I guess what I want to express, Mr. Prime Minister, is that we are dealing with one of the fundamental and important institutions of this country and you outlined briefly the process by which the government came to the suggestion contained in the present legislation and what I am suggesting is that really there has not been an opportunity for First Ministers or even others to really get down to the fundamental question of what in fact will work, what it is we expect an Upper House to achieve, whether or not we are in any way detracting through an Upper House from the responsibilities of the elected political people, whether in the House of Commons or as provincial governments I really think that we have not sufficiently canvassed what it is we expect this Upper House to achieve. I have reservations quite frankly-- and I expressed this to our own advisory committee -- about an Upper House of this kind having the power of veto over appointments to the Supreme Court. Now others around this table will not share that point of view but I have quite genuine reservations about the validity of this sort of chamber exercising that kind of responsibility. As I listened to Premier Bennett outline the areas of veto rather absolute power, I once again, I think, would like to be

in a position to feel that we have fully explored the implications of this upon our system of government. I think at first glance I expressed this to our own advisory committee that with a great deal of discussion today about duplication or too much government, some of which is exaggerated, that we perhaps are laying the groundwork for further increase of government in the process that is being suggested.

I also want to make it clear, Mr. Prime Minister, that while the Senate is a fairly popular body for people to criticize that in many respects this criticism has not been totally justified. I am not saying this as one who some day would seek an appointment to that very distinguished body even though I doubt that you would even undertake that in any event, but I want to declare from the outset that I have no such interest. But I do think there has been a tendency on the part of some to suggest the Senate in its present form is useless, does not do anything worthwhile or significant and I just don't happen to share that point of view. I don't say it is as relevant as it might be but I really think what we have to ask ourselves is: "What is it we want in the Upper House to reform? Does it in fact take away from the democratically elected people in terms of their responsibilities? Should it have absolute veto powers et cetera?" And I just express these not in opposition, Premier Bennett, as much as concerns that we have been exploring really within our own province really since last June or July when the advisory committee's report came out on this very topic with a suggestion that is somewhat comparable.

In some respects, Mr. Prime Minister, it is not dissimilar to the Upper House in Western Germany as a matter of fact. I sense one or two of the philosophies that have been expressed really are contained in the constitution of that country and once again to draw parallels

of that kind or use that as a rationale is somewhat dangerous. I don't say that in any critical sense. So I would hope as a result of this morning's discussion that perhaps with the same consideration there might be some vehicle -- this is leaving apart the question of any Supreme Court adjudication -- that we all have an opportunity to seriously ask ourselves the question and hopefully reach some form of consensus as to what it is we expect or want an Upper House to perform, what really is the rationale for it and then finding an effective way to express that and certainly from Ontario's standpoint I totally understand the philosophy as expressed by Premier Bennett in terms of the dominance of the two central provinces in terms of numbers. That I understand and respect. At the same time I think it is important in these considerations that we once again approach it logically and intelligently, that we don't just make changes for the sake of change because someone said the Senate in its present form is not working or is not useful and that we get down to the basic issue of what in fact will work and what it is we want to achieve and while I don't for a moment suggest that you did not go through this in your own assessment in your own presentation I really think there is merit in having a greater input from the provinces in that type of discussion. I think it will be very constructive and very meaningful.

Mr. Wells later, Mr. Prime Minister, will suggest one or two approaches and I hope your list of this morning would not preclude the possibility of this type of discussion by the provinces with the expectation that we can achieve some measure of consensus, not unanimity -- I would not use that term -- in a way that makes sense and I do say to Premier Bennett I think it is a creative imaginative suggestion. I do have some questions, we have explored this in some depth ourselves and we have not found answers to them yet.

THE CHAIRMAN: I will come back to Mr. Wells in a little while. Let us hear from a few Premiers. Premier Hatfield.

HON. RICHARD HATFIELD: Well Mr. Prime Minister I am not in favour of a substantial change in the second chamber of the federal parliamentary institution. I disagree. I think it is one of the myths that is perpetuated that the second chamber has not performed the function of taking a hard second look or representing regional points of view. I think it is interesting that the Minister of Transportation is sitting at the table because I think he knows and under oath will testify that the Senate has made his life miserable if not his personal life as minister miserable and made the bureaucrats in his department miserable because they have been determined to put through a bill with regard to transportation which has been stopped by the regional interest expressed in the Senate regardless of party and only in the interests of a region of Canada. I think that that is the most current example that I know of. It is one of the reasons why I cheer the Senators because they are functioning properly. No, they do not perform magic every day, they don't make decisions every day that might light up the sky but neither does the Parliament of Canada do that either. There are a lot of days go by in the Parliament of Canada when not very much of anything is done.

I think there is an argument and the argument begins I think we should reform the Senate and have it do all kinds of things and based on this concept the Senate should be cost efficient or what-have-you. I don't think it should be. I think it has to be a place where people who have served our country in one capacity I recognize and are put there because of the special contribution they have made to Canada and a lot of the appointments to the Senate have been of that quality.

Unfortunately, a lot of the appointments to the Senate have not been of that quality and they have been put there for another reason, they have been put there for a partisan reason and I think the only parties who are not guilty of that are the Social Credit Party and the New Democratic Party and the Communist Party. They have not been in the position to do so yet. But I think the Senate has performed a very important function in our society.

Now, another problem with the Senate is that it is not democratic. I would like to remind the people of Canada that neither is the appointment of the Prime Minister democratic and neither is the appointment of the Premier of the Province of New Brunswick democratic. It is not decided by a popular vote of the people of New Brunswick or a popular vote of the people of Canada. That is an American concept. I hope we will continue to recognize that we do not want in this country pure democracy all along the way, that every appointment no matter what it is of any class no matter what it is has to be purely by popular will because if we are we are in for much more serious trouble than I think we are. So I am not concerned at all that the appointments to the Senate are not made on a democratic basis.

The other thing is that really offends me and I would really strongly and strenuously oppose, I have watched the Senate Committees of the United States of America disgrace their system -- I have to say so -- by putting to the test every appointment that is made to the Supreme Court of the United States and to other important positions and I do not want to see us copy another American mistake. We did not make those mistakes initially in 1867 --

HON. STERLING LYON: Even the Bill of Rights.

HON. RICHARD HATFIELD: That may have been a mistake. I am not prepared to accept the Senate approval system and many other systems but the Bill of Rights is another matter. That is far more important. I think it is wrong -- and I resist it most strenuously -- to subject good honest people of quality and reputation to that kind of a partisan, petty parochial kind of investigation. It would really do a disservice to our country and to the people of our country and it would discourage quality in those appointments. So I am opposed to any kind of approval on the part of Senators particularly -- I mean people who are concerned about the fact that people are not democratically appointed and want to give them power to decide who is going to be President of the CRTC or whatever, I can't accept that. I can't accept the general principle that we cannot trust our democratic parliamentary system and trust the people who come out on top to make proper appointments and we cannot trust the people of this country to say that if the Prime Minister of Canada or if the Premier of a province makes too many bad appointments they will not throw him out. I think that is the ultimate check that the people have.

I would like to see the Senate composed of more people whom I think have in fact made a contribution to the country and less partisan consideration given to it. I think we have got to make an honest effort or the Prime Minister of Canada today and tomorrow has got to make a stronger commitment to get higher quality appointments and less partisan appointments, but I also think that we should also limit the life of a Senator from perhaps 8 to 10 years. I am talking about their life as Senators and I think after they have lost their seat in the Senate they should be allowed to continue to use the title of Senator. We have a Senator in New Brunswick who has the respect and admiration of all the people of New Brunswick as far

as I know and one of the marks that I am sure that is true is that I have never heard him refer to anything -- he has been on the Senate a long time -- he is still referred to as Senator and I think that is a tribute to the Senate, I think that is a tribute to the kind respect that people have for that office and that institution and I basically support the Prime Minister of Canada appointing Senators and I think the only reform I would like to see is basically that the life of your presence in the Senate be limited to 8 to 10 years.

THE CHAIRMAN: Thank you, Premier Hatfield.

Premier Alphonse.

HON. STERLING LYON: I guess I am Gaston, Prime Minister. Very briefly, Prime Minister, and the Attorney-General, Mr. Mercier, can speak in more detail later on. Manitoba would like the Upper House to continue and would like it to continue to be known as the Senate. The Senate might well be reconstituted to give greater representation to the regions that are also not provinces, thinking of course, of the Territories, the Yukon and the Northwest Territories.

We say, ideally, there should be an equal number of Senators from each province, but that is, of course, a council of perfection and I am not aware that my colleague, the Premier of Ontario, is prepared to have the same number of Senators as my other colleague, the Premier of Prince Edward Island. The reality of regional and/or provincial representation should continue in the Senate.

I should have prefaced my general remarks, Prime Minister, by saying that we do not regard any of our comments as reflections upon the intriguing suggestions made by the Premier of British Columbia in any way as being chisled or cast in stone. I think there will be a number of creative and intriguing positions put before the meeting with respect to the Senate, and we in a general sense would have our comments be registered that we want it to continue, we want the name to continue as it is. We might well consider that one half of the appointments of the Senators should be made by the Provincial Governments. I make that distinction only because of the suggestion, sir, that was contained

in Bill C-60 that through some kind of Rube Goldberg apparatus we would come up with the representation some how or other based on the popular vote of each province -- each party in each province.

I was trying to figure out this morning what four per cent of 4 was in order to equate what a particular party in Manitoba would get under that arrangement.

A SPEAKER: A little less than one.

HON. STERLING LYON: I never was too good at that kind of mathematics.

THE CHAIRMAN: The same as they would get in Quebec.

HON. STERLING LYON: Yes, or perhaps the same number of Liberals as we now have in Saskatchewan. But there should be participation by the provinces in the appointment of Senators. Indeed, I can recall, sir, in 1969 when your government of that day proposed to the provinces -- I believe there was general acceptance, as you have alluded to before, one half of the appointments might be made by the provinces in order, as the Premier of British Columbia has said, that there would be better provincial representation within that body.

In view of the fact that the Federal Government under that kind of a suggestion would not be assured a majority, some limit on the Senate's ability to defeat legislation passed by the House would have to be considered and any limitation would not prevent the Senate from considering the impact of Federal Legislation on provincial concerns, and from being, as I think we all want it to be, a chamber of sober second thought.

Those are only some preliminary observations on the Senate. I will take just a moment to react to some of the points that were made by Premier Bennett and by Premier Hatfield.

I would agree with Premier Hatfield that there is great danger in this whole process of having a person come before a committee, be it of the House or of the Senate, in order to have his nomination to a particular federal institution approved by that board. I share some of the concern expressed by Premier Hatfield that that process could well be one that we would be importing from our great neighbour to the south that would not be advantageous or helpful in any way to our system.

I say by way of parenthesis, of course, to my colleague from New Brunswick, that if we were to have a Bill of Rights in the Constitution, as he is a strong advocate, then we would have this delightful kind of interrogation going on with appointees to the Supreme Court as to whether or not they were constructionists, or strict constructionists, or whether expansive legislators were being considered as appointees, and I am sure he would not want that in any case.

There are a number of suggestions that have been made by the Premier of British Columbia that would require, I think, a great deal more thought before we change too much of the substance of the Senate. I am one of those who believes that the Senate as constituted today is performing an exceptionally fine job as the senior house in the Parliament of Canada. I feel that the work that they do in committees, indeed the report that we have before us, the Joint House - Senate Report, a report that was sent around to us today by Senator Stanbury, all of this is helpful and it reflects a kind of sober second thought, for want of a better term, that that body, composed as it is, in large measure of experienced citizens of this country, some of whom have served in the public domain before, can give.

I forget who it was who once said that once a government is elected it ceases to have the time to be reflective about national conditions. I think we could all agree that is one of the ills of being in government, an ill that, of course, we seem to overcome quite well.

We do need the second chamber. There will be a number of ideas as to how it might be improved. We are prepared to contribute to that process. We would question whether this should be treated in the short list of matters that must be considered urgently because, to go back to my first point, the Senate is, it exists, it functions, and it is part of our parliamentary system today, and I would think that consideration of the future role of that institution might well be one of those matters that would not have first priority among all of us around the table.

THE CHAIRMAN: Premier Lougheed.

HON. PETER LOUGHEED: Thank you, Mr. Prime Minister. I enter into discussion of the Senate, with some slight trepidation of looking up into the sky in the sense that thunderbolts may come down. My grandfather was involved as Government Senate leader for many a year, so he might wince a little bit at what I am about to say.

I think that we have two views about this matter. The first one is that we attempted to reflect --- not dealing with the Senate in our extensive position paper. We did that primarily because we wanted to communicate a view that it is the intention within our Confederation and the feelings of alienation I referred to yesterday in our judgment with respect to the different view of the Province of British Columbia will not be resolved by structural change with the Senate, and for

that reason, therefore, we have not referred to it. We totally ignored the Senate within our position paper for this conference.

I would, however, say at the same time, I have been struggling to find a point which the Premier of New Brunswick and I agree on, and here we have one where I think they have been doing a very effective job. There are, perhaps, some ways in which it could be improved. As part of the team of observers from Alberta a former Premier of our Province, Senator Manning, was here and one of the points he made, I think was a good one and I think one that is worth thinking about -- maybe they are coming to get me ---

THE CHAIRMAN: Quick action.

HON. PETER LOUGHEED: No thunderbolts!

THE CHAIRMAN: There is a new vacancy on the Senate.

HON. PETER LOUGHEED: I think, Mr. Chairman, one of the thoughts though, which I really think the Federal Government should think about in a procedural way is what the original intention of the Senate was, to consider that when Bills are introduced in the House of Commons, some consideration be given to having those Bills considered and this is a matter strictly for the Federal Government, but I think a worthwhile suggestion, that if they are of a technical nature that they be considered by the Senate or a Senate committee before they go into -- if you like -- the political nature of the discussion at Second Reading, and in that case some of the technical aspects of them, I think, would usefully have the input of the Senators that we have now in Canada. I think it is a worthwhile point.

I also agree with Senator -- pardon me -- with Premier Hatfield -- I know now I should not have got into this subject.

THE CHAIRMAN: Having a former Premier of New Brunswick in the Senate, I think maybe that is Premier Hatfield's future.

HON. PETER LOUGHEED: In any event, to conclude my final remark and escape from this subject, to the effect that I agree with Premier Bennett and Premier Hatfield that review of an appointee before a group of that nature, I think, has some serious problems with it if the American experience is valid, and surely there are other ways of doing it.

Thank you.

THE CHAIRMAN: Thank you, Senator.

HON. RICHARD HATFIELD: I would like to make a point that I do agree with British Columbia the regional representation should be better balanced and I would not object at all to the concept of 25-25-25-25 extended across the country. I think that is sound. I think his logic there is sound too.

THE CHAIRMAN: Premier Bennett?

HON. WILLIAM BENNETT: I just wanted to make one point because it has been brought up, that the way the Senate is functioning now, I see one of our outstanding Senators from British Columbia sitting behind you, is irrelevant to a proposal of how much better a reconstituted Senate would work. In suggesting reconstruction of the Senate was not to deny that there are Senators and a job that has been performed for the country in a number of ways, but how it can work better in the future in more ways to resolve the problems of the country.

Another point that has been made, perhaps probably I am the only one here who is not in that exclusive club, that is a lawyer. I don't tend to view being examined by the public as somehow demeaning and the public should know not only what their legislators are like, but what future -- to have some understanding through an Upper House, I am sure would be discretionary in the way they used it in advance of the appointment of what an extension of the law-making processes are like, and that is, I don't somehow see us falling into the type of examination the United States has, nor do I think it is demeaning to have people have some opportunity to have their record discussed by such a body as the Senate before accepting such a very important post in our country, role in our country, but of course, that may be because I am, perhaps, the only non-lawyer here.

THE CHAIRMAN: Well, maybe it is because of that, Premier Bennett. I think you have asked really the fundamental and the basic question: how do we solve the problem of "regional alienations"? Do we take more powers from the centre and put them out in the regions? We said this morning we will do a little bit of that. How much I do not know yet, but you are quite right in saying at some point you will be weakening the central power so much that you will cease to have a national government with enough muscle to speak for all Canadians and it is because of that limit that you have asked yourself the question which we asked ourselves too while we were mulling these ideas over: is there some way that the regions or the provinces can be present on Parliament Hill where the decisions are being made? We will develop the particular and peculiar institution of federal-provincial conferences of First Ministers - I think it is particular to our system and we are prepared and we have indicated in C-60 that we should institutionalize this but we are not a legislative power and we are not an executive power and I believe if we could find some way of turning ourselves into an executive or a legislative power, we might be doing that rather than talking about the Senate. But I have not - nor has anyone it seems to me, found a way of doing that. So we are left with the dilemma that you asked, I think, very clearly: how do we mix that at the centre of a federal system of government so that the regions can feel that they are fairly represented in cases where numbers, as Premier Blakeney said, do not give them a fair or an equal representation as a province?

You are tending to answer it, as we did in a way, as every other federation seems to be, by having an Upper Chamber which increases the input of the regions or provinces or states or whatever you want to call it, and I do not think we can escape that question. If we today or at some other meeting reach the conclusion which I think has been

reached at least tentatively by Premier Hatfield and Premier Lyon and perhaps by Premier Hatfield, that the Senate as constituted by the Fathers of Confederation put different emphasis on appointments, can play that role, then well and good, we won't talk about it any longer. But I mean, we will make some guarantee that there is now, I think I appointed four former Premiers to the Senate, certainly several Leaders of the Opposition including some - in spite of what you said, I think, Premier Hatfield, some members of the Social Credit Party and the New Democratic Party. Perhaps more of this would suffice.

HON. RICHARD HATFIELD: There have been no partisan appointments of Social Credit or New Democratic because the party has not been represented by a Prime Minister. I recognise you appointed people from the CCF and the NDP and Social Credit. I recognise that.

HON. WILLIAM BENNETT: I only ask, Prime Minister, that my colleagues keep an open mind as I believe that we should be discussing the opportunity for input at the centre. They may vary in their opinion on how we do this, but I feel it is important, as one of the areas of the country that would like that opportunity and feel that we have had that opportunity up to now. I want to make it clear that one of the problems with parties such as ours that are strictly provincial, although we bear a name with the party that is national, we are separate. We do, as a provincial government and a provincial party, represent a regional provincial interest now and as such will never be on the national stage in a partisan sense. In our government the only opportunity we have is to have this opportunity to deal with appointments to the centre and we feel that it is in the interests of our people and can be in the interests of the country. So I would just ask that we keep an open mind. I think the importance is in the objective and what we are trying to do and perhaps we can have this dealt with by the process we discussed this morning, because it is equally important to me to have that input at the centre as it

is to have the decentralization that some of the other Ministers want, First Ministers want. I hope then that you will agree to have this item on the list and in the process that we agreed to this morning.

THE CHAIRMAN: Well, certainly the subject will have to be debated. I would propose maybe to take another fifteen or twenty minutes to hear further views and then we will see to what extent there is a consensus forming and it will be easier then to give direction to that sub-committee.

Premier Buchanan.

HON. JOHN BUCHANAN: Mr. Prime Minister, a few comments and then the Attorney General of Nova Scotia, Mr. How has a few comments to make.

We take the position that the institutions of the Monarchy, Senate, the Supreme Court, are uniquely national in character, having both federal and provincial aspects and impact. We see the institutions as fundamental to our federation. As far as the Senate or reform of the Senate is concerned, there must be regional and provincial presence in that body. Accordingly, all of the provinces, as well as the federal government, have a constitutional obligation concerning these institutions and the process of review, possible change in the process of review or to decide whether there should be change or no change in their power. It appears to Nova Scotia to be at variance with what the purpose or intent of this conference for the federal government to either move unilaterally as suggested in Bill C-60 or by making reference to the Supreme Court to determine an issue of legislative authority concerning them. A reference would do no more than settle the dry legal point of jurisdiction but leave open the question of whether it is wise for the federal government acting alone to move on any of these issues.

It would seem to us, therefore - and I think a few other Premiers have mentioned this - appropriate that the process of review of the institution be referred to the

constitutional committee which was discussed this morning. We believe that the partners in confederation are much closer to agreement on the future of these institutions and that agreement could be reached quite soon provided joint action is taken along these lines.

THE CHAIRMAN: I have a few Ministers who would like to take the floor. Mr. Wells, on behalf of Ontario?

HON. THOMAS WELLS: (Minister of Education for Ontario): Mr. Prime Minister, having listened to the very excellent discussions that have gone on so far about the Senate, I think that the question we have to ask ourselves is what role is a new reconstituted Senate going to play and the general consensus that I seem to see developing is that this is a vehicle to bring regional interests into the central governing structure and to be sure that they are represented there and of course balanced off against that has got to be the viewpoint that there are two hundred and sixty-five members of the House of Commons elected to represent all the regions of this country and in each of our provinces there are members elected to represent all the regions of our province. Now some of our provinces used to have two houses. Perhaps at one time they existed for regional representation within our provinces or for other means but of course we do not have those two houses in any of the provinces of Canada now.

What I am saying is that the federal government is elected by all the people of Canada to represent all of Canada. Each provincial government is elected to represent all the people of its province and we are asked to govern and really what I think needs to be done in order to bring regional interests together is, as we have talked about over this day and a half so far, is better coordination and cooperation on a number of matters and also a constitutional delineation of what are the division of powers that we should have, what should each government be doing, what are they entitled to do and how can they best do it and we

should not be meddling in each other's affairs unless it is absolutely necessary.

Now, when you follow that train of thought, you can lead yourself to believe perhaps the present Senate is fine the way it is, perhaps it should be changed, perhaps there should be some other slight mechanism, slight change to it, to help it fulfil its purpose, but we have to decide what is its purpose, as my Premier said, what do we really want the Upper House to perform and are we looking for some magical answers from it that we cannot get; in other words, each of you gentlemen as First Ministers, and the Prime Minister of Canada are elected to govern and the kind of regional cooperation is going to come really from the kind of cooperation that comes from meetings like this and perhaps that is the more important area we should be directing our attention towards.

As you mentioned, sir, Bill C-60 suggests some type of institutionalization of First Ministers' conferences, and we would like to suggest that that indeed should happen, that there should be, for instance, a minimum of two First Ministers' conferences mandated in the constitution and that some revised secretariat from the present one will have, perhaps even modelled along the form of the Secretariat of the Ministers of Education that has more than just an administrative secretariat role but a policy-collecting role that can work on an ongoing capacity with the First Ministers to make the First Ministers' conference between the Prime Minister of Canada and the First Ministers of the provinces the vehicle whereby coordination and cooperation occurs and regional interests and concerns are represented and that that become the vehicle perhaps and it is certainly the kind of process that would be very hard to delineate further roles for from those First Ministers conferences now being carried on but perhaps after being created further development of its role could occur, but the creation could occur in the new constitution where it was mandatory to have First Ministers conferences at least a minimum

of two and a revitalized secretariat that played a much greater role in pulling together and representing all the interests of this great country could assist them. So we see that, sir, as one of the things that perhaps we should give paramount importance to and it may be that perhaps the present set up serves us well. Perhaps, as you said, sir, even we should look at electing the Senate. Certainly you mentioned that and there are other prominent Canadians who mentioned an elected Senate as a possibility but that certainly is something that I am not advocating as something we have to look at.

But I think -- we used to, Premier. I think at one time when you were appointed to Cabinet I think you had to resign, at least the Federal Cabinet you had to resign and re-run in your constituency. To some of us that would be rather inhibiting. We are not advocating that but I guess what I am saying, sir, is that maybe what we are looking for in the Senate is a vehicle for representing really co-ordination and co-operation and representation of all the regional interests of this country. Maybe we are looking for it to do too much for us in that area and we should look somewhere else.

THE CHAIRMAN: Thank you. Before recognizing Mr. How I think Premier Campbell would like to take the floor.

HON. W. BENNETT CAMPBELL: I just wanted to follow up on exactly the same point that Mr. Wells just addressed himself to and I think the basic question that faces us here, now, this afternoon, is asking the question what role do we expect of the Senate? Having answered that question, one can then determine the make-up and the general parameters of the operation of the Senate.

I think from our province's point of view we are quite happy with the Senate at the moment. We feel that it is performing a very worthwhile function, that it is doing a lot of good work in terms of its investigative and research capacities and while we look at the possibility of varying the Senate, you immediately run into the very difficult question of the interface between the Senate, the House of Commons and the elected provincial officials, Provincial Ministers in government interfacing with their federal counterparts and the possibility of a very substantial overlap. The minute you begin expanding the role and function of the Senate or take on regional or provincial representations within the federal House,

it is very quickly acknowledged that the Senate may be usurping some of the roles or responsibilities originally assumed to have rested with the Provincial Minister. So I guess having looked at the various actions, we are happy with the Senate as it is presently constituted, although we would like to see the selection process changed somewhat, as I mentioned in my paper yesterday morning, in that we support the concept of having the Senators appointed by resolution of the provincial legislatures. So without reflecting on the present membership of the Senate, you would ensure the appointment of very high quality people to that body as well as by limiting the term you tend to again ensure that the input from the province is of a very high calibre and one which not necessarily represents a political affiliation or a political point of view in the Upper House. So, from our point of view, we do support the continuation of the Senate in its present form with the various alternatives suggested.

THE CHAIRMAN: Thank you, Premier.

Mr. How of Nova Scotia.

HON. HARRY W. HOW (Attorney General for Nova Scotia): Mr. Prime Minister, I may be forgiven for a certain amount of nervousness in addressing this body for the first time. I would say as of two months ago I was not really expecting to be here.

HON. WILLIAM B. DAVIS: That was true of all of us at one point.

HON. HARRY HOW: Political fortunes do ebb and flow these days, but nevertheless, I suppose as a member of the Progressive Conservative government, however new, I am looking at the make-up of the present Senate of Canada with 71 Liberals, 17 Conservatives. I suppose that we might be forgiven if we would suggest some change is due on the Senate of Canada makeup.

Moreover, fresh from being a country lawyer from Wolfville, Nova Scotia, although a member of the legislature in opposition -- as Conservatives are often wont to be for some years -- I nevertheless have formed certain impressions of the Canadian Senate so really I suppose, Mr. Prime Minister, what I am saying is I am bringing to you perhaps the viewpoint of a layman, if you will, of a person from the street, the ordinary Canadian which I consider myself to be. Therefore, I have heard the opinion here today that the Senate is performing a very useful role. I grant you in the peripheral sense I think that is true. I can remember the late George [redacted] with whom I practised law for many years who was a former Minister of Finance used to say that the Senate was performing excellent work, in the bankruptcy law and I think in the field of criminal law and other major statute works of Canada, but when it comes to the primary function of the Senate, that is, the sober second thought body in the parliamentary structure of Canada I fail to see how it has performed. I have to say that as a layman -- I hope this isn't tinged with any partisanship -- that it has been a body which has been particularly adept at responding to the government of the day when that government happened to be Liberal and I must say that has been for a considerable part of the time since the turn of the century. On the other hand, it has been somewhat, if I recall historically, somewhat obstructionist when it came to the very brief periods that we have had a Conservative administration in Canada. I do recall that had something to do with the legislation relating to the Bank of Canada. Is that not right? Something of that nature, leaving former Prime Minister Diefenbaker with some power.

We also have the opinions of some very prominent Canadian politicians such as Stanley Knowles and he is not alone in this when he says it should be abolished. He doesn't see that it performs its role or function. This isn't, Mr. Prime Minister, to say it couldn't but in its original concept as a sober second thought body, as nearly as I can observe from the years I have been watching the press, watching the events in this country, has not been lived up to. It has been a partisan body. It has even had the role -- they have caucuses and the Conservatives can hold theirs in a very small room and presumably the governing Liberals cannot. In any event, it seems to be an extension of the political process within the House of Commons.

I agree with the political process because it represents a sensitivity to public wishes by the election process of its members but here, if this is designed as a sober second thought body, it cannot have that luxury I would say. Therefore, first of all, I would say that whatever is done with the Senate, that it must perform its original purpose under the BNA Act, that is as a sober second thought body and therefore its members, once appointed or elected, whatever, then will have to become somewhat akin to judges on a bench who when they assume the office of judge must lay aside their politics. If we have this kind of thing, I submit, Mr. Prime Minister, then we will have a non-partisan body, non-partisan approach. We will have the sober second thought body that it was originally designed to be.

Now the question is what powers should it have? I for one do not favour a veto power as such because I think the elected members, the will of those elected members must always prevail but as a sober second thought body it would have suspensory powers but exercise those properly in a non-partisan way and

we would then have a Senate I think which would be the productive part of the law-making process in this country.

The regional concept I think is borne out by its parallel in the United States. The State of North Dakota I believe, one of the smallest states, has two Senators. The State of New York also has two Senators. You will agree there is some difference in their populations but it was designed I take it specifically to give a regional concept in the Upper Chamber so-called in that country. I say, Mr. Prime Minister, that although many good things are being done by the Senate, in my view as a layman it has failed in its primary role, that is as a sober second thought body and I would hope that by a different appointment process, if not an elected process, that this would be adjusted and amended in the future.

THE CHAIRMAN: Thank you, Mr. How. There are three provinces who haven't spoken on this subject yet. I don't call on them unless they want to take the floor. We will hear from Mr. Bennett again.

HON. WILLIAM BENNETT: Mr. Prime Minister, briefly to add a few comments to what I have already stated -- Mr. Mair would like to speak.

HON. K. RAFF MAIR: I am concerned listening to the arguments around the table that we not fall into the trap of dealing with this institution by defending or addressing ourselves to the one that exists. I don't think the existing Senate or the Senators require any defence and I don't think that is the point. The point from our point of view, Mr. Prime Minister, is how do we ensure input at the centre from the regions? The danger as I see it is that we attack this question by throwing customary one-liners about the Senate and that to me misses the point. For one thing, we have got a very complicated problem with which we are dealing, one that

can't be handled with one-liners or short statements in the 10, 15 or 20 minutes we are spending here. There are a number of other dimensions, Mr. Prime Minister, we haven't talked about today in dealing with representation from the regions. I have heard it said the MP's have a role and the Senators have a role and so on but there are other dimensions. The political realities, for example, of responsible government, party discipline, what is the actual mandate that an MP has, who does he really represent, his constituency, his region, his party, who does he represent? What is the mandate of an existing Senator? All of these things are all too complicated, all too time-consuming to deal with at this point.

The next point I think is most important and essential that we remember is that we are not the United States of America. We are Canada. We have different traditions. We are asking the First Ministers of this country to look at an institution not the same as another institution but one which while it may have the same name as other institutions will perform an entirely different function so why would we want to compare what we want that body to do with existing bodies with which they cannot be compared?

I think, if I might just conclude with these remarks, Mr. Prime Minister, that the Province of British Columbia, trying to do as Premier Campbell has suggested, determine what role an upper body ought to fulfill in Canada, has given the matter an enormous amount of thought and expended a great deal of energy and I would not want to think that that thought would be dispelled with not enough time being given or perhaps if I may say so the one-liner approach.

I think that we are looking for an institution which has different foundations and is built up by different requirements than other bodies and that we need to give it a great deal more thought and give it at least the same attention as we are going to give the division of powers, because as you have observed, Prime Minister, there is the other side of the division of powers coin, and I urge all of the Prime Ministers here to bear in mind the seriousness of the problem that we are trying to address with the answer that we have brought forward in our set of proposals.

THE CHAIRMAN: Well, I certainly would not want to dispose of this item by taking it off our agenda. At least two provinces have requested specifically that it be put on. It is noteworthy that most of the bodies or institutions which are doing work on the Constitution seem to have recommended the use of the Senate in some such way as not an alternative to decentralization but as another course of stronger representation of the reasons at the centre.

I do not know how to put this, but I am reminded of 1969 when the Federal Government at that time had suggested some provincial input into Senate appointments. We did not go as far then as we did in C-60, but we had suggested that, and the same lack of enthusiasm then was shown by the Premiers as generally today. I think we can candidly reflect on the reasons.

In a sense, a Senate such as you propose, Premier Bennet, would make sure that the Provincial Governments are spoken for at the centre by the members of the Senate, and maybe there is some fear that the power of the Senate or the authority of the provinces even in such a conference as this would be in some way diminished, and I think we have

to say candidly that that might be one of the consequences, and it might also be the explanation of the hesitancy of many provinces to go this route. But on the other hand, we cannot, as both you and I have said, Premier Bennett, decentralize federal powers to the extreme and be left with the problem of how in the day-to-day conduct of federal affairs on Parliament Hill, how are the provinces in some way represented.

We have had other alternatives suggested. I know Premier Lougheed was referring to his suggestion of having, I think, 40 per cent of federal boards appointed by the provinces. This is another way that we may look at it at some other time of our discussions, but right now I think we have to reach the conclusion that there is no great support for this type of reform of the Senate, and I would suggest -- by "no great support" -- I think your paper is a very basic one and I think it raises very, very important questions and I would have questions to ask on the way we do it, but I think the thrust of it is one with which we, the Federal Government, very much agree.

But if Premiers are willing, we could ask this institution to be referred to the Continuing Committee. My inclination would not be to put it on the short list with a recommendation by January. I think it could be on the second list of things that could be studied over a bit of a longer haul.

I see you winced at that, Premier Bennett. I am just thinking, judging by the discussion today it is unlikely that in January we will suddenly have a majority of Premiers and in view of the fact that we cannot reach anything like a consensus, and in view of the fact that there is a Supreme Court which is going to report on this, perhaps we should put it on

the back burner and ask that it be --- Premier Bennett.

HON. WILLIAM BENNETT: Just one point, Mr. Prime Minister. You are presuming that the other items that you have placed on the short list will be disposed of quickly. I say, from British Columbia's viewpoint we cannot talk about the items of the decentralization of powers, or division of powers without giving this equal discussion because they go part and parcel.

THE CHAIRMAN: That is certainly what we thought when we put Reform Senate in Bill C-60, and I think the examples you gave about their veto powers, certainly the kind of Senate you are proposing, sir, would be a very good solution to the question of declaratory power used in the way you suggest.

HON. WILLIAM BENNETT: Maybe, Prime Minister, in putting it on the short list, all the items there will not have final resolutions but the discussions of them will help us make the decisions by the timetable that you seem to be working towards. That is why I say, if in doing that we allow for a much wider and broader discussion, particularly for those provinces that do not come with the very narrow view that decentralization is the only answer and want this opportunity, I think under those terms it could be placed on the list.

THE CHAIRMAN: Let us put it on the list.

HON. OTTO LANG: What list is that?

HON. RICHARD HATFIELD: The short list and long list, and all that, what is this problem that the provinces have to be represented in some powerful way in the Federal Government? The Constitution of Canada gives the provinces a good deal of power to look after local problems. I think, as the Premier of

Quebec is discovering, as I am sure is the Prime of Canada, from time to time the provinces have a lot of power. Why do they have to have more power? Don't you feel competent or confident to carry out the powers that you have as head of the national government?

THE CHAIRMAN: I wondered why you spent the morning giving me a list of fifteen powers that you wanted to take away from me.

HON. RICHARD HATFIELD: New Brunswick's position is, we have got enough power and we can handle it. I said that the day before, but there are provinces, I recognize, that want more power. I think not only do they want more power in absolute terms, they want clarification of the power under the British North America Act, the powers that are assigned to them and clear that up. That is why I think the recommendation you made late in the morning was a good initiative, but I resist this notion that somehow the provincial interest -- now, I am just talking about the provincial interest -- there is such a thing as a provincial interest, and from time to time I want to put that forward and I have a difficult time as it is getting it by the Legislature of New Brunswick, and getting it by the First Ministers Conference, and getting it by the Federal Cabinet, and so on and so forth, to get it to that big place in the sky where a decision is finally made, and I have to go through another obstacle, the Senate of Canada, who is going to make it more difficult.

The other thing I am worrying about is, why does a province like Ontario, like British Columbia, like Alberta, want more provincial power at the central government? Surely they can look after themselves.

I have only got constitutional power.

They have got Constitutional power and resources. And I am really concerned that they want this power, and I think, again, it is not the position of the Government of Canada to be promoting greater provincial involvement at the national level. Rather, they should accept their responsibilities and protect the lesser provinces such as our own.

HON. WILLIAM BENNETT: Prime Minister, all that notwithstanding, I am quite prepared to discuss items that are of interest on the short list of the Premier of New Brunswick that may be exclusively to his interest. We are interested, but this makes part and parcel of the discussion on the division of powers.

Just before the Premier of New Brunswick spoke, I believe you were about to put it on the short list. If we can do that, I think we can move on.

HON. OTTO LANG: Mr. Prime Minister, I was just going to observe, and perhaps in view of what you have just heard, but I was going to observe that there may be more tendency towards consensus movement -- some progress in regard to an institution even if not in a short period of time a final leap to British Columbia's solution, and perhaps if it could be kept in mind we could see some improvement if it was put on the short list.

THE CHAIRMAN: For that reason, I think we should keep the item alive and I think discussion of it has been very good. We will put it on the short list. It is possible that we won't have a short list, we will only have a long list, but it is certainly worthwhile discussing this if only to say that I have now been replaced by the Premier of New Brunswick as the person who says that the provinces have enough power now, and I am very happy to give you my place.

I just want to point out to the spectators and television that I didn't say it, you said it.

HON. RICHARD HATFIELD: If you used your powers better and I used my powers better, we would get along quite well.

THE CHAIRMAN: Can we move along to the next of the institutions that we thought we might look at, and that is to say the Supreme Court.

Here again, in view of the time, I won't read the paper I have. In a sense, it asks something of the same type of question, and that is, why we attempted to deal with it in our bill of last June. It is saying we have to have a Supreme Court which will interpret the Constitution, and we will have to have a Supreme Court that has the confidence of the people of Canada, of the provinces of Canada, of the regions of Canada.

We made some suggestions for increasing the number, particularly so that the civil law province of Quebec could have a larger hearing. We made some proposals in terms of appointments of Supreme Court Judges so that the regions, perhaps, feel a little more involved in that appointment process, but the name of the game on this subject is to make sure that the Supreme Court has legitimacy and that all of us can look to it with the feeling that whatever decision it comes down with will be the ultimate view on the Constitution at that point of time and that we will be willingly bound by it, and that is the problem we addressed, and that is the problem which is in front of us now.

Two basic aims were in our approach. One was to entrench the Supreme Court in a Constitution so that it could not be altered in its status by the Federal Government acting alone by a mere statute, which

is the case now, and to find a method of appointment of the members which would ensure that the court had the confidence of Canadians in all regions.

Here again I repeat our proposals are not immutable and we are very anxious to hear views from the various Premiers assembled here. I have a list of Premiers who might want to talk on this. The Premier of Alberta, Premier Lougheed.

HON. PETER LOUGHEED: Everybody else seems to be reticent to start. What strikes me about this situation which compares quite differently to the discussion of the Senate which we just concluded, and in that discussion we were talking about the possible delegation of responsibilities from elected persons to non-elected persons, but I believe I would think it is very close to full acceptance in Canada that we are not talking in any way about changing our traditional system of the judiciary and quite obviously the judiciary are therefore appointed people and distinguished too. I think we can be very proud of the judiciary we have in our country.

A concern that I think we should look at or consider, Mr. Prime Minister, is that when the Supreme Court of Canada in the federal system is obliged to reach a conclusion in terms of jurisdiction as between two orders of government, provinces and federal government, it is very, very important that there be a feeling that that court is reflecting the perspective of the various parts of the country and the perspective of the country other than merely from the point of view of one participant in that constitutional dispute. I realize it can be argued that all the court is involved in is the question of interpretation of the law and that certainly is the case that has been put, but it certainly strikes me that, like it or not, when it comes down to a matter of the decision of the Supreme Court of Canada, as presently constituted, on a constitutional question it is forced to come to a conclusion in terms of a balance either between the provincial point of view that may be argued in that court, and the federal one. I know that the effort is being made to attempt to interpret that in light of the specific existing constitution, but I am troubled by the process in the sense that what we have had to date is a

process that one party to these constitutional questions, they are so important to us, appoints the judges that sit on that Supreme Court and yet they have such a profound bearing upon the way in which our federal system would work. Of course, we moved away from the decisions and interpretations of the judicial committee of the Privy Council some time ago, as we should, and brought it back here to Canada, that is as we should. But I think that there clearly should be some effort expended to come to a conclusion in this area to reflect the fact that the court in one way or another should have a perspective that reflects the various parts of this country and where people live, how people think in the various parts of the country and that it should be perceived to be, in that sense, more representative and not just an aspect of the federal government in Ottawa.

There have been all kinds of ideas. We presented one. It is merely a proposal for discussion purposes but I would hope that what we are trying to do is look at a situation where the court can be perceived as being established in a way that is truly representative of the federal system and not the judiciary system and perceived in a way that when it makes its conclusion the conclusion is accepted as therefore a conclusion that has brought into its decision-making, the human and psychological and other perspectives that come from a country as diverse as ours. We are not hard and fast on the how, but I think we should try and I think it is in the interests of all of us to strive for that. I am not looking at it in terms of questioning the high jurisprudence talent of the existing court in any way. What I am referring to is the perception of the court in a constitution in the longer term on constitutional matters as between the two orders of government we have been discussing. That, to me, and I know what a fairly difficult question it is, is one that I would hope our discussion would revolve around. Even if we can't come to any conclusions, at least be stretching our minds to find ways in which that could occur.

THE CHAIRMAN: Thank you, Peter.

Mr. Mair of British Columbia.

HON. K. RAFF MAIR: I would just like to echo the sentiments of Premier Lougheed. The position of British Columbia, of course, Prime Minister, has been put forward and I think it is very much in line with what you have, sir, in mind in Bill C-60. It just seems to me if I make one observation that the Supreme Court of Canada has served us extremely well indeed since 1949 and we have been extremely lucky in this country to have men of such high quality serve as judges on the Supreme Court and they deal with very delicate matters from time to time as between the federal government and the provinces and other matters. It seems to me we should not give any losing litigant, whether it be the Province of British Columbia or Alberta or any individual the right to use as an excuse the fact that the court was not fairly constituted because the court has been a fair court. It has been a good court and to give that flimsy and wrong excuse to a person simply because we do not use the means at our disposal to ensure that the appointment seems to be fair is doing a great disservice to a great court, so I echo as much as I can Premier Lougheed's remarks that we must take care to ensure that the appearance of the appointment lives up to the expectations that we rightfully have of that court.

THE CHAIRMAN: Thank you, Mr. Mair.

Mr. Blakeney.

HON. ALLAN BLAKENEY: Mr. Chairman, I want to make a few observations which are almost self-evident but I make them anyway because I think we need to state them to see whether we all agree.

My first proposition that Supreme Courts, when they interpret constitutions, legislate. They are part of the legislative process. Any court which has little or no legislative guidance is in the business of legislating and any

court, when called upon, let us say, to decide what happens to words when the transmission by Hertzian waves, for example, is involved, has only to guide it, something about telegraphs, which was written long before wave radio was invented and obviously is making a policy decision and is in the business of legislating, so I think that is proposition No. 1 which I think we would probably all agree with.

Proposition No. 2 is that a court or any other appointed body will reflect or at least can be made to reflect those who appoint it, the views of those who appoint it and that I think is almost a self-evident proposition. Nobody is accusing courts of being agents or spear carriers or anything like that for the people who appoint them. Nobody is saying that. I am saying anyone who is appointed or elected indeed has a set of predelictions, biases, whatever one was to call it. I will call it a mind-set. I have a mind-set, the Prime Minister has a mind-set and the Minister of Justice has a mind-set and I think somebody who has sat here for a day or two or three could make a pretty shrewd judgment as to what kind of judge we might turn out to be if we were on the Supreme Court and where our biases would lay. And that is a fact, and none of us can walk out of our past or walk out of our intellectual baggage. Accordingly, anyone who would be selecting from that group would be able to produce a given result in that court, given time because he would - he or she could select persons with the appropriate mind-set and could produce a court or any other body which, in a broad sense, reflects, and I think that again is almost a self-evident proposition.

We have real limitations on that in Canada because we have observed a rule with respect to regional appointment which I think has been very healthy because it has limited the process of selection which any appointed body can use and as I say, I am surely not saying anything that anyone is likely to object to. If I am, if the appointing body is impartial, then we would be glad to take on the role and

presumably the body we would appoint would be a body equally impartial. I know nobody is going to believe that and they shouldn't.

All I am going to say is that any body, any appointed body can be made to reflect the views of those who appoint it over time, and I don't mean with any precision but I mean in that general direction. Therefore, our issue here, what we are grappling with is to make sure that the independence and the impartiality and the authority of the court is above reproach, which no one is contesting now and appears to be above reproach, which I think is in question now.

The question, therefore, is how do we establish an appointment system whereby this court can be a referee between federal and provincial governments? How can there be a sufficient provincial input so as to reenforce the public perception of the independence impartiality and authority of the court?

Shortly put, I think that is the problem. The Victoria Charter proposed changes for the manner in which judges are appointed. I certainly have sympathy for the approach taken in the Victoria Charter. It is somewhat elaborate and rigid, not altogether the best way to proceed, but it is an approach and I don't particularly object to it.

Similar proposals were recommended by the Joint Committee of the Senate and House of Commons on the constitution in 1972. The Premiers in 1976 and again in 1978 advanced their view that a great role for the provinces in the selection process was necessary, although in fairness, we did not come up with a particular proposal. All of these proposals have one thing in common. They attempt to ensure that in constitutional decisions the make-up of the court will adequately reflect the regional differences of Canada.

I think that is important and I have come to the view, I think somewhat reluctantly, that a provision for regional or provincial input is probably needed. I started the other way. I started saying as soon as you get reflecting provincial or regional you run the risk of judges being perceived to be representatives of regions and that is unfortunate but I think we have to make balanced judgments here and on balance therefore I believe that provision for regional and provincial input is probably needed and I think the time has come to have a Supreme Court where there is a clear understanding as best we can of the social and economic conditions and aspirations of all parts of Canada, that this is reflected on the court that the vast majority of Canadians will recognize as fair in adjudicating essentially inter-region pursuits or interprovincial or federal-provincial pursuits. I recognize some of the dangers involved in this approach. In the case of Quebec I think it is essential that the mechanism project the civil law of that province and I do not think your proposal does that.

In the case of the other provinces there was a problem of whether a regional or provincial body should have a voice but I will I think reserve my comments on how I think that ought to be done and terminate my remarks now by stating what I think are the principles and saying that I have reached the conclusion that we ought to have a system involving federal-provincial participation. We are not wedded to any particular formula but we do feel that on balance that is the better approach.

THE CHAIRMAN: Thank you, Premier Blakeney.
Mr. Hickman.

HON. T. ALEX HICKMAN: Mr. Chairman, very briefly the position of the Province of Newfoundland is that as the highest court in the land and the final arbiter

of the constitution it is obvious that the decisions of the Supreme Court of Canada have major implications in interpreting our constitution and in particular the jurisdictions of the federal and provincial governments.

I am inclined to agree with the comment made by Premier Blakeney that in deciding constitutional issues in particular that the Supreme Court of Canada wittingly or otherwise becomes part of the legislative process and I guess there is very little we can do about that and I am not suggesting that there is not a great deal of merit in it. But the court, as has been said by other speakers, must not only be independent and impartial but it has to appear to be so and I would not wish anything I say to be interpreted but it is my belief that today it is not. I have seen no evidence to indicate to me that the Supreme Court of Canada is not indeed a group of competent and totally impartial judges and I would hope that their regionalism and their regional backgrounds -- I am sure it hasn't -- has not interfered with their interpretation of the law. But in any event as a procedure to ensure that in the eyes of all Canadians that the court continues to be totally independent and impartial we welcome the proposal to provide for the constitutionality of the court by entrenching it in our constitution.

The method of appointment of judges to the court has sparked a great deal of discussion at previous First Ministers' meetings and at dozens of meetings of the Attorneys General that I have attended and whilst there are divergent views to the approach I think everyone is committed to the principle that it is absolutely necessary that we continue to maintain the total impartiality and absolute independence of the judges in whatever selection process we follow.

For this reason the Province of Newfoundland agrees with most provinces if not all that it is desirable to have an appropriate provincial involvement in appointments

to the Supreme Court of Canada. Whilst we recognize the merit in openness with regard to appointment to the court we do have some reservations with respect to the ratification of appointments by the House of Federation. Personally, I seriously doubt if any lawyer worth his or her salt would be prepared to subject themselves to the kind of kind of interrogation and expose themselves to the kind of public and political interrogation that would obviously flow from giving the Senate or the House of Federation the obligation to ratify an appointment. I really believe that the government of Canada should reassess its position with respect to that latter part of its proposal because it does appear to be consensus amongst most provinces. with respect to the appointment procedure.

The present informal practice of appointment of Supreme Court Judges on a regional basis I think is being satisfactorily formalized in Bill C-60 and I repeat our position that the bringing of appointments to the court on a regional basis certainly will assure an appreciation and understanding by that court of all regions in our country and in the eyes of the Canadian citizen I think this does something for the credibility of the court and certainly it aids them in applying and interpreting the laws in a very diverse country. I believe that still the most important factor that we must continue to place out in the forefront is that we find for that court the most competent people, the most competent lawyers available throughout the country.

Whilst accepting the different legal system in the Province of Quebec and that this may necessitate and does necessitate the appointment of a certain number of judges from that province, any formal selection process must achieve a careful balance between the two objectives of reasonableness and excellence and we must continue as I said earlier to ensure that the most competent people and the

most qualified people are made available and appointed to the Supreme Court.

The proposal to have the Quebec judges only review questions relating to Quebec civil law causes me some concern. This change is based on the argument that the participation of judges trained in common law when appeals dealing with civil law have led to distortions and erosions of civil law. I think there are benefits to be gained by taking the best aspects of both systems, both the common law and the civil law and the Supreme Court of Canada already within their authority, their administrative authority, has made certain accommodations and has in my opinion taken care of these concerns by the practice of having five judges as a minimum sit on cases, civil cases coming from Quebec and that the majority of judges are those trained and learned in the civil law. I yet have to be convinced that common law lawyers and common law-trained judges are not equally competent to deal with problems coming before the Supreme Court of Canada on civil law and vice versa, that judges who are trained in the civil law certainly have handed down some of the best decisions, the most noteworthy decisions on common law cases I believe that have emanated from the Supreme Court of Canada.

The Province of Newfoundland has for some time expressed interest in consultation with regard to appointments to provincially constituted courts, the superior district or county court level and it is my recollection that at the Regina meeting there was a unanimous decision taken, whether it was formalized I am not sure by all provinces but we felt there should be some consultation made under the same sort of formula or even a less cumbersome one than that suggested for consultation with respect to appointments to the Supreme Court of Canada. The reason for it is this: The provinces,

the Provincial Attorneys-General have exclusive responsibility for the administration of justice within the province and our experience indicates that the citizens of this country do not quite appreciate that fine distinction between the administration of justice and the appointment to the superior or county -- district courts of the provinces. This will not do violence. We are not suggesting that the right of appointment be taken from the Governor-General in-Council and transferred to the Lieutenant-Governors-in-Council of provinces, we are not suggesting that, but we do suggest that as the provinces have the primary responsibility for the administration of justice within their boundaries that it is absolutely essential if we are going to get the kind of liaison between the two levels of government within the administration of justice field, the enforcement in the hands of the provincial Attorneys General, the law-making process and criminal law in the hands of the Parliament of Canada, then nothing will be lost and a great deal will be gained by providing a simple formula that will allow for and enshrine in some way meaningful consultation between the first law officers of the Crown at both the federal and provincial level with respect to appointments to the superior courts of the province.

THE CHAIRMAN: I have Premier Hatfield and three provincial Ministers.

HON. RICHARD HATFIELD: Mr. Chairman, I just wanted to find out: As I understand it the Supreme Court of Canada presently does not appear to be a partial court. Is that the view that people are taking, that they want to make sure that the situation that exists now continues to exist?

THE CHAIRMAN: I will let the Minister of Justice answer that question when his turn comes.

HON. RICHARD HATFIELD: I am interested in the position of Premiers who have advocated the change in the establishment of the Supreme Court. They all say that the present

court is impartial and appears to be impartial but now that we are going to enshrine it in the constitution that we have got to make sure that what exists now continues to exist. Do you think the court is partial?

HON. ALLAN BLAKENEY: I do not think it appears to be impartial and on the question of whether it is partial obviously that is a debatable point which I do not propose to enter into at the moment because our job is not to resolve that debate in point but to make sure that it appears to be impartial and we have not done so.

Because if it appears to be impartial, appears now to be impartial and approachable to people in Canada, then I think you have to make a change, by the way, , but I personally don't agree, I think that I am more persuaded by the position of Alberta that you let the Supreme Court be a national institution and, therefore, be appointed by the national government and have a separate Constitutional Court.

I would hate to see -- I don't see how we are going to get a court that is impartial that is appointed by some of the provinces in Canada but not all of the provinces in Canada.

HON. ALLAN BLAKENEY: I can make one clarification. When I speak of Supreme Court in this context, I am speaking of it solely in its constitutional capacity. If one seeks to divide between the regular appellate jurisdiction of the Supreme Court and its constitutional jurisdiction, my comments apply only to the constitutional side.

HON. RICHARD HATFIELD: I don't see how, though, that the government -- the Province of New Brunswick is going to have a role to play in the appointments to the Supreme Court to ensure that that court has a provincial bias, or a provincial consideration, or a provincial factor in it, or a provincial mind set, if you like, because I don't think -- we have only got one appointment on there. The chances are two or three governments could go by without ever having a chance of ever being consulted, even being called.

HON. PETER LOUGHEED: Could I just get into the discussion in responding, because it is what Premier Hatfield was just on that caused a difficulty with me on this whole process, and my colleagues, because the more I got into the question of the appointment per se of a judge from the province, the more I felt I really questioned whether that was going to be a real solution to the problem in any event, because, as Premier Hatfield has just pointed out, if you go through the time frame that is involved there, it is really pretty extensive in terms -- pretty long and drawn out -- in terms of anybody sort of feeling the provinces by their very appointment process are going to find themselves feeling that the problem Premier Blakeney has described is met.

So we went around the other way, and we said: "Okay, we have a good judicial system. We have judges who have been appointed by the Federal Minister of Justice in consultation with the various law societies in the provinces and there are Superior Court Judges and there are a large number of them there. We certainly don't want to detract from the Supreme Court of Canada as the highest court of appeal on matters that are non-constitutional, so let's consider leaving it as it is and not worrying too much about it." But then saying: "All right, in the constitutional side where it is a matter of perspective, we look at the decisions that came and we are not trying to apply anything, but it is a puzzlement."

You see outstanding jurors in the Court of Appeal in Saskatchewan all come to a conclusion on one side of an issue entirely, and then the Supreme Court of Canada all come to the completely reverse conclusion. It is a puzzlement to us why. With due respect to the City of Ottawa and its environment,

it strikes us that instead of worrying so much about appointment by provinces or by Provincial Governments, would you not have a better possibility of having a court that appears more representative? If on Constitutional matters the judges all being judges appointed by the Federal Government in the first place, and being experienced, could in some way of rotation -- and without getting into the details of that -- living in the various communities in Canada, operate on the basis of considering at least the major Constitutional questions?

I admit it is a very complicated matter, but I was trying to respond to the first concern Premier Hatfield has, does the process of appointment of judges by the provinces do anything anyway?

Secondly, it leaves the Supreme Court of Canada intact without adjusting it relative to its position in non-Constitutional matters.

Thirdly, it brings into the Constitutional area the perspective of the jurists along the line that Premier Blakeney mentioned, that they are all human beings with natural attitudes and living in different parts of this country. We don't suggest it as a panacea and we realize it has some weaknesses, but we throw it out for the purpose, at least, of consideration.

THE CHAIRMAN: With what you said about Ottawa, I am surprised we didn't hear those sirens again.

Mr. Lang, Mr. McMurtry, Mr. Morin, and the Minister from Manitoba.

Mr. Lang, Federal Minister of Justice.

HON. OTTO LANG: Mr. Prime Minister, I think Premier Hatfield asked what I think is a very key question, which is whether the court is regarded as impartial or not. I should reflect on the fact that the reason we have the proposal for what you could call "formalized consultation with Provincial Attorneys General" in Bill C-60, is because of some words, certain spokesmen for Provincial Governments over the years, at least two or three of them, about their doubt about the impartiality of the court. We put that in because we wanted to tend to assure that that was not possible, that one could not say that.

On the other hand, I would really make the case that it has not been the case, that has not been a case that could be made by a reasonable lawyer anywhere on the basis of analysis of court decisions. I am really going to use temperate language in regard to Premier Blakeney's comments, because he kept his very mild as well. Both of us may use different language on another occasion, but he has suggested that the court is, indeed -- has a bias, a prejudice, a head-set.

Of course, any lawyer appointed to a court will have certain background and certain judgments which he will have made, but I suppose I feel it particularly directed because I had the chance to participate in the appointment of three members to the court when I was Minister of Justice previously, and the search was, quite simply, for the best possible legal mind in the area of the country from which the appointment was to be made. I think you would find a good deal of consensus that that is what was achieved. I certainly didn't know a great deal about the predilections of the individual judge on a whole range of issues,

because they might not have practised very much in the constitutional area, for instance.

Indeed, the head-set or the mind-set of the court is hard to defend in the face of so many five to four, six to three decisions which we have seen from it. It is also worth noting that the same Saskatchewan Court of Appeal which went one way on a decision and then the Supreme Court went the other, were also appointed by the federal appointment process.

I think it is unfortunate to think of the court as a place where refereeing is going on, or where in the end the constitutional process will be changed, improved, altered over the years. Without a doubt courts have a role in that regard, but it is really through an amendment process and agreement of legislators that we should want to see the changes come to our Constitution.

The consultation process here, however, is proposed so that even the appearance and any suggestion of a bias or an attempt at bias is gone. I think the real substance is that the attacks which have come upon the court have more often really been directed at dissatisfaction with the Constitution itself, or with what has been found in it, and I think, indeed, a recent paper by the Government of Quebec has indicated their conclusion that they may feel that the document is too centralist and that our Constitution is too centralist. Obviously, that is a different question. How much power do we need centrally in Canada? That we need a trade and commerce power is generally agreed upon if Provincial Legislation runs against it, whether in hog marketing, or in other things, then naturally the court looking at the long term, not just at whether or not the particular thing which has been done is harmless or would not greatly interfere with Canada's well being, the court has to look at the long

term of what is happening to the power, what would happen in other areas. Does the province have jurisdiction in this particular case?

I think many times solutions to specific problems should be achieved other ways, and Premier Blakeney himself spoke of delegation in this connection, or finding some way of assuring that a particular legislative enactment which not be a model one to spread throughout the whole of the system, yet could be valid in its specifics as a result of some arrangement between the Federal Government and the Provincial Government. These sort of arrangements are possible.

I think it is certainly a mistake to attack the court, to suggest it is playing its role except in terms of the best exercise of its obligation to determine what the law is, and I think that is what it has been attempting to do. Notwithstanding that, we make a proposal to guard against the problem even of appearances in the future.

HON. ROY McMURTRY: Ontario, of course, recognizes that the Supreme Court of Canada performs a critical function with respect to Federal-Provincial relations. Clearly, this represents an exacting obligation which can only be performed by an institution which is truly independent, which is impartial, and fundamentally which is perceived as being impartial.

When, therefore, we consider any proposals about the court, I think we all -- of course, I think we agree that we must be certain that the result will be to protect its integrity. It is in this context that I wish, sir, to state Ontario's position.

Firstly, we agree with the entrenchment of the court in the Constitution, but apart from that, there are, in our view, three specific areas: The appointment process, the composition of the court and the jurisdiction of the court.

In 1976, the ten Premiers agreed that the provinces should play an active part in the appointment of justices to the Supreme Court of Canada. Ontario thinks that the body which interprets disputes between governments should be appointed through a process of active collaboration among the elected representatives of the eleven governments, and in addition, we believe that the process should be straightforward and workable.

Accordingly, we recommend that the Governor General-in-Council should appoint justices to the Supreme Court of Canada from a list of candidates drawn up by a National Judicial Nominating Council. This council would be composed of the Attorneys General of the provinces and the Attorney General of Canada.

In 1971, in Victoria, the First Ministers agreed that the Supreme Court of Canada be composed of nine justices. Ontario continues to support this proposal. We agree that three of the justices should be appointed from the Province of Quebec with the remaining six justices appointed at large without undue consideration or formal requirement of regional ratios.

We advocate the retention of a nine member court for a number of what we think to be very good reasons. This number is capable of handling the caseload demands without being excessively burdened. It is large enough to accommodate the two legal systems. It provides a variety of legal knowledge and is conducive to the process of judicial debate.

We naturally hope -- and expect -- that the selection of justices to the court would, as a matter of practice and common sense, take into account that we have distinguished potential candidates from across this country.

Sir, to suggest that Judge X or Judge Y come from Province A or Province B is to, in our view, deny or be appearing to deny the overriding principle of merit.

We obviously want men and women of sound learning and proven ability and providing specifically for the appointment of judges from Quebec, this principle in our view is not breached. It is not Quebec that is being represented but the unique Civil Code of that province.

Mr. Prime Minister, we want to emphasize the fundamental and overriding principle which we, as a province, subscribe to, namely, that judges are first and foremost the servants of the law and not servants of a geographic constituency. It surely should be a collegial body and surely we must not, for example, allow people to confuse the Supreme Court of Canada with a Labour Relations Board regardless of how important that latter body is to the functioning of our system.

The British North America Act fashioned a single hierarchial system of courts in this country. What this means is that a single system of courts entitles both federal and provincial law and ultimately any legal dispute whether civil, criminal or constitutional can be appealed for a final ruling to one court, one court alone, and that of course is the Supreme Court of Canada and we do oppose the concept of a separate constitutional court. We believe that to date we have therefore avoided the complexities and expense of a dual court system. We believe that this concept should be preserved by entrenching as stated in the constitution, the jurisdiction of the Supreme Court as the Court of final appeal.

The criticism of the Supreme Court of Canada that has been made from time to time - and this does appear in a very interesting paper that was just distributed by the Government of Saskatchewan in which it states:

"The decisions of the Court do favour the federal government."

But I think it is important to note that Saskatchewan's paper goes on to state:

"But this is not because the Court is biased but because 'it must interpret a text which lends itself essentially by its wording and the intent of its authors to a centralizing vision.'"

And surely any comments are surely not with respect to the adequacy of the court or the of the court but what we are all gathered here for, and that is the adequacy of the statute that it has to interpret.

Finally, Mr. Chairman, we would urge that in relation to the judges and the appointment of judges in the Superior, County and District Courts of the provinces, that we would volunteer, in view of the provincial responsibility in the area of administration of justice, to assume that burden and appoint these judges by Lieutenant-Governor-in-Council. Such provincially-appointed judges would continue to hear cases involving matters of federal and provincial law. The present practice is often inefficient although I would hasten to add, sir, that we in Ontario have been very well served by federal judicial appointments in recent years, but on the one hand the province is responsible, as Mr. Hickman pointed out, for establishing and maintaining the courts of the province.

On the other hand, the federal government is responsible for the appointment of the judges and the payment of their salaries. Too often unfortunately there appear to have been prolonged delays in the appointment of judges, and obviously a situation which only detracts from effective administration of justice for which the provincial Attorneys General have some fundamental responsibility.

Moreover, we believe that the current situation prevents the provinces from adapting the courts so that they are more responsive to the changing needs of society. For example, in Ontario, this strict responsibility is making it particularly difficult to establish a system of unified family courts in which all aspects of family law can be considered by a single judge. Although I hasten to add,

sir, we are very pleased to hear your remarks this morning and your indication of willingness to resolve this difficult, and, for at least the Minister of Justice of this country, very important issue.

Thank you, Mr. Prime Minister.

LE PRESIDENT: Je donne maintenant la parole à monsieur Claude Morin, le ministre des Affaires intergouvernementales du Québec.

HON. CLAUDE MORIN: Monsieur le président, j'ai une très brève intervention à faire justement ce matin on a appris une décision tout à fait récente de la Cour suprême qui dans le cas de la Commission Keable qui donne pas mal d'actualité à certaines de nos préoccupations.

J'ai entendu le ministre de l'Ontario comme j'ai d'ailleurs lu tout à l'heure un document qui nous est parvenu de la Saskatchewan, sur une étude sur les jugements rendus par la Cour suprême du Canada.

Or nous avons fait justement, qui réfère à notre propre étude que nous avons rendue publique il y a déjà quelque temps et qui démontre deux choses que d'une part évidemment le nombre de juges et de la question du droit civil au Québec est extrêmement importante d'une part, mais que d'autre part, si la Cour suprême -- et on en a beaucoup d'exemples -- a rendu des jugements en ce qui concerne le Québec et en ce qui concerne aussi d'autres provinces qui sont plutôt orientées vers des choix ou des préférences fédérales, c'est essentiellement parce que cette Cour doit s'appuyer sur une constitution qui est elle-même, -- d'après nous en tout cas -- de tendances centralisatrices dans plusieurs domaines. Ce qui, à notre avis, je pense, apporte un argument de plus pour démontrer -- c'est comme ça

qu'on le voit en tout cas -- que la question du partage des pouvoirs c'est-à-dire cette question directement reliée à la substance de la constitution, pourquoi cette question a toujours été, historiquement chez nous, fondamentale. Et tant que la constitution dans le régime actuel sera ce qu'elle est, les chances sont, comme ça vient d'être souligné par le ministre de l'Ontario et ça l'a été aussi par la Saskatchewan, les chances sont que les jugements continueront en majorité à être orientés du côté fédéral.

LE PRESIDENT: Merci, monsieur Morin.

Est-ce que je peux attirer votre attention sur le problème posé par monsieur Hickman, qui semblait dire que notre idée d'avoir un panel de quatre juges de formation de Droit civil, n'était pas une très bonne idée et je dis carrément, nous avons parlé dans notre proposition d'aller de neuf à onze juges, précisément pour instaurer cette sorte de réforme, mais si elle n'est pas voulue par les provinces de droit commun, ni requise par la province de Droit civil, c'est une réforme que nous laisserions probablement volontiers tomber.

Est-ce que votre délégation a quelques opinions à ce sujet?

HON. CLAUDE MORIN: Oui et c'est justement pour cette raison que j'ai pris la peine dans la première partie de mon intervention de dire que cet aspect des choses, c'est-à-dire le Droit civil était important, mais qu'il y avait un autre élément que notre étude avait démontré et le Québec continue à croire que

dans le régime actuel il est important que l'aspect Droit civil soit traité de la façon dont il l'a été jusqu'à maintenant avec les corrections dont vous parlez pour le projet dont on est en train de discuter.

Je ne suis évidemment pas d'accord avec l'approche et la remarque faite par mon éminent collègue de Terre-Neuve.

THE CHAIRMAN: Well, there will be another way of tackling this problem which I hesitate to put forward but which the Attorneys General could look at. It would be to stop appeals at the provincial Appeal Court in all matters of strictly provincial law or civil law and matters which did not involve constitutional or criminal law situations.

I just throw that out and no doubt we can have the Attorneys General work on it. I have the Attorney General of Manitoba.

HON. G.W.J. MERCIER (Attorney General of Manitoba):

Mr. Prime Minister, what Mr. McMurtry just said places the position of Manitoba on the table. We would identify ourselves with those persons who have indicated they are not in favour of the ratification of Supreme Court appointments through the Senate or in the Second Chamber. We would suggest that the Supreme Court remain constituted as nine judges, three from Quebec, but that the provinces should have some input in regard to the appointment of judges.

I was going to suggest - and Mr. McMurtry has already advanced the suggestion I was going to make - that perhaps appointments to the court could be by a nominating council composed of the Attorney-General of Canada and the ten provincial Attorneys General. We would also suggest that the custom of appointing three judges from Ontario, two from the West, alternating between one from British Columbia and Alberta and one from Manitoba or Saskatchewan and one from the Maritimes, should be retained as a sound practice but not in any particular way formalized.

I would say obviously that as a number of other speakers have indicated the legislatures as litigants have an advantage that the normal litigant does not have and that is the ability to make a change in the law after a decision is made, and we in general reject any suggestion that judges should be selected on the basis as delegates representative of a particular region of the country.

THE CHAIRMAN: Thank you, Minister. I

think now the Minister from British Columbia.

HON. GARDE GARDOM: Thank you, Mr.

Prime Minister. Without becoming involved with too much issue here, I would just like to make a couple of points vis-à-vis B.C. and that is, I think, that we all truly appreciate the Supreme Court of Canada has become and is becoming yearly, if not monthly, the most highly significant policy-making institution and it is determinant of many cases which, in the final analysis, really results in matters of enormous social policy. We can see from the figures that that function has increased dramatically, be it natural evolution or whatever with from 1956-1974, sixty-four major constitutional cases, '74-'77, six, and 1978, some twelve and there are a raft in the hopper at the present time.

No one at this table has questioned the true independence of the competence or the partiality of the court but we certainly are questioning the past method of appointment, the number of male members and the regional considerations that may have been given as to the members of the court. Obviously as we have stated at the table, there is the requirement for the full concept and complete appearance of impartiality as the Tremblay Report said in 1956. The existence, the composition and the jurisdiction of the court are solely dependent on the federal authority without any provincial participation and I think it is pretty well recognised, Prime Minister, at this table that this is not the appropriate route to be taking insofar as our attitudes are concerned for contemporary federalism in Canada.

The basic perception, the basic public perception of a court and the public appearance of a court I think are most closely related to those concepts that I have referred to. In your initiatives in your bill you have provided, I think, in essence, if we are going to find ourselves going down the line towards constitutional entrenchment for the court, ensuring that the provinces will have a role in

the appointment and not narrow its jurisdiction.

Dealing with jurisdiction, I very much like the quotation from former Justice Minister Turner when he said: "We believe also the Courts should not be compartmentalized. The jurisdiction of the Courts should be integral or entire and it should not be a specialized body merely hearing constitutional issues. In the adversary process when a case involves a case between two individual litigants it may involve questions of civil law and questions on the federal statutes and items of a constitutional nature all wrapped up together in the same selection of facts and involving the whole panorama of the law."

B.C. very much endorses those sentiments and feels that the courts should have complete and full liberty to consider the broad brush in all of those matters.

So in summary, it is B.C.'s position that the existence, the composition and the jurisdiction of the court should be provided for in the constitution, there should be the three-stage procedure for appointments which were dealt with earlier by Premier Bennett, consultation between the federal government and the government of the province to decide upon the nominee, nomination by the federal government and confirmation by reconstituted Senate. We feel the courts should be comprised of eleven members, obviously drawn on merit and from all of the five regions of the country, that it should exercise final appellate jurisdiction in constitutional and in non-constitutional cases, and it should continue to exercise final appellate jurisdiction in relation to both federal statutes and in relation to provincial statutes.

As a personal comment I don't think it is really heresy to suggest that as a part of the court having a complete and fuller Canadian profile, be it on an occasional hearing basis or chambers, or what-have-you, that it would appear outside of that marble ediface down the street and if the judges pack their saddlebags and at least, say, once a year in one province physically appear one time. That would be about a nine-year circuit and I don't think that would be too difficult for anyone.

THE CHAIRMAN: Could you guarantee their protection? I think we have pretty well covered the subject.

HON. MARC LALONDE: Just a word about the so-called intonation of the court or tendency of the court to render judgments in favour of the federal authority rather than the provincial authority, I will just refer to a quick count made by Dean Beaudoin of the Faculty of Law at the University of Ottawa who did a survey of court decisions since 1973 in the constitutional sphere and obviously would not include the one today or the last few days maybe, but a quick count indicates that of these decisions, and I have made a rough count. I don't want to hold him to the exact figure but it would be about 17 decisions rendered in support of provincial powers and about 17 decisions in support of federal powers. The courts are not deciding which ones are coming before itself. It is the litigants who are bringing it before itself and I think it is important that we bear that in mind and have this perspective. No doubt the learned professors are going to go into it more extensively, but I think it would appear to be anyway at first sight, at first calculation that the results of the decisions of the court over the last few years anyway, as I said, since 1973, this is the latest calculation I have, are not going as much one way as one would tend to read from hearing some of the comments

that have been made.

HON. ALLAN BLAKENEY: Mr. Prime Minister, I want to reply to a couple of comments made by your colleagues and I deal first with a couple of remarks made by Mr. Lang. He suggested that no reasonable lawyer could make a case that the court was partial or that it might have a perception of partiality. I don't challenge him on the first one and don't try. I am not here to say the court is partial. With respect to it might have a public perception of partiality perhaps as an unreasonable lawyer I can make a little argument. I am not impressed by Mr. Lalonde's figures. The issue is not whether or not they opt for the provincial government or the federal government. That is not the issue. The perception of partiality arises when the court goes through -- when a case goes through three or four courts one way and it is reversed by the Supreme Court. Let me instance what I think were perhaps the 7, 8, 9, 10 cases of most importance in the last few years and I hope Mr. Lalonde is not relying on something like the Court of Revision in Edmonton or something but we have had -- I have 7 cases here, Burns Foods, Interprovincial Co-ops, Amax versus the Government of Saskatchewan, CIGOL, Dionne, Simpsons-Sears in New Brunswick or Central Canada Potash. Those are seven cases where provincial legislation has been struck down. In no less of six of them they were overruling the Court of Appeal in the province where they were made, in no less than six. They are not all in Saskatchewan by any means.

THE CHAIRMAN: Maybe you could have some input ...

HON. ALLAN BLAKENEY: Forgive me for saying so but the criteria for appointing judges in the provinces are somewhat different than your criteria for appointing Supreme Court judges.

THE CHAIRMAN: We will have to watch that.

HON. ALLAN BLAKENEY: I may watch it but any attempt to deny it I think would not be credible.

HON. OTTO LANG: I would like to observe in some of those cases the trial division judge may well have originally held the same way the Supreme Court did in the end.

HON. ALLAN BLAKENEY: I think if our own were one of them, we had it all the way, CIGOL the first negative was in the Supreme Court and in the other one one negative before it got -- in Central Canada one negative report got to the Supreme Court. In the other three which are leading, DiIorio, McNeil and Dupond I think one of them is -- reverses -- goes provincial when the local court went federal, but it strikes me that the overwhelming perception that would be drawn from that is that the Supreme Court is taking a more federalist line than the Courts of Appeal. That may not be -- they may not exercise you but when it is overwhelmingly the case it exercises me because I think that people are entitled to believe that the same law and the same constitution is applied. I don't know how this can be overcome but to suggest it isn't a problem and that all is well and that nobody is concerned is, I think, to understate what are some very real problems and I state that. I am -- it is my belief that we can -- that this one can be dealt with by the method you are suggesting. I am not quarrelling with your proposal. I am just saying in my judgment it represents a problem that Canadians should face.

HON. OTTO LANG: I didn't deny that you have managed to persuade some other people there is a problem with bias I was just trying to satisfy myself in my mind that it was a legitimate argument. In the CIGOL case I presume you believe that you have now effectively legislation within your power to do what you accomplished or what might have been accomplished the other way. I

just make the point that we were dealing there with the court having to view a very broad issue of the trade and commerce power and it draws certain conclusions about what the law is in many of the cases, in other words, the same result might have been arrived at another way with the legislation that took that into account.

THE CHAIRMAN: I think we have reached unanimity on one point, that the Supreme Court should be constitutionalized. Therefore, we should put it on the short list of Attorneys General preparing for the next series of conferences. Beyond that there seems to be certainly agreement, consensus that at least there should be some form of consultation before the judges are appointed and some choosing of judges from the various geographic regions of Canada, but beyond that I think there is a difference, for instance, the British Columbia approach and its reference of appointments to second chamber and so on is something that will be dealt with I guess when we look at the second chamber and its various functions. I would suggest we stop at this point if it is agreed and say that we do want the Supreme Court entrenched in the constitution but as starters they could take the federal proposition in C-60 and see how much beyond or less far than that they want to go in their recommendations. Premier Lougheed.

HON. PETER LOUGHEED: Mr. Chairman, hopefully though they can at least be asked to go one step further and to examine ways in which the perception of the court in terms of its appointment and its functioning are perceived by Canadians to be more representative. Surely an effort should be made to look into that.

THE CHAIRMAN: I agree with that completely, Premier Lougheed. As I said at least twice, the legitimacy of the court is absolutely basic to the maintenance of an organized society in Canada and we have to

set it up in some way that we will agree that it is the legitimate arbiter of any differences between the federal and provincial governments and that we will be bound -- I am almost inclined to say that we will want to be bound by its decisions but that doesn't mean settling the prior questions of what do we ask in terms of its appointment?

We have less than half an hour left and I had announced that there would be an occasion to look at that third item, sub-item, the Monarchy. At least on the substance it shouldn't be difficult to reach a consensus because the ten Premiers agreed in Regina last August that they wanted the Monarchy to be preserved in Canada, that our constitution be one of a constitutional Monarchy and that -- am I quoting the consensus incorrectly?

HON. WILLIAM DAVIS: From our standpoint it is one area we were unequivocal.

THE CHAIRMAN: Let me just say, Premier Davis, we too are unequivocal. Continuation of the constitutional Monarchy there is no question, but there are two questions we have to ask. One is if we are going to write a constitution, should we describe the reality of the Monarchy in it? I don't know if this can be argued, but it would seem to me that we would look passing strange if we were to write a constitution with Houses of Parliament and provinces and federal governments and so on and not mention the Queen or the Monarchy so I take it we would easily agree that we should describe the reality of the Monarchy in any proposed constitution.

The second question is what do we conceive reality to be? How do we describe the reality of the Monarchy in Canada? That is the problem we tried to address in the drafting of Bill C-60. If we can agree on what that reality is, the problem is very simple. We will ask our Attorneys General to draft a clause which states the reality. If we can't decide what the reality is, then indeed we will need a

discussion.

HON. RICHARD NATFIELD: A committee of officials was working on that to get the correct wording and I agree the reality must be --

THE CHAIRMAN: I am informed to the contrary. Really the description of the role of the Monarchy in Canada today is not one on which there has been agreement. We all agree there should be a Queen and a Governor General who represents her in Canada, but I understand that the Attorneys General have not agreed on exactly the same statement of the present reality of the Monarchy. Is that incorrect?

HON. WILLIAM DAVIS: Mr. Prime Minister, it is relatively close. I understand there is some concern about the actual wording of the legislation. We have gone to some trouble to assist in that process and would be quite prepared -- we have some drafts here and we would be delighted to give you to share with the committee that is working on it but from our standpoint, Mr. Prime Minister, while we sense that some change is taking place, Ontario has been I think relatively supportive and flexible in a number of these discussions but this is one area where we are, as I said earlier, unequivocal.

It may not be that easy to put it in the form of a statute, but I do not think it is beyond our creative capacity to do it and to reflect in that statute what I sense the Premier said in Regina, and certainly what has been my personal point of view, and that is the status quo or the place of the Monarchy and the Queen in our system is left inviolate.

I know there is a certain history in all of this, and I hope as well a lot of majesty in it, and I think that our Attorneys General can find the solution, but what I would like you to concentrate on today is that the Government of Canada, in fact, says that the view of the Monarchy will remain as we all understand it even though it may be difficult to put it in the words in the legal sense. I think I know what it means and I have great confidence in the ability of my Attorney General to reflect that in conversation with the Minister of Justice and others in a way that the people of Ontario will also understand.

It is basic, it is fundamental, and it is an area where, from my standpoint, there is no flexibility.

THE CHAIRMAN: That would seem to make things very simple if we are all agreed on that.

HON. RICHARD HATFIELD: It is a matter of time and it takes time to work those things out. They are pretty important words and I think you should let that committee go ahead and continue, and hopefully in January we will have something we can agree to.

HON. OTTO LANG: Yes, we were anticipating distributing some drafts very soon. I think there were some provinces where a position had been reserved on the question of whether or not the draft could, in fact, cover their concerns, but I think that that may have to be decided only after the draft is seen.

THE CHAIRMAN: On the distribution of drafts, there is a sensitive matter. It is that I don't think we should make any drafts public until the Queen herself has seen them. That is the way we proceeded last June. We did not publish Bill C-60 until Her Majesty had seen the draft and let it go, and I think that it would be a mistake now to circulate drafts until Her Majesty, The Queen, has expressed satisfaction with them. Would you agree with that, Premier Davis?

HON. WILLIAM DAVIS: Well, Mr. Prime Minister, I won't call ours a draft. I will call it a memorandum of assistance to those who are faced with this difficult task. I would also be quite prepared, at your request, Mr. Prime Minister, to take our memorandum of assistance myself to London, if you like.

THE CHAIRMAN: Surely that would be the role of our Attorneys General. We could put them on a plane.

HON. WILLIAM DAVIS: Prime Minister, I don't want to often usurp the responsibilities of my Ministers, but I really think that would be sufficiently important that the First Ministers should go.

THE CHAIRMAN: Then there is little subject for debate.

HON. ALLAN BLAKENEY: One narrow point on that is, the narrow concern we have on this area -- and that does not concern the place of the Monarchy as such, but the Governor General and the tenure of office of the Governor General. One reading of 45 suggests that a Governor General is dismissable by the Cabinet. That strikes me as being undesirable since it drastically changes, at least in my judgment, the way the system works.

THE CHAIRMAN: You need say no more. I do not know how you read the section that way, but it certainly has not been the intention to change that reality either. The Governor General under the present system is appointed and cannot be removed without a very complicated process, certainly not by the Federal Government.

HON. ALLAN BLAKENEY: "The tenure of office of the Governor General of Canada shall be at the pleasure of the Queen, expressed by her on the advice of the Council of State of Canada --", and that's where it says that the Queen has to take the place of the Governor General of Canada. That is understandable. When it comes to the Council of State advising the Queen that she should withdraw her pleasure so far as the tenure of office of the Governor General is concerned, then we have a very substantial change in our Constitution, and I simply want to raise that point. I don't know whether it was intended.

THE CHAIRMAN: Well, the system today is that Her Majesty appoints the Governor General on the advise of her Prime Minister, and that will be the system under this law.

HON. ALLAN BLAKENEY: I am not worrying about the appointment. It is the dismissal that is worrying me.

THE CHAIRMAN: The present Constitution provides a minimum of five years, and this one does too, and your concern with the Queen being given different advice, surely in a sense is injurious to the institution of the Monarchy, because that is the one prerogative that Her Majesty maintains, that of saying to the Prime Minister: "Look I don't think this particular person would be a good Governor General. Look for some other name." And she is not bound by the advice of the

particular Prime Minister on that. But you know, these are Constitutional points. I am just telling you what our intention was.

Then we can say that we have dealt with the three main institutions and that we have referred them to the Committee of Attorneys General. I don't know if there are any other institutions that we would want to cover.

Premier Lougheed.

HON. PETER LOUGHEED: I am not sure, Mr. Chairman, whether it really comes in this area in the sense of institutions, and perhaps in essence involves more the question of distribution of powers, but the thrust of the Federal Government's proposals with regard to the Senate had to do with the point of view that Canadians living in the various regions of the country would have some feeling about the participation in national government in the summer, if I understood the thrust, and although we in Alberta do not agree with it in terms of the Senate, we certainly believe in the motivation and what is intended in terms of the sentiments there minimizing the feelings of Canadians in the outerlying regions of the country as not being involved in terms of the central decision-making, and I certainly know on a number of occasions I have made a point of trying to emphasize some difference between a federal policy and a national policy, but that speech is, perhaps, for another place.

Then we deal with agencies or boards of the Federal Government, and this was a matter that British Columbia referred to specifically in their document relative to their proposal for the Senate, there is a feeling, I think, in Canada, certainly in our part of Canada, that it would be desirable to give some consideration to reflect in some of these areas

that national agencies or boards which have a tremendous impact upon the lives of the people involved had some reflection of the perspective and point of view of the provinces not in terms of either elected provincial people serving on them or public servants of any provincial government, but merely having provincial governments participate in those, and those members of perhaps the more major federal boards and agencies that were affecting their lives by way of some portion, clearly a minority one, but a question of representation.

So that there was a feeling that when they made these decisions that had such a profound impact upon their lives, that they would feel more comfortable about it, that they had the provincial perspective or the perspective of the part of the country that was being involved, and I recognize there is an effort by the Federal Government in the appointment process always to try and do that, but there is still that feeling there, at least I think in parts of Western Canada, and we can argue over which boards and agencies. Premier Blakeney and I argue with regard to Canadian Wheat Board for different reasons, but take the National Energy Board, the Canadian Transport Commission, or even the CRTC, I think Premier Bennett has raised the Bank of Canada on previous occasions, and I am not sure, other than to raise it not as an institution per se, but to put it on the table, perhaps for further discussion at the meeting you are referring to holding early in 1979, as a reflection that if we do not approach the Senate in the way that has motivated the Federal Government, we look at these same motivations as, perhaps, ones that could be responded to by some of the national boards and agencies again within the parameters I have described.

THE CHAIRMAN: There is a real difficulty there. I wish we could examine it either in the way British Columbia suggested, or some other way, but I feel it important to state that in areas of federal jurisdiction -- maybe wheat should not be in federal jurisdiction or international trade -- I don't understand how we can have that without really involving the country -- in legislation it is hard for me to see how provincial governments as governments should have an input.

The provinces elected provincial governments to speak for the provincial interests, not for the national interests, speak for the provincial interests, and that is their job, and they elect national governments to speak for the national government, and that is our job, and that is why we sometimes clash because you are representing, as you should, the interests of the people of your province, and in all areas which are in strictly provincial jurisdiction, nobody can say anything about that, but in all areas which are strictly federal jurisdiction -- and I can't see why a provincial government as such should want to tell us how to better discharge our obligations in the area of international trade or war and peace, or whatever it is. As Premier Hatfield said in another context, the remedy if you don't like the government is to change it. That is not to say: "Let us have the provinces make the decisions in national matters."

I think that Premier Bennett's approach is an attempt to sort of bridge that difficulty, although I would ask him, wouldn't it be better done if his Senate were appointed, not by the provincial governments as such, but perhaps directly by the people? That is another question we can discuss. But I think that is the reality we are faced with. I am not shocked or surprised we disagree on a lot of things because it is your job to speak for the people of Alberta, Premier Lougheed, so far as your interests in energy are concerned, produced within that province. We have a different duty and sometimes they clash. We have federal-provincial meetings on energy and we reach some compromise but surely that is the way to do it rather than to have provincial interests designate appointees to federal boards. Anyhow, that is my view.

HON. PETER LOUGHEED: I would like to make one final comment. Obviously we agree to disagree on this particular item. I just want to say this though, that in terms of the feelings of the people in our province, and I think in the western region, if you take some organization like the Canadian Transport Commission, I think something has to be done of a dramatic nature to make the people feel there that that federal institution is responsive, more responsive to the feelings of the people in western Canada.

THE CHAIRMAN: If I had the guarantee that we would never hear about problems of transportation any more from the west if we would only name forty per cent of the CTC on provincial recommendations, you know, I might just be happy to do it but would it solve the matter?

HON. PETER LOUGHEED: It wouldn't solve the matter but it certainly would improve the reaction of the people of western Canada toward transportation today, as I am sure you are well aware.

THE CHAIRMAN: Wouldn't they say, "They are sitting on this Board in Ottawa and they are no longer good Albertans. They have been in Ottawa on this Board for

ten years"? We hear that in terms of members of parliament who are coming from distant provinces and somehow they are attacked by the local politicians because they have been in Ottawa too long. We would have to have very short term appointments on the CTC.

HON. PETER LOUGHEED: At least have an opportunity to at least convince them to move west and see what is involved.

HON. WILLIAM BENNETT: Prime Minister, before we adjourn, given the opportunity for our Senate proposals and as the table reflects Premier Lougheed's interest in the national boards and commissions which we all identified, given the opportunity to discuss it, perhaps we will have a better understanding by the time of the next meeting.

THE CHAIRMAN: All right. I don't know if Mr. Davis has any administrative announcements. I believe there is a dinner of First Ministers at 24 Sussex at eight o'clock - 7:30 for 8:00.

THE SECRETARY: 7:30 for 8:00.

THE CHAIRMAN: When you ring the door, if somebody says, "Trick or Treat --" there is a pumpkin in the window. I believe the provincial ministers -- you had your dinner yesterday. You have made some progress on these short lists and we will meet tomorrow at ten in the morning.

THE MEETING ADJOURNED AT 5:20 P.M.

FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION

CONFERENCE FEDERALE-PROVINCIALE
DES
PREMIERS MINISTRES SUR LA CONSTITUTION

VERBATIM TRANSCRIPT

(unverified and unofficial)

Morning Session
November 1, 1978

COMPTE RENDU TEXTUEL

(non révisé et non officiel)

Séance du matin
le 1^{er} novembre 1978

OTTAWA
October 30-31 and
November 1, 1978

OTTAWA
les 30 et 31 octobre et le
1^{er} novembre 1978

THE MEETING COMMENCED AT 10:00 A.M.

LE PRESIDENT (LE TRES HONORABLE P.-E. TRUDEAU P. C.)

Mesdames et chers téléspectateurs qui apparemment ont eu une bonne journée hier grâce à Radio-Canada, bonjour.

Nous avons encore deux items à l'ordre du jour, soit le processus de révision constitutionnelle et la duplication des services. Nous aurons, je pense, le temps de discuter de l'un et l'autre avant midi; à midi il est convenu que nous déjeunons ensemble les premiers ministres pour travailler aux communiqués que nous espérons remettre à la conférence après le déjeuner, soit vers trois heures et je crois que ça couvrira tout ce dont nous sommes convenus de couvrir sauf ensuite à fixer la date de la prochaine rencontre.

Alors, sur le processus de révision constitutionnelle, je suggère que l'on regarde ça en deux temps pour faciliter la discussion.

D'abord, les procédures qui sont en cours ici même entre nous et entre nos ministres et fonctionnaires et, deuxièmement, le processus en ce qui concerne le rapatriement et la formule d'amendement éventuel pour avoir une constitution vraiment canadienne.

On m'informe que sur le deuxième item de ce matin la duplication des services, cela peut se discuter en très peu de temps puisque nos ministres à Montréal dans une réunion ont abattu beaucoup de travail.

Then, on the process of constitutional review just to agree on the procedure that we more or less had a second consensus on at dinner last night officials will be working presumably beginning around 11 on a communique, a draft communique that we had agreed on in principle last night. We did not have all the words but I attempted to convey as faithfully as possible the second consensus that we had reached at dinner last night. That is being drafted now. It will be important for federal and provincial officials to work on that as quickly as possible so that they could give it to us First Ministers as soon as possible after 12 when we have begun to have our lunch. Then, whatever wrangling is necessary will take place and we will be able to report on a final communique except on the question of whether we should be drinking Canadian or Italian wine.

HON. WILLIAM BENNETT: Or British Columbia.

HON. WILLIAM DAVIS: Or Niagara Peninsula.

THE CHAIRMAN: So that is the general schedule for today. It will require, if we are going to have that following meeting at a date to be decided early in the new year, and we can look at the dates again over lunch; we looked at some last night, we looked at some Sunday night and I understand there is a consensus emerging for a date very early in February. But between now and then there will be a great deal of important work to be done by the Ministers and officials so that they can report to us, not only the agreement in principle that I think we reached yesterday but the words to spell that agreement out in eventual constitution documents.

So I have asked Mr. Lang and Mr. Lalonde on our behalf to begin meetings with their own opposite numbers hopefully while we are having lunch. I am told by Mr. Lang that there has been some discussion of 2 o'clock, not to look at texts but to look at a schedule of meetings

between now and the next two months so that we can be assured as First Ministers that when we meet again in the new year there will have been a lot of drafting to put into words the agreements we will have reached here.

I think that covers the general process insofar as we are concerned here. We still have to discuss amending formula and repatriation but I stop at this point to see if on the process described thus far there are some modifications or discussions.

We will attempt to make it clear in the communique that there is firm agreement in several areas. In some areas there is not. I would think for instance on B.C.'s Senate proposal there is not firm agreement so we will put that for study but in the area where there is firm agreement we will spell that out and it will be a matter only of putting words to that agreement and the communique will be couched in this way so that people do not succumb to the temptation of saying they only agreed to study it. I take it that in the past two days and today we will have agreed to more than just studying some things. We will have agreed for instance to transferring indirect taxes or to permit provinces to levy indirect taxes. In order to put that in words in the way we suggested yesterday of course there will be drafting difficulties and that is what our Ministers will be working at, but I am trying to establish and not binding you -- we will only bind ourselves when we see the communique but I am trying to explain to you the way in which I thought we had discussed and agreed on this last night; wherever an agreement has been reached we will say it in so many words.

HON. PETER LOUGHEED: Mr. Chairman, I am somewhat alarmed about that latter comment in terms of the interpretation of our discussions. If I could use an example one of the items in division of powers was to clarify the resources position of the provinces. We are

agreed we are going to analyze how it can be clarified but we are not agreed with the statement that was presented by you in terms of the qualifications relative to it.

THE CHAIRMAN: I agree to that.

I am not giving resources as an example where we can say "We have agreed firmly to this" but even on indirect taxes we have agreed that provinces should be able to levy them but we have also agreed that this should not be done in a way which will create interprovincial barriers to trade and that is why I say there will be some drafting problems and that is why it is important to have our Ministers work at it diligently.

HON. ALLAN BLAKENEY: I am sure in the course of drafting that communique we can identify areas where we have firmly agreed, areas where we think we have agreed subject to drafting and we all understand the hazards of that and areas where we have not reached any substantive agreement in principle but where we still want to refer to the committee. I think it is important that those be differentiated so that we don't lump them all together because the expectations with respect to all of them are not the same.

THE CHAIRMAN: I understood that to be our thinking last night and I asked that it be drafted that way. If it doesn't come out that way, we can change the categories over lunch, but I think my understanding is the same as yours, Premier Blakeney.

Premier Lougheed.

HON. PETER LOUGHEED: With regard to the discussion on a Charter of Rights which we discussed yesterday, Alberta discussed last evening on the basis of some alternative ways we would examine and I just want to make it clear it is an examination of the alternative ways of doing it. I certainly don't feel that I have a mandate here with regard to that matter other than to look at alternatives. I just wanted to make that clear.

THE CHAIRMAN: I must confess, having hoped or perhaps dreamed last night that we had reached agreement, at least on the basis of the formula that you and Mr. Lang were discussing, a notwithstanding formula, but I have no objection and I think I did ask the communique be drafted that way, but it is only a draft and we are meeting for lunch precisely to see where -which of the three of Premier Blakeney's proposals has been given some thought. Certainly nobody is going to be bound except as to what we agree over lunch as to the way it should be put in the communique. Any other remarks?

All right then. The second half of this --
Premier Blakeney.

HON. ALLAN BLAKENEY: I am not sure whether I was clear. Did I understand that on the follow-up there was - we were going to have a steering committee of the Attorney General of Canada, Minister of Intergovernmental Affairs of Canada, and the Chairman of the Attorneys General Group and the Chairman of the Intergovernmental Affairs Ministers Group?

THE CHAIRMAN: I understand there have been some discussions amongst Ministers to that effect. I don't think as First Ministers we discussed that, but I would welcome that suggestion if it is convenient to the Ministers, rather than have all twenty of them meet in executive sessions, if we agreed to that.

HON. ALLAN BLAKENEY: I wouldn't attempt in any way to restrict or otherwise offer comments on when or where they should meet but eleven, twelve, twenty or twenty-five people builds in its own problems and if you get a steering group of four, it seems to me things may well move more rapidly.

THE CHAIRMAN: Is it agreed generally that we have these four Ministers act as our steering group?

THE FLOOR: Agreed.

THE CHAIRMAN: Good.

Then I see we have the last part of the process of constitutional review to discuss and that is the amending formula and patriation. We talked a fair amount about it not only last night but on the first day and the statements that some of us made. Rather than go through the whole process of reason, I wonder if I can attempt to state what I think we have reached as agreement last night on the amending and patriation formula. Certainly we haven't agreed on any precise formula, but we have agreed that patriation with obviously an amending formula is urgent and that it should be done. As you know, we always thought that it should be done first and gotten over with and I think Premier Hatfield and maybe others share that view, that this should be done independently of progress on other things.

But there is certainly no consensus on that. I think in the discussion in the past days and perhaps years, it has been rather clear that several provinces didn't want patriation to take place until there had been sufficient movement to be defined on, shall we say, division of powers. So what I think the stage that we have reached now, is that it will all go forth together as part of a package and we will ask our Ministers to report to us at the next conference whether or not they have reached agreement on a formula, amending formula and a way to repatriate, and then we will see what we will do with it. It will come to us as a package and I take it none of us are saying that some of the package can go ahead alone. I would like the patriation part and I think Premier Hatfield would like the patriation part to go ahead regardless. Others would like the division of powers change to go ahead without it, but the approach that we have taken is to make a package where all of these are considered urgent and desirable and we will see how much of it we can put together at our meeting in early February.

Premier Moores.

HON. FRANK MOORES: On the interpretation, Mr. Chairman, I am wondering, are you saying now that the package, all the things that we are talking about are all predicated on the patriation of the constitution?

THE CHAIRMAN: Are predicated on?

HON. FRANK MOORES: Yes, as part of the package, the patriation of the constitution, the amending formula has to be part of any of the other agreements that accompany it?

THE CHAIRMAN: I am saying that my understanding, and I made it clear in my statement yesterday morning, my understanding is that we are talking of a package and, as I said in so many words, okay, we will do this on division of powers and the proviso is that we agree on or make progress, whatever the words are, on the Bill of Rights and on other things, on the amending formula particularly.

I am not trying to pre-judge now what will happen when we meet in February. We did discuss that a bit last night and some asked: "Well, what happens if we are ready on this but not on that?" I guess we will have to see in February, but I take it we are telling our Ministers that every part of this package is equally urgent and that they should not sort of just concentrate on amending formula and if they have time do the distribution of powers or vice versa, they should not just work on the distribution of powers and then if they have time, work on the amending formula.

HON. WILLIAM DAVIS: Mr. Chairman, my recollection of last night is the same, that nearly all of us agreed on patriation being a desirable objective soon, that an amending formula quite obviously has to be assessed in terms of patriation. I would hope, sir, though, that we would not lock ourselves in here this morning after last night's discussion saying one is dependent on the other, terms of distribution, etc., until we see what the Attorneys General and the Ministers come up with for the early part of February.

Hopefully, they will have most of the items dealt with, but I would hate to see us get in the position today of saying then: "If this doesn't happen, then the other doesn't happen." I think that would be unfortunate.

THE CHAIRMAN: I sense your meaning. I think I can agree with it, but are we not clear that we all want patriation and an amending formula, and we all think that is urgent? We have not agreed on what that amending formula is.

HON. WILLIAM DAVIS: I think that "all" would be an overstatement by one, Mr. Chairman.

THE CHAIRMAN: I turn to Mr. Levesque, and unless I misunderstood him I think he said, "unless it is desirable", he said "it should just come as a crowning achievement: when we are agreed on a whole new Constitution, then it is desirable", but I give him the floor. I understood that the difference is one of timing rather than substance. I do not think Mr. Levesque took the position that he would like the Constitution to remain in the United Kingdom.

HON. RENE LEVESQUE: Bien, monsieur le président, je pense que j'aimerais autant me citer moi-même:

J'ai eu le temps d'y penser depuis hier soir, comme la plupart d'entre nous et si nos collègues le permettent, je pense que je pourrais en cinq minutes essayer de résumer ce qui est notre position là-dessus et la façon dont vous présentez les choses. Vous aviez indiqué hier soir privément avec pas mal d'insistance et puis vous venez de répéter publiquement que le Comité dont il est question devrait travailler au cours des prochaines semaines et de façon prioritaire en plus des sujets qui ont été mentionnés hier matin, qui ont été reproduits je pense dans tous les média d'information, que ce Comité donc devrait travailler en plus à l'étude de votre projet de Charte des Droits aussi à la réforme éventuelle du Sénat et de la Cour suprême, ainsi que la mise au point d'une formule d'amendement de la constitution.

Vous venez même d'ajouter, si j'ai bien compris, que le gouvernement fédéral n'accepterait pas -- ou en tout cas accepterait difficilement si je comprends bien -- de discuter ou de finaliser quelle que forme que ce soit de nouveaux partages des pouvoirs à moins qu'une telle formule d'amendement ne soit arrêtée ou acceptée.

Hier, dans votre énoncé, c'est vrai qu'il y avait des bouts qui étaient difficiles à suivre un peu il a fallu le relire, mais hier, dans votre

énoncé, si j'ai bien lu, il s'agissait d'un espoir, je cite le texte anglais, celui que j'ai: "Indeed, I would hope the Constitutional Committee would be able to examine all these matters as well as the Constitutional amending formula before our next conference."

Donc, il s'agissait d'un espoir additionnel. Ce qui était un espoir dans votre énoncé d'hier devient une exigence et vous venez de dire "equally urgent", aussi urgent, c'est-à-dire à toutes fins utiles, l'un doit aller avec l'autre. Bien, je dois vous dire tout de suite que cet élément des propositions, qui ressemble un peu à une sorte d'ultimatum, je m'excuse, mais c'est le seul mot qui me vient à l'esprit, est tout à fait inacceptable, non seulement pour le gouvernement que je dirige, mais aussi pour l'ensemble des québécois, c'est-à-dire cette nécessité d'en arriver à adopter immédiatement une formule d'amendement.

Hier matin, je vous avais indiqué, si je m'en reporte, -- je vais vérifier -- à la page 251 du compte-rendu de nos travaux, que nous ne devions pas aborder l'étude des partages des pouvoirs sur une base de "give and take", donnant/donnant, en lui opposant comme contrepartie surtout l'étude rapide, pressée d'une formule d'amendement. Il ne s'agit pas pour nous d'un "package deal" surtout pas dans l'état actuel de nos travaux. Le "package", pour nous, c'est, la fable française le dit bien, c'est un bloc enfariné qui ne nous dit rien qui vaille.

Hier matin j'avais ajouté aussi que ce dernier sujet c'est un des terrains traditionnellement

les plus glissants qui soit. On a l'impression de voir sortir du sac tout à coup le chat qui ronronnait au fond de son sac depuis le temps de Victoria.

Or, si nous avons souscrit, nous, au nom du Québec au communiqué de Régina, communiqué conjoint des provinces cet été, c'est parce qu'il mettait l'accent sur la nécessité d'en arriver à un nouveau partage des pouvoirs entre le gouvernement fédéral et les provinces. Cette insistance des provinces semble avoir amené, il semblait en tout cas hier, avoir amené Ottawa à accepter que cette question fasse l'objet d'une étude prioritaire. Devant l'attitude habituelle du gouvernement fédéral sur ces questions depuis des années, on a même eu l'impression qu'il y avait une sorte de bouffée d'air frais là qui circulait, même si on doit ajouter tout de suite, on pourra en parler plus en détail que cet air frais était quelque peu mélangé de restrictions, de caveats et de conditions.

Et, un premier examen nous laisse déjà voir, nous a laissé voir qu'on n'est pas sorti du bois, je veux dire que ça va soulever pas mal de difficultés et que tel que c'est là, les sept points en particulier dont on a parlé sur les pouvoirs, c'est très mince, très fragile et très très loin d'un consensus.

Il s'agit beaucoup plus d'un examen où il y a énormément de contreparties évoquées que d'une décision ferme ou d'un accord.

Alors, compte tenu de la difficulté

qu'auront les membres du Comité à produire des conclusions sur ces sujets dans un délai très court, d'ici le début de février, moi, je crois honnêtement qu'en surchargeant les travaux du Comité avec cette addition de d'autres sujets prioritaires, nous risquons de compromettre ces possibilités de succès tout de suite en partant.

Par conséquent, nous estimons, nous au nom du Québec, qu'on devrait s'en tenir dans les quelques semaines qui viennent, ça sera un exercice préliminaire qui permettra à tout le monde de voir si on s'en va quelque part, que nous devrions nous en tenir aux sept points relatifs à la répartition des pouvoirs.

Vous voulez également que le Comité se penche sur la réforme du Sénat et de la Cour suprême, quant à moi, il m'a toujours semblé qu'on devrait d'abord faire un bon bout de chemin sur la répartition des pouvoirs avant d'aborder la question des institutions.

Les points de vue que l'on a entendus sur la réforme de ces institutions d'ailleurs sont très variables et souvent opposés les uns aux autres, mais malgré le peu d'enthousiasme -- et je l'avoue -- que nous avons pour ces sujets, je n'aurais quand même pas d'objections majeures à ce que le mandat du Comité inclut ces questions, si la majorité le désire.

Vous insistez aussi pour que le Comité étudie le projet de Charte des Droits que vous avez inscrit dans le Bill C-60, il y a quelques mois. Il nous semble que vous insistez malgré l'opposition et

les réserves qui ont été manifestées par de nombreux premiers ministres provinciaux, on n'a pas repris le "gallup poll" lundi après-midi, à la fin de la séance, mais je dirais même probablement par une majorité des provinces ici représentées.

Pour ma part, je vous répète que nous avons déjà légiféré au Québec en matière de Droits et des Libertés de la Personne, et que la proposition fédérale n'accorderait vraiment rien de plus aux québécois que ce dont ils bénéficient déjà.

Cependant, je précise qu'en ce qui concerne les droits linguistiques et culturels, il ne peut pas être question pour nous de limiter les pouvoirs de l'Assemblée Nationale du Québec de légiférer sur ce sujet et de l'empêcher ainsi d'adapter le droit à l'évolution de la société. Mais, avec cette réserve fondamentale, nous serions prêts, là encore, à ce que le Comité puisse discuter de cette question et à prendre part.

Toutefois, lorsque vous insistez pour que le Comité mette au point, dès maintenant, une formule de rapatriement et d'amendement de la Constitution, je me dois, comme je l'ai fait hier soir, de vous réitérer notre désaccord total.

Je ne voudrais pas répéter l'expérience de Victoria, en laissant entendre que le gouvernement du Québec pourrait peut-être être en mesure d'accepter le rapatriement avant que l'ensemble de la question des répartitions des pouvoirs soit abordée et que des

solutions satisfaisantes aient été trouvées.

L'histoire des vingt dernières années démontre clairement que le Québec n'est pas prêt à ratifier un rapatriement de la Constitution sans être assuré au préalable d'obtenir tous les pouvoirs dont il a besoin pour assurer son épanouissement.

Si, finalement, la décision était prise d'inclure dans le mandat du Comité cette question du rapatriement, le gouvernement du Québec n'acceptera pas de collaborer à cette partie des travaux du Comité.

A ce stade-ci il n'est pas question de consentir à quelque formule de rapatriement que ce soit, parce qu'il a été dit si souvent au Québec, même dans une optique fédéraliste, qu'un rapatriement accompagné d'une formule d'amendement dans de telles conditions, peu importe les arguties techniques, figeraient politiquement le Québec dans le statu quo, sans guère de possibilité de pouvoir le changer ensuite de façon substantielle.

On a assez parlé au temps de la formule Fulton-Favreau, j'ai même quelques souvenirs amers de cette époque, au temps où j'étais dans le gouvernement du Québec, on peut se rappeler également les débats qui ont entouré le pèlerinage avorté de 1968-71. Alors, en me basant sur les précédents et sur la logique de notre position, il est facile d'affirmer, et il est vrai d'affirmer que l'ensemble des québécois politiquement conscients répudieraient toute adhésion, même partielle ou conditionnelle de ma part à l'élaboration d'une formule d'amendement dans le contexte actuel ou dans le contexte prévisible des mois qui viennent.

On n'a pas envie, en un mot, de re-

commencer Victoria.

Et, je demanderais à nos collègues autour de la table si cette perspective n'est pas tout simplement une espèce de "forcing" qui n'avait pas été prévue, qui n'avait pas été annoncée, qui nous est arrivé de façon assez brutale hier soir et qui risquerait simplement de compromettre un exercice dès le départ, auquel, paraît-il, tout le monde accorde une certaine importance.

Il me semble qu'il y a là quelque chose qui pourrait nous conduire à l'absurdité.

THE CHAIRMAN: Any comments?

I think it is clear that on the agenda we were discussing the amending formula and patriation this morning. I would be surprised if anyone in this room thought that that was not one of the objectives of Constitutional Reform, so I do not think anyone was caught by surprise that it was an objective that we were putting forward.

L'HON. RENE LEVESQUE: Monsieur le premier ministre, si vous me le permettez, il n'a jamais été question de faire de ça une des premières priorités et de faire de ça un "package deal". Ca, c'est arrivé dans les dernières heures.

HON. WILLIAM DAVIS: I do not want to disagree with the Premier of Quebec, other than my own personal observation and that is very simple. It surely was part of our discussion on the Constitution for years, the end objective of patriation had to be a priority. This just is not an emotional thing from my standpoint. I am one of those who believes after 111 years of history that there is some justification for Canadians having the ability to deal with their own Constitution, and as you know, sir, there is no one who is a greater supporter of the Monarchy and Her Majesty and our traditions than the Premier of the Province of Ontario, but that does not in any way detract from the fact that I think we should have the ability to do things ourselves, and to suggest that we can have meaningful progress in the area of Constitutional Reform, or whatever term one may wish to use, without consideration of patriation and an amending formula, with respect to the Premier of Quebec, I do not think is realistic.

At the same time, sir, while your observations last night did not come as any surprise whatsoever, I would urge that it is the general feeling that I sense in this conference where with your presentation yesterday I really sense the government is serious about coming to grips with some of those issues. The provinces have suggested for a number of years as well, sir, that we do not lose that in debating today whether it is completely necessary prior to the Committee study that they are all interrelated so they all must go ahead at the same time.

I am not unsympathetic to the concerns of the Premier of Quebec. I do not totally agree with his logic. I would look at it the other way, but that is because I look at it from a different perspective. But I would hope, sir, that we can agree today that the Committee will, in fact, look at amending formulae. They may not achieve unanimity. The Premier of Alberta has some views that are different from Ontario's views. I understand that, and I may disagree with it -- in fact, I think he knows I do disagree with it -- but to say that I don't think we should be looking at it, I think would be unrealistic, but I do urge, sir, in the communique and in the feeling that exists here, that the Premier of Quebec can say he does not join that part of the communique, but that we do give the Committee this responsibility and see what they produce for us for our meeting in February and that there is no sort of ultimatum.

I know you did not intend that you would not move on one and not the other if there was some way of doing it. I just hope that we don't sort of lose what we have accomplished by saying at this stage of the game that one is dependent on the other.

To be realistic, sir, patriation is a priority, you can't have patriation in my humble opinion without some agreement on an amending formula.

THE CHAIRMAN: Thank you, Premier Davis. Anyone else?

HON. ALLAN BLAKENEY: It is important that we be seen to come to grips with the very nature of the subject which was raised here and while I don't think we can be totally definitive, in fact there is serious linkage if in fact the federal government feels that it is 99 per cent sure that they would not have agreed to a package which didn't contain patriation and amending, and if in fact we are all 99 per cent sure we are not going to get unanimity on patriation and amending by any committee of Ministers, then perhaps we ought not to mislead the public by suggesting that we are or mislead ourselves and in the course of so doing mislead the public. If in fact I am wrong in either of those assessments, if in fact there is more prospect of getting patriation and amending, I think there are a lot of problems there and I know the Prime Minister knows that they do not stem from the differences between our province and his government because I suspect that we could reach agreement in 30 seconds but that is not the issue. The issue is whether or not there would be other persons who would be unwilling. I think, therefore, it is obvious we can't ask the federal government for a hard commitment that there is no linkage but I think we can ask them for some sort of a statement that at least they would consider a package which did not contain patriation and amending because, if not, then I think we have got ourselves a problem that we are not going to solve by shoving it off to a committee.

THE CHAIRMAN: Very well.

HON. ALLAN BLAKENEY: I have to repeat what I said earlier, that I think there are some things on which we can agree and I know that each of us will -- I don't deny the fact that this is in part a bargaining session and in part there is give and take and everybody can agree if he is taking, so everyone can agree, but I still feel that we should try to come up with a package. I think

that Canadians are expecting us to come up with some agreement, however narrow, and I think it must show that the federal government has not led it to the status quo and I don't need to go into all the reasons why I think that is a good thing to show at this time. I think in my own view, it must show that some of us are willing to move linguistic rights which we had been saying a lot about, but I think perhaps should be prepared to put in the constitution and put it beyond our simple pronouncements. Furthermore, I think to name other things that we could get, even if only a small package, we could get it and get it soon so that we can convey this impression to Canadians generally and also to some particular groups of Canadians who I think it is perhaps important to show we can make movement in this federal system of ours.

THE CHAIRMAN: Premier Moores.

HON. FRANK MOORES: Once again just for clarification purposes it is certainly news to me that this package -- the impression I got was it must include the amending formula and patriation in order for the package to work. I have great difficulty with this in that it was a very short while ago if the provinces couldn't go along with some of the recommendations in C-60, it was quite possible the federal government would unilaterally do them anyway. Obviously they were going to be done without patriation and an amending formula. They were going to be done through Westminster.

All I am trying to figure out here is if we come and make some agreement on the distribution of powers, if we do get this package put together, would the federal government give any indication that that package in itself could be dealt with as things presently exist or must the constitution be patriated and the amending formula attached? I am not clear on how strong you are on that being a must in the total package.

THE CHAIRMAN: Premier Hatfield.

HON. RICHARD HATFIELD: Well, Mr. Prime Minister, I don't what to say. I feel very strongly that we should proceed to patriate the constitution and do it as quickly as possible. I don't know -- I don't understand the argument that if we hold it up we must hold it up in order to get a better deal on distribution of powers or a better deal on something else. I think if we get patriation of the constitution, we get an amending formula, we would still be in a position to deal with those. If there is any political pressure that can be put on in favour of any particular position, surely that same political pressure can be put on that constitution if it is enshrined in Great Britain or here or in Canada I should say. So I don't understand this argument which has been going on for a long, long time. The Premier of Quebec said that it had been the historic position of Quebec not to agree. I suppose you could say that has been the historic position of all the provinces of Canada and the government of Canada because we haven't reached agreement. I don't know what difference it makes because some government didn't agree with it in New Brunswick in 19 something or other. It doesn't mean we can't agree with it now, can't accept it now or can't accept our responsibilities now. I would like very much to see us proceed toward the object of patriation of the constitution.

THE CHAIRMAN: Premier Lyon.

HON. STERLING LYON: For the purposes of the present only, acknowledging the position that the Premier of Quebec has just enunciated to us, for the record let me repeat, as we said in our opening statement, we believe the question of patriation should be dealt with concurrently without giving priority one way or the other. You have got to keep bringing all of the horses along at the

same time if you are finally going to cross the wire. That being the case, in order to get over what appears to be a bit of a timing log jam right at the moment could we not get onto the question of patriation formulas to determine what measure of consensus, if any, exists at the meeting at the present time? It seems to me we are hanging ourselves up on a procedural matter without really discussing the substance of patriation. I would be interested to know what kind of formula the Premier of Quebec might be looking at or might find favour in if we could get onto the substance of that, perhaps it would clear the air to some extent on what the committee should or should not be looking at.

THE CHAIRMAN: Well, it would seem to me that Premier Lyon's suggestion makes some sense. We are moving together on all fronts. We will know in February how far we have moved on each particular horse, to use his metaphor, and we will see if we want to slow some of them down or if we want to have some cross the wire independently of others. But I find it difficult and I believe that this is also the position of Premier Davis, I find it difficult to say that we shouldn't even study formulas of patriation and amending formulas. I think Monsieur Levesque doesn't say we shouldn't either. He just says he doesn't want to study them. Everybody else -- we certainly can agree and I think Mr. Levesque might agree on this too, that it is a desirable goal to have our own constitution in Canada. I think he wants to have even one in Quebec, but certainly that we should have one in Canada after the 111 years we are talking about. It seems to me a good goal. As I understand it Mr. Levesque, he says he doesn't want that to happen until in some way the discussion on division of powers has been completed to everyone's satisfaction which presumably won't be the case by February but who knows? Maybe our Attorneys General

and Minister of Intergovernmental Affairs will work wonders and that we will be satisfied with what you have called a package, Premier Blakeney. We will see. Surely the communique can say -- Mr. Levesque will be free to take exception from it when we see the text then I think that we could all say that it is desirable to have the constitution in Canada written for Canadians by Canadians, rather than having to go to the United Kingdom to amend vital parts of our constitution. That is my suggestion but I would like to return to something which I think has been described by Mr. Levesque as a technical difficulty. I think he has in mind what I put to you last night: What do we do if we agree to limit, shall we say, the federal spending power? That is what you have been asking us since 1976. That is what we proposed back in 1969. How do we limit the federal spending power? We can put it in a federal statute which we would call Bill C-60 or some other number, saying the federal government will only use its spending power in certain circumstances and given certain conditions. You can do that if you want and that is, you know, the course we have been following in the federal bill. We can say in a federal bill we will constitutionalize our own powers and limit them in some way but you know very well that next year we could change that. Parliament by the very argument that many made yesterday, Parliament can't bind itself forever unless it is in a constitution which is binding us all. The only other way we could bind ourselves is for the federal government to go back to the United Kingdom and say "Okay, Parliament of Great Britain, would you pass another BNA Act limiting the federal spending power?" which it seems to me is a rather ridiculous proposition. In a legal sense we would go to Great Britain and say "We want you to limit us even more." I don't think anybody would advocate that and you people are

asking us to limit our spending power and to limit our declaratory power. I repeat, there are three ways of doing it: one is to go to the United Kingdom and say "We want to give up some more of our Canadian powers to the United Kingdom." The other way is to put it in a federal statute which is the course I suggested last June, pass a federal bill which we called C-60 then which would define certain institutions and impose self-limiting, self-denying ordinances on ourselves. The third is to have a constitution in Canada with an amending formula which would say "The federal government cannot use the spending power except in certain ways" and we wouldn't be able to change that unilaterally by statute. We would only be able to change it by the use of the amending formula to the constitution. But I think we realize that. Another point is that you want the right in the provinces to levy indirect taxes. How do we give you that? We can pass a law saying the provinces can levy indirect taxes but you know very well that law wouldn't be valid because we can't by federal act give you new powers under section 92.

You are asking the federal government to go to Great Britain once again and say, "Would you please amend Section 92 to include a provision in that?" And we do that, I suppose, with some of the other sections on which we agreed and on division of powers and maybe next year we would go again and next September we would go again and every time we got a bit of a package we would go again. Mr. Levesque talks about pilgrimages to Victoria. The pilgrimage we want is a pilgrimage to Westminster. I don't see anything more noble than that but you see this is the bind we are in and if you want constitutional change and a division of powers, either we do it by going repeatedly to London or we agree amongst ourselves on a way to do it.

Et, c'est ça que j'ai expliqué hier soir au Premier ministre.

Monsieur Lévesque a bien voulu parler d'ultimatum ce matin, il me semble que l'ultimatum c'est plutôt monsieur Lévesque qui me le donne.

Il nous dit: "Tant que vous ne m'aurez pas donné tous les pouvoirs que je veux, je ne vous permettrai pas d'avoir une Constitution canadienne. Je vous obligerai d'aller à Londres à chaque fois que vous voulez changer des pouvoirs."

Or, c'est précisément la province de Québec qui nous demande plus de pouvoirs, qui voudrait de la juridiction dans le domaine de l'imposition directe, indirecte, qui voudrait une juridiction dans le domaine des communications, qui voudrait une juridiction accrue dans le domaine des pêcheries, etc.

Comment est-ce que vous pouvez, vous, les provinces obtenir cette juridiction si ce n'est par un pèlerinage en Angleterre où on dirait au Parlement de la Grande-Bretagne: "Eh bien, veuillez, s'il vous plaît, encore une fois, passer un Acte de l'Amérique Britannique du Nord changeant le partage des pouvoirs."

Alors, l'ultimatum, il me semble, que vous nous le donnez deux fois, monsieur Lévesque. La première fois en disant que vous ne voulez pas discuter d'une constitution canadienne sans que nous donnions aux provinces tous les pouvoirs qu'elles demandent, premier ultimatum; et le deuxième, jamais il n'y aura une constitution canadienne pour les canadiens écrite au Canada tant que nous, gouvernement québécois nous n'aurons pas obtenu tout ce que nous voulons du gouvernement central.

Or, nous le savons ce que vous voulez obtenir du gouvernement central, vous l'avez dit à l'Assemblée Nationale, le dix (10) octobre, vous voulez la totalité des pouvoirs.

Alors, qu'est-ce à dire?

C'est dire que le Québec, tant qu'il n'aura pas l'indépendance politique absolue ne permettra pas aux canadiens d'avoir une Constitution à eux.

Eh bien, je vous pose la question, messieurs: Est-ce que c'est la position sur laquelle nous devons nous rabattre ou est-ce que ça ne serait pas plus censé comme je le suggère, comme l'a suggéré, je pense, le premier ministre du Manitoba, que vous étudions toutes ces questions dont nous avons parlé hier dans la journée et dans la soirée et que nous demandions à nos ministres de nous faire rapport?

Il se peut qu'ils trouvent une formule d'amendement qui fasse l'affaire de tout le monde.

Mais ce n'est pas probable parce qu'on sait par exemple qu'entre le premier Ministre Lougheed et le premier ministre Davis qu'il y a un désaccord.

C'est un désaccord non pas sur la

volonté d'avoir une Constitution canadienne, mais c'est un désaccord sur la formule d'amendement.

Eh bien, le Québec nous en a proposé une sous la plume de monsieur Favreau, monsieur Gérin-Lajoie qui négociait pour la province de Québec en 1962-64, le Québec nous en a proposé une autre avant Victoria, mais qu' ils nous en proposent une troisième ou qu'ils nous disent quelle sorte de formule d'amendement ils veulent.

Et, alors on pourra rapatrier la Constitution.

Moi, je suis parfaitement d'accord avec monsieur Hatfield quand il dit: Quelle différence si ce n'est une question de posséder sa propre Constitution. Bien sûr, il y aura toujours des différences d'opinions entre les provinces, entre elles et entre le gouvernement fédéral et les provinces, et bien sûr, il y aura toujours des nécessités d'amendement. On finira par s'entendre comme on l'a fait en 1940 pour changer les pouvoirs dans le domaine de l'assurance-chômage, on finira par s'entendre, comme on l'a fait en 1952 et ensuite en 1964 sur les pensions de vieillesse.

Ca prend des fois des années pour s'entendre, mais en quoi l'entente est-elle rendue plus facile du fait qu'ayant obtenu cette entente, nous devons ensuite aller en Angleterre pour l'entériner.

Je dis simplement, je ne prétends pas que nos ententes seront faciles, je dis simplement: Une fois qu'on aura fait des ententes, comme j'espère qu'on en fera d'ici le mois de février, dispensons-nous donc une bonne fois d'être obligés d'aller en

Angleterre pour demander la permission d'entiréner
cette entente.

Voilà notre position. Et, je pense
que...

We should be able to draw the conclusion that patriation is desirable. Finding of an amending formula is desirable and we should write that in the communique and I suspect that even Mr. Levesque will agree that it is desirable but if he does not want it to come too soon and therefore he does not want to join us in studying how these things can be obtained, surely we can write that in the communique too.

HON. WILLIAM DAVIS: I think, Mr. Chairman, you have stated the obvious which you think should be contained in the communique and my recollection of the discussions is no one can quarrel with this. Premier Blakeney points out that there may be less than unanimity in the discussion on the amending formula, but maybe all the possibilities for an amending formula have been trotted out to date. Maybe there is some way of partially accommodating at least the concerns of one or two of the provinces, but I do not see any reason why we cannot include in a communique the desirability of patriation or the need for an amending formula. I think what some are saying to you, sir, is that if you would not attach as a precondition that one relates to the other, one is essential for the other, then we see what the others produce for us at the meeting in February and I think we can get a consensus on that with a reservation from Quebec.

THE CHAIRMAN: I am inclined to agree with that, as you say, with the reservation for Quebec, but I am a little puzzled because since 1976 you have been talking of patriation. You will only give it to us when you have more powers, but you don't like patriation. We will give you more powers if you agree to patriate, but I am a humble man and we can make progress and we will see in February. Maybe there is agreement.

HON. WILLIAM DAVIS: I will never debate your humility, but being a very humble man myself, we will have that much in common at least and people can judge who is the most humble. I think, sir, historically while we have had

preconditions in a sense that we would like to see a more comprehensive approach, that we are reluctant to see just a creation because we think that maybe some of the momentum and some of the flexibility that has been demonstrated in the past couple of days might not have been as evident. I am just as committed to patriation as you are. I want to make that clear and we were no problem for you on the amending formula.

THE CHAIRMAN: Let the precondition be that it goes together as a package and then we will see in February, maybe you just want to pass some parts of the package, but you will be left with the technical difficulty of how do we do it then?

HON. WILLIAM DAVIS: You have convinced me but I understood the discussions last night, and I listened to you this morning and some of them are saying that they would prefer to see the studies because I think, along with Premier Blakeney, I do not want to feel that we have been here for three days and we are going to take another three months to restudy what we have been studying for years. It is not a study; it is a direction to our Ministers to come back with something in terms of recommendations that we can agree upon to move the process forward. All I am urging, Mr. Prime Minister, is that it not appear either in what you say or in the communique, that all aspects are totally dependent on one another. You can convince me, but I do not think you are going to convince everybody else, and I just think there is merit in taking it, as Premier Lyon has suggested, and one or two others.

THE CHAIRMAN: We certainly do not have to mention preconditions and we do not have to determine now if parts of the package can fly alone. All I want to make sure is that between now and February we do not say, "Well you know, our Ministers should not put too much time on discussing the amendment because that is not as important as the rest."

You tell us in February if you like the package and we will tell you and we will see if we can go forward with parts of it or all of it or what.

HON. WILLIAM DAVIS: That is great.

THE CHAIRMAN: "That is great," says Premier Davis. Are we all agreed?

HON. ALLAN BLAKENEY: I certainly think if that is the best we can do, that is the best we can do but I think we should recognise that at least in my judgment the situation has substantially changed from yesterday because I did not understand that there were that many linkages in the package, for example, that Senate reform or fisheries were necessarily going to be linked with entrenchment of the Supreme Court and that we were - I know that you are not saying necessarily but there is certainly, I detect a pretty firm tone and if, in fact, there is a mental reservation, linkage of patriation and amending formula in the minds of the federal people I respectfully suggest that you should tell us so that we know what the ground rules are.

THE CHAIRMAN: Well I have gone further than that. I have said there are ways in which we could proceed with the distribution of powers, if we fail to reach agreement on an amending formula. I have told you what that way is. It is the incorporation in a new C-60 of some limitations on the federal spending power, for instance. We can do that but you know it is no great guarantee that that will be binding on us or any federal government for a long time, which I hope you would want as a result. That is why we talk about constitutional change, but you can't get that once again unless we all go to London or we go on your behalf, which is the way it is done, and say, "Please take some powers away from the federal government." I am telling you now that I would not do that, and I doubt whether any Prime Minister of this country would do it, but you may find some other way of doing it and if so, maybe the Attorneys General can tell us.

HON. ALLAN BLAKENEY: Forgive me but I think

we are a long way back then because, let us take language rights. We were going to incorporate a charter of language rights which was going to take powers away from the federal government undoubtedly.

THE CHAIRMAN: And the provincial governments.

HON. ALLAN BLAKENEY: And the provincial governments and we were going to do it without going to Westminster?

THE CHAIRMAN: Well hopefully we will go to Westminster once and for all, but if we don't we can each of us - and we have used the expression repeatedly in our white paper, "The Time for Action", we can constitutionalize by way of a federal statute and that is what C-60 is, it is a constitutionalization of federal institutions and powers and we could put in that constitutionalized document a limitation on our freedom as regards language, as you could do that in yours too. All I am saying is that you could change that the next year by an Act of the provincial legislature and so could we by an Act of the federal parliament. I think this is real progress if the provinces, and we pass this kind of statute saying, "The constitution of shall we say Saskatchewan recognises the Queen, the Prime Minister and two official languages." And we could do the same thing. All I am saying is that the ultimate entrenchment of your education and ours would be a little pilgrimage to London and all I am saying is that if we have not found a way in which we can go to London, some final time - I am not saying we could not go once or twice more, but I would think it is very important for us to agree that at some point in the foreseeable future we should say, "Well, let us go one last time to Westminster and henceforth any agreement amongst ourselves we will be able to put in a constitution by way of an amending formula without going back to the United Kingdom."

HON. ALLAN BLAKENEY: You have allayed my fears because you are not saying there is only one last trip to London and that is it. We could go one or two times more and I am not advocating we should, I wholly agree with you, I would

like to see it wrapped up, but if we need to, the option is still there.

THE CHAIRMAN: Well I am saying let us decide that in early February. I am somewhat puzzled that on something which is basic enough to have been discussed once again since 1957 - and I don't understand some of the arguments put forward the day before yesterday saying, "That it was not urgent those days but has become urgent now." Well, if it is urgent now, let us at least agree that we should tell our Ministers that we want an urgent report on that in February and that is all I am asking. Then we will meet the difficulties then, the ones that were thrown out to you on Monday morning. Do we refuse to patriate until we have had absolute unanimity or at some point will a consensus suffice? And if we are going to go for another fifty years without reaching that unanimity, could we at least agree that in the fifty-first year, we could consult the people rather than have the Premiers disagree for the second time? But we will see in February. Christmas, New Years will come between now and then and we will all be moved to generosity and who knows, your humility and mine, Premier Davis, might carry the day.

HON. WILLIAM DAVIS: It has worked before, Mr. Prime Minister.

LE PRESIDENT: Monsieur Lévesque.

HON. RENE LEVESQUE: Monsieur le président, je suis content, je dois le dire en toute humilité, je suis content de voir que vous vous résigneriez peut-être, enfin je voudrais que ça soit bien clair, à faire ce terrible voyage à Westminster peut-être une couple de fois au besoin, parce qu'autrement je me demande même si ça voudrait la peine de participer au Comité dont il est question si ça devenait une espèce de sine qua non. A ce moment-là aussi bien le savoir tout de suite et je suis très heureux d'avoir entendu la réponse que vous venez de donner, si je l'ai bien comprise, à monsieur Blakeney.

Maintenant, je voudrais juste, si on me le permet, souligner cette insistance vraiment très très stimulante que vous mettez à la fin du colonialisme, sur la fin du colonialisme sur lequel vous avez tellement insisté.

Bien, vous savez, je pense, qu'on peut dire qu'il y a colonialisme et colonialisme et puis il y a aussi sophisme et sophisme à l'occasion, il y a des reliquats, c'est vrai, d'un colonialisme extérieur, qui, dans l'ensemble ne dérange pas vraiment les gens.

Je n'ai jamais constaté que ça empêchait personne de dormir, surtout si on pense que monsieur Lalonde hier, nous a mis comme perspective, quelque chose comme deux ans, deux ans de plus, je ne crois pas que l'on en mourrait.

Mais, je dois répéter ce que j'ai dit

tout à l'heure c'est que ni de près ni de loin, je n'accepterai au nom du gouvernement du Québec, aucune démarche qui risquerait, quant à nous, d'accentuer ou de renforcer aux dépens du Québec un certain colonialisme intérieur, parce que ça aussi ça risque d'exister.

On a remarqué une chose, dans les sept -- après les avoir analysées -- dans les sept propositions concernant les pouvoirs qui sont devant nous, il y a beaucoup de priorités régionales que nous respectons et que parfois nous partageons.

Il y a par exemple les ressources auxquelles s'intéresse beaucoup la Saskatchewan, l'Alberta et le Québec aussi. Il y a les pêcheries auxquelles Terre-Neuve, la Nouvelle-Ecosse et le Québec aussi peuvent s'intéresser, ça ce sont toutes des dimensions régionales qu'on évoque, mais il y a aussi une autre dimension que j'ai invoquée depuis le début.

Je dirais qu'il y a deux perspectives, je citerai monsieur Davis, il y a deux perspectives, deux réalismes si on veut qui peuvent parfois s'affronter ici.

Ce n'est pas de notre faute, c'est la réalité des choses ça. C'est qu'il y a une société distincte au Québec et quand je regarde ce qui nous est proposé comme discussion, non pas comme décision pour l'instant, loin de là, mais comme discussion dans les sept sujets qui ont été invoqués, il y en a un par exemple qui rejoint cette dimension spéciale du Québec, un seul, celui des communications, et si je regarde ce qu'on dit à propos des communications, bien, j'ai nettement

l'impression qu'il s'agit simplement d'examiner, mais en tenant compte d'attitudes déjà solidement enracinées du fédéral d'examiner sans nécessairement déboucher sur quoi que ce soit qui ferait l'affaire du Québec, d'examiner le statu quo tel qu'il existe actuellement.

Et je dirais à nos collègues que si on regarde par exemple ce dont il est question et le premier ministre fédéral a insisté beaucoup là-dessus tout à l'heure dans un de ses exemples, quand il est question du pouvoir fédéral de dépenser, tout ce qu'on trouve dans les propositions d'hier, et c'est en cours de route que l'on verra si c'est ça que ça veut dire, c'est qu'on parle de restreindre ce pouvoir, mais il n'y a aucune précision qui est donnée.

Il y a même une proposition en contrepartie qui serait que les provinces de leur côté restreignent aussi leur pouvoir de dépenser. On admettra que dans la répartition actuelle entre le fédéral et les provinces, c'est quelque chose qui est quelque peu ironique, on pourrait même dire qu'il y a peut-être un peu de cynisme là-dedans.

Alors, pour l'instant, on a sept (7) sujets concernant le partage des pouvoirs qui sont évoqués où ni de près, ni de loin le Québec ne voit le commencement de l'ombre de la queue de ce qui pourrait être le début satisfaisant pour le Québec, en fonction de la continuité de son dossier depuis des générations, d'une solution à la question constitutionnelle.

Alors, je vais rappeler des souvenirs nostalgiques au président en terminant, je répéterai

ce qui a été dit par un de mes prédécesseurs en 1967, c'est que devant la perspective où nous sommes en ce moment, devant le peu de choses concrètes qui sont sur la table pour les mois qui viennent, et je cite un texte de 1967:

"It would be out of the question to think of an amending formula or machinery without taking into consideration all the problems of a new Constitution."

Ce qui explique, et je le répète de nouveau, que tout le monde veut bien étudier le sujet, mais que nous il nous paraît prématuré et politiquement absurde de prétendre en faire un sine qua non au moment où on commence à peine à discuter de la question centrale de n'importe quelle fédération, c'est-à-dire comment les pouvoirs sont distribués.

LE PRESIDENT: Bien, monsieur Lévesque, je me demande seulement une chose: quand vous parlez de d'un certain colonialisme intérieur, vous êtes en train de dire présument que le Québec voudrait exercer plus de pouvoirs parmi ceux qui sont actuellement exercés par Ottawa.

Soit ! C'était la discussion de toute l'avant-midi hier, les provinces voudraient, pour employer votre expression, grignoter davantage sur le pouvoir fédéral.

Bon! On a fait un certain nombre de concessions.

Vous dites qu'il n'y en a qu'une qui vous intéresse, je ne pense pas que ce soit tout à fait exact, j'espère que le Droit Familial...

HON. RENE LEVESQUE: Si vous me permettez, non...

LE PRESIDENT: Laissez-moi finir mon raisonnement, vous répondrez après.

HON. RENE LEVESQUE: C'est simple...

LE PRESIDENT: Vous m'avez dit qu'il y avait un pouvoir sur les sept que vous considérez

peut-être...

HON. RENE LEVESQUE: J'ai dit, si vous me permettez quinze secondes, j'ai dit que les ressources qui intéressent la Saskatchewan et l'Alberta en particulier, je pense qu'un peu toutes les provinces, ça nous intéresse aussi, les pêcheries également et beaucoup d'autres choses, mais j'ai dit qu'en ce qui concerne les dimensions particulières que le Québec ajoute au débat, il y en a un c'est le sujet sur sept qui touche directement cette dimension, ce sont les communications et la façon dont il y touche, j'ai l'impression que ce n'est pas très prometteur.

LE PRESIDENT: Est-ce que vous n'incluez pas le Droit Familial là-dedans aussi qui est important du point de vue de la famille et de la société?

HON. RENE LEVESQUE: D'accord, c'est un embêtement que vous voulez nous passer, on l'accepterait probablement avec plaisir.

LE PRESIDENT: Mais évidemment si vous considérez comme embêtement d'être obligé d'exercer des pouvoirs que vous réclamez, je suis un peu, dans une position un peu difficile.

Mais qu'importe.

Le raisonnement est le suivant. Vous dites que c'est un colonialisme intérieur de ne pas avoir, dans votre cas la totalité des pouvoirs, on est prêt, on l'a dit hier matin, à en passer un certain nombre aux provinces.

Je vous pose la question, en quoi est-ce que vous pensez en obtenir plus et plus vite du fait

que la Constitution soit en Angleterre, c'est ça que je n'arrive pas à comprendre.

Je l'ai dit, ça sera toujours difficile de s'entendre entre nous, les gouvernements provinciaux pensent qu'ils exercent mieux leur juridiction, mais nous pensons que nous exerçons mieux la nôtre, mais on a fait des échanges, des partages de pouvoirs dans le passé, quelques-uns, on en proposait encore hier.

Tout ce que je vous demande: c'est en quoi est-ce que la position du Québec est diminuée du fait, qu'ayant après de nombreuses années de discussions, après avoir fait une entente sur un nouveau partage des pouvoirs, nous ne soyons pas obligés d'aller en Angleterre pour l'entériner.

La discussion n'est pas rendue plus facile ni plus simple du fait qu'en fin du compte nous devons aller en Angleterre.

La discussion sera toujours la même, elle sera entre nous, fédéraux et provinciaux, les anglais ne s'en mêleront pas.

Mais elle sera difficile et je l'espère que l'esprit de compromis nous permettra de faire des améliorations.

Mais pourquoi est-ce que vous tenez, c'est votre sine qua non, c'est votre ultimatum, pourquoi est-ce que vous dites: "Eh bien! une fois que ces discussions-là auront abouti à une entente, nous exigeons que vous fassiez un pèlerinage en Angleterre?"

C'était la question posée par monsieur Hatfield, ça doit être la question que se pose la totalité des canadiens.

HON. RENE LEVESQUE: Monsieur le président, si vous le permettez, je vais couper court au dialogue, parce que je trouve assez désagréable cette tradition établie, en particulier sur ce sujet, que ça devient une espèce de dialogue chicane entre deux québécois qui donnent un spectacle.

Je veux dire simplement que si pour terminer: vous ne semblez pas avoir compris à Victoria, vous ne semblez pas comprendre aujourd'hui qu'il y a eu une évolution au Québec, qu'auparavant le droit de veto qu'on évoquait toujours en ce qui concerne l'amendement à la Constitution, ce droit de veto permettait une espèce de repli défensif, comme ça on était sûr qu'on ne se ferait pas grignoter, je reprends l'expression, de vos positions.

Il y a un certain dynamisme dans l'évolution du Québec que vous n'avez peut-être pas remarqué depuis une dizaine d'années, mais ce dynamisme veut garder des ouvertures, et dans la continuité du dossier fédéral, nous ne sommes pas ici pour plaider une autre cause ou une autre option, ça, ça se fera chez nous au Québec, entre québécois.

Mais, dans la continuité du dossier fédéral, nous croyons que ce dynamisme, cette espèce de possibilité veut aller plus loin, doit rester ouverte jusqu'au moment où le Québec aurait, je vous avoue que j'en doute grandement, aurait obtenu un nouveau statut qui lui permettrait de dire: "J'ai maintenant suffisamment de sécurité et suffisamment de capacité d'auto-développement pour pouvoir accepter."

Et comme, c'est le moins qu'on

parce que les trois jours qu'on vient de passer, il n'est pas question pour nous de nous embarquer, je le répète pour la dernière fois, dans la discussion d'une formule d'amendement.

Et je terminerais en ramenant simplement la question de monsieur Blakeney, j'espère que ça n'est pas un sine qua non par rapport aux sept autres sujets sur lesquels je croyais qu'on s'était entendu hier.

LE PRESIDENT: Juste un mot à titre de renseignement. Le veto que vous réclamez, vous l'aviez dans la formule que vous aviez proposée en vertu de Fulton-Favreau et vous l'aviez dans la formule que vous aviez proposée à Victoria.

Alors, le veto, il ne s'agit pas de vous l'enlever, vous l'aurez toujours.

Pour ce qui est d'obtenir de nouveaux pouvoirs, ce n'est pas l'Angleterre qui va vous les donner, ça sera l'ensemble des provinces et le gouvernement fédéral qui feront une entente.

Mais, je suis d'accord avec vous, ce n'est peut-être pas la peine d'essayer de se persuader sur ce sujet-là.

But we have reached agreement at least, at least in the draft communique, that we have reached agreement that patriation would be a desirable goal and that our Ministers should work towards it.

Then we can go on to the last item if there is agreement, the item on -- whatchamacallit -- duplication of services.

HON. RICHARD HATFIELD: I would like to ask the Premier of Quebec, what is this evolution in Quebec when he kept saying the position taken by the Government of Quebec is the same as that taken for the last fifty years?

HON. RENE LEVESQUE: I think you have been coming to Quebec often enough to know what the evolution is. I don't have to paint a picture.

HON. RICHARD HATFIELD: Your position is now you don't want to negotiate? In other words, you are taking the same position as Lesage and Johnson, etc.?

HON. RENE LEVESQUE: On the basic points.

HON. RICHARD HATFIELD: On the basic points.

THE CHAIRMAN: Any other questions? All right. On duplication of "whatchamacallit", Mr. Lalonde will present, I think, a short paper which attempts to draw together the work and conclusions done by our Ministers in Montreal early in October.

Monsieur Lalonde? Premier Lyon?

HON. STERLING LYON: Perhaps, Prime Minister, I suppose for the record, if we are going to get onto duplication, let the record show that we haven't discussed patriation and the formula yet.

THE CHAIRMAN: Let the record show we haven't, and probably we could ask our Ministers to discuss the formula, unless you want to take a few more minutes and discuss it, but I think we know of two recent ones, the Victoria one, and the Fulton-Favreau one. Would you gentlemen want to indicate some preference for one or the other, or ask that both be looked at, and possibly others, including perhaps the American type of amending formula, where I believe if the legislators don't move, the people can move?

I think we could leave it to our Ministers to exhaust the subject, but it would be on the record if you are taking it in the sense that we have agreed that we should find one, but we haven't said what it is, then I agree with you completely we should make that clear.

Monsieur Lalonde:

HON. MARC LALONDE: Mr. Chairman, the question of duplication of services is one to which all governments have assigned a high priority and in this respect I think we have all reacted to the general view of the public that it is over-governed and the bureaucracy at all levels of government is too large and too costly. Moreover, the business community itself isn't happy about the extent of governmental regulation and intervention, particularly where governments overlap and cause unnecessary difficulties and costs. In this regard, the Economic Council has already begun an examination of the regulatory activity of governments, under terms of reference which the First Ministers have jointly approved.

The federal government proposed, in the White Paper on the Constitution last June, a practical and constructive approach to the reduction of administrative duplication. In addition, the Premiers at the conference

in Regina in August, August 9th, also reached an agreement that the question of duplication of services should be looked at by the two orders of government. Moreover, several provincial governments -- and reference has been made in particular to the work done by the Western Provinces in this respect -- several provincial governments have made similar suggestions to reduce overlaps, encourage disentanglement and so on. A review of the activities of the two orders of government with a view to eliminating wasteful duplication of programs and services is particularly desirable at this time of fiscal restraint. In order to achieve a net reduction in government expenditures, I am sure you will agree with the federal government that duplication issues cannot be reduced simply by one order of government or the other withdrawing from a particular area and transferring its financial resources to the government which remains in the field. Instead, each situation needs to be examined carefully so that governments can decide on the most sensible administrative and financial arrangements on a case-by-case basis, remembering that either federal or provincial cutbacks may be involved.

In this regard, an agreement -- in Montreal last September 26th, the provinces and the Federal Government agreed on a list of nine items which should be considered on a priority basis by the provinces and the Federal Government -- those nine items were, in fact, those that the Premiers themselves had listed in their meeting in Regina during the course of the summer, so we have accepted fully the list of subjects the Premiers had listed as priority questions for consideration.

In that sense, that September 26th meeting was very fruitful. We have agreed on the items for consideration and the agenda for work. The only question that was left for consideration by the First Ministers was the question of the financial ramifications of decisions to eliminate duplication. In this regard there have been discussions between the Federal and the Provincial Ministers and it was concluded that this item should be brought to this particular conference.

Probably the best means of outlining the federal view of the situation would be to quote from the Prime Minister's October 18th letter to you which dealt with the various matters that arose out of our meeting in Montreal, and I quote:

"The solutions to various instances of duplication or overlap may or may not involve significant costs and will vary widely from sector to sector and from one part of the country to another. For these reasons uniform treatment regarding costs would not seem to be appropriate. What I (the Prime Minister said) would hope we can agree to among ourselves before the meeting is that any proposals for elimination of duplication in a given area of activity be accompanied by a careful assessment of the costs involved so that the financial ramifications are known to all concerned. We can also agree, I am sure, (he said) that a satisfactory resolution of financial questions would be integral to any agreement to eliminate particular instances of duplication and overlap."

J'espère, monsieur le président et messieurs les premiers ministres, que cette déclaration d'intentions du gouvernement fédéral rejoint vos préoccupations et que si cette approche qui est suggérée, cette ligne de travail qui est suggérée,

particulièrement concernant les implications financières, si cette ligne de travail vous convenait, eh bien! nous pourrions nous attaquer sans délai à cette importante entreprise encore une fois travaillant sur les neuf sujets que les premiers ministres provinciaux ont eux-mêmes énumérés comme sujets prioritaires pour considération.

Le gouvernement fédéral a accepté cette liste lors de la conférence du 26 octobre, et en autant que nous sommes concernés, déjà nous avons fait une certaine quantité de travail je pense très productif avec les provinces de l'Ouest sur cette question de la duplication des services et je pense que nous pourrions faire des progrès remarquables, si ce travail, qui a déjà été entamé avec les provinces de l'Ouest, était étendu à l'ensemble des provinces du Canada et se concentrait sur les questions qui ont été énumérées par les premiers ministres à Regina dans le cours de l'été.

LE PRESIDENT: Merci, monsieur
Lalonde.

Le premier ministre Bennett.

HON. WILLIAM BENNETT: Yes. Our Minister, the Honourable K. Rafe Mair, who chaired the Task Force on this would like to make a statement for British Columbia.

HON. K. RAPE MAIR: Prime Minister, I think it ought to be noted that the Western Task Force on Constitutional Trends is now in its third year and I have the honour of chairing it for the third straight year, and it came about as a result of our concern in British Columbia with the very subject we are talking about today, the duplication of services, and a word I suppose we don't like to know, but "intrusions" and this sort of thing. It came about in Medicine Hat in 1976, and I think that as a result of this and the two booklets that have been published by the Task Force, and I presume a third yet to come, that as Mr. Lalonde has said, a great deal has been accomplished.

I think that it points out very clearly, Mr. Prime Minister, that the people of Canada, whether they be from my province or any other province, have a right to expect that their tax dollars are going to be spent wisely and efficiently, that they are not going to be spending two dollars for one dollar's worth of value and that the laws that are passed are meaningful laws that are administered in a way that is efficient, is cost conscious and in the way that gives them the impression that government is not there simply to interfere with their way of life, but to govern in areas where government is obviously necessary.

Mr. Prime Minister, I think that a division of powers and other matters that we have discussed over the last few days should cause us to think and to pause for thought that the reassessment of the division of powers and other matters will not necessarily remove the problem of duplication. It may very well aggravate

that problem if we do not take the care, and the time, and the trouble to see that we have the means by which to prevent this happening.

I think my colleague and friend, Mr. Lalonde, agrees with me that this is a very important part of the intergovernmental relationships that we are now in the position of setting up, so I urge all First Ministers here to bear in mind that this whole question of duplication is probably -- if I may use the modern expression -- "where it's at" with the general public in Canada today. They see the dollars being spent two for one, or perhaps two dollars for every ten cents worth of value that they receive, and this is, of course, something that is very much to be discouraged.

If I may just close on this note, Mr. Prime Minister, sometimes our colleagues wonder why we are so concerned with getting ourselves as a province, for want of a better expression, wired into the centre where our input will be felt. This is a very good example of why. We are now embarking upon our third year in this endeavour and it is only recently that we have been able to attract sufficient attention to accomplish what now has been accomplished in the last three or four months. We think that there are better ways of attracting your attention and for you attracting our attention in matters of this sort. This problem is not in isolation from other problems, and I think, Mr. Prime Minister, that I very much wish to take this opportunity of congratulating the Federal Government on their response, albeit perhaps two or three years later than we wished, and to express the hope that in future the time lag between the problem occurring and our addressing ourselves to solutions will not be so long.

THE CHAIRMAN: Thank you, Minister.
Premier Hatfield?

HON. RODMAN E. LOGAN (Minister of Justice for the Province of New Brunswick): I feel very strongly that our governments are working together to achieve reduction of duplication and overlap. There is a danger some governments will attempt to use this exercise to point the finger at the other level of government and accuse it of making unwarranted intrusions. These governments would use this exercise as their rationale for enlarging their sphere of influence by claiming their sole right to be involved in some area of responsibility without regard to whether their citizens will be better served as a result.

There is also the danger, and it is particularly likely in this period of serious fiscal restraint, that some governments will attempt to use this exercise as an excuse or justification for withdrawal of services or financial support where they are badly needed.

The effect of such measures is to force the government left with the sole responsibility to either drop the programme in mid-stream or find the money either by robbing other services or raising taxes.

You can be certain that Canadians are not well served by this tactic. I feel it is necessary, therefore, for us to clarify, both for our own benefit and for greater public understanding, what we mean and can hope to achieve by eliminating duplication of services. Our intention and responsibility in this exercise should be to examine our respective operations and determine jointly if and where any actual duplication exists and how it can be eliminated. More importantly, in cases where both levels of government are legitimately involved, environmental protection, for example, we must determine where we can tailor our administrative operations so that our efforts complement and not frustrate each other.

There may well be areas where we can agree to divide our responsibilities, in fisheries, say, and other areas where we may find it advantageous to adopt joint administration of certain agencies. I believe that we in the Maritime provinces have been pioneering very effectively in the area of joint management both between provinces and common agencies such as the Land Registration and Information Service and with the federal government such as our agreement to establish the Maritime Offshore Resources Board.

Let me conclude by saying some principles which I think we should all endorse and observe in carrying out this exercise to eliminate duplication: 1. Decisions to withdraw services or financing must not be taken unilaterally without consultation between the governments affected.

2. In areas where the financial consequences on either or both levels of government of a withdrawal of service are proportionally significant, there must be an appropriate and commensurate transfer of resources or financial responsibility.

3. The guiding principle behind our action should be the achievement of the most effective and efficient delivery of services to our citizens. In this regard we should ensure that our efforts are complementary and we should not overlook the possibility of joint administration and delegation of the administrative responsibility where desirable.

4. We must agree to set aside those areas where the only possible solution is a change in the constitutional distribution of powers and deal with those separately and,

5. We should resolve to work cooperatively at both the political and administrative levels in order to achieve positive results as soon as possible.

THE CHAIRMAN: Thank you, Minister.

HON. RENE LEVESQUE: Monsieur le président....

LE PRESIDENT: Monsieur Lévesque.

HON. RENE LEVESQUE: Monsieur Morin, dont le ministère a fait une étude assez élaboré, je crois, des chevauchements justement, voudrait ajouter quelques mots.

LE PRESIDENT: Monsieur le ministre Morin.

HON. CLAUDE MORIN: Monsieur le président, toute la question des chevauchements des services gouvernementaux est, je dirais, une très ancienne préoccupation du Québec et nous l'avons remarqué à maintes reprises dans le passé, nous en avons souvent parlé, nous avons fait précisément au cours des derniers mois, ça s'est terminé au mois de mai et publié au mois de juin, une assez longue étude sur justement ces chevauchements.

Il va sans dire que nous sommes tout à fait d'accord pour, d'une part, les éliminer et d'autre part prévenir leur retour.

Cependant il y avait une question qui nous préoccupait quand l'étude nous avait été proposée, on avait insisté à cet égard auprès de monsieur Lalonde à Montréal le mois dernier, c'était à savoir dans quelle mesure les engagements financiers fédéraux, qui sont liés à des programmes fédéraux, mais qui sont en chevauchement avec les nôtres pourraient, si le programme se terminait, si ces arrangements financiers pourraient être maintenus, de telle sorte qu'il n'y ait pas de pénalisation des provinces, parce que ça peut aller chercher dans certains cas dans plusieurs millions de dollars.

Maintenant, j'ai lu ce matin, j'ai entendu ce matin la déclaration de monsieur Lalonde où il est question -- et je cite à la page 3: "Qu'il y aura une solution satisfaisante aux aspects financiers qui ferait partie intégrante de toute entente pour éliminer certains cas précis des chevauchements ou de double emploi."

Je comprends en d'autres termes, et la précision nous a été fournie et qu'elle signifie que cet aspect financier du travail à entreprendre ne soit pas négligé de telle sorte que nous ne nous retrouvions pas devant un retrait fédéral qui peut être en principe bon, mais qui serait accompagné aussi d'un retrait fédéral de fonds qui lui peut être énormément désavantageux dans l'état de nos budgets actuellement.

Alors, si j'ai bien compris, si c'est ça que veut dire la déclaration, il est entendu que nous serons heureux de collaborer à ce travail dont nous sommes convaincus.

LE PRESIDENT: Merci, monsieur le ministre.

HON. THOMAS WELLS: Mr. Prime Minister, I don't think we need to itemize the problems that are here. We were looking over, for instance, in several Ontario communities - London, Toronto, Thunder Bay, Sudbury and so forth, there are offices run by the federal government and by our government that deal with consumer matters. There are environmental regulations and laws enacted by the federal government and the provincial governments that industries have to worry about. We each operate our own prison system and so forth. We all know the problems and confusion in the eyes of a lot of the public. I think what we need to do now is just to get on with the matter and I think that the Inter-governmental Affairs Ministers came to an agreement and they listed nine in Montreal in September. I think we set out a procedure working with the federal Minister and the provincial Ministers, and I think we would be prepared to use that group as a steering committee and move ahead in those areas.

I personally and the Province of Ontario would be agreeable to the statement in Mr. Lalonde's remarks a few minutes ago concerning the financial aspects. I think that the statement that is satisfactory was a feeling that the financial question, certainly has to be an integral part of any agreement and would be accepted by all and I think that that would meet the demands of the criteria set down by my friend from New Brunswick and so forth. So I think that we can move ahead. In fact if you wanted to move ahead today, Mr. Chairman, we would be happy to - let us take an example - give you our reform institutions and prison system and you give us your consumer relations offices and we will make real progress.

HON. MARC LALONDE: Maybe we will give you both.

HON. THOMAS WELLS: No, I think we would like to see a little quid pro quo in this. You can have some and we will have some.

Anyway, I think, though, that we all

agree that all we need to do is have the stamp of approval of the First Ministers and let us get the steering committee going and move ahead and report some progress on this.

THE CHAIRMAN Thank you, Minister.

Premier Campbell.

HON. W. BENNETT CAMPBELL: Mr. Chairman, my recollection and my understanding of the terms of the Montreal meeting was that we had resolved all of the means respecting the matter of undertaking an in-depth study on the duplication of services, With the exception of, I think, the question raised on whether or not the financial ramifications would be a component and I think having resolved that matter, I think it is very clear from your letter, Mr. Chairman, of February 18th and Mr. Lalonde's statement today, that I think we can now get on with the business.

THE CHAIRMAN: Thank you, Mr. Campbell.

Mr. Smishek.

HON. WALTER SMISHEK: As you know, it has been assigned to the Economic Council of Canada to do some work and I think it is important that the federal government do everything possible to expedite the study because studies at times tend to get prolonged, so to the extent that you can use your influence to have the Economic Council of Canada expedite the work, I think that this would be very desirable.

One other point, Mr. Prime Minister, and that is the list of nine numbered items, the list the Premiers have set out at the Regina Conference. I hope that there is not an interpretation that this list of nine is interpreted as an intrusion, but it is a list of nine items because I think what was meant was the need for clarification that there is a role to be played by the provinces and by the federal government in these areas, perhaps not in all, but that might be interpreted, that this was a list that somehow we want the federal government out of the field because I do not think, as I read the communique, that that was the intent. It was a matter of clarification of each other's roles.

THE CHAIRMAN: If there is general agreement, as there seems to be, we could call an end to this final item. It is right on time.

HON. ALLAN BLAKENEY: I have a minor miscellaneous item on a technical matter. The conference Secretariat has put together a collation of constitutional proposals that have been advanced from various sources in 1971, which is very useful work. I would ask that we agree in principle that the collation should be published as a document emanating from the conference and leave it to our officials to work out the details of publication, distribution and financing. I am asking to bring this forward. It seems to me to be a sensible arrangement.

THE CHAIRMAN: We would agree, we think it is a good idea, we think the document is very useful. The officials should probably consider whether they should not bring it up to date with the more recent proposals of Alberta and British Columbia in particular.

We were a little bit worried about the cost.

HON. ALLAN BLAKENEY: It was about \$15,000 or something like that.

THE CHAIRMAN: Our officials can look at that and if it is a minor amount I am sure you won't mind picking it up.

HON. ALLAN BLAKENEY: Pro rata.

THE CHAIRMAN: Then we can ask our officials to consider that and consider whether it is worthwhile, or whether it is practical including the more recent publications because they have a form in themselves. It may not make much sense to reproduce them just for the purpose of that.

Then, if we are ready for adjournment, I have one announcement. It is that the meeting of Ministers would take place at 2:00 o'clock in Room 200. I am talking about Ministers who are going to constitute this continuing committee of Attorneys General, Ministers of Intergovernmental Affairs

or whatever it is, so they will meet at 2:00 o'clock to put in train the work that we have agreed on.

THE SECRETARY: Room 200 is upstairs.

It is to the left of the main hall on that floor.

THE CHAIRMAN: Put some mattresses underneath.

First Ministers, we were going to have lunch at 1:00.

What room is that in Mr. Davis?

THE SECRETARY: Lunch is at 1:00 and the elevator is from this floor on the east side of the main corridor into the Chateau, on the east side.

THE CHAIRMAN: The First Ministers want to take a break to meet with their officials - can we say in fifteen minutes? Do you want more because the communique probably won't be ready for us to look at until close to 1:00.

HON. ALLAN BLAKENEY: It has not yet reached provincial people.

THE SECRETARY: It will go before the committee at 12:15 and that is in Room 307.

200 THE CHAIRMAN: Why don't we meet in Room 200 and give us a little time now and we can eat our lunch while waiting for the communique. We'll have lunch on the 5th floor.

THE MEETING ADJOURNED AT 12:00 P.M.

THE CHAIRMAN: I am not reconvening the conference. I just want to announce that we have agreed on a four-page communique which is being put together by the Secretariat which should be in your hands in about half an hour and the adjournment of the conference is to the dates, the 5th and 6th of February, 1979. Therefore, the conference is adjourned. You will have the communique in your hands in both languages in half an hour. I believe in the meantime the Ministers and First Ministers are available to the press. I will be giving a press conference myself in about half an hour.

Alors, je le répète, la conférence est ajournée aux 5 et 6 février.

Le communiqué d'à peu près 4 pages vous sera remis dans une demi-heure. Je tiendrai à ce moment-là une conférence de presse.

THE MEETING ADJOURNED AT 3:00 P.M.

APPENDIX A

DOCUMENT: 800-8/014

FEDERAL-PROVINCIAL CONFERENCE OF
FIRST MINISTERS
ON THE CONSTITUTION

AGENDA

Ottawa
October 30-31 and
November 1, 1978

FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS
October 30 - November 1, 1978

Agenda

<u>Day</u>	<u>Time</u>	<u>Agenda Item</u>
Oct. 30	10:00 - 1:00	Introductory Statements
	2:30 - 5:30	Charter of Rights
* * * * *		
Oct. 31	10:00 - 1:00	Distribution of Powers
	2:30 - 5:30	Institutions
* * * * *		
Nov. 1	10:00 - 11:30	Process of Constitutional Review
	11:30 - 12:00	Duplication of Services
	12:00 - 3:00	Working lunch to discuss Follow-up (In camera)
	3:00 - 4:00	Conclusion (open session)

* * * * *

APPENDICE A

DOCUMENT: 800-8/014

CONFERENCE FEDERALE-PROVINCIALE DES
PREMIERS MINISTRES
SUR LA CONSTITUTION

ORDRE DU JOUR

Ottawa
Les 30 et 31 octobre et
le 1^{er} novembre 1978

CONFERENCE FEDERALE-PROVINCIALE
DES
PREMIERS MINISTRES
du 30 octobre au 1er novembre 1978

Ordre du jour

<u>Date</u>	<u>Heure</u>	<u>Article</u>
Le 30 octobre	10h à 13h	Déclarations d'ouverture
	14h30 à 17h30	La Charte des droits
* * * * *		
Le 31 octobre	10h à 13h	Le partage des pouvoirs
	14h30 à 17h30	Les institutions
* * * * *		
Le 1 ^{er} novembre	10h à 11h30	Le processus de révision constitutionnelle
	11h30 à 12h	Le double emploi des services gouvernementaux
	12h à 15h	Déjeuner de travail et étude des suites à donner (à huis clos)
	15h à 16h	Conclusions (séance publique)

APPENDIX B

DOCUMENT: 800/8-002(1)

FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS
ON THE
CONSTITUTION

ATTENDANCE

First Ministers and Ministers

Ottawa

October 30 - 31 and November 1, 1978

FEDERAL-PROVINCIAL CONFERENCE OF
FIRST MINISTERS

October 30 - 31 and November 1

Ottawa

1978

Attendance

CANADA

The Right Honourable Pierre Elliott Trudeau
Prime Minister

The Hon. Allan J. MacEachen
Deputy Prime Minister and
President of the Queen's Privy Council for Canada

The Hon. Jean Chrétien
Minister of Finance

The Hon. Donald Campbell Jamieson
Secretary of State for External Affairs

The Hon. Robert K. Andras
President of the Treasury Board

The Hon. Otto Emil Lang
Minister of Transport and
Minister of Justice and
Attorney General of Canada

The Hon. Jean-Pierre Goyer
Minister of Supply and Services Canada

The Hon. Alastair William Gillespie
Minister of Energy, Mines and Resources

The Hon. W. Warren Allmand
Minister of Consumer and Corporate Affairs

The Hon. James Hugh Faulkner
Minister of Indian Affairs and Northern Development

The Hon. André Ouellet
Minister of State for Urban Affairs

The Hon. Marc Lalonde
Minister of State for Federal-Provincial Relations

The Hon. Jeanne Sauvé
Minister of Communications

The Hon. Raymond Joseph Perrault
Leader of the Government in the Senate

The Hon. J. Judd Buchanan
Minister of Public Works and
Minister of State for Science and Technology

The Hon. Roméo LeBlanc
Minister of Fisheries and the Environment

The Hon. Marcel Lessard
Minister of Regional Economic Expansion

The Hon. Jack S.G. Cullen
Minister of Employment and Immigration

The Hon. John Roberts
Secretary of State

The Hon. Monique Bégin
Minister of Health and Welfare

The Hon. Jean-Jacques Blais
Solicitor General

The Hon. Iona Campagnolo
Minister of State, Fitness and Amateur Sport

The Hon. Jack Horner
Minister of Industry, Trade and Commerce

The Hon. D.J. MacDonald
Minister of Veterans Affairs

The Hon. G. Lamontagne
Postmaster General

ONTARIO

The Hon. William G. Davis
Premier

The Hon. R. Roy McMurtry
Attorney General

The Hon. Thomas L. Wells
Minister of Intergovernmental Affairs

The Hon. René Brunelle
Provincial Secretary for Resources Development

QUEBEC

The Hon. René Lévesque
Premier

The Hon. Claude Morin
Minister of Intergovernmental Affairs

NOVA SCOTIA

The Hon. John M. Buchanan
Premier

The Hon. Roland J. Thornhill
Minister of Development

The Hon. Harry W. How
Attorney General

NEW BRUNSWICK

The Hon. Richard Hatfield
Premier

The Hon. Rodman E. Logan
Minister of Justice

The Hon. Jean-Maurice Simard
Chairman of Treasury Board

MANITOBA

The Hon. Sterling R. Lyon
Premier

The Hon. Donald W. Craik
Minister of Finance

The Hon. Edward R. McGill
Minister Responsible for the Manitoba Telephone System
Manitoba Forestry Resources Ltd.
Manitoba Public Insurance Corporation

The Hon. G.W.J. Mercier
Attorney-General and
Minister of Municipal and Urban Affairs

BRITISH COLUMBIA

The Hon. W.R. Bennett
Premier

The Hon. K. Rafe Mair
Minister of Consumer and Corporate Affairs and
Chairman of the Cabinet Committee on the Constitution

The Hon. Garde Gardom
Attorney General

The Hon. Jim Nielson
Minister of the Environment

PRINCE EDWARD ISLAND

The Hon. W. Bennett Campbell
Premier
Minister of Finance

The Hon. John H. Maloney
Minister of Education and
Minister of Industry and Commerce and
Minister of Development

SASKATCHEWAN

The Hon. Allan Blakeney
Premier

The Hon. Roy Romanow
Deputy Premier and
Attorney General

The Hon. Walter Smishek
Minister of Finance

ALBERTA

The Hon. Peter Lougheed
Premier

The Hon. Lou Hyndman
Minister of Federal and Intergovernmental Affairs

The Hon. James L. Foster
Attorney General

NEWFOUNDLAND

The Hon. Frank D. Moores
Premier

The Hon. C. William Doody
Minister of Intergovernmental Affairs

The Hon. T. Alex Hickman
Minister of Justice and
Minister of Finance

The Hon. Brian Peckford
Minister of Mines and Energy

SECRETARY

Henry F. Davis
Canadian Intergovernmental Conference Secretariat

APPENDICE B

DOCUMENT: 800-8/002(1)

CONFERENCE FEDERALE-PROVINCIALE
DES
PREMIERS MINISTRES
SUR LA
CONSTITUTION

PARTICIPANTS

Premiers ministres et Ministres

Ottawa

Les 30 et 31 octobre et le 1er novembre 1978

CONFERENCE FEDERAL-PROVINCIALE DES
PREMIERS MINISTRES

Les 30 et 31 octobre et le 1er novembre

Ottawa

1978

Participants

CANADA

Le très honorable Pierre Elliott Trudeau
Premier ministre

L'hon. Allan J. MacEachen
Vice-premier ministre et
Président du Conseil privé de la Reine pour le Canada

L'hon. Jean Chrétien
Ministre des Finances

L'hon. Donald Campbell Jamieson
Secrétaire d'Etat aux Affaires extérieures

L'hon. Robert K. Andras
Président du Conseil du Trésor

L'hon. Otto Emil Lang
Ministre des Transports et
Ministre de la Justice et
Procureur général du Canada

L'hon. Jean-Pierre Goyer
Ministre des Approvisionnements et Services

L'hon. Alastair William Gillespie
Ministre de l'Energie, des Mines et des Ressources

L'hon. W. Warren Allmand
Ministre de la Consommation et des Corporations

- L'hon. James Hugh Faulkner
Ministre des Affaires indiennes et du Nord canadien
- L'hon. André Ouellet
Ministre d'Etat chargé des Affaires urbaines
- L'hon. Marc Lalonde
Ministre d'Etat chargé des relations fédérales-provinciales
- L'hon. Jeanne Sauvé
Ministre des Communications
- L'hon. Raymond Joseph Perrault
Leader du gouvernement au Sénat
- L'hon. J. Judd Buchanan
Ministre des Travaux publics et
ministre d'Etat chargé des Sciences et de la Technologie
- L'hon. Roméo LeBlanc
Ministre des Pêches et de l'Environnement
- L'hon. Marcel Lessard
Ministre de l'Expansion économique régionale
- L'hon. Jack S.G. Cullen
Ministre de l'Emploi et de l'Immigration
- L'hon. John Roberts
Secrétaire d'Etat
- L'hon. Monique Bégin
Ministre de la Santé et du Bien-être
- L'hon. Jean-Jacques Blais
Solliciteur général du Canada
- L'hon. Iona Campagnolo
Ministre d'Etat (santé et sport amateur)
- L'hon. Jack Horner
Ministre de l'Industrie et du Commerce
- L'hon. D.J. MacDonald
Ministre des Affaires des anciens combattants
- L'hon. G. Lamontagne
Ministre des Postes

ONTARIO

The Hon. William G. Davis
Premier ministre

L'hon. R. Roy McMurtry
Procureur général

L'hon. Thomas L. Wells
Ministre des Affaires intergouvernementales

L'hon. René Brunelle
Secrétaire provincial du Développement des ressources

QUEBEC

L'hon. René Lévesque
Premier ministre

L'hon. Claude Morin
Ministre des Affaires intergouvernementales

NOUVELLE-ECOSSE

L'hon. John M. Buchanan
Premier ministre

L'hon. Roland J. Thornhill
Ministre du Développement

L'hon. Harry W. How
Procureur général

NOUVEAU-BRUNSWICK

L'hon. Richard Hatfield
Premier ministre

L'hon. Rodman E. Logan
Ministre de la Justice

L'hon. Jean-Maurice Simard
Président du Conseil du Trésor

MANITOBA

L'hon. Sterling R. Lyon
Premier ministre

L'hon. Donald W. Craik
Ministre des Finances

L'hon. R. McGill
Ministre responsable du réseau téléphonique du Manitoba
Manitoba Forestry Resources Ltd.
Manitoba Public Insurance Corporation

L'hon. G.W.J. Mercier
Procureur général et
Ministre des Affaires urbaines et municipales

COLOMBIE-BRITANNIQUE

L'hon. W.R. Bennett
Premier ministre

L'hon. K. Rafe Mair
Ministre de la Consommation et des Corporations
Président du Comité du cabinet sur la Constitution

L'hon. Garde Gardom
Procureur général

L'hon. Jim Nielson
Ministre de l'Environnement

ILE-DU-PRINCE-EDOUARD

L'hon. W. Bennett Campbell
Premier ministre et
Ministre des Finances

L'hon. John H. Maloney
Ministre de l'Education
Ministre de l'Industrie, du Commerce et
Ministre du Développement

SASKATCHEWAN

L'hon. Allan Blakeney
Premier ministre

L'hon. Roy Romanow
Premier ministre suppléant et
procureur général

L'hon. Walter Smishek
Ministre des Finances

ALBERTA

L'hon. Peter Lougheed
Premier ministre

L'hon. Lou Hyndman
Ministre des Affaires fédérales et intergouvernementales

L'hon. James L. Foster
Procureur général

TERRE-NEUVE

L'hon. Frank D. Moores
Premier ministre

L'hon. C. William Doody
Ministre des Affaires intergouvernementales

L'hon. T. Alex Hickman
Ministre de la Justice et
Ministre des Finances

L'hon. Brian Peckford
Ministre des Mines et de l'Energie

SECRETARE

Henry F. Davis
Secrétariat des Conférences intergouvernementales
canadiennes