

9:01 a.m.

Saturday, June 1, 1991

[Deputy Chairman: Mr. Schumacher]

MR. DEPUTY CHAIRMAN: The committee will come to order, please. It's after 9 o'clock, and we do have a very full schedule for the day. It's always a concern, of the Chair at least, that every person who has made arrangements to present should have the opportunity of doing so, and if we don't make the best use of our time, some people might be deprived of their right of expression. We wouldn't want that to happen. On behalf of the Alberta Select Special Committee on Constitutional Reform I welcome you all here this morning.

Just in order to get the proceedings under way, I will introduce the members of the committee that are with us this morning. On my far left is the newest member of the Alberta Legislature, Mr. Barrie Chivers, the MLA for Edmonton-Strathcona; our administrator, John McDonough, is between him and the Hon. Dennis Anderson, the MLA for Calgary-Currie. My name is Stan Schumacher; I represent the Drumheller constituency. On my right is Nancy Betkowski, the MLA for Edmonton-Glenora, and on her right is Sheldon Chumir, the MLA for Calgary-Buffer. We want to say welcome to all of you. We appreciate your participating in this process to consult Albertans with regard to how they feel about the nature of our country and the place of Alberta in that country as it may develop in the months ahead.

Our first presenter this morning is Sheila Greckol. The committee would invite Sheila to come forward, and we would say good morning and welcome.

MS GRECKOL: Good morning and thank you.

MR. DEPUTY CHAIRMAN: I should say that the general format is that we have 15-minute segments. While we don't have an egg timer like the other committee does, we like to stay as close to that as possible. If presenters want to have dialogue with the committee, they should try to leave a minute or two after their presentation.

Thank you.

MS GRECKOL: I assume someone will ring a bell when my time is up. I tend to go on.

MR. DEPUTY CHAIRMAN: Thank you for warning me.

MS GRECKOL: All right. First, I'd like to thank you for the opportunity to present some thoughts on constitutional issues which I believe should be considered in the next round of constitutional discussions. I intend to touch on two areas this morning. The first is the area of collective rights, and the second is the importance of maintaining a strong federal state as the essence of Canada.

Dealing first with the issue of collective rights. In the past two to three decades in Canada, Parliament and the provincial Legislatures have expressed the will of the people to provide extensive legislative protection to individual rights. Human rights codes have been passed in each provincial jurisdiction and in the federal sector protecting, to a greater or lesser extent by province, against individual discrimination in a broad range of human endeavours. The courts have generously interpreted such protections of individual rights and have thus played an important role in the shaping of the Canadian tradition of a pluralistic and multicultural society. In 1982, as this committee is no doubt

very familiar with by now, the Constitution was amended with the enactment of the Charter, and to the joy of some and the fear of others, individual rights and freedoms have again flourished through judicial interpretation, most notably in cases of the state against the individual, otherwise known as the criminal law.

Collective rights, on the other hand, or the freedom to do as a group that which you can do as an individual, have not fared so well. It is my submission that there is neither logical nor moral reason to deny constitutional protection to collective rights. After the Charter was enacted in 1982, several public-sector trade unions from the province of Alberta brought a Charter challenge against this government's legislated prohibition against the right to strike. The argument was that the Charter guarantee of freedom of association meant that conduct which was not prohibited for an individual could not be prohibited for the group. Since it was not and could not be prohibited for an individual to withdraw her services – that would be slavery – the guarantee of freedom of association meant that governments could not prohibit withdrawal of services for the group. Freedom of association meant at minimum the freedom to do in concert that which one is free to do alone; therefore, the right to free collective bargaining including the right to strike was constitutionally protected by the Charter.

The Supreme Court rejected these and other related arguments and narrowly interpreted the guarantee on the premise, among other things, of legislative deference – that is, the province should be making these decisions – and found that at best the Charter protected the mere coming together or trappings of association. As a result, collective rights of members of trade unions and other groups in our society are based on legislative policy, not fundamental constitutional freedom. What could be more fundamental to freedom than the inherent right of a worker to join with coworkers in their refusal to continue to work in an effort to achieve fair terms and conditions of employment? In practice, the denial of this freedom creates a hopelessly imbalanced collective bargaining playing field and breeds frustration and anger and precipitates unlawful activity. History tells us that workers will exercise their freedom to strike regardless of the government's economic agenda.

The absence of a constitutionally protected freedom to strike means that one day this government, should it survive into the next decade, will have to put nurses and social workers in jail for flagrantly disobeying the law, liberated as they now appear to be from the self-image imposed by the patriarchy and certain to go to the wall yet again for the terms and conditions of employment that they believe are their right. Such a fundamental right as free collective bargaining ought not to be left to the vagaries of a particular provincial government but ought to be accorded constitutional status and ought to be brought to the table in the next round of constitutional discussions.

The second area which I wish to talk about this morning is the importance of maintaining a strong federal state as the essence of Canada. My vision of Canada is a united Canada with a strong federal government that yet makes accommodation to meet alternative views of Canada held by other groups of Canadians such as aboriginals and French Canadians. Even as Quebec has vehemently made its case for a much larger share of provincial power, the Premier of this province has made no bones about his view that Quebec can basically have anything it wants so long as Alberta gets the same share of power from the federal government. Mr. Getty does not speak for me nor for any Albertan that cares deeply about the survival of Canada as

we know it. Such a parochial determination to grab a larger share of the federal powers that unite this country is, I submit, treacherous to the basic values of Canadians.

Canadians want a national transportation and communications network uniting the country. Canadians want the CBC and Petro-Can and Air Canada and the Canada Post offices, which are the focal point of life in every small community across the country. Canadians want a social services net, a national health care program, unemployment insurance, and the Canada pension plan. Canadian women do not want control of their constitutional right to reproductive freedom subject to the fundamentalist religious views of a Premier Bill Vander Zalm, as we saw in British Columbia. Neither do Albertans want our constitutional right to medical treatment for, say, mental health problems here today and gone tomorrow depending upon the economic priorities of the provincial government. On these important matters we need the leavening of extreme regional views by the election of a national government with very strong powers.

We do not need the national shame that is the way of life in the United States, where abject poverty lives side by side with sumptuous wealth and where there is a patchwork quilt of the provision of basic needs across the country. Rather, we should look towards the enshrinement of a social charter to guarantee equal access across the country to the social services net which has become part of the very fabric of Canadian life. The absence of these guarantees will have a disproportionate impact upon women, who form the large majority of single-parent families in this country and who bear the large portion of the burden of poverty in Canada. We need our historic and cherished Canadian institutions, which the evidence suggests we will not have without a strong central government and without which Canada cannot survive.

Those are my submissions, unless there are any questions.

MR. DEPUTY CHAIRMAN: There will be some questions. Thank you.

Barrie.

MR. CHIVERS: I think I'll let the other members of the committee have a go at Sheila since I'm kind of closely connected with her.

MS GRECKOL: Familiar with my views.

MR. DEPUTY CHAIRMAN: Nancy.

MS BETKOWSKI: Thank you very much for your presentation. I wonder if we might have a copy. I'm not as familiar with the individual/collective legal arguments, and I'd really appreciate a copy of your submission if that's possible. I've taken notes.

9:11

MS GRECKOL: Sure.

MS BETKOWSKI: My question was with respect to your second point, on a strong federal government. I don't question that. I certainly think we need a strong federal government. I guess my questions to you are twofold. First of all, do you believe in special status for Quebec, which you appear to be arguing for? I don't know if you meant special status for Quebec or equality amongst the provinces with respect to provincial powers.

My second question is with respect to federal standards, which are national standards, which I also think are very important. Yet right now in the health area, which you highlight, the federal government has cut back in health even though they have set the standards. The provinces have no power to say, "Don't do this," other than to say so, and I wonder how you juxtapose those two views.

MS GRECKOL: The first question, with regard to special status for Quebec. I believe that in the negotiating process which will ensue, there are some areas in which, by virtue of the differences of Quebec, the cultural and linguistic differences and the different history of Quebec, there will have to be special accommodations made. For example, in the area of immigration, which has been traditionally a federal power, it may be that a concession has to be made to Quebec because of its unique physiognomy, if you will, in order to ensure that it has the ability to continue to live and exist as it has historically; that is, as a distinct cultural entity. Linguistics would be another obvious point. So within some areas there's obviously room, I believe, for asymmetrical federalism or for particular accommodation to Quebec. Within some of the subject matters which I've covered I believe there is far less room for movement, because if you chip away at national standards in favour of one group of constituents, then the basic premise is gone.

With respect to the health area, what I advocate for the area of health, as well as the other social services, is that national standards continue to be set at least to the extent that they are by the federal government, which brings us to the issue of funding. As the minister well knows, no doubt the issue of funding is very dependent upon the kinds of negotiations that go on generally with regard to the budget and the transfer payments between the provinces and the federal government. But in health, as in any area of social services, the bottom line is: what are the spending priorities of the provincial government, given X amount of dollars from the federal government? You have to decide, it seems to me, as a province whether you're able to negotiate funding to a certain level from the federal government. It may be that you have to supplement that at the provincial level, and then it becomes a question of prioritization within the province. Are you going to, for example, continue on the present course of what I have been known to call corporate welfare or are you going to start to put money into places where it's needed? I've already highlighted, as for example, the very great concern that some people in the community have over mental health services.

MS BETKOWSKI: I guess the only point I'm making is that a national standard doesn't guarantee a national program, as we've seen by cutbacks with the federal resources. What I'm struggling with is not knowing how those moneys are going to come from one year to the next. A breaking of contract: what recourse does a province have with the jurisdiction over health to that federal government for clawing back. I mean, it brings the whole essence of national standards to how do we work it.

MS GRECKOL: Speaking of claw-backs, what happens is the federal government decides that the provinces are not going to get funded to the level that they have. That means that across the country, in theory, there's going to be a lowering of national standards. Then it's a question for the province as to whether or not they're going to elevate those standards again. We know from the recent claw-backs by the provincial government in things like seniors' benefits that people have to make do with

the resources they've got and have to prioritize within their budgetary framework. Insofar as we're unable to persuade the federal government that its priorities should be health and social services, the provincial governments have to step into the breach, but in any event, we have at minimum standardization across the country. Speaking for myself and I believe a large portion of Albertans, I would far rather throw my lot in with the federal government as it has historically performed than with the vagaries of any particular provincial government, such as what we've seen occur in the province of British Columbia.

MS BETKOWSKI: Okay. Ms Greckol, my only point would be that if we had thrown our hat in with the federal government this year, we would have seen a decrease in health support for Alberta, not a 10 percent increase. Thank you.

MS GRECKOL: I understand that.

MR. DEPUTY CHAIRMAN: Before I recognize Sheldon, the Chair has been remiss in not recognizing a very important person, and that's the MLA for Edmonton-Highlands, who is joining our committee. We want to say we're very happy to have Pam Barrett with us for the remainder of our work this week.

MS BARRETT: I've switched committees, and I apologize for being late. This hotel is in the riding I represent, and I've spent about seven or eight minutes on the third floor looking for everybody. I guess I have to spend more time in the Hilton, but glad to be with this committee. Thanks.

MR. DEPUTY CHAIRMAN: Well, it's nice to have you with us, Pam.
Sheldon.

MR. CHUMIR: Thank you very, Sheila. I'd like to just explore a little bit with you the issue of collective rights, because as you noted, our society traditionally and through the Charter has focused on individual rights. As you know, from time to time collective rights can come into collision with individual rights. The most pertinent recent example would be the issue of the distinct society clause in the Meech Lake accord, which was strongly opposed by many groups on the basis that that would give to Quebec the power to legislate in respect of their language and cultural aspirations, perhaps at the expense of women's rights with respect to reproduction, possibly the English-Canadian language rights. What I would like to know is: are you placing a special claim on collective rights in the field of labour, or are you arguing for more focus on collective rights generally? How do you deal with the collision issue; which do you give priority to when they collide with individual rights?

MS GRECKOL: You're probably more familiar with the constitutional drafting work than I am, but obviously I would believe in a so-called freedom of association – defined differently of course, because that failed us in the Supreme Court of Canada – which would be general in nature and would have of course as one of the groups to which it would apply the trade union movement.

In relation to the collision of individual rights and group rights, it's sort of been a case-by-case kind of scenario, and the defence provisions in the Charter, as in human rights legislation, would come to play in terms of protecting the rights of individuals when the rights of the group are in danger of overrid-

ing those individual rights. I'm trying to think of a specific example that might more clearly enable me to answer your question.

When we speak of trade union rights and free collective bargaining, if, for example, the right to free collective bargaining and the right to strike in the hospital industry was one of the issues on the one hand and on the other hand was the right of the individual to have health care services, there would be a collision of rights. If it was amenable to Charter treatment, which of course it isn't, then there would be a balancing by the judiciary as to which right ought to prevail and which right ought to be constitutionally protected in the final analysis. It's not been an issue in our history of collective action in this province, because in fact each time there's been a strike in the hospital industry, ironically mortality declines because of fewer numbers of people in the hospitals and so on. It hasn't proven to be a problem through a history of – I lose count, but I think five – nurses' strikes. I'm struggling to find an example that might actually answer your question, but that's perhaps as close as I can come.

MR. DEPUTY CHAIRMAN: Our time has expired, but Dennis has twisted the Chair's arm. Briefly, please.

MS GRECKOL: I warned you that this might happen.

MR. ANDERSON: Thank you, Mr. Chairman. Sheila, just a quick follow-up on Nancy's questions. I'm finding some incongruity in having the federal government establish the standards but not having responsibility for the payment, taking the money out of the province via the tax system yet not giving the resources back. Is there not a better or more efficient way of dealing with that: having provinces collectively establish standards, required to do so maybe by the Constitution, and therefore still having their taxing ability to carry out those standards? I just don't know how you give the responsibility to one and the requirement to carry it out to the other without the ability to meet those needs financially.

9:21

MS GRECKOL: Historically, as we know, the federal government has established the standards, for example, in health care and through transfer payments has been paying the lion's share of them. If the level of standards – I think I tried to make this point previously – is to diminish because of lack of resources from the federal government, then I suggest at some point, if in fact the provincial government doesn't march in and start to fund and make up for the imbalance, we're going to have the response from the people across the country, "Hey, we want to elevate those standards." I don't see an incongruity there. I think there can be a synthesis between what the federal government provides and what the provincial government is prepared to top up. If the people are not happy with the minimum level of standards nationally, then there's going to be a reaction at the election.

Your suggestion to have the provinces collectively establish standards – sir, I point you to the Meech Lake debates and rest my case. The ability of the diverse regional parties to have the government and various provinces across the country come together and actually agree on what everyone across the country should have I suggest is not a possibility. I mean, how will you have somebody like Bob Rae, responsible for the government in Ontario and having a certain position on health care and women's rights in that province, meeting the mind of a Bill

Vander Zalm from British Columbia? I suggest it's not a possibility, whereas when you have the entire country casting ballots, electing a government that goes to Ottawa, you have a necessary leavening of those extreme views and have what we've had in this area, I think rather successfully, over the last large number of years in the provision of social services.

MR. ANDERSON: I just say it's easy to have a leavening of views if you don't have to attach the dollars to them and can take them from others at will.

MR. DEPUTY CHAIRMAN: This has stimulated another question. Pam, briefly.

MS BARRETT: Thanks. It will be short. Do I understand correctly, then, that what you're saying is that a social charter in the Constitution would have the highest assurance of funding for the programs you call for as opposed to a policy set by either federal or provincial governments?

MS GRECKOL: Yes, that's what I'm advocating, that a social charter which guarantees these basic necessities be provided to Canadians, be elevated to the level of a constitutional guarantee.

MS BARRETT: That means, then, that the obligation of the government is financial as well as lip service. Is that what you're getting at?

MS GRECKOL: I would so argue.

MS BARRETT: Okay. Thanks.

MR. DEPUTY CHAIRMAN: Thank you very much.

Our next presenter is Marie Gordon. I invite Marie to come forward, please. Good morning. Welcome.

MS BETKOWSKI: I'm just looking at the other name on the other side of your card. You would think we'd have . . .

MR. DEPUTY CHAIRMAN: We're running out of material.

MS GORDON: Eleanor Kelly. Is she a movie star or something?

MR. DEPUTY CHAIRMAN: No, she's from Red Deer.

MS GORDON: Thank you, Mr. Chairman. Like Sheila, I'll try and watch my time. I'm here as an individual to present some of my personal views on constitutional reform, keeping in mind that my perspective today and the points I'd like to raise have to do with women's concerns. I'm an active member of the Women's Legal Education and Action Fund, the National Action Committee on the Status of Women, and the National Association of Women and the Law.

As I thought about my submission to this committee, I took a look at the discussion paper from the Constitutional Reform Task Force of Alberta. I found it amazing that nowhere in that discussion paper was any space devoted specifically to the concerns of women in the constitutional reform process, and I feel the need to speak about that because it's something dear to me. In the Meech Lake process, it was in fact prominent women's groups who spoke loudly about ensuring that constitutional changes have a positive or, at the very least, not a negative impact on the gains women have made over the years

in Canadian legal history. I think Ann McLellan in her information paper done for the advisory council points out some reasons why we're concerned about women's interests in constitutional reform. Firstly, we as a gender continue to receive less money for the work we do across the country, we continue to be the primary care givers to our children, we are still subjected to the risk of widespread sexual abuse and violence, and our voices are still not heard in the corridors of power.

I want to address three basic issues. First is my concern about rights in the Canadian Charter of Rights and Freedoms and how constitutional reform might alter that; secondly, to talk about some concerns about decentralization; and thirdly, to talk about my feeling for a need for some guarantee of full participation of women in the political process.

Women really have only recently achieved constitutional gains and recognition, the hard-fought rights contained in sections 15 and 28 of the Charter. Those hard-won rights are very precious to us women, because it was through the efforts of many women's groups and organizations such as LEAF and other equality-seeking groups that the Canadian courts extended a broad and liberal interpretation to the gender equality sections of the Charter. The decision in the Law Society of B.C. versus Andrews, in which LEAF had a very prominent intervenor role, made it clear that our courts are going to use the Charter as a positive and progressive tool to ameliorate the situation of historically disadvantaged groups.

The fact that constitutional reform may involve changes to the rights guaranteed to us in the Charter I think concerns all of us. There have been discussions since 1982 about, for example, the possibility of entrenching property rights in the Constitution. Women traditionally have never been property owners, and their interests are neither enhanced nor protected through this proposed amendment. It's taken years for women to achieve rights under matrimonial property legislation to ownership of property. We're concerned that entrenchment of property rights does nothing to further women's rights and in fact might be invoked to challenge women's claims to property in common-law unions and marriages, challenges to real property, to pension and other benefits on marriage breakdown, and this says nothing about the possible impact of the entrenchment of property rights on environmental protection issues, for example. As Ann McLellan has said in her paper, the entrenchment of property rights would indeed disproportionately benefit men, who today are still the owners of most property.

Similarly, I strongly oppose the entrenchment of any fetal rights in the Constitution, however unlikely that possibility may be in the wake of numerous court cases in Canada. Women themselves have only recently achieved constitutional rights to equality, and the idea of limiting a woman's rights over her own body and potentially extending constitutionally protected rights to the fetus would invite a plethora of litigation initiated by strangers challenging women's reproductive autonomy, something women still have to fight for in reality as a full human right.

There are rights that I strongly believe should be extended. Canadians were promised years ago by then Justice Minister John Crosbie that the federal government would add sexual preference as an enumerated ground of prohibited discrimination under section 15 of the Charter. Given some of the flagrant incidents of discrimination on the basis of sexual orientation that we've recently seen, the government should live up to its promise to ensure that this ground is included in the Charter forthwith.

If the Charter is to be reformed and improved, then perhaps the rights most desperately in need of recognition and protection are rights of Canadians to proper health care and education:

economic protection of single parents, for example, most of whom are women, universal child care, housing, and possibly the right to an annual guaranteed income. This might be achieved through the adoption of a social charter, an innovation that would do a number of things. Firstly, it would give us a guarantee that decentralization of programs and services would not reduce our basic entitlement to them; and secondly, if it included a right to a guaranteed minimum income, it might force provincial and federal governments to escape, to get out of the web of incomplete and overlapping social welfare programs.

Secondly, I'd like to talk about decentralization. I think women have more to fear than anyone from decentralization, from a wholesale decentralization of powers. I'm not arguing against decentralization of powers in some areas. Please understand that's too simplistic an argument. I understand we are restructuring the division of powers, and that is inevitable. But I'd like to tell you that we really do have concerns based on the historical experience of women, who have not necessarily been able to look to any specific government for protection but on average have looked to federal and national governments for assurance of some standards to take us out of the precarious reliance upon parochial, regional, individual, local entitlements or positions of governments.

9-31

The current constitutional discussion really hinges on how much decentralization will take place and not whether decentralization of powers is a good idea. Women have always looked to strong central powers in the areas of health and welfare spending policy as well as, for example, uniform divorce laws. It's crucial that we have continued jurisdiction in that area, that doesn't devolve to the provinces. Women, who are primary caretakers, have been promised – Canadians, not just women – a national day care program from the federal government, and while we may despair of this government's intention to follow through with that promise, we don't doubt that our national interests are best served by a central focus on any such program rather than simply a local, regional, parochial jurisdiction. We have been subjected to the threat of deinsuring of certain medical services which most clearly impact on us as women: provision of birth control information, sterilization, IUD insertion, et cetera. B.C. women saw their provincial government attempt to deinsure abortion services, and it was only the risk that the proposed legislation would disqualify the provincial medical care scheme from federal funding which resulted in the court decision striking down the proposed legislation. I abhor the notion of eroding or weakening in any fashion the medicare system that we as Canadians have developed, and I believe the wholesale devolution of jurisdiction in this area to the provinces will spell the end to a cherished system of health care that still serves us well and which women depend upon for their own reproductive health care as well as the care of their children.

At the time of the Meech Lake accord many women expressed concern about the possible effects of the accord, which intended to place limitations on federal spending power. Their concerns focused on those proposals which would have permitted provincial governments to opt out of national shared-cost programs if they carried on a program or initiative that was compatible with national objectives. We still have concerns – I still have concerns – about the lack of federal government power to curb unacceptable provincial variations in coverage and accessibility. At the very least, we need to ensure that the vague wording of national objectives, as it was then referred to in the Meech Lake accord, is replaced with something meaningful like

national standards to be set and enforced by the federal government. Future cost-shared programming arrangements between the provincial and federal governments should embrace the principles in the Canada Health Act: universality, access, comprehensiveness, accountability, portability, and public administration.

Thirdly, it occurs to me and many of us that to date the voices of women have been sadly lacking in the political process as well as in the courts. It's only been a recent development that women's voices have been heard, and those are voices that speak to the unique experiences and perceptions of women in Canadian society. So in any constitutional reforms, I feel as much attention should be paid to women's grievances about underrepresentation in the process as is paid to concerns about regional underrepresentation. Much time will be spent by this committee – and already has, I'm sure – addressing and listening to concerns of those who feel the west has suffered regional discrimination. Imagine how that sounds to those of us who form 52 percent of the population but in this era of full equality hold only 13 percent of the seats in the federal Parliament, 12 percent of the seats in the Senate, 15 percent of the seats in the Alberta Legislature, and we have three members, 33 percent, sitting on the Supreme Court of Canada. It still isn't enough. So I think any constitutional reforms aimed at improving representation of the population in federal institutions should at the very least ensure that women comprise one-half of those sitting in the Senate, in provincial Legislatures, in Parliament, and in the courts.

I've really only addressed three areas this morning, and I know there are more. I'd like to summarize by saying that I believe all constitutional amendments have the potential of profoundly affecting women's lives. In 1867 the Fathers of Confederation shaped the Constitution. It's no wonder women weren't at that table. We were then denied the right to vote, to hold public office, or to enter professional occupations. In 1929 the federal government opposed the court application by the Famous Five to be considered persons under the BNA Act and forced women to seek redress from the Privy Council, and in 1982 the first ministers failed to ensure that equality guarantees for women were included in the constitutional reform package. It was only after intensive lobbying by concerned women's groups that section 28 of the Charter was achieved, preventing the use of the override clause on gender equality rights.

Frankly, most arguments in the courts for equality for women are met by resistance from governments, so it's no wonder women remain vigilant about their hard-won rights and are concerned about the impact of constitutional arrangements that might impair government services or programs they so clearly rely upon and which sometimes are the only things that ameliorate their disadvantaged status. I hope when this committee makes its recommendations, it will be ensuring that the concerns of women are given prominence as well as thorough consideration.

Thank you.

MR. DEPUTY CHAIRMAN: Thank you very much, Marie. Barrie.

MR. CHIVERS: Thank you, Mr. Chairman. Marie, over the week we've heard many submissions with respect to the relative merits of constitutional entrenchment of fundamental rights and freedoms as perhaps juxtaposed with the ordinary statute sort of formula, such as a bill of rights provincially and federally and even, on one or two occasions, the suggestion that we should

have an unwritten Constitution. I'm just wondering what your views are as to the relative merits of constitutional entrenchment as distinct from one of those other forms.

MS GORDON: Well, I'm just a poor old divorce lawyer; I'm not a constitutional lawyer. But something has educated me since 1985 about the need for clearly entrenched rights that I didn't understand before. I think it has to do with what I have seen happening in the courts through various challenges, through constitutional cases that have had a profound impact upon the actions of government, upon deterring governments from introducing legislation that would offend those guaranteed rights in section 15. I think it's really had a profound impact on all of us. LEAF, for example, has been involved in court cases that have meant a great deal to legal precedents. The fact that things cannot be given and then taken away, that there is a building up, an understanding of how rights are defined, is crucial to our identity as women and the equality guarantees.

So I feel so strongly, having seen the progress of litigation under the Charter since 1985, which has been a mixed blessing. I mean, in many ways the Charter has been used against women as much as for women, so it has not entirely been a blessing for women. But on the whole I am really devoted to the idea of entrenchment of certain rights, away from the vagaries of Legislatures coming and going.

MR. CHIVERS: Thank you.

MR. DEPUTY CHAIRMAN: We have time for one more question.

Dennis.

MR. ANDERSON: Thank you, Mr. Chairman. As usual, there are a number of areas I'd like to explore, but in particular the suggestion that we somehow guarantee a percentage of women or presumably men in Parliaments or Legislatures. How would one accomplish that without taking away the right of women and men to vote for whom they want where they want? Would my constituency be required to elect a woman or a man? Would we split those in half? How could that be accomplished?

MS GORDON: I wish, Mr. Anderson, I had some easy answers to that, because the process of arriving at fair representation in the workplace as well as in the Legislature has been a difficult one. I think the same tests and the same use of creative thoughts that can come to bear on how we ameliorate regional underrepresentation should be used to improve the representation of women, so if the constitutional reformers are saying we must find a way to ensure that people in rural Alberta have a strong voice, we must also in that same process say that we must not forget that women are really underrepresented. How can we creatively say that? I mean, we just passed a law saying that by the year 2000 half of the people on the Supreme Court of Canada will be women. Now, that's easy to do and can be done. We should ensure that national women's groups have a say, have some input on, for example, the appointment the same way the Canadian Bar Association does, for example. In the Senate we may simply have to work on creative alternatives.

I don't have any easy answers. But I really find that we have sat back complacently and allowed this situation of 10 to 15 percent representation to exist, and haven't either as a federal government – the federal government hasn't, for example, given any initiatives, any financial offerings to encourage women to seek public office, which is often a real deterrent for many

women who don't have access to the corridors of power and the usual bag money available either to seek nominations or to win nominations. I think there just has to be some creative thought happening on this and a commitment. First and foremost, a commitment; the mechanisms will work out. We've got lots of people who can sit down and brainstorm on it, but there has to be a commitment to make this a reality and to believe that that's something that is worth while for us as a country.

2:41

MR. ANDERSON: Would you extend that to other parts of our society who feel they should have representation? I think of the aboriginal people, particularly.

MS GORDON: Yes, I do, indeed. I think that's extremely important. It's not going to happen if we don't make it a commitment. It's simply not going to become a reality, and it's so important that it is now, not when we're all dead and gone, but rather now.

MR. DEPUTY CHAIRMAN: Thank you very much, Marie.

MS GORDON: Thank you.

MR. DEPUTY CHAIRMAN: Our next presenter will be Dennis Herbert.

Good morning.

MR. HERBERT: Good morning.

MR. DEPUTY CHAIRMAN: Welcome.

MR. HERBERT: Mr. Chairman, members of the committee, ladies and gentlemen, I'd like to outline some proposals to you to amend our Constitution and ensure that there are equal rights and responsibilities for Canadian citizens regardless of sex. I'd like to cover some of the ramifications of the very basic proposals which were mooted at Meech Lake, and I would also like to suggest to you right now that the proposals mooted at Meech Lake were not to amend any Constitution. The British North America Act was not a Constitution. It was an enactment to bring together a rather large area of a country: a political union, solely. I will come back to that in a few moments.

We've listened to some very grand proposals that have been made to enhance provincial governments' powers, but in all of these proposals there has not been anything about the rights of individual Canadian citizens. The Meech Lake proposal was defeated for that very simple reason. It went against the rights and the wishes of Canadian citizens. I would like to suggest to you that we certainly do not need another fiasco like Meech Lake.

I'd like to start, first of all, with the definition of a Constitution. A Constitution is a set of rules, a set of governances, a basic group of principles or laws under which a state, an organization, is organized. It outlines the rights, the responsibilities, and the limitations of those people who subscribe to that Constitution. Now please note: the rights, responsibilities, and limitations of the people who subscribe to it. I'm not talking about governments; I'm talking about the individuals. It also means there are equal rights and equal limitations for all, for every person under it. They are exactly the same across the board. That is why I suggest to you that we are not trying to amend a Constitution by trying to amend the British North America Act. We have never had a Constitution.

Our present Constitution, what people have misnamed the British North America Act, did not deal with human rights. We have had enactments, and people have misconstrued the British North America Act and human rights legislation. I think, perchance, you might notice that in discussing Meech Lake and the proposed Constitution, we have totally ignored the rights of Canadian citizens. This is one of our very real difficulties because what it has afforded is a different interpretation in every province in Canada of any federal statutes which apply across Canada. Federal statutes apply to all citizens across our country, and they have been ignored, canceled, and so on. Provinces can use the notwithstanding clause, the opting out clause, to get out of federal legislation. Well, then, where do we have equal human rights for Canadian citizens across our country? We're denying human rights.

There's one other very insidious little point: we are now well on our way towards anarchy, to provincial autocracy across the board, because there is no common standard for our country. The opting out clause allows for all kinds of discrimination because there is nothing there that says provincial governments have to conform not only to the letter but to the meaning and intent of federal legislation. It allows them to do, as they say today, their own thing. It allows them to use their own population for whatever wishes they have, to override any rights the minorities have. It discriminates against a whole population, not just certain segments of it but the basic population of that particular province. It does not afford the same treatment. It allows for a multiplicity of rules and regulations and laws that vary from province to province. When we come to try and promote interprovincial economies, how do we do it? Last night on television the four maritime Premiers were just citing that they were going to try and break down their economy into a maritime economy rather than having the provincial barriers. But if we have an opting out clause, any attempt made by any central government is destroyed immediately.

Grants in lieu as an alternative. They are not an alternative, because grants in lieu allow provincial governments to do their own thing. We do not have the common rights across the board for all the citizens of our country. The grants would be administered by the province, and we have just listened to two speakers who have sort of re-emphasized that particular point: that we now have a provincial autocracy taking over rather than across the board.

The notwithstanding clause. That makes an absolute, complete mockery out of any human rights this country has, a complete mockery. How can you overturn the highest court of the land and go your own way? There is no way that we can administer anything under those circumstances. It means that each province is a law unto itself. It is not acceptable in a Constitution, which is a set of laws or governances which apply equally across the board to all citizens. The Supreme Court of Canada has now become a nonentity. Whether we have half of the members women or whether we have them all women, they have no power anymore because any province can say no. How do we control our situation? We can't. Laws now become the whim of whichever autocrat happens to rule in any particular province.

The three things – the opting out, payments in lieu, the notwithstanding clause – deny any human rights legislation. Citizens are now unequal before the law and will become even more so because we cannot have the Constitution of Canada invoked anymore. It just doesn't work out that way.

9:51

No province should ever have the power of veto under any circumstances because what it tells me right now, the moment somebody mentions that particular word, is that you have your own hidden agenda. What is it you want to achieve? And you are afraid that you are going to lose your power. That's what the veto is. It's not for the good of anybody, but it is to gain control, and we have seen this operate so often all around the world. The veto just doesn't work. If we have a veto, then who controls the Canadian Constitution? It is not the individuals who are meeting to determine the Constitution. It is the individual who uses that particular veto. This is our problem. It discriminates against all the citizens of Canada, including the province in which the veto was instituted. So we lose out all the way around. It allows politics to enter into the constitutional rights of the individual citizen, and it abrogates the rights of all our citizens. Vetoes have never helped resolve anything. All they have done is to build up and ensure the rancour of the individuals and to delay any possible solution. It is not a useful mechanism under any circumstances.

The Supreme Court of Canada must be the final arbiter. There is no alternative. There are always going to be cases, litigation of all kinds, but somebody has to determine the limits, and it is the Supreme Court of Canada, which means the highest level within the country. If its rendered decisions can be brushed aside with a notwithstanding clause, then what's the use of it? It is just no use at all. There are going to be disagreements, but there still has to be conformity. In fact, my wife and I disagree quite often, but we've managed for 46 years to stay together, so I don't see why we can't have the same thing in our country here.

Without adherence to the judgments of the Supreme Court we have provincial autocracy. They are the people who are the controlling influences. The rule of law has now disappeared because the law is no longer applicable. Any relationships are gone right now, and the problem is, of course, that we're going to have dictatorships built up.

Equal rights are not possible under the dissolution of the powers of the Supreme Court of Canada. We need them to control federal statutes, provincial laws, and municipal laws. There has to be a limit somewhere, and this is the only place there is, but there has to be conformity whether we like the judgment rendered or not. We need them to establish precedents of laws. Which law does have priority? Which one is going to rule? The laws which affect all of the citizens of Canada cannot be made in the province of Alberta nor in the city of Edmonton. They can only be made in the House of Commons, and it is up to the Supreme Court to ensure that those laws which affect all people do and to make sure that those laws of the province of Alberta do not contravene federal statutes. It must be done to protect the rights of Canadian citizens, all the people of our country.

One of the things which has been most disruptive has been this idea of a distinct society. I would suggest to you that there are only two distinct societies in our country, the Inuit and the Indian people. The French, the English, the Ukrainians, the Russians are distinct in that their ethnic backgrounds are different, but the French Canadians are no more distinct than I am. We don't have a distinct society. In fact, it's quite a common society. It is only the Inuit and Eskimo peoples who are distinct societies. But – there's also another big "but" here – it does not mean that because somebody is a distinct society they can live outside the norms, the laws of Canada. Not by any

stretch of the imagination am I inferring that. If they are citizens of Canada, they must conform to the laws and accept the responsibilities of being citizens of Canada.

All our ethnic peoples, as I said, are not distinct societies. This is one of the problems. It was mentioned a few moments ago: how can we recognize distinct societies? The only way is the fact that they are particularly distinct. The rest of them have exactly the same laws, exactly the same privileges, exactly the same responsibilities as any other. This is one of the confusing things to me. On one hand, we have people claiming they are subject to discrimination, and five minutes later they want to be recognized as a distinct ethnic group. I'm sorry, but if you are a Canadian, you are a Canadian. What your forebears were has no influence. You are a Canadian citizen and as such responsible to Canada and nowhere else. It seems to be hard to get people to understand this idea. I don't quite know why, but they don't seem to want to accept the responsibilities of conformity to the laws of Canada, and this is one of our very real problems in trying to develop a new Constitution. We can't take the British North America Act and summarily change it and say, "This is the Canadian Constitution." We've got to redraft a whole set of laws, of ordinances, of governances.

Regional disparity has been discussed at length. One of the things we've got to recognize is that there's always regional disparity. There always seems to be regional disparity in the smallest country we have in this world. It's there. We can't do anything about it. We've got to learn to live with it. Some of the provinces have been gifted with ample natural resources, others without. Okay; this is regional disparity. It's predestined, but we can't do a thing about it. But we can still live within the laws of the country despite the fact that there is this economic disparity. It doesn't change anything at all. The laws are still there. People are still going to get along, but if we don't have these rights and responsibilities written into some kind of Constitution, unfortunately we are going to lose out.

MR. DEPUTY CHAIRMAN: Dennis, I don't like to interrupt, but we've gone past the time, and I would like to give you the opportunity to briefly make your points. If you could summarize them quickly, please.

MR. HERBERT: Right.

First of all, the British North America Act is not a Constitution, never was. What we have to do is write a Constitution which guarantees the rights of all Canadian citizens.

MR. DEPUTY CHAIRMAN: Now, Dennis, I thought you had some new points you hadn't made. I don't want you to summarize the points you've already made. If you could use this time to summarize the points that have not been made yet.

MR. HERBERT: First of all, provincial governments should be interested only in the administration of the federal and provincial enactments. Provincial governments have rather limitedly demonstrated an interest in the rights and responsibilities of people. No province should have the right of control over any interprovincial or international matters. That is the area of concern of the federal government of Canada, not provincial governments. The federal government speaks for Canada.

10:01

Finally, Mr. Chairman, one thing that I think we have to do to overcome the distrust which unfortunately has been built up in all our political systems in our country: we have to have a

referendum on a new Constitution to the people, because people do not trust politicians anymore. I'm afraid that this is a very common denominator in our country today. It must be a referendum. In that referendum there should be a paragraph, if you like, on how we elect our Senate. Our Senate should be elected on the basis of equal representation, and I do not mean pro rata; I mean equal numbers by each province in our country. If it's two, it's two for every province regardless of size. But please, Mr. Chairman, it must be the voice of the people who accept the Constitution, not our politicians.

Thank you, sir.

MR. DEPUTY CHAIRMAN: Thank you very much for a very thoughtful, stimulating, and provocative presentation. It's too bad that we don't have time to pursue it further.

MR. HERBERT: That's fine, sir. Thank you.

MR. DEPUTY CHAIRMAN: Larry Putnam, please. Welcome. Good morning.

MR. PUTNAM: Do you want to take a coffee break now?

MR. DEPUTY CHAIRMAN: No, we probably will not be having a coffee break.

MR. PUTNAM: You haven't had one yet?

MR. DEPUTY CHAIRMAN: No.

MS BETKOWSKI: We just sort of slip out and fill our cups.

MR. PUTNAM: Well, good morning. Just give me a minute to get organized here. I will try and charge through this. I know what it's like to sit through these types of things.

MR. DEPUTY CHAIRMAN: Well, that's not the problem. We do want to try to give everybody who wants to have a chance a chance to exercise it.

MR. PUTNAM: Actually, I appreciate that. I think it's vitally important in this particular area that you get as much input from the citizens of this province as possible.

Anyway, my name is Larry Putnam, and I was born and raised in this province. I've had the opportunity with the work that I do to travel outside this province. Actually, I've had job offers outside this province, and I've turned them down. I believe in this province, and I believe in the people in this province. I just wanted to give you a basis of where I'm coming from here. I would also like to mention that I do not belong to any political organization or political party. I come today as a private citizen. I think that's important, because I see on the agenda that there are people here who are representing special-interest groups. That's fine, but they're really pushing, in my opinion, a hidden agenda. You have to look through their presentations and try and see what they're trying to get at. I have no hidden agenda here. What you see in front of you is exactly what I have to say. I'm not here promoting one particular issue or one particular - well, I am, and we'll get to that in a minute.

It's also the first time that I've ever come out in public, other than small groups of friends sitting around various cocktails discussing things. I just want to make that clear, because I am taking the time to come out here to let you people know what I feel about this process that we're going through here.

I think the major problem with the Canadian Constitution is that it has become a political matter. The Constitution of Canada, or for that matter any Constitution of any country, is merely a piece of paper with letters written on it. What makes any Constitution a great document is that the people of the country have to believe in it. They have to buy into this thing. They have to stand behind it. I remember watching on TV the formal signing of the Constitution, and I thought: wow, what a great thing; now we have this proverbial stick in the ground with which to measure ourselves. I actually wrote away and got a copy of it. I read it, and I thought: here we are, all this eloquent speaking. It always has amazed me how people can turn English into bafflelegab, but that's another issue.

MR. DEPUTY CHAIRMAN: Our Minister of Consumer and Corporate Affairs certainly agrees with you. He has an unending battle for the cause of plain English.

MR. PUTNAM: Well, you get my vote, even if you're not in my constituency.

But after I read it, I said: well, this thing's got flaws; it's not a perfect document. I was actually quite depressed for a while. So I went back. I sat down and read it again, and I said: well, that's right; it shouldn't be a perfect document. It should be something that we can now build. We can take this document – call it a modified BNA Act, I don't care – and now we can make it a Canadian entity. We can truly make it a Canadian document, for the Constitution is not something that just sits there and lies there like a dead piece of paper; it's a living, breathing organism. I mean, we saw the Meech Lake fiasco. That was an attempt to modify the Constitution, and look how alive that was. It was every night on TV, for crying out loud.

Again I watched in horror. I was totally shocked when I saw the process that it went through when the Meech Lake accord was ratified by this province. I was stunned. That really for me started the downfall of this trust with our politicians. Here we had the Canadian Constitution lying there, and these people all of a sudden took it upon themselves to modify it. Not only that; they went ahead and they ratified it. They didn't even ask me. I firmly believe that somewhere along the path the politicians have taken it upon themselves to become nation builders. I hate to say it – what I'm saying? I hate to say this. I firmly believe that the politicians who run the province were elected to run the province. They were elected to build the damn roads. They were elected to run the schools. They were elected to run the health care systems. They weren't elected to build the country. It's not the Sir John A. Macdonalds or the Pierre Elliott Trudeaus, both great men in their time, but it's the citizens of this country, the people who came to this country, the people who grew up in this country, that make this country what it is.

I am sick and tired of politicians telling me what great leaders they are, how they single-handedly worked out a great deal for us, and how they are doing such wonderful things with our money. I don't need to be led, ladies and gentlemen. If anything, I am the leader electing the politicians and the people to run and administer this country. It's the people of this country who lead, not the Premiers and the Prime Ministers of this country, because we can turf these people out four years from now. It amazes me that people become politicians. At least I know how long my job's going to last. You guys are, you know, like, screw it up and you're out next week, kind of thing.

The politicians who are elected are hired. Really, if you look at it, you're elected, but you're also hired by the people for a period of time to run the country or the province or the

municipality. That period of time in some instances is very short. The Constitution of a country must and will outlast all of the politicians. Therefore, it stands to reason that the only way a Constitution should be changed is through the people of the country. After all, we were smart enough to elect the politicians; surely we are smart to know what is good for us.

The federal government. My position on the federal government is that there should be one strong voice for Canada, not 10 separate ones. Having said that, I believe that the federal government's role is to set policy and direction for this country and set up guidelines with which to administer those directions and policies. Medicare is a prime example of that. The federal government says, "This is the bottom line; here's the funding you shall provide, and if you don't, we will take away your funding." We saw that in B.C. where a political individual tried to force his own moral views on the entire population. I mean, that's just ludicrous. Thank God that sanity walked in, and they backed away from that. If we don't have these types of federal minimum levels, I can envision a time when people in the poorer provinces would flock to Alberta because we can afford doctors and they can't, or we can afford educators and they can't. That's fine. I happen to think that this is a wonderful province. I happen to think it's full enough, by the way.

10:11

The Senate. The Senate defies description. I cannot personally think of a better job. I mean, where does one find a job that pays great and requires that you don't have to show up for work? It was the job of the Senate to provide that sober last look at a piece of legislation, and the problem is that the Senate has become a last watering hole for who knows whom. We have to do something about the Senate. I am and was in favour of a triple E Senate. The problem I have is with equality. We had a lady here earlier telling us that equality was, in fact, that 52 percent of the Senators be female. Well, that's her definition of equality; that's fine.

I happen to believe that I would like to see an elected Senate. I would like to see a nonpartisan Senate. In other words, I think anybody should be able to run for this job. I don't think you should have to be a political group or party to get elected to it. I think that if we could get a nonpartisan and elected Senate, the equality would disappear. I am tired of the "leaders" of a political party standing up in front of their side of the House and saying, "We're voting against this Bill, even if . . ." or "We are voting for this Bill." The GST is a prime example of that. I attended several luncheons with my Member of Parliament, and he stood right up and said: "I'm going to vote for this Bill because it's good for Canada." One of the people in the back of the house said: "Who the hell is sitting in here? Americans?" We were Canadians telling this guy not to vote for it. We elected him, but he didn't represent us at all. So if we could get that nonpartisan issue away, I believe that the equality issue – because then it becomes a job of internally convincing you to vote for my Bill and I will vote for your Bill, et cetera, et cetera. I believe you get these little inner workings happening; that's how I envision the Senate. We've got to do something with it, and elected and nonpartisan is at least a step.

I also happen to believe that the relationship between the two levels of government must be redefined. I'm not naive enough to think that we're going to keep the Canadian levels the way they were. I happen to think that there is an evolutionary process going on, and I think that that's what's happening today. There must be more consultation between these levels of government. We can't have one government going off and doing

one thing, and the next thing you know the province of Alberta is setting up a trade representative in Hong Kong. Provincial governments are all doing this and the federal government is doing this, and then we've got 10 little offices all promoting their own little things. This just doesn't make sense to me.

I believe there should be annual, fixed-date – November 1, December 1, whatever it is – first ministers' meetings. I believe that these should be public. The reason I say they should be public is because then the people of this country get an opportunity to understand and see the opinions of the political Legislatures of those provinces on the topic at hand as opposed to this backroom dealing we always hear about and see. Then I in Alberta can see what the Premier in Nova Scotia thinks about a particular topic – aboriginal rights, for example – because everybody has a different view and everybody brings something different to the table. While it may look like a big political rally, I think it's important that we get these annual, that we get them public, so that the people can see. For all intents and purposes I should be allowed to put something on the agenda and go talk to these people about it.

I happen to believe that the areas of administration must be more clearly defined. Where do the government's areas of responsibility start, or more importantly, where do they stop? This definition would then apply to all provinces. No one province would be able to negotiate or demand preferential treatment. We should not be able to say, "We are going to control immigration in our particular area; the rest of the country can go do their own thing." Either the definitions apply to all or they apply to none. If a change is to be made to those definitions of areas of administration and responsibility, then it has to be voted on. It has to be unanimous with all 10 provinces, and then it applies to all 10 provinces. So if the province of Quebec wants to control their immigration, then they propose that change to the definitions of administration, and all of the other nine provinces say, "Fine, we'll look after our own immigration policy," done deal. But if two of them say no, then that's it; it doesn't go. Maybe it doesn't sound like a democratic solution, but it's important that the equality stay here. We can't have the federal government being one thing to one province and another thing to another province.

Aboriginal rights. I happen to believe that every person within this country has the right to be treated like a human being by all levels of government, and it is my belief that we have done a very poor job of this where the native people are concerned. It has always been my belief that when a person goes on welfare, then their children go on welfare and their grandchildren go on welfare, and the cycle is difficult if not impossible to break. But if a person has a feeling of self-worth, has the feeling of contributing, then that good will be conveyed to the children. For too long the levels of government have treated the native people like they were on welfare: told them what to do, how to do it. That cycle has got to end. So end it. It's a simple thing. I was listening on the radio coming in that the federal government forced the Kanesatake in Oka to hold a plebiscite to decide how the native people in Oka were to decide who were going to be their leaders. That's like me sitting down in front of your family and saying, "Okay, guys; this is how you're going to elect the head of the family." Well, it just doesn't work that way. Okay?

I want you to settle their land claims, and settle them now. What has gone on with the Lubicon is ridiculous. Consider it a done deal, and walk away. Hand them their land; hand them their title. If they throw it on the ground and say they want more, tough. It's theirs. But settle it. Disband the Indian

affairs bureaucracy, and do it today. Get rid of these people. I don't mean transfer them into somebody else's department. Get rid of them. I can't imagine a more inane or more wasted bunch of money than the Indian affairs bureaucracy. All these people do, as little as I can figure out, is hand cheques out. One person can sign a cheque. The computer prints them. You've got a whole bureaucracy sitting there.

The only stipulation I would place is that the native people have to become full and equal citizens of this country. If they want to say they have dual citizenship, if they want to say they're Canadian and Mohawk, I don't have a problem with that. But they've got to become equal, full-fledged members of this community. That also means there'll be no more government money. That's it, guys. I don't get it; they shouldn't. I also am prepared to agree to or negotiate some level of autonomy. I happen to see something like a municipality sitting out there where they could actually hire their own police force. I think there's a major cultural change here. We can't – and we've seen it – enforce our "white man's laws" on these people. They just don't understand it, for some reason. I don't pretend to understand why they don't understand it; it just seems not to work.

The Charter of Rights and Freedoms I happen to think is a wonderful piece of legislation. For the first time in our history we have a clear outline of where an individual's rights and freedoms are, but more importantly, we have a guideline for officials of the government. Governments can no longer tread like some huge elephant on an individual's rights. Each piece of legislation must conform to the Bill or it will be struck down by the courts. You have to have this guideline with which to pass legislation. All of us in our daily lives have measurements we judge ourselves and our communities against, and we have to have that, certainly within the Legislature. I've heard arguments that say that the Legislature is the highest court in the land and that once a law is passed, then that's the law, so how can it be argued. Well, I just can't disagree more. I can envision a time where the Conservative government, I'm sure, in the province of Alberta would dearly love to pass a law outlawing everybody else. But that's not right. Okay? Again, all Bills must have a measuring stick or a litmus test to see if they conform to what the whole of society wants. Certainly you can pass a Bill and then a society says, "No, we don't like that," and turfs you out three years later. That's not it. Anyway, I'll move along. That's enough on the Charter of Rights.

10:21

I happen to think that what's really wrong with the Canadian Constitution is the amending formula. I get back to this horror show I saw at Meech Lake; I was just stunned by that process. I'm going to skip over the main point here, and I'm just going to go into how I believe the Constitution should be changed. I believe anybody – anybody: myself, yourself, a group – should be able to put forth an amendment to the Constitution. If this document is mine, I should be able to change it. I then should take the amendment, plus a petition of at least 1 percent of the total Canadian population as of the last census date, and then would present it to the federal government. The petition is really a second chance, a second sanity check here. If we don't have the petition, anybody and every dog and cat could put together a change, and we'd have 4,000 changes on these things. But at least you've got some level of support behind your change. Then the next time the federal government holds a federal election, you simply put on the ballot: do you support this amendment, yes or no? Each province's ballots are then

totalled. If 51 percent of the people within the province of Alberta say yea, that's one vote. If seven out of the 10 provinces – and this happens to be in the Constitution right now – with a total of 51 percent of the population or more vote for the change, then it's a done deal. We now have an amendment. So we take the people of Alberta, vote on this amendment; we total it up. That's one vote. The people of Ontario vote on the amendment; we total it up. That's only one vote. They have now cast their vote.

I firmly believe that if we had pushed back, held a referendum – call it what you will – and said to the people of Alberta, "Do you support Meech Lake?" Meech Lake would have passed. If every province had done this, if every province had let the people of the province decide how that one vote is going to be cast . . .

Now, we've heard ongoing discussions on regional disparity. I mean, we're stuck with Quebec and Ontario's large population growth, but they've only got one vote, ladies and gentlemen. Ontario's got one, Quebec's got one, and even if they vote against the change and the other eight vote for it, that's still 51 percent of the population: we've got 'em.

The major problem I see with this is the territories. How do these people participate? I see them not, until they become full-fledged provinces, and once they do, then the numbers simply adjust accordingly. So if there were two provinces created out of the Northwest Territories, there would be now nine out of 11. We're simply stuck with this.

MR. DEPUTY CHAIRMAN: Well, Larry, we have gone over the time.

MR. PUTNAM: Yeah. I rehearsed this too. I am surprised.

MR. DEPUTY CHAIRMAN: We've heard another stimulating and provocative presentation, but we don't have any time to follow it up at the present time. So we'll say thank you in appreciation for you . . .

MR. PUTNAM: Well, thanks again. One last point: do listen to these people. They are coming before you, and it is a major process, on my part at least.

MR. DEPUTY CHAIRMAN: Thank you.

Our next presenter will be Clement Leibovitz.

MR. CHIVERS: Mr. Chairman, when each presenter comes forward, I wonder if we could just remind them – I'd ask that we could perhaps give them some idea of when their time is running out, because I feel I would like to have some dialogue, and I think many presenters would too.

MS BARRETT: We did that on the other committee. I could be a timekeeper if you want.

MR. DEPUTY CHAIRMAN: Well, no, I don't mind keeping time, but sometimes people have gone to a lot of trouble, and they like to make their presentation. Clement, do you want to be warned when you have five minutes left, or do you want to have the chance to . . .

DR. LEIBOVITZ: I think I will manage to finish quite in time because I am quite interested in the follow-up.

MR. DEPUTY CHAIRMAN: Okay. Thank you.

DR. LEIBOVITZ: That's the reason why I will summarize very much the first part, to concentrate on the second part, which for me is most special. In the first part I am listing the wrongs of Canada towards Quebec, and I'm suggesting that Quebec also had wrongs towards the rest of Canada. I think it is up to the Quebecers to determine their wrongs and to recognize them, and it is up to us to determine our wrongs and to recognize them. I made, as I say, a list, and I would like Canada to apologize for the wrongs they have done. It's the only way to build trust.

Then I suggest that the government state its readiness to sit with all the Quebec parties and associations, particularly with those who favour separation from Canada, to discuss the two following points. What in the present state of federation makes independence of Quebec an attractive alternative for many Quebecois? That's a fact. We want to know why they think they would be better off. Second, how should the present federation be modified so that what was most important to achieve through independence could still be achieved within the new Confederation?

Then I suggest that in order to strengthen the unity of the country, it would be a good thing if the federal government would subsidize the means of travel to make it possible for the average Canadian to go to all the corners of the country and to find by himself what is the richness of the different cultures and the beauty of all our provinces. That will make each Canadian more attached to all the provinces, to all of Canada, than just to the single province he knows best.

I would like to more extensively promote more youth exchanges between Quebec and the English provinces and also an interprovincial agreement for the introduction in the school curriculum of special courses intended to familiarize the student with the cultural particularities of the different provinces.

Now I come to the part I think most important, and I will just read it. If Quebec, in spite of best efforts, remains bent on independence, we will have to remind Quebec that independence, even accepted in principle, has to be negotiated. The federal government has, for instance, definite responsibilities towards all native people and among them the native people of Quebec. It is therefore incumbent on the federal government to let it be known that no part of Canada can become independent unless it is dotted with a Constitution guaranteeing to the natives the rights they are entitled to claim from the federal government. And here the federal government is on shaky ground. Unless it cleans up its own act with respect to the native people, it would justly be suspected of raising the native issue only in the measure in which it would make Quebec's independence more difficult to reach.

The native issue is important to Canada's unity in its own right. The native issue does not today threaten Canada's territorial unity, though it does threaten its spiritual unity, and we need spiritual unity. We need to know that all Canadians, including the native people, have good reasons to believe that their Constitution, their legal system, their judicial and social systems work equally well for all. All past pledges must be honoured, all injustices redressed.

Finally and most importantly, we must be conscious of Canada's responsibility towards history. The U.S. Constitution was the most admirable in its time, not because it collected what was best in the constitutions of all other countries but because it dared to innovate and progress beyond what was best at the time. Should we decide to take from others the best they have, that would still mean stopping short of being an example, failing

to uphold our responsibility, which derives from the fact that we are drafting a new Constitution 200 years later.

Would Canada have remained totally conservative in her ideas, women in Canada would still be deprived of the right to vote. Let us note that even the Conservative Party felt it necessary to qualify its conservatism with the word "progressive." To be progressive 50 years ago meant, for instance, to discover that the status of women was unacceptable, though still accepted. To be progressive today is to discover in what is acceptable today what should be unacceptable tomorrow. I repeat: to be progressive today is to discover in what is acceptable today what should be unacceptable tomorrow. Since it is our turn to write a new Constitution, we have a historic obligation to proclaim today what should be unacceptable tomorrow.

10:31

It should be unacceptable tomorrow that people be deprived of quality health care. It is not enough to legislate universal health care; it has to be localized as a constitutional right so that it may not be restricted or revoked by different legislation.

Though it is accepted today, it should be unacceptable tomorrow that people should be homeless. This rejection of homelessness has to be engraved in our new Constitution.

It should be unacceptable tomorrow, and this should be clearly stated in our Constitution, that people after long years of work still be insecure.

It should be unacceptable tomorrow that a mother should not have a paid long-term leave after child delivery, the financial burden, like that of public education, being shared by society. This should not only be a matter of legislation but a matter of morality, decency, and constitutional right.

The right of people for decent holidays should not only be a matter of work contract, labour legislation, and labour bargaining, but should be inscribed in the Constitution.

The obligation of Canada's government to work for peace and to exhaust all pacific means before supporting a solution by force should also be engraved in the Constitution.

We must once and for all get rid of the egotistic mentality summarized by the common expression, "Not with my tax money." Have we forgotten our Christian and humanistic traditions? With what money can we take care of the underdog – the weak, the poor, the disabled and poor of health – if not with my tax money? Are we to witness the poverty and hunger in the Third World and abstain from helping them generously with my tax money?

There was a time in which it was argued that reducing the working day from 14 hours a day to eight would result in some economic catastrophe. Such was not the case. With technological advances, production efficiency is constantly increasing. This means that society can more and more afford to improve the working conditions of the working people and more and more increase its help to the Third World countries. All it would take is to stop the tremendous waste on world armament production. The Canadian Constitution should obligate the Canadian government to promote general disarmament and to give an example in this matter.

The new Canadian Constitution should incorporate the Christian spirit of caring and giving and the humanistic spirit of decency. If it does that, no Quebecer will find it advantageous to leave Canada.

I am ready to answer.

MR. DEPUTY CHAIRMAN: Thank you, Clement.
Barrie.

MR. CHIVERS: Clement, that was an eloquent argument in favour of Canadian unity, but you touched on a note of caution that's well worth remarking on. That is with respect to should Quebec separate, there would be a condition precedent that would have to go with separation, and that is the rights and responsibilities with respect to the native people, the aboriginal peoples. My question is and what you're saying is that Quebec would have to assume the federal government's responsibilities with respect to aboriginal peoples within its boundary. If I understood you correctly, that's what you were arguing. Now, the difficulty is, of course, that nowhere in Canada, let alone in Quebec, have we defined what the substance of those rights and obligations are. It seems to me that before we can insist that Quebec is going to assume those responsibilities with respect to aboriginals within its boundaries, we're going to have to go through a process of defining exactly what those rights are. How do we do it?

DR. LEIBOVITZ: I think it would not be too difficult that first we clean up our act with the natives, and I say that if we don't do that, we would be on shaky ground ourselves. We have to do this before, and we should speak with the Indian representatives, the native representatives to find if it is possible to reach some common understandings of what those rights are. Some of those rights have been written on paper. It consists of an agreement made hundreds of years ago. I say all past pledges should be respected.

One of the rights could be, for instance, a given amount of self-rule within the Canadian Constitution or a federation or whatever. But I do agree with you that we have to first establish ourselves as a country that takes care of the rights of the natives first. I would like to say that the way the Quebec government has handled the native problems recently makes me very suspicious to rely on them without constitutional guarantees to the natives to give them independence. It would be a betrayal of our duties and responsibilities with respect to the native people, but we shouldn't raise it just to make independence difficult.

MR. CHIVERS: Thank you.

MR. DEPUTY CHAIRMAN: Sheldon.

MR. CHUMIR: Thank you for a very wonderful presentation. I'm going to ask a question that I've been concerned about and have been asking most of the presenters here, and that relates to the role that you see for the federal government in our country, the need for a strong central government as opposed to the direction of decentralization that is being argued for by many people.

DR. LEIBOVITZ: I have a suggestion that I think is too much in advance of its time and too much in the Christian spirit. We are not prepared to follow the Christian spirit and humanistic decency well enough. My suggestion would have been to consider all economic resources a federal matter and not a provincial matter and in one block make disappear the differences in economic resources between all the provinces. I know the rich provinces will not like it, the poor provinces would just adore it, and there is too much egotism in us to say we are all Canadians and it's just a matter of luck we happen to have things. Did I do anything in order to store in our soil an amount of petroleum or oil? I did nothing; I don't deserve to have more than the Atlantic provinces or the Yukon or what-

ever, to enjoy it. Why not enjoy it all together and say, "That belongs to Canada"? But I didn't include it in my brief.

MR. DEPUTY CHAIRMAN: Nancy.

MS BETKOWSKI: Thank you, Dr. Leibovitz, for a very eloquent presentation. I believe, frankly, that one of the things Canadians are tired of is old language with respect to constitutional issues, and you've given us some wonderful terms like "spiritual unity" and many others.

My question is really flowing from Mr. Chumir's. You talked about the issue of cultural delineation, and perhaps you'd tell me how in your sense of the division of powers you see the cultural, because you've suggested the economic resource question go to the federal government. You mentioned interprovincial agreement in commitment to education, for example, about other provinces. I wondered if you'd go further on your division of powers argument.

DR. LEIBOVITZ: I would say the following. The cultural facilities and their allotment: I would accept that they be provincial on the condition that they accept a given standard that would be federal, but it would be the task of the federal government to facilitate intercultural relations and friendship between the different ethnic groups.

MS BETKOWSKI: Thank you.

MR. DEPUTY CHAIRMAN: Thank you very much, Clement, for your well-thought-out presentation.

DR. LEIBOVITZ: Can I leave it with you? I have here seven copies.

MR. DEPUTY CHAIRMAN: Thank you.

DR. LEIBOVITZ: You're welcome.

MR. DEPUTY CHAIRMAN: Our next presenter is John Knebel of the Edmonton Chamber of Commerce.

Welcome, John.

10:41

MR. KNEBEL: Good morning.

MR. DEPUTY CHAIRMAN: Good morning.

MR. KNEBEL: Should I proceed?

MR. DEPUTY CHAIRMAN: Yes, please do.

MR. KNEBEL: Mr. Deputy Chairman, commission members, my name is John Knebel, and I represent the Edmonton Chamber of Commerce: over 2,500 businesses and over 3,600 business members. We're a volunteer organization, and our expertise and concerns really arise from our members. We do have some relevant expertise, but to make it clear today, we're not addressing a whole agenda of issues. There's been consensus on some, and I'm probably going to be more general than some of the previous speakers.

There are many issues relevant to business in constitutional reform: more efficient government organization, the ability to achieve competitiveness. I say you can't amend the Constitution to be competitive, but you can make sure you have the ability to

be competitive within the Constitution through the more appropriate distribution of powers and making sure powers over certain important things are there. There are various concerns – such as taxation, levels of taxation, duplication of efforts, interprovincial trade barriers – that can be addressed in one way or another in the constitutional reform process. I want to repeat that we're still learning. There's some degree of consensus, and I hope to express that today.

Second only to Quebec, I think Albertans have been really concerned about constitutional reform and doing a lot. That's what I've seen. The chambers of commerce have been really doing a lot across Canada. There's a major gathering in Victoria, and awhile back I was at a major gathering in Winnipeg of the major chambers. At that time I was representing both the Edmonton chamber and the Alberta chamber. We got together with the Montreal Board of Trade and various Quebec chambers of commerce and, first of all, attempted to understand them and, second of all, attempted to come to an understanding of some basic principles that could be taken to the Canadian Chamber of Commerce annual meeting in Halifax this September.

We went back to Edmonton and drafted a resolution that is more national in wording than Albertan in wording, hopefully to be adopted across Canada. Our objective is really to work in one of the other constituents to get Alberta's objectives on the agenda, even though perhaps not worded in terms such as triple E Senate and other things. To be clear, I think there's an element of maybe Albertans in the long term screaming in the dark, having a little bit of resentment over some of the economic things that have happened to us over the past and not being appropriately represented on national institutions. We at least wanted to try to bring the Canadian chamber on side with some of our issues.

What we did is that we as the Edmonton chamber passed the resolution – that's the last two pages of this submission that I gave – with a view to sending it to the Canadian chamber. We submitted it in time, and last weekend at the Alberta Chamber of Commerce annual meeting in Calgary that resolution was also adopted by the Alberta Chamber of Commerce and supported by the 102 chambers across Alberta. Once again it's sometimes more general than some of the previous speakers', but I think we've started contributing, and we continue to investigate alternatives.

The four major thrusts of the resolution are as you might expect. The first one with chambers of commerce: competitiveness. Now, I've already acknowledged that you don't just put a few words in the Constitution that result in competitiveness, but there are many things that can be done. You consider the form and level of taxation. For chambers of commerce you consider things like free trade; education and the resulting powers over education and the debate over national standards, national objectives, et cetera; skills; and even the social welfare net. In no way does the chamber think it should be disintegrated, but I think we all realize there's a lot of duplication and there are a lot of alternatives to approaching it on an integrated basis, leaving incentives for people to go out to work and not losing everything by doing it. I'll even refer to that being one of the unfinished areas in the Macdonald commission report that could be tackled across Canada.

Another focus of the resolution is the recognition that there will be a shifting of powers in the process, and it's probably good from a competitiveness or economic efficiency standpoint. Even though we didn't put it in the principal resolutions in the preamble, we recognized that the provinces would be gaining

more powers, including taxation powers, to have accountability accompany powers, which is one of the problems today. But for the purposes of our resolution out front we recognized that there could be and should be enhanced federal powers in certain areas, and we focused on the problem of interprovincial and international trade, on which I'd be pleased to go into the details. Basically, we feel that even though the Constitution should provide for consultation and, hopefully, consensus in the matters of international and interprovincial trade, clearer federal powers over interprovincial and international trade and commerce are necessary in order to allow competitiveness. I think we all know that Alberta businesses would probably be more competitive if they had the whole Canadian market to deal with instead of just the Alberta market in some areas. The Edmonton chamber's effort is to try to make sure that that's on the agenda of constitutional reform.

Another thing that's not expressly reflected in the resolution is our view at this time – now, we could be convinced differently – that there should be no permanent special status for any province in the Constitution. We think of Alberta's history, how much Alberta has contributed economically to the country, Alberta's maturity and overall contribution to Confederation. We look at Quebec's concerns, and we think they could be handled by things like powers over language and perhaps culture, and we wonder, if there's to be any distinct society recognition – which as a lawyer I recognize has certain potential power or consequences – whether that's not something that Alberta deserves as a grown-up child as well. I hate to use the family analogy; the family analogy has a lot of problems. At this point in time we would have to be convinced if Alberta wasn't to gain whatever Quebec might gain by the distinct society wording. We're inclined to think that we should make whatever additional powers might be made available to any province available to all provinces. If, for example, as used in the resolution, all provinces had control over language and culture, well, Alberta could have control over language and culture too. We hope they wouldn't do anything about it, but we would like to get rid of things like the national bilingualism policies and, to be clear, multiculturalism policies. I'm not talking voluntary areas of multiculturalism; I'm talking about compulsory areas and government grants, et cetera. The relevance to business on that one, of course, is that we feel we'd be better off within a Canada where you could do business as you wished. Maybe it's not so much a business issue, but you could rise within the federal government regardless of whether you knew French or not. In this regard we don't mean to discriminate at all, but we think that certain powers should be given to the provinces so that the country is more realistically governed.

The final point really reflected in our brief is representation on national institutions, and the resolution itself is for more effective and visible representation of the regions and national institutions. As I indicated right off the bat, we didn't start talking about triple E Senates or even focus on Senate reform. That is certainly one national institution that requires attention. But we're concerned that the Alberta government, by focusing too much on trying to achieve a triple E Senate, would ignore what's out there and available for the Parliament, the Bank of Canada, other national institutions: very important to us because we can see politically two or three years from now sacrificing a lot of the "effective" to achieve something like the "equal," the thing that's difficult to grab right now. So very clearly we are not convinced that a triple E Senate is the only way to go or that all our powers and persuasive abilities should be wasted on it. Once again, yes, we just used regional repre-

sentation, national institutions. We wanted to get it on the chamber agenda. Once it's on the agenda, we want to then make proposals like Senate reform and other proposals that then have to be responded to because it's on the agenda.

In summary, the Edmonton Chamber of Commerce is making an effort. Although a lot of us, including myself, have personal views on many of the other details, I can only speak of a consensus on the things reflected in our brief and my discussion. We're ready to contribute to the debate. We continue to examine such things as national standards in education and other things that we're not really in a position to give a position on – double "position" there. We are, I hope to the benefit of Alberta, focusing on achieving a national consensus in our Chamber of Commerce organization. Our major point is that when we go through constitutional reform, please consider economic efficiency, appropriate levels of government, and the relevant powers to allow us in the long term to become more competitive.

Thank you very much.

10:51

MR. DEPUTY CHAIRMAN: Thank you very much, John. Dennis.

MR. ANDERSON: Thank you, Mr. Chairman. I appreciate the outline today. I've had the fortunate experience of hearing the Calgary chamber make their presentation last week, as the rest of the committee did, and then attending the provincial convention and participating on a panel. That's led me to a question, which you may not be able to answer. I found in the Calgary presentation that there seemed to be a general desire for more federal authority in many respects. I don't know if I'm fully interpreting that right. At the provincial convention I found very much the opposite, a commitment to decentralization, and so far I don't think, John, that you've really taken a position on that in this presentation except to generally allude to it. Does the Edmonton chamber have a position yet on that or an inclination on the general concept, and are there any specifics you want to let us know about in that regard?

MR. KNEBEL: Certainly not as far as specific powers or percentages of powers. If I didn't reflect this in my presentation, we do feel that more powers will travel to the provinces than will go the other way, to the federal government. We just feel that it's clear at least in a couple of areas, in some macro-economic areas, that the federal government requires clearer powers. Unlike the Calgary Chamber of Commerce and more like you heard last weekend at the Alberta Chamber of Commerce, we probably believe in an overall increased degree of decentralization.

MR. ANDERSON: But haven't defined the areas except for the federal need to run the economy.

MR. KNEBEL: We are working on almost every area relevant to the economy, but I can't speak of a consensus. I used the education example before. Just briefly, we debate issues such as mobility within the provinces and having consistent standards. We hear nightmares about somebody's daughter going from grade 9 here to grade 9 there and losing something. We still haven't taken a position.

MR. DEPUTY CHAIRMAN: Pam.

MS BARRETT: Thanks, Stan. In your discussions with either the Edmonton chamber or with the Alberta chamber, did you discuss in the context of "no special status" for any given region – particularly Quebec, one assumes – the economic implications of Quebec's separation, and what did you make of that? If you did, the other part of the question is: did either the Edmonton or Alberta chambers discuss and come to any conclusion with respect to what would be useful in terms of keeping Canada together, including Quebec, that is?

MR. KNEBEL: First of all, we are very concerned and have at both levels discussed what might happen at least politically if Quebec was to go. We all know what percentage of Canada that Ontario would be then, and we all know that in many respects Quebec has been a friend to Alberta over the long term, so that also does translate into economics. I guess you could take a look at things that arise from politics, like national energy programs and things like that. We very much want Quebec to remain in Confederation; we very much want to do what's necessary to achieve that.

Going on to your second question about what's useful in keeping that, we sat down on various occasions with the various Quebec chambers of commerce and said: "Really, what do you see you need in a distinct society? Powers? Or wording: distinct status, different than everybody else?" They're not speaking for the Quebec government, but they treated it more as a negotiating position, and we all realize that negotiating positions are taken. They thought that absolute control over language and culture, subject to minority rights as reflected in the resolution, was enough. You know, that's not their formal position – I'm speaking of talking to representatives – but they didn't think that a distinct society was necessary.

MS BARRETT: How did you respond?

MR. KNEBEL: We responded: "Great. Let's get a mutual resolution before the Canadian Chamber of Commerce, and let's both act accordingly with our governments."

MS BARRETT: So you didn't go beyond that territory, culture and language. Those were the two that you stuck to, basically?

MR. KNEBEL: I guess it was difficult enough to arrive at consensus. I wanted to get regional representation on national institutions in front of them and agreed to by them, and I did. In doing so, I had to deal with something on the Quebec side, and they were satisfied with the primary jurisdiction over language and culture to the provinces, subject to minority rights.

MS BARRETT: Great. Thanks.

MR. DEPUTY CHAIRMAN: Sheldon.

MR. CHUMIR: Thank you, John. You talked about greater taxing powers going to the provinces, and I've been trying to wrap myself around that concept because that's what the provincial government has been arguing for. I have this conundrum: if greater taxation powers go to the provincial government, presumably what we're talking about is a provincial income tax return like they have in Quebec. At the same time, the federal government is so dependent on personal income taxes that it just doesn't seem conceivable to transfer that power totally to the provinces without eliminating an inordinate chunk of their revenue. This leads us to the issue of whether or not we

have two personal income tax returns here in Alberta, and I'm hearing from people very strongly, particularly professionals who are involved in the taxation field, that that's a nightmare we don't need. So what exactly do you mean by more taxing power?

MR. KNEBEL: The Edmonton chamber has definitely been involved in these issues before, so I can speak on their behalf. The Edmonton Chamber of Commerce does not want two personal income tax returns. That doesn't mean that there can't be increased taxation powers for the provinces. We would just hope that one way or the other we can act consistently on a national basis. It's difficult enough for the little guy to fill out the Alberta corporate income tax return. It's not really difficult, but it's one extra piece of paper and slightly different rules. Greater taxation powers: the word "greater" bothers me for a second. I recognize that there are some limits to provincial taxation powers that the federal government does not have, be it direct, indirect, and all those distinctions. Maybe I can use a municipal government as an example. I mean, we look a lot to our municipal government. They take on many programs that weren't originally contemplated for them, and then we sort of limit them to property taxes and that type of thing. We haven't taken a position on more powers for municipal governments, but that's one thing that we wonder about and are thinking about.

With the province we would like very much to have overall limits on taxation, overall limits on deficits on a national basis, and perhaps some formula where all the provinces have to agree to lift limits or things like that. I mean, not getting into all the details right now when we're discussing them, I guess I'm saying that where responsibility goes in terms of powers, there also has to be the accountability. Instead of just taxing for one-half of what you're spending and getting the other in a cheque from the federal government, we think that aside from equalization payments and principles like that that we do believe in, there should be more accountability on what a government spends by looking at taxation. To do that, there might have to be the power. I think we all recognize that a lot of the income taxation powers are given by agreement from the federal government to the provinces right now. That may be working, but we're looking at a long-term constitutional relationship, not just something that is working right now.

MR. CHUMIR: Thank you. You've talked about economic efficiency, particularly economic efficiency as being a criterion of the allocation of powers. In fact, that's one of the criteria we've suggested in a discussion paper. But we also go beyond that and state that you also have to figure out the impact of the distribution of the power on the strength of nationhood. Now, you've indicated you've not taken any position on education. There's a tremendous amount of debate going on re whether federal standards, with respect to medicare and social services standards being administered by the provinces as at present, are something that should continue or whether we should decentralize to the provinces. Have you taken a position on that?

MR. KNEBEL: I can tell you about the inclinations, but I'd be wrong to say that we've taken a position. The inclinations are that there should be national standards. It's hard to distinguish between minimum national standards and national objectives and things like that for us poor Chamber of Commerce members, but yes, I tried to say that we see a few more powers going to the provinces, perhaps more than would end up going in addition to the government. So, you know, we're for slight

decentralization, but we very much believe that in this world we're living in, a lot of things that relate to the economy have to be consistent on the national basis for a whole bunch of reasons like mobility and others. So in no way do we say massive decentralization.

11:01

MR. DEPUTY CHAIRMAN: Thank you very much, John.

MR. KNEBEL: Thank you.

MR. DEPUTY CHAIRMAN: Our next presenter is Charan Khehra. Welcome.

MR. KHEHRA: Thank you very much. Mr. Chairman, the presentation which I am going to make is my personal presentation. I do not speak on behalf of any organization.

As far as I'm concerned, Canada is my homeland by choice. It is a great country, and I believe that if all Canadians work together, it could become greater. Towards this end, I made this brief. The format of my brief is as follows: first, I will comment on the current state of affairs in Canada, specifically the lack of consensus building. This will be followed by comments and recommendations on Canadian federalism, the federal Parliament, Quebec, the aboriginals, the bill of rights, and constituent assembly.

Current state of affairs. The major causes of our continuing problems appear to be lack of consensus, exclusion of Canadians from the political process, secrecy, and rigidity in our positions. This analysis is clearly supported by experience with the 1987 Constitutional Accord - Meech Lake - and other things. There was a lack of consensus throughout. There was no participation of other Canadians except to stand outside the roped area and remain puzzled. That was the only participation Canadian citizens had. The Prime Minister had taken a very rigid position from the very beginning. Nobody knew what was going on.

As a matter of fact, I think whatever Mr. Harper did, it was the right thing to do, by giving us another opportunity to look at ourselves. What we find is that in this country at the moment the so-called "true patriot love" seems to be waning among Canadians. National interests are being replaced by regionalism and provincialism. Populism is on the rise. Governments appear to have lost vision. It is pity that when Europe is coming together, provinces in Canada are threatening to break away.

It looks like Canadians have a commitment, and that commitment at the moment seems to be a commitment not to work together. Adversarial attitudes are prevalent. We blame each other for our ills. The federal government blames the provincial governments; one political party blames the other; so does management and labour. There is confusion all over. There is a crisis of confidence. Numerous constitutional task forces, committees, or commissions in place, including yours, are seeking miracles to save the country from falling apart. The observation which I would like to make is that unless these bodies are sensitive, unless they are willing to be flexible, unless they are prepared to change the status quo, unless they work harder towards consensus building, this confusion and crisis will continue.

Let me also say that politicians in general need to raise their current low public esteem. That includes most of the politicians these days. Citizens are looking at you to provide an open government, make promises which you can keep, eliminate backroom deals, listen to the public, encourage nonpartisan appointments to various public bodies, establish a strict code of

ethics and strictly follow it, and the country will start coming together. Although considered to be the supreme law of the land, a Constitution has its limitations. Any Constitution or any amending formula would not create consensus; it can just facilitate it.

Let me talk about Canadian federalism here. Canadian federalism confronts serious problems. Once again Canadians need to be reminded that the reason for Confederation is to bring different parts of the country together to share common economic and security benefits. The federal government needs to be stronger, and I want to emphasize that it needs to be stronger, much stronger than it is now. It must have the ability to spend money for programs within provincial jurisdictions to operate, and attach conditions to transfer those funds.

I recommend that the Constitution must recognize and entrench the principle of equalizing social and economic opportunities between regions as an objective of the federation. It is interesting to note that although Canada has negotiated the free trade agreement with the United States, the provinces continue to place trade barriers within Canada. There is an obvious contradiction.

Then I move from here to the federal Parliament. Both Houses of Parliament, the Commons and the Senate, have been criticized and I think rightly so. What we need here is a proportional system of representation to the House of the Commons. Now what we find is that at the moment the majority party gets all the seats, even though they may have been elected by 30 or 40 percent of the votes, and the rest of the country is left out. So you need some sort of representation which will be based on proportional representation, and this could mean that you may be returning four to five members from each riding. The best politicians will be able to come up, and they will be accommodated in this process.

As an institution, the Senate has outlived its life. The method of selecting Senators has meant they do not represent either themselves or anybody else in this country. The poor quality of the Senators is also very well recorded. If we want a second House to check over the over-hastiness on the part of the Commons, it should be reconstituted on an elective basis. My personal recommendation would be that the new Senate should have equal representation from each province, its membership should not exceed one-third of the House of Commons, and they should be elected for six years, one-third of them retiring every two years. Then you need to define what are money Bills very clearly. The powers of the Senate would be to hold legislation for a period of 12 months, except money Bills. But money Bills have to be restricted so that not anywhere where \$1.49 is involved, you consider it a money Bill and it remains so. What I'm saying is that you've got to very clearly define it.

The other important thing I would suggest is that we need to have a system of recall of Members of Parliament and the provincial Legislatures. That would make it important for people to have some sort of input and the politicians to be responsible and continue to be responsible. Therefore, what I'm suggesting is that we have some sort of recall system there.

Talking about Quebec. Of course, all provinces are not equal. They will never be equal. They were not created equal. We are different than the United States system. Whenever the federal governments have failed to provide consensual leadership, more so in the recent past, all provincial governments, including Quebec, have started moving in their own way, coming together, trying to separate and establish sort of banana republics in this country, which is unacceptable.

11:11

The concept of bilingualism has not been allowed to work. Canadian bilingualism policy has been limited only to whether the storefront signs or the road signs should be either in English or French; that has been the extent. What I would have expected was that English should have been made as a second, compulsory language in Quebec and French throughout the country as a second language.

Although we must recognize our special problems of French and English, Quebec and English Canada, any special status for any province would not only encourage all provinces to seek more powers, it would result in the disintegration of the country. You cannot have special status for certain provinces and so on.

Talking about aboriginals, you have got to recognize that there is historic mistreatment of our aboriginal people. Although more and more immigrants are being brought into Canada, the aboriginals have been left out of the mainstream. This is, I think, disgraceful. Such a policy is counterproductive, and I recommend that the Constitution must recognize and affirm the special place of the native people of Canada and reserve a specific number of seats for them in the provincial and federal Legislatures. Such members would be directly elected by the aboriginals from their own electoral ridings.

The bill of rights. The remark I want to make is that section 33 should be removed from the Charter. It does not make any sense.

Constituent assembly. There is an assertion that there is a time limit to amend the Constitution and so on. I think it's a myth. You cannot just push people to amend anything. You have got to be convinced; you have got to be committed. You should understand why you are making those changes. Therefore, don't rush into doing those things that we would regret later on. Don't make those changes just for the sake of making those changes.

I'm recommending that a constituent assembly should be a permanent body with a total membership limited to 300. I mean, you can always juggle with these numbers. Half of these members should be selected or elected by the provincial Legislatures and our federal Parliament according to their political party strength. A certain political party has got 30 percent, so they should be able to elect a certain number of those people or select them. They don't have to be the serving politicians who are MLAs; they could be appointed from outside. As regards the other half, these people should be elected by the public and on a proportional basis for a period of four years. When there is a vacancy, the next runner-up should be called. Instead of having another election every second day, whoever was the next runner-up, call him; let him serve. This would be a permanent body, and it would only deal with the Constitution. If there were any amendments needed, they would have a look at them.

The conclusion. Whether we want to accept it or not, we are facing a crisis in this country. The crisis will test our national character and values as Canadians, so we should be giving very clear, full concentration to what people are saying, and you should be listening to them very carefully.

With these remarks I would conclude my presentation, and I would be very happy to answer any questions which you might have.

MR. DEPUTY CHAIRMAN: We have two on the list, Charan, but we have about three minutes to accommodate them within the time.

We'll start with Sheldon.

MR. CHUMIR: Thank you for a very excellent presentation. I'd like to get your views on the issues of multiculturalism. We've been hearing a great deal of criticism of the present thrust of the program in terms of supporting, financially and otherwise, different ethnic groups, and it's been suggested that this tends to separate and divide. The alternate vision is that we should be spending more time trying to bring people together: education, acceptance, and understanding, equality of opportunity. I'd very much appreciate hearing your views with respect to that issue.

MR. KHEHRA: I think that so far multiculturalism has been a good concept, but the way it has gone, it has gone out of control. You find that you've got pockets of people all over with different backgrounds; this is separating them. I think that if you are talking about multiculturalism, it should be accepted as a concept in the Constitution, but it should be left to the people to preserve their own sort of cultures instead of promoting them or giving them money to say, "Okay, why don't we start up some sort of structure here and there," just to play your own sort of drums. Those drums are becoming very noisy now. I think we have got to start talking about something in common: the Canadian - what is a Canadian? - concept? I think we have gone too far. Let's bring these people together as Canadians rather than promoting their cultures. There's not going to be any end to promoting those cultures.

MR. CHUMIR: Would you say, then, that we shouldn't be moving in the direction of providing funding for schools for different ethnic and religious groups so they would be separated together at the expense of public schooling?

MR. KHEHRA: I think the way would be to go through the educational system, teaching people about different cultures and about their different values, rather than setting up different structures outside with different symbols all over the place. Let's go through the educational system. Let people learn about other, different cultures and subcultures and what they stand for and come back with a commonality, basically the human values there. That would be much better than what has been happening in this country so far.

MR. DEPUTY CHAIRMAN: Barrie.

MR. CHIVERS: Thank you for your interesting presentation, Charan. There's been a lot of viewpoints presented to the committee thus far with respect to accountability in the political system, and you've repeated it in your call for recall of politicians. However, there's also been an inability to define how that should operate. For example, in Red Deer the other day one of our members, the member who is the MLA for that constituency, was discussing the idea of recall, and a 3 percent formula was proposed. He made the point to that presenter that that was capable of political manipulation, that any of the opposition parties, for example, would be able to mount a recall petition based on that basis. The idea of recall is at first blush very attractive, because it gives you that accountability and it gives it to you at more frequent intervals than every four or five years, but I'd just like you to think about it and see if there is a workable formula. I'd like to pursue that idea.

MR. KHEHRA: I would be happy whether you said 2 and a half percent or 3 percent or maybe, say, if 5,000 people signed a petition - anything. That does not make any difference. What

I want to take up is the second issue which you are raising, that certain political parties would be able to outmanoeuvre somebody else and manipulate, and they would be recalled and so on. Personally speaking, I do not think that is going to be a problem, because all the political parties would learn in due course. They would settle down, and they would know, if they are not responsible to the people, what is going to happen. It does not matter. I think it's going to work in due course. If as an MLA I have got the confidence of the people, if I'm doing the right sort of thing, there is no reason if another election is held that I'm going to lose, because I will have the confidence of the people. This would help you to build a consensus in this country.

We have got to come together. Instead of talking about individuals, you have got to blend the views of political parties and personal views of the MLAs. Sometimes I say: that's my political views of that particular party; they are not my personal views. Then there are my personal views which do not tie with a political party. Both of them have got to go together. I think the system, Barrie, is going to work. It may create some difficulties. It may create some sort of panic initially for some MLAs, some MPs, and so on, but in the long run there's no reason it would not work.

11:21

MR. CHIVERS: I think my time is finished. Thank you.

MR. DEPUTY CHAIRMAN: Not yours, Barrie, but the committee's time, unfortunately.

Charan, thank you very much for your presentation.

MR. KHEHRA: Thank you very much. I appreciate this opportunity.

MR. DEPUTY CHAIRMAN: Our next presenters are Margaret Duncan and Margot Herbert on behalf of the Alberta Association of Social Workers. Good morning. Welcome.

MRS. HERBERT: Good morning, and thank you.

MR. DEPUTY CHAIRMAN: Do you want to be reminded where you're at timewise, or will we just do the best we can here?

MRS. HERBERT: You could remind us. That might be helpful.

MR. DEPUTY CHAIRMAN: At about 10 minutes would you like to be?

MRS. HERBERT: Ten minutes is fine.

MR. DEPUTY CHAIRMAN: Okay. Thank you.

MRS. HERBERT: I'll just start out by saying to you that I feel very much a Canadian. I was born in western Canada, in Saskatchewan. I grew up in a little town during the Depression. I've lived, worked, gone to school in five provinces in Canada, and I feel very Canadian. I grew up and went to school – one of the provinces I lived in, went to school in, and worked in was Quebec, incidentally – long before it was popular to refer to oneself as an English Canadian or any other kind of a Canadian. We were Canadians, and I feel panic-stricken, really, at the thought that Canada is going to divide itself up into a group of

little statehoods or something with a whole variety of ways of dealing with human services and the need to govern and so on.

So for starters, I think that we need a strong central government. I really think that you deserve a great deal of credit for taking the time and the effort to allow people to present their views on this very important issue to you, but I also would say to you that we as Canadian citizens can tell our elected representatives what it is we want to happen to Canada, but we can't necessarily tell you how to do that. I submit that when we elect you to office it's because we think that you have the creativity, intelligence, energy, and whatever else to find ways to do it.

MR. DEPUTY CHAIRMAN: I won't repeat what I said in Calgary in that regard. It bothers my friend Barrie. Sorry to . . .

MRS. HERBERT: No; that's all right.

MR. CHUMIR: Maybe you should.

MRS. HERBERT: I'd be interested in knowing what you did say.

MR. DEPUTY CHAIRMAN: Well, at the end of a long day last Saturday in Calgary, somebody said: after hearing the spectrum of opinions that we've heard here today, we don't know how you're going to do this; and I made the flippant comment: well, that's what we get paid the big bucks for.

MRS. HERBERT: Yes. Well, I guess that's a more direct way of saying exactly what I'm saying.

I believe that there surely are ways to find the creativity to preserve all the regional uniqueness in this country. I think that's just not incongruent with a strong central government. I have confidence that our elected representatives have enough creativity to find ways to do that, and I commend you for listening to what people are saying.

As a social worker I've seen incredible changes in the way people have been able to access needed human services over the years. I've been a social worker for – I hate to admit it – more than 40 years, and I started my career in child welfare in Saskatchewan. I can remember in those days – I think particularly of young women who came into the city where I worked to get away from small rural communities because they were pregnant and became temporary wards of the provincial government. I can remember having to call out to whatever small community the girl came from to ask the reeve of the rural municipality for a voucher to buy this girl a winter coat, which she didn't own. That request would be taken back to the council, probably consisting of her uncle, three neighbours, and whoever else, while she shivered in the cold for a week waiting for the council to meet and approve the purchase of a winter coat. Now, that's the kind of thing that we have gotten away from since funding for welfare programs has been provincial rather than municipal, and on a different level I think there's a lesson to be learned about the human misery that results from even that small example of lack of a universal way of dealing with human problems. There are many other examples of the kinds of ways in which the practice of providing service to some of our vulnerable populations has changed over the years.

I think I could say – and I'll pass the floor to Margaret, who has had a lot of experience in this area as well – that most social workers feel that vulnerable populations are much better served in a whole variety of ways with a strong central government and

a national commitment to the welfare of all of the citizens of our country.

MR. DEPUTY CHAIRMAN: Margaret.

MS DUNCAN: Okay. Yes. Our elected council of the association had some discussions on this topic recently, and there were a number of things that they asked that we bring forward to you today. Margot Herbert is the president of our council, I'm proud to say.

Indeed, social workers are very much concerned about those vulnerable people with whom we work as we discuss what ranges from a different arrangement between the provinces and the federal government in how funding and standards and so on will be handled to what also makes me feel panic-stricken: what begins to be a discussion that sounds like the breakup of Canada, which is very frightening indeed.

I'm an immigrant to Canada. I'm in Canada by choice, and there are wonderful things that I have found since coming here, such as the national medicare program and the guarantee of universal access to all Canadians. I certainly don't think we need any further breakdown or differences between the provinces in how that is handled.

Essentially, the Alberta Association of Social Workers believes that we need consistency in human services. We need guaranteed national standards, national funding, and at the same time we need to find ways of providing for diversity in cultural pursuits. The association feels very strongly, as Margot has told you, that these are not contradictory aims and that we can find ways of achieving these. We're very concerned with protection of individual rights through the Charter of Rights, a document already in existence in Canada. We need to strengthen that, and we need to be sure that we are finding ways of enforcing that document that's already in place. It's easier for vulnerable people such as women and minorities, native people, children, and so on to find their rights protected under a national charter, going to one government to bring their case, than it is to deal with 10 provincial governments and territorial governments and whatever else. We need to be guaranteeing those rights.

11:31

In terms of the economy, the association is very concerned that we remove existing interprovincial trade barriers. We consider this to be a very important social issue and one that's certainly of concern to social workers. People need to be able to move throughout the country. In times of economic change in one region they need to be able to move to another region, and the jobs need to be available to people throughout Canada as Canadians. We heard some talk at a gathering of economists last week about what might happen to currency if Quebec should leave, and should the west adopt U.S. currency and so on. We think it's essential to the continuation of the nation of Canada that a common monetary currency be maintained.

We're also very concerned about immigration policies and that those should be consistent throughout the provinces. When an immigrant comes to Canada, then that person should be coming to the nation and traveling within the nation. We want to speak very strongly in favour of national standards for health and education and our welfare programs, including day care, income security, and so on. Again freedom of movement is important in terms of the family. I'm aware of a gentleman who moved to Alberta from the maritime provinces for the purpose of work. He was injured here and receives disability here and has been unable to move back to his home and to his family because his

home province is saying that the injuries were sustained in Alberta and so they should have to pick up the tab. This is an example of a way in which there are already too many provincial barriers between our national welfare programs. Our association is also very concerned – we do recognize that Quebec is a unique province, and we do want to ensure protection of the culture and language. At the same time, we do want to see citizens' rights ensured under the Charter of Rights throughout the nation.

We also think that the national government is better placed to set up environmental regulations and to enforce those.

MR. DEPUTY CHAIRMAN: I'm not trying to stop you; I'm just giving you the signal that there are five minutes left.

MS DUNCAN: The high sign. Okay.

That really was my last point, that the environment knows no boundaries, neither provincial nor national nor any other kind of boundary. We all share the same environment. We think that the federal government is better positioned to deal with those kinds of issues, not as likely to be pressured by local powerful interests as our provincial governments.

Those are our main points.

MR. DEPUTY CHAIRMAN: Thank you very much, Margaret. Barrie.

MR. CHIVERS: Thank you, Mr. Chairman. We've heard a lot of views speaking of, I'm going to call it, uniform standards across the country, so as to be neutral in presenting this point to you. But the debate amongst our committee seems to centre on whether those jurisdictions – for example, in health care and education, and in the environment, if that was to be included – should be achieved through the national government establishing those standards or each of the provincial governments having the responsibility for the standards and the funding, and then that there would be uniformity achieved through discussions amongst the various levels of government. I'm just wondering where you stand on that debate. I've tried to present it as neutrally as I can.

MS DUNCAN: I think the provisions in the Canada assistance plan, in the CAP Act, have stood us in good stead to protect standards for those programs that are funded under CAP. I'm very concerned. Of course, recently there was extra billing in Alberta for health care services, and that leaves out people who are poor and who cannot afford to pay extra when it comes to certain health services. There was a bit of a confrontation between the Alberta government and the national government, and because the national government is a major funder and because they did set standards, Alberta was no longer permitted to do that. I think that was a good decision, and I think the reason the national government was able to do that more easily than the provincial government was able to do that is because the national government is responding across the nation and not just to whatever may be happening in a particular locality. Certainly the national standards, I think, offer good protection for all of us.

MR. CHIVERS: I'll leave it at that, so some other members can pursue it if they wish.

MR. DEPUTY CHAIRMAN: Dennis.

MR. ANDERSON: Thank you, Mr. Chairman. With respect to the Charter and the suggestion that individual rights were best dealt with by one government, I assume, then, you have no concern about the complexity of the legal system and somebody needing to go through that end as opposed to getting redress from government for their difficulties. The more you add to the Charter, of course, and the more you place the responsibilities in the hands of the court that cannot be changed or amended easily through Legislatures or through Parliament, the more you have to leave that process to the legal process as opposed to the elected representative process.

MS DUNCAN: Uh huh. I wouldn't say I have no concerns about the process of the way legal operations take place. I wouldn't say that at all. What I would say is that it seems to me that the courts are now the only balance in the Canadian government against whatever pressures elected officials may be feeling by lobbying groups that have the resources to pressure for whatever it is that they want. There's a big discussion going on in Alberta now, for example, about gay rights, and the Alberta Association of Social Workers along with our Canadian association has taken a very firm stand in favour of guaranteeing rights for gays. Now there's an issue. The very reason that gay people need protection is because most people do believe that that protection should not be guaranteed. So I do think that the courts have a unique role to play, and the fact that they are not vulnerable to pressures from the electorate puts them in a position where they can consider these things in perhaps a more objective light.

MR. ANDERSON: So as a general statement you believe that the courts should have more authority and final authority, rather than people elected; that the will of the people shouldn't be represented? There's somehow more wisdom attached to nine appointed people?

MS DUNCAN: I didn't say "more wisdom." I said more objectivity and perhaps more protection from the immediate pressures of the electorate. I don't mean to say more wisdom. What I mean to say and did say is "balance," more balance, so that the elected representatives and some people who are appointed by elected representatives but who are protected from the pressures of the day can work together. Certainly it's the courts' job to interpret the laws as laid down by the elected officials.

MR. DEPUTY CHAIRMAN: Sheldon.

MR. CHUMIR: Thank you very much. I'd like to quiz you on a topic that I asked the last presenter. You may not have an official position as an association, so I'd appreciate it if you are able to give me your own views on that, and that relates to the direction of multiculturalism. We've had some criticisms to the effect that some aspects of it tend to divide and that the promotion of the different individual cultures and languages should be the responsibility of the particular groups and that what we should really be doing is working on acceptance, understanding, education amongst the groups, equality of opportunity, equal access, and so on. I'd appreciate very much if you would be in a position to give me your observations on that.

MS DUNCAN: Well, again I would just like to stress what we have said earlier, and that is that it is our association's belief

that we can have both consistency and national standards and maintain cultural diversity. I was very impressed with the remarks of the gentleman who spoke just before us when he talked about not writing specific cultural diversity provisions into law but leaving the culture to the people who bring it with them to practise it and to keep it alive, making enough room in the law so that people can do that, so that we're not saying you must - I don't know - either worship in a certain way or that you must speak a particular language or whatever.

MRS. HERBERT: I think you raised with the former speaker the question of schools and so on, and I find myself thinking that although that, on the one hand, is a confirming opportunity for children of minority groups, in some ways it's very sad for children who are not of the minority group, that they lose the opportunity to live and work and play with the variety of children of different racial and ethnic origins that make up the kind of tapestry of Canada, if you like. If children of different religious beliefs and languages of origin are separated in different buildings to go to school, I think we've just lost a glorious opportunity to help our children all grow up together and honour all of their variety of racial origins.

11:41

MR. CHUMIR: So are you favouring common schooling?

MRS. HERBERT: I am, yes. Now, also I think one would have to get a little creative about also making it possible for children whose parents were anxious for them to pursue a language other than English to have ways to do that, but I think there's precedent for that within the school system, absolutely. My own children went all through the public school system in Edmonton before it was fashionable to have a variety of programs. I've always been very glad that they had that opportunity, and some of the classrooms some of my own children were in looked like little United Nations. I think that was a wonderful opportunity for them; I'm very glad. That's the level at which we have to start dealing with prejudices, at the level of young children.

MR. CHUMIR: Just a point of clarification, if I could, Stan, re Margaret's comment re multiculturalism. You refer to the previous speaker. I had understood him to be fairly clear that he thought government programming should not be established to encourage the separate cultures. They should be left to their own; the climate should be there for them to be able to do it. Is that what you're saying?

MS DUNCAN: Yes, the allowing for it. Whatever laws and programs and whatever we put into place would allow for people to maintain their cultural diversity and celebrate their cultures so that the rest of us can learn about other cultures and so on. But stay away from laws that say that you must participate in some particular cultural activity.

MR. CHUMIR: I miscommunicated it. The problem is not so much that we're forcing them to do things. The complaint we've had is that public policy provides money to these groups specifically to encourage their culture, and this is said to be divisive and selective and so on. That's the conundrum that I'm trying to get some expression of opinion on.

MRS. HERBERT: I wish I had a wonderful answer for you, but I don't. There's certainly a problem.

MR. DEPUTY CHAIRMAN: Could I ask a question, just in conclusion? We've heard a lot of representations in our travels around the province over the last week that the general public don't feel very empowered. I would think that most of the criticism has gone towards the federal level, because we hear criticism of the free trade agreement, we hear criticism of the GST. Those are the things we're hearing, that the federal government has been unresponsive to the electors of Canada, and there's a demand for more direct democracy and control over the federal government. With this day and age of fear over the accumulated debt and deficit, would you feel as comfortable about the federal system guaranteeing the things that you feel it guarantees best if these demands for more empowerment from the ordinary citizen come to pass?

MS DUNCAN: I think it has also been said, and I hope you've been hearing, that people also feel quite shut out of the processes of the provincial government. Since you are provincial representatives, I would like to take the opportunity, if you haven't heard it until now, to hope that you will hear it now.

MR. DEPUTY CHAIRMAN: We have heard the same criticism at both levels. It's been more directed at the federal level, but we don't disagree that it's also applied at the provincial level too. I'm just asking you because it seems to me that so many people feel that the further you are away from the people, the more safe their own particular concerns are.

MS DUNCAN: Well, I certainly would not favour transferring those kinds of standards and so on that we've been talking about from national jurisdiction, if I thought the national government didn't listen to me, to the provincial jurisdiction if I also thought the provincial government didn't listen to me, which is what I think. So I guess that's my answer.

MS BETKOWSKI: It begs the question: what do we do to enhance the direct democracy process at whatever level of government to give citizens a sense that they're more directly involved? We are hearing that, and you've heard some suggestions: constituent assembly, reform of the Senate. Have you any views on that mechanism?

MS DUNCAN: Well, certainly more public hearings, such as the one that you're holding today, and then taking those seriously, not simply saying, as unfortunately happened in the case of Al-Pac: "Well, that was a mistake. It wasn't handled well and whatever, so we're going to do it all over and throw that out the window." That was a very unfortunate thing that certainly decreased people's confidence in the provincial government to be responsive to what they were saying. There has been talk, I know, of direct referenda on certain decisions that have to be made. That may be a good idea. Constituent assembly is also something that I would favour.

MRS. HERBERT: I would certainly reinforce those comments. I have had occasion, partly because of my position with ASW, to have frequent conversations with people within the Department of Family and Social Services, particularly at the ministerial and deputy ministers' level. Each time I do that, I'm impressed with how difficult it is to be in those positions in high places, because there seems to be a very thick layer of people who feel that it's their mission in life to keep people at the ministerial and deputy ministerial level from knowing what it really is that people are saying and that people are wanting and so on. So I

applaud you for being here today and having dispensed with that middle layer and listening to what we're saying. I think it's an occupational hazard for you people, probably, that the people you employ feel that they're employed to protect you from real information that voting citizens want you to hear.

MR. DEPUTY CHAIRMAN: Thank you. Thank you very much.

The next and final presenters for this morning's session will be Olivia Butti, Lorne Clark, and Barry Gogal on behalf of the Edmonton Real Estate Board. Welcome, Olivia. Good morning.

MR. GOGAL: We'll make sure we have you out of here in time for lunch.

MR. DEPUTY CHAIRMAN: Yes, we must be back in business at 1 o'clock.

MR. GOGAL: We don't want to see you hard-working folks not have lunch today.

MR. ANDERSON: I'm in danger of wilting away to nothing.

MR. GOGAL: Well, you can't keep your weight up if you don't have lunch.

Thank you, Mr. Chairman and the entire committee. We want to thank you, first of all, for allowing us the opportunity to meet with you today. Also, Dennis, as our minister as far as our industry is concerned, it's nice to see you again.

I want to introduce ourselves to you so that you understand our presentation today and where we're coming from. My name is Barry Gogal. I'm a past president of the Edmonton Real Estate Board, a past president of the Alberta Real Estate Association, and I'm currently a senior director of the Canadian Real Estate Association and chairman of our governmental affairs division representing our entire industry at government in Ottawa. On my right, an individual who is no stranger to any one of you, Olivia Butti, who is our governmental adviser from the Edmonton Real Estate Board and the Alberta Real Estate Association, and Lorne Clark, our current president of the Edmonton Real Estate Board.

We have a kit that we passed out to you. There are a number of issues in there. There's a presentation that I'm going to make to you on behalf of the board and our industry. Hopefully, at the end of that we may have a little bit of time to address a couple of other issues with respect to how our industry is going to be related to the unity situation as far as the Quebec situation is concerned.

The Edmonton Real Estate Board appreciates the opportunity to formally present its views on the future of Canada's parliamentary system. Acknowledging that the current federal system is not working, major changes are necessary to ensure that the elected representatives are in fact representing the views of their constituents and voting accordingly. The present system of adhering to the party line in direct conflict to constituents' wishes is unacceptable.

11:51

The Edmonton Real Estate Board wishes to go on record as opposed in principle to our government spending millions of dollars on federal commissions traveling across Canada to seek the opinions of people on major issues. Elected MPs, MLAs should be in constant communication with their constituents, and

the views of their constituents should be reflected in ongoing representation, debates, et cetera. Any changes to the Constitution should ensure that all MPs, including backbenchers, have a real voice in representing the views of constituents who elected them to that office.

The Canadian Real Estate Association's continuing efforts over the last 10 years to entrench property rights in the Charter have proven conclusively that the current amending formula is not workable. Part 5 should be amended to ensure that reforms that have wide public support receive timely and fair consideration by Parliament and provincial Legislative Assemblies. The difficulties encountered by the Meech Lake accord or indeed any other proposal for amending the Constitution are procedural. An amending procedure which does not require timely votes by Legislatures and Parliament on amending resolutions in the form initiated is flawed. Further, an amending process which fails to provide for initiation of amending resolutions by citizens as well as their elected representatives is undemocratic. Part 5 in its current form forces all constitutional amendments into the political agendas of governing parties. As a result, factors unrelated to the merits of proposed amendments can block popular reforms.

Part 5 of the Constitution Act, 1982, should be amended to permit people in any province to initiate amending resolutions by petition to their Legislative Assembly and to allow a minority of MLAs to initiate amending resolutions; to cause amending resolutions, once adopted by any Legislative Assembly, to be automatically referred to all other Legislative Assemblies, Parliament, and the Senate for consideration in the form initially adopted; to deem that a Legislative Assembly, Parliament, or the Senate has adopted a referred amending resolution if not considered and voted on within a prescribed time; to give a minority of MLAs, MPs, and Senators the power to force consideration of a referred amending resolution; to make the support of a majority of members present and voting sufficient for adoption of an amending resolution by any legislative body; and to give people the power to override by referenda resolutions of Legislative Assemblies opting out of constitutional reforms and legislative conclusions of the Charter.

The Edmonton Real Estate Board supports the recommendations by the Canadian Real Estate Association submitted May 7, 1991, to the special joint committee of Parliament on the process for amending the Constitution of Canada. Many Canadians are unaware that they have no constitutional guaranteed right to enjoy, protect, or own property. They have no guarantee of fair compensation if a government takes their property away.

It is unique in Canada's history that the right to own and enjoy property is not guaranteed. The Magna Carta of 1215 gave our British ancestors such protection. It was followed by the English Bill of Rights in 1627 which entrenched the right, and so did the 1948 United Nations Universal Declaration of Human Rights which Canada signed, and the 1960 Canadian Bill of Rights added to their protection. It has only been since patriation of the Canadian Constitution in 1982 that this right has not been enjoyed by Canadians. In other words, citizens of this country do not have recourse to the Charter of Rights and Freedoms if their land or home is seized by a government or its agent. Under existing conditions, for example, a municipality can pass a bylaw to expropriate private property and a landowner cannot mount an effective challenge. This opens the door for potential abuse, and organizations like the Canadian Real Estate Association have documented actual cases of individuals losing property for highly questionable reasons.

Property rights should be equally protected for all Canadians under the Canadian Charter regardless of where they live and should not be left to the guidelines and regulations within each province.

The Alberta provincial government has opposed the numerous requests to support the amendment to the Constitution to entrench property rights, stating that the Alberta Bill of Rights adequately protects Albertans. In reality, since the inception of the Alberta Bill of Rights in 1972, Albertans have suffered numerous abuses, many of which resulted from the decisions by the Alberta government, thereby proving that the Alberta Bill of Rights is not adequate protection. The Canadian Real Estate Association has documented many cases of property rights abuses across Canada, and a few cases are attached. As well, the Edmonton Real Estate Board has documented many abuses in Alberta.

The Hon. Jim Horsman, Alberta Federal and Intergovernmental Affairs minister, has written that the provincial government supports the individual's right to own and enjoy property and the protection thereof. He further stated that the Alberta government does not support the entrenchment of property rights in the Constitution because this would have the effect of substituting the authority of the courts, through judicial review, over and above that of elected legislators in regulating the ownership and enjoyment of property. The Alberta Bill of Rights is not a supreme law like the Canadian Charter of Rights and Freedoms, and as evidenced by the documented cases, the Bill can be overruled by provincial laws and government action at any time. Many of these documented abuses in Alberta have resulted in Albertans seeking decisions through the courts because satisfaction was not available from the Alberta government in concluding transactions.

Canadians have faced arbitrary decisions and infringements by all levels of government which have resulted in hardship and the need to pursue just compensation through the courts. The restricted development area zoning imposed a great hardship on farmers in Alberta for many years. The zoning virtually froze the land, affected prices, and hindered the use of the land to its fullest utilization. In all reality the land, through arbitrary zoning, was expropriated without just compensation and without the right of appeal.

Entrenchment is not a threat to provincial rights. Provincial jurisdictions that oppose entrenchment have never explained how this would interfere with their operation as a government. It will not prevent necessary expropriation or interfere with the administration of government, whether at the federal, provincial, or municipal levels. The Edmonton Real Estate Board together with the Canadian Real Estate Association and the Alberta Real Estate Association officially support an amendment to the Constitution to do more than just legalize the rights of property owners but to guarantee these rights under the Canadian Charter.

A Gallup poll conducted in August 1987 showed that 81 percent of Canadians overwhelmingly support entrenchment of property rights in the Constitution. The result should be a powerful message to all governments that Canadians take their property rights seriously and want their rights protected in the Constitution. It is essential to distinguish between rights which are national in scope and legislative rights which are constitutionally assigned to the province. At no time does the amendment to the Constitution suggest the legislative rights of the provinces over property rights be restricted. Exclusion of such rights can, however, interfere with the security of the individual and the right of the people of Canada. Rights should be

identical and rock solid for all citizens in all provinces and territories in Canada.

Mr. Chairman, we recommend that the government of Alberta support an amendment to the Canadian Charter of Rights to include the protection of property rights in the Constitution.

Thank you.

MR. DEPUTY CHAIRMAN: Nancy.

MS BETKOWSKI: Thank you, Mr. Chairman, and thank you for your presentation. We've actually heard from other members of the real estate board in Alberta in other places.

One of the questions I would like to ask. There is some concern that the entrenchment of property rights in the Constitution would disproportionately affect women. That's my first question, how you feel about that. We had some presentations this morning where it was argued that women, because they aren't the primary property owners, may have their rights impacted by a protection of property rights. That's the first question I have. The second one is with respect to environmental protection, which may not meet your test of "the use of the land to its fullest utilization." I'd just ask your comment on those points of view, both different from your own.

MR. GOGAL: Madam Minister, first of all, your first question with respect to women. The property rights issue is based on whoever's name appears on the title. If there are any dower rights or whatever type of rights are involved, that won't make any difference as to what the rights will be for the individual that's registered. So that part will look after itself from that standpoint.

MS BETKOWSKI: Including, for example, divorce? That would apply?

MR. GOGAL: Sure, the dower right applies.

Secondly, with respect to the environmental issues, that's why we state in our presentation that we understand that naturally property rights have to fall under whatever municipality constitution there could be, that there'll be some restrictions on development, and that goes with zoning or any type of, I guess, upscale for a use rather than what the existing use could be. We appreciate and understand that in light of those comments – and environment could be a big issue, because we think that in the 1990s environmental issues will be the most popular indoor sport for the legal profession over the next number of years. So that's something that obviously we have to deal with, and we appreciate that and look at that. However, if we take a look, and I mentioned in my remarks with respect to the RDA and the province of Alberta . . . I mean, we have a report that has gone to the federal government through an individual by the name of Gaylord Watkins out of Calgary, who is a constitutional lawyer on the property rights issue. There's no doubt when we look at the RDA situation in the city we're sitting in today, that has created some major problems for landowners in the RDA. Even though there may be some environmental issues we have to look at, there are ways around these environmental issues to correct them and therefore allow these people to enjoy the ownership of what may be down the road for them in their land.

12-01

MS BETKOWSKI: Thank you.

MR. DEPUTY CHAIRMAN: Barrie.

MR. CHIVERS: Mr. Chairman, I know Gaylord Watkins' material was referred to us previously. I'm not sure whether we've received it yet, and I'm wondering if it would be possible to see that work. It would be very useful for us.

MR. GOGAL: We have a very extensive report that was put out by him that we have available. I can assure you that we will provide each and every one of you with a copy. It does not outline all the cases. As we found out when we started working on this issue a couple of years ago when John Reimer introduced the public Bill in the House of Commons, there were cases where people had asked us: do you have anything to base your information on? So when we did the study, we came up with numerous – numerous, I can tell you – cases across the country. He's outlined in there especially some cases in Alberta, because we've had some problems in this province. We will provide all that information.

MR. CHIVERS: Thank you. I'd really appreciate that.

I'm constantly delighted by the novel ideas that come before the committee. One of them in particular is intriguing to me, perhaps not in the context that you've presented it. It's item 7, which I believe is about page 3 or 4 of your brief, where you've argued in the context of initiating future amendments to the constitutional process, where there would be a possibility for people to override resolutions of Legislative Assemblies opting out of constitutional reforms. One of the concerns consistently presented to this committee is with respect to the notwithstanding clause, which is the ability of governments to opt out of Charter and constitutional requirements. This might be a formula that could be adapted to meet some of the concerns expressed about the notwithstanding clause. I was wondering if you'd thought about it in that context as well.

MR. GOGAL: Yes, we did.

MR. CHIVERS: And you would advocate that this be utilized as a . . .

MR. GOGAL: Absolutely. Sure.

MR. CHIVERS: Thank you.

MR. DEPUTY CHAIRMAN: Dennis.

MR. ANDERSON: Thank you, Mr. Chairman. I appreciate the board making a presentation. Of course, I have been encouraging you to do that at the conventions, and you've certainly done that around the province. That's helpful to us.

I've discussed this issue with you from time to time, especially with Olivia, over many years, so you probably realize that my question and concern really isn't with respect to provincial authority versus federal. It's with respect to the interpretation given by the Supreme Court to those matters referred to it and the fact that that interpretation may give fewer rights or, at least, less ability to adjust them through elected representatives than through the legislative process. The reading I've done on other countries where it's been entrenched is that in fact you can find as many, if not many more, places where you could argue the rights weren't looked after properly as you can systems that are more responsive and able to respond through legislative change or through political pressure. So I guess my question would be: has Gaylord done any research on other countries and other places where entrenchment has been there versus just legal

requirements, as we have here? If so, could we get that information?

MR. GOGAL: The answer to your question is yes, he has. We do have that information. One of the bases we arrived at in the final presentation in its current context was because of some of those issues. If you really relate to it today, when you take a look at provincial jurisdiction over the rights being entrenched in the Constitution . . . Let's get away for a minute from the Alberta situation and look at the Saskatchewan side right now with respect to farmland. The province of Saskatchewan, as we speak today, is having some major economic problems in the farming community. I believe there are some 25,000, or something of that nature, up before the farm review board right now because of economic reasons, and you and I sitting here as Canadians living in the province of Alberta cannot go in today and buy farmland and utilize it as farmland unless we live in the province of Saskatchewan. It makes no sense to me, because there are many, many people – and we know this through our association – from Ontario, British Columbia, Alberta, and Manitoba that would love very much to go to the province of Saskatchewan and buy some farmland as an investment. We've been able to show that over the past 30 years in any given 10-year increment real estate is the best investment there is compared to bonds, mutuals, equity funds, whatever there is.

MR. DEPUTY CHAIRMAN: It hasn't worked for me.

MR. GOGAL: Well, it has for the majority of Canadians.

Also, if you look at the province of Prince Edward Island, there's a perfect example. Prince Edward Island is in a situation where they could be developing a lot of coastline for Canadians to enjoy as opposed to having many people go to all these foreign countries and what have you on holidays. Take a look at Hawaii. If Hawaii had the same jurisdictions Saskatchewan and Prince Edward Island have, you and I wouldn't be able to go to Hawaii to enjoy the facilities they have, because native Hawaiians would not have been in a position to develop the country like they have. So we think there are many, many possibilities.

MR. ANDERSON: Thank you.

MR. DEPUTY CHAIRMAN: Sheldon.

MR. CHUMIR: That's fine. I've got . . .

MR. DEPUTY CHAIRMAN: Okay.

The Chair would like to make an observation or two. I believe on page 5 you are incorrect in your assertion that a municipality can expropriate property without compensation. I believe the Expropriation Act of Alberta is a pretty good piece of legislation that paves the way for the property owner to hire the best legal representation he wants, also appraisers, to take the case to the Land Compensation Board. I don't understand how you can say there is absolutely no protection from municipalities.

MRS. BUTTI: Mr. Chairman, I think what is being referred to is that there is no time frame when just compensation through expropriation has to be done. It can be dragged on for years and years and years, and Albertans for Property Rights has been negotiating with the Premier and cabinet for many years now, as have municipalities, to ask . . .

MR. DEPUTY CHAIRMAN: But, Olivia . . .

MRS. BUTTI: May I answer this?

MR. DEPUTY CHAIRMAN: Well, I would just like to point out that they are negotiating their grievances under the RDA problem. That is not for municipalities making expropriations.

MRS. BUTTI: Presentations we have made to the government have specifically asked that there be a time frame, that if any level of government expropriates any property, there be a time frame for when compensation has to be paid. The suggestion has been six months.

MR. DEPUTY CHAIRMAN: I have no difficulty with that at all, but I would like to make the suggestion to the Alberta Real Estate Board that I have been an MLA since 1986. I've heard various presentations saying, "Entrench it in the Constitution," but I've never heard any really effective lobby or persuasion of the provincial government to amend its own laws to protect the citizens of Alberta. I personally can say this, whereas some of my colleagues maybe can't, because I'm a member of a government: the RDA situation is a complete blight on this province, and this province should be ashamed of the way it has treated its property owners. I don't think you'll argue with me on that. But I would like to see a little pressure from the real estate people on where the problem should be solved instead of going off and saying, "Well, let's go to some other level of government that's further away to try to protect our people," because our people could be protected if there was a right for people affected, as they have been under the RDA in a terrible way, to force the government into expropriating their property.

MRS. BUTTI: Mr. Chairman, we have made presentations to the provincial government, as the members can state. We've done it formally through our meetings with them. It is a different issue here. We're asking how to change the Constitution, and that's what we tried to keep this paper to.

12:11

MR. DEPUTY CHAIRMAN: Well, I'm suggesting that the issues you're raising as they affect Albertans could be dealt with in Alberta without the necessity of trying to convince everybody else in the country to amend the Constitution.

MR. GOGAL: Well, Mr. Chairman, I agree with you, but they haven't been. We have made these presentations to the provincial government in this province over the past number of years. I'm going back now to when Mr. Lougheed was Premier. That was when the issue of the Alberta Bill of Rights came up, that Albertans were protected under the rights and the majority of MLAs were not prepared to even listen to our proposals, our presentations. It's only been in the past few years since we've met with some of your cabinet ministers, some of the different MLAs, that we've found that it's not true that the MLAs of this province are totally in support of the Alberta Bill of Rights. So we are prepared. I mean, we have been prepared all along.

MR. DEPUTY CHAIRMAN: All I know is that as an MLA since 1986, I have not received strong representations and lobbying of the provincial government. I've heard annual representations about changing the Constitution of the country.

MR. ANDERSON: I'm sure you'll get several calls now, Stan.

MR. GOGAL: You'll get more calls.

MR. DEPUTY CHAIRMAN: Thank you.

MR. GOGAL: Thank you very much.
Enjoy your lunch.

MR. DEPUTY CHAIRMAN: Thank you.

[The committee adjourned at 12:12 p.m.]

