8:36 a.m. **Tuesday, March 10, 1992**

[Chairman: Mr. Horsman]

MR. CHAIRMAN: I call the meeting to order. I'd like to deal with the agenda first of all. Through an oversight the minutes of October 29 were not formally approved. If I could perhaps have a motion to formally approve those minutes. Stock Day. Are we agreed?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: All right.

Now the minutes of March 9. I'd like to have a motion to have those minutes approved.

AN HON. MEMBER: So moved.

MR. CHAIRMAN: Okay. Questions? Comments? All those in favour? Opposed, if any? Carried.

All right; we'll continue with the discussion of the committee report. You have before you now a document which was prepared as a result of yesterday's . . .

MR. CHIVERS: Mr. Chairman, I'd like to propose a motion that we continue these deliberations in open session.

MR. CHAIRMAN: I'm in the process of making some comments. You can wait until I recognize you.

You have before you now a document which was prepared as a result of yesterday's discussion.

MS BARRETT: I don't have that, Mr. Chairman.

MR. CHAIRMAN: Copies of it were supplied, I believe – were they not? – to all members of the select committee.

Highlighted in yellow are items which were approved from the original draft, which have been circulated to all members of the committee. I want to go over those changes so members understand just what is there.

On page 1 it's proposed to add to the original draft the following:

> This report will be submitted to the Legislative Assembly for debate and approval. In view of the importance of the issue, the committee recommends that a vote on the report not be subject to party discipline, in the hope that an open, non-partisan approach will be followed.

On page 2, a highlighted section as follows:

> Albertans believe that the complex constitutional and political issues before us cannot be solved all at once. The national constitutional agenda must be limited to manageable proportions.
>
> In recognition of this, the Committee has attempted to categorize the many reform proposals that were advanced by Albertans as follows:
>
> I. Constitutional issues which require immediate resolution;
>
> II. Constitutional issues that should be addressed in the next round of constitutional negotiations;
>
> III. Matters which are best addressed outside the Constitution; and
>
> IV. The Constitutional Amendment process.

Those words are the same, obviously, but they are highlighted in this document.

Then in the following paragraph a change in wording, which will read: "Procedures for setting those standards should be carried out by a cooperative process of intergovernmental relations."

Moving on to page 3, in clause 1, the term "must" has been added there rather than "should."

MR. CHIVERS: What page is that, Mr. Chairman?

MR. CHAIRMAN: Page 3.

On page 6, in clause 35, the first sentence has been changed to read: "Many Albertans objected to the manner in which federal official bilingualism policies are applied."

On page 7, clause 36: "Albertans value the cultural and ethnic diversity in Canada." There has been a slight wording change there.

Page 9. In the enumerated items the word "dedication" has been included instead of "commitment": "dedication to a united Canada."

Moving through the paper to page 25 under the heading Multiculturalism, the first sentence has been changed to read: "Albertans value the cultural and ethnic diversity of modern Canadian society." Then in the committee conclusion on that matter: "Albertans value the cultural and ethnic diversity in Canada." Under Minority Language Rights, in the second paragraph: "Many Albertans, however, objected to the manner in which federal official bilingualism policies are applied in Canada." The committee conclusion incorporates that same language:

> Many Albertans objected to the manner in which federal official bilingualism policies are applied. The Committee recommends that the federal government review the application of federal language legislation and policy in Canada.

Then the final item. Under Strengthening our National Identity, we have added the term "exchange programs and travel incentives within Canada should be promoted."

MRS. GAGNON: Mr. Chairman, you forgot to mention the preface, which was brought forward from the back to the front page, a very important page.

MR. CHAIRMAN: Yes, that's right. We did bring forward a preface of an item that had been contained in the last page, a quotation from a presenter which reads this way:

> "With all my heart I beg my leaders to leave no stone unturned, no point undiscussed, no decent idea . . . unconsidered on the path to unity for this country. This is the most unique and beautiful country on the face of the earth."
>
> These powerful words were expressed to the Committee by Buck Kallen from Wainwright, Alberta. His words echo the sentiments of many who appeared before us and who submitted briefs and letters and made telephone calls.

I would just like you to note that there is a misspelling of Mr. Kallen's name. It's my understanding it begins with a K and not a C.

Those would propose to be the changes.

I would now invite the members of the NDP to bring forward their amendments that they were talking about yesterday.

I invite all the news media to stay for the whole substance and not just the show. I hope nobody at all will want to leave during the course of this morning's activities. It should be enlightening to all of you. If anybody leaves the room, it will only be, I assume, because you have no interest in what really takes place at the table.

MR. McINNIS: Will the changes that you just outlined be circulated to all the members?

MR. CHAIRMAN: They are circulated to all the members.

MS BARRETT: We didn't get that.

MR. POCOCK: It was my understanding that it was walked over yesterday afternoon.

MS BARRETT: None of us have them. I mean, none of us have.

MR. CHIVERS: No, that's not correct.

UNIDENTIFIED SPEAKER: You do have them.

MR. CHIVERS: I have mine. Mine were faxed.

MS BARRETT: Oh, you have yours. Okay.

MR. CHAIRMAN: Check your mail.
Yes, please circulate your proposals.

MS BARRETT: Mr. Chairman, I would like to circulate the amendments that we've drafted. I've got copies for everybody including, I think, our primary staff people here. [interjection] No, I'm afraid we drafted these on Sunday for this committee.

MR. CHAIRMAN: All right; go through them, please.

MS BARRETT: Okay. I guess I'll start, and we'll sort of take turns.
In clause 2, under Constitutional Equality . . .

MR. CHAIRMAN: Oh, don't leave.

UNIDENTIFIED SPEAKER: We're not leaving.

MR. CHAIRMAN: Oh, good. Keep the cameras rolling, you know.

MS BARRETT: . . . we propose that the statement borrowed from the third paragraph of page 10 of the first draft be incorporated. It would add to the first paragraph:

> The concept of equality must take into account historical, cultural and economic realities; the concept of equality is sometimes better served through different rather than uniform treatment.

8:46

MR. CHAIRMAN: Okay. Next.

MS BARRETT: The next one refers to Senate elections, clause 6. Strike everything after the first sentence and add:

> Senate elections should not be held in intended conjunction with provincial or federal general elections. Senate elections should be conducted on a proportional representation basis. The provinces and territories should develop all other rules by which Senate elections shall be conducted. Those rules should include reasonable mechanisms for ensuring the objective of achieving gender and aboriginal balance within the Senate. All rules must be uniform for all provinces and territories for Senate elections in Canada, and be embodied in the Constitution.

MR. CHAIRMAN: Next.

MS BARRETT: The next one is consequential. It would strike clause 7, which says, "Senate elections should be held in conjunction with provincial elections."

MR. McINNIS: The next one, the amendment to clause 9, I don't have the revised draft, so I think it may have been . . .

MR. CHAIRMAN: There are no changes in there.

MR. McINNIS: The question of "the territories should . . . upon attaining provincehood must": that correction has not been made in clauses 8 and 9?

MR. CHAIRMAN: It is in the new draft. That has been corrected. That's dealt with.

MR. McINNIS: So that amendment is redundant at this stage.
The amendment to clause 15:

> The Senate should be given the responsibility of ratifying all appointments to the Supreme Court of Canada, and reviewing all appointments to national boards and agencies; in both instances keeping in mind the desirability of gender balance in these appointments.

Chiefly the addition of "gender balance" to the wording that's in the clause today.

MS BARRETT: Well, a little bit more, I would say. We're talking about actually ratifying appointments to the Supreme Court, not just reviewing; in other words, giving the new Senate some additional powers.

MR. CHAIRMAN: Okay. Next.

MR. McINNIS: Okay; the next is the addition of clause 11, which effectively eliminates the property qualification clause from the Senate. Since this is to be a democratically elected body, it's our feeling it should no longer have the property qualification, which admittedly is not a very tough barrier in today's day and age, but there's no place for a property qualification in a democratically elected agency by way of a universal franchise.

MR. CHIVERS: The next item, Mr. Chairman, is recognition of Quebec's distinct society: clauses 16, 17, and 18.

Mr. Chairman, I've just noted, and it doesn't appear on this document, that there's a contradiction in the wording between the text of the report and these sections of the report with respect to the title. I think it should read "Recognition of Quebec as a Distinct Society," which is the way it's formulated, I believe, in the text. At least it was on the original version that I had.

MS BARRETT: That's the wording they used in their draft.

MR. CHAIRMAN: That's correct.

MR. CHIVERS: Very good. That's been corrected then.

With respect to the three sections under this heading, Mr. Chairman, we have three suggestions. First, the sections require renumbering. Clause 17 should become clause 16, and in the present clause 16, we should strike the word "should" and insert the word "must." The present clause 18 should be renumbered 17, and again we should strike the word "should" and replace it with the word "must." With respect to the wording in that same subsection, after the words "Rights and Freedoms" add "should be limited to."

With respect to the Aboriginal Peoples clause, actually this should read 19 and 20. In line 2 in clause 19, change "should" to "must." In line 2 of clause 20, change "should" to "must."

With respect to paragraph 24, I want to spend a little time on this, Mr. Chairman, because this is a rather complicated suggestion. It is our view that this issue . . .

MR. CHAIRMAN: Could I just stop you for a moment? On the material we have, there's no reference to clause 24.

MR. McINNIS: It's actually further down in the package.

MS BARRETT: If you keep going, it's not on a numbered page. It just says at the top "Aboriginal Peoples."

MR. McINNIS: Third page from the bottom.

MS BARRETT: It starts with clause 19 and goes all the way through 24.

MR. CHIVERS: Sorry, Mr. Chairman, but since this is under the same topic, I wonder if I might just carry on with it.

MR. CHAIRMAN: Yes, that's fine. I didn't know what you were talking about.

MR. CHIVERS: To follow us, yes.

Mr. Chairman, with respect to paragraph 24, we think it's imperative that the Constitution clearly and unequivocally recognize the entrenchment of the aboriginal right to self-government. We think that

> this recognition should include a requirement that the federal [and] provincial governments and aboriginal organizations immediately begin negotiations in good faith and make every reasonable effort to conclude self-government agreements.

The second point, Mr. Chairman, has to do with the issue of justiciability, which has been a very difficult and troublesome concept. We want to propose a method which we think will adequately balance the interests of aboriginal peoples, governments, and the peoples of Canada. This suggestion is that there be a requirement in conjunction with the requirement to meet immediately and begin negotiations in good faith that we should then impose justiciability in the event either of an agreement being reached or of an impasse in bargaining. An impasse in bargaining would be arrived at should there be a failure to make every reasonable effort to conclude a self-government agreement. An impasse would also arise if there was bad faith bargaining by one of the parties.

MR. CHAIRMAN: Okay. Do you want to go back now to 25?

MS BARRETT: We agreed with the statements in clause 25 but thought we should take the section of the report which recommends later action and pull it forward into this clause dealing with distribution of responsibilities. So we would insert as a first paragraph exactly the same words that appear under clause 30 and just add at the end of it, which I've underlined, "subject to the constitutional amendment process." So it's basically supporting the co-operative review of the division of constitutional responsibilities by both orders of government, legislating into the delegation, et cetera. Essentially everything under the constitutional issues that should be addressed in the next constitutional discussions: we feel putting it forward into the statement of distribution of responsibilities does not jeopardize that which was proposed in the first draft and, in fact, adds to it.

MR. McINNIS: In clause 26 there's a desire to strengthen the wording of the opting out provision on cost-shared programs to ensure that substitute programs are not merely compatible with the objectives of the program but are in fact comparable so there's some measure of quality of services as opposed to mere compatibility.

I'm going to have to ask you to jump pages again. If you go to the second-last page of the package, we get to a new section, 29.1 of the report, just so we keep with the flow. This is the clear desire of Albertans expressed in public hearings to ensure that social benefits, environmental integrity, and fundamental trade union rights are protected in our Constitution. This wording reflects the desire of Canadians to have some basic level of services and programs enshrined in the Constitution, equitable social and economic conditions, access to health care, education, and social welfare, known popularly as the social Charter or the social covenant. We're recommending the Constitution be amended to include a social covenant to commit governments collectively to foster

* comprehensive, universal, portable, publicly administered and accessible health care;
* adequate social services and social benefits;
* high quality education;
* the right of workers to organize and bargain collectively; and
* the integrity of the environment.

Further, while these things shouldn't be dealt with in the courts, they should be dealt with by

> public review, including public hearings and periodic reports by a specialized commission, whose reports would be tabled in Parliament and the provincial . . . legislatures.

MR. CHIVERS: Mr. Chairman, with respect to clause 31, the Charter of Rights and Freedoms, in that clause the recommendation the majority of the committee has proposed is that the issues concerning the Charter of Rights and Freedoms be referred to the First Ministers' Conference in 1997. Our concern of course is that this has been one of the very frequently referenced matters in the hearings and in the data the committee has before it. Consequently, when you take into account that one of their representations has been that they do not want constitutional matters dealt with by the politicians exclusively, we propose that after "1997" we insert the words "in conjunction with a Joint Committee of the Senate and the House of Commons," with the understanding that that would also involve again a process of hearing and consultation.

8:56

MS BARRETT: With respect to clause 32, I'll read the sentence we want struck. We do not believe this sentence does reflect either input from the public or our own thoughts. This is talking about national standards. It says:

> The Committee believes that these programs are best enshrined by flexible legislative and other arrangements, rather than by constitutional entrenchment.

Sponsoring, as we are, an addition to this report to embody the concept of social covenant, we believe those two statements would be in contradiction with each other, and therefore we move to strike the second sentence in that clause.

MR. McINNIS: On clause 38, again we're seeking to emphasize gender balance in appointments to federal tribunals, boards, and agencies. It's pretty important to have representation from the provinces, but it's also important that both genders be represented on those bodies. In line with the wording, we've added gender balance in the representation.

MR. CHIVERS: Mr. Chairman, with respect to clause 43, the item dealing with referenda and plebiscites, our concern here is that we should add the third component of the process, which was frequently discussed by presenters to the public hearings, and that is the concept of a constituent assembly.

Mr. Chairman, with respect to the national identity clause, I think we have four suggestions here. We suggest:

> The preamble to the Constitution of Canada must contain a brief and inspirational national identity clause which reflects . . .

I'm sorry. Are you following me?

MR. ADY: Tell me where you're at.

MR. CHIVERS: Section 1, which reflects basic beliefs and values of Canadians. The clause should include, in addition to the other matters,

> respect for diversity throughout Canada, including differences based on language, culture, race, national or ethnic origin, geographical residence or creed.

It should also include "respect for the dignity and well-being of every person" and a specific statement with respect to "fairness, equality, and democracy."

MS BARRETT: Finally, Mr. Chairman, you'll recall the report recommended that, in terms of institutional reforms for the Alberta Legislature, we strike a committee to get to work on those. It was recommended that that be outside the constitutional paper we're working on. We believe, considering this committee heard a lot of recommendations with respect to parliamentary reform, that what we can do ourselves right now, without having to strike another committee, is develop our own policy and our own section on this very matter to include things such as freedom of information legislation, improved conflict of interest legislation, more free votes in the Legislature, the right to petition the Assembly to ensure debate on issues Albertans want discussed in the Legislature, regularly scheduled hearings of the Assembly, the televising of all the Assembly's activities, allowing a set number of private member's Bills to come to a vote, expanding the role of Legislature committees to allow more public participation in lawmaking and the review of spending – in other words, opening up the Legislature book to public affairs debate – legislation to require the election of the Speaker, and legislation requiring public consultation on proposed constitutional amendments before they're ratified by the Assembly. We believe these recommendations could be embodied in our report. They're not constitutional recommendations, but considering what we heard when we were on the road, we believe they should be embodied in the report.

That's it for our amendments.

MR. CHAIRMAN: All right. Let's proceed to deal with them.

First of all, are there any general comments? Dennis.

MR. ANDERSON: Mr. Chairman, as a general comment on these recommendations, I might say there are a couple that might have been quite useful earlier in the process. I see some changes from what the committee had agreed to when all members of the committee had agreed to be in camera. I think others are beneficial. Certainly gender equality in a number of sections or gender recognition is an important factor, but so are aboriginal balance or balance by province or trying to ensure that minorities are included. I think if we try to redo all the report at this point to recognize all the needs that might be there in any composition, we would be doing more than the job of constitutional change at this point in time.

I might also say that I don't fully understand the recommendations made with regard to Senate reform. They seem to generally agree with what we've put in place but somehow change the benefit we suggested would be there from having each province able to determine its own representation in order to represent its unique place in the country and require a common set of rules, which I'm not sure how one would come about. A new idea might have been helpful earlier, but at this stage I can't see how this committee can deal with it.

Mr. Chairman, in terms of some of the others, I generally support the new section 37, but once again, I think we allow for that to be developed through a separate committee of the Legislature. So while I don't disagree with some of what's in this package, I can't see where it's helpful to us at this stage in the deliberations after the numerous meetings we've held by all-party, all-representative agreement on this committee.

MS BARRETT: Mr. Chairman, I beg to respond to that, please.

MR. CHAIRMAN: Well, all right, but let's get down to dealing with the items themselves.

MS BARRETT: Okay. Fair enough. The point, Mr. Chairman, as all committee members know, is that the first written draft we got was on Friday, and we were asked to come back on Monday with our responses prepared. We had never been told by anybody in this committee that the report would be drafted to show that each province would develop its own rules for senatorial elections. That was brand new to us.

MR. CHAIRMAN: Let's get to that issue.

MS BARRETT: Mr. Chairman, Dennis was just saying, "Jeepers, you know, it's a little late for this." The first news we had of that was on Friday. Yes, it was.

MR. ANDERSON: Well, that wasn't the understanding of the agreement we reached here and John and I talked about during the committee meetings. Maybe you missed that one, Pam, but my understanding was that . . .

MR. CHAIRMAN: Well, let's not go back over the issues. Let's deal with each issue as it comes forward.

MR. McINNIS: Perhaps, Mr. Chairman, it would be helpful to say this. There is a difference between a verbal discussion and apparent consensus on the actual text. I think we are faced with that today. What these amendments do in our view – just a general comment – is make the report correspond more closely to what Albertans told us and also what is in our best interests as a province leading into negotiations. That's really all that needs to be said in general about bringing the amendments forward. I do agree. We can disagree about wording. We can decide some of them were good and some of them were bad. All we ask is an opportunity that they be considered.

MR. CHAIRMAN: Fine. The fact of the matter is, though, that 12 hours of in camera meetings were held, which is the normal procedure for the conduct of preparing a select committee report – four meetings, each three hours in length, at which time *Hansard* was not present to record the discussions, at which notes were taken as to what the staff and committee felt were appropriate conclusions about principles. Then the staff was asked to draft the report which was made available Friday, and on that basis the wording was put forward. Now, I think the key thing is this. Since we have departed from the normal procedures because of yesterday's activities, we shall go forward now and deal with all these items one by one. I think that's the appropriate way of dealing with this matter now.

9:06

MR. CHIVERS: Mr. Chairman, I agree that that is the appropriate way of dealing with it. My concern, however, is that we were promised the package on Thursday. We did not receive it on Thursday, and on Friday some of our committee became very distressed when in effect a notice of closure was imposed on the committee.

MR. CHAIRMAN: Well, let's put distress to an end and deal with items one by one.

The proposal in clause 2 is to add additional wording.

MR. McINNIS: The wording was always in the report. It was a question of making certain that Albertans' generous notion of equality is not a simple-minded notion and not a one-dimensional notion as reflected in key recommendations and findings of the report. So we're not really introducing a new concept or even new language to the report; we're simply taking what's already there and putting it in the context of key findings and recommendations.

MR. CHAIRMAN: I take it you're moving that this be added. Is there a comment from members of the committee as to whether or not it is necessary to add wording from the preamble to the recommendation itself?

MR. ADY: Mr. Chairman, what are they proposing that we add?

MR. CHAIRMAN: If you look at page 10, you'll see there is a preamble in the text, the wording of which it is now being proposed we add to the conclusion. The question is: does the committee feel it is necessary to add to the conclusion wording from the text?

MR. CHIVERS: In other words, make the recommendation conform with the text.

MR. ADY: I see. Give us a minute to look this over.

MR. CHAIRMAN: The recommendation obviously is much shorter than the text leading up to the question.

MS BETKOWSKI: I don't have a problem with it. It's in the text. The question is: do we need it?

MR. CHAIRMAN: That's it. The question is: do we want to keep it a simple, straightforward statement as it is in paragraph 2 on page 3, or do we want to add part of the preamble or the text?

MR. McINNIS: I think the difficulty, Mr. Chairman, is that if you look at, for example, the two federal documents recently, the findings and conclusions are much more widely circulated than the report itself. This is not a cosmetic matter. Albertans' view of equality is not simple-minded and one-dimensional. It is, in fact, a generous notion and a nation-building notion. It's not cosmetics to say that this notion that definitely did come through and is recognized in the report should be placed in the conclusion, which I suggest would be much more widely read than the full text of the report.

MR. CHAIRMAN: All right. It's been moved that this be added. All those in favour? Opposed? Let's take the count. Stan, are you in favour of this? Opposed?

All right. We'll add this to the text.

MR. McINNIS: The question of timing of Senate elections, clause 6. Concern has been expressed that we don't want the Senate elections in conjunction with the federal election because that would give the federal parties too much influence over who's elected and their performance once they're in office. I think the same view can easily be taken about holding them in conjunction with provincial elections: it will tend to make Senators beholden to provincial parties and, therefore, less independent.

The obvious solution seems to be a stand-alone election given that the Senate is going to be not a House of the provinces or a House of the federal Commons but rather an effective, independently-elected body. I think the third alternative of putting it in with municipal elections would be treated in a hostile fashion by the municipalities. So that leaves us with the option of stand-alone, which I think is preferred by common sense and by most Albertans.

MS BARRETT: Could I just explain something on this, please, Mr. Chairman?

The way it's written, it refers to "intended conjunction." The reason we drafted it that way is because . . . Let's say, for example, you're going to set an election every five years or every six years. You can't prevent another jurisdiction, which has the right to call elections as it desires, from calling an election at about the same time. If you have fixed or stand-alone times for Senatorial elections, you don't prevent provincial or federal elections from happening at the same time; it's just that they're not intended to be in conjunction with federal or provincial elections. That's the intent of the motion.

MR. CHAIRMAN: Comments? Yes, Dennis.

MR. ANDERSON: Mr. Chairman, this is a change of heart from what was previously suggested by committee members. I would oppose it. I think, as we agreed in previous meetings, that an election during provincial elections does two things. First of all, it ensures that federal political parties are much less involved, and consequently the ability of the House of Commons or the most populous parts of the country to control the Senate through that process is much negated. Secondly, the focus on provincial issues and their dealing with representatives of the people of the province in the federal decision-making process is much more in keeping with the whole reason for a Senate than is done in some other form of election.

Stand-alone elections would certainly be better than federal elections, as we've discussed. Federal elections have the downside of excess cost to the population and once again, more importantly, more potential for national political parties to control the election and consequently influence the votes of Senators once those parties have funded and operated the election process. So I think the provincial election is the most logical one, and I suggest we stick by the original decision and script that the committee has now.

MS BARRETT: Can I just ask Dennis: would you also elaborate why you want the electoral rules within each province to be different?

MR. ANDERSON: Well, in the 1985 report to the Legislature, that wasn't there. We've suggested similar rules. But the reason, which John and I discussed in a previous meeting, is essentially that each province has a difference circumstance. In New Brunswick they may well want to give a seat to the Acadian people, or they may want to develop a kind of representation that meets the needs of minorities in that particular province. In

Ontario, Toronto has the potential to control a lot of the seats; they may want the seat breakdown to be different. So my original feeling was . . .

MS BARRETT: So you're only talking about configuration. You're not talking about the rules being different. You're talking about whether they have, you know, one seat for a province or two or if they want to dice them up geographically.

MR. ANDERSON: That's the primary difference, allowing for where the boundaries of the seats will be, whether they're provincewide or they're in different areas. Also, we would allow for some flexibility in the way the vote is held, whether it's first past the post or otherwise, because clearly we're going to have difficulty reaching consensus among the provinces. I certainly have my own idea where every province should be, but when we're trying to get the conclusion of the country, it makes sense to allow that to develop according to the special needs of each province be it Quebec or Alberta or New Brunswick.

MR. CHAIRMAN: I just want to make a brief comment, but you go ahead, Stan.

MR. SCHUMACHER: Okay. Essentially I agree with Dennis, but, you know, we just passed an amendment to clause 2 that takes into account historical, cultural, and economic realities, saying that equality shouldn't be slavishly followed in that way. I don't understand why the NDP now want to have some type of monolithic, uniform, standard way of dealing with the election of Senators.

9:16

MR. CHAIRMAN: I just want to add – and I've shared this, I think, with the committee before – that we experienced during that time when I was chairman of the task force on behalf of the Premiers a great deal of concern in other provinces. The one that really struck home for me was the expression of concern in Nova Scotia for uniformity in selecting their Senators. For example, we had proposed in our original report that there be a single constituency; that is, provincewide representation. The Nova Scotia people made it very clear that if that were to occur, then Halifax would inevitably elect all the Senators, and they did not want to see that occur. In New Brunswick as well that concern was expressed relative to the fact that the English-speaking majority may very well exclude the election of Acadian representation from parts of New Brunswick which had large Acadian populations. They felt that they needed that flexibility within their own boundaries to make those decisions. It was on the basis of that type of concern that we felt there needed to be more flexibility within each province. That's one of the reasons this recommendation is here.

MR. McINNIS: Mr. Chairman, the expression that comes to mind in dealing with this whole section of Senate reform is that you should be careful what you wish for because you might get it. I think when we say that these things are all musts for Alberta – what we ask for is very important. Taken together, the recommendations paint a picture of a Senate elected provincially according to rules that may vary quite dramatically. I suppose in theory, if the Quebec National Assembly chose their Senators, that might be considered an election too, although most of us wouldn't consider that to be an elected Senate. It would be, in effect, one appointed by politicians.

I also think in the area of powers it obviously reflects the concern that was mentioned about the role of the provinces and the provincial governments. The only place we've given the Senate a veto is in dealing with provincial government jurisdictions. This type of Senate would not, for example, be able to drop the GST effectively or even the national energy program for that matter unless you could prove it was in the provincial jurisdiction. What it doesn't do – and I think this is a whole area where we perhaps do disagree – is provide a balance to the majoritarian, white male, middle-class nature of the House of Commons, and that's why the business of gender and aboriginal balance should be in there as well.

I recognize it's a fairly broad brush, but we're saying that the Senate objective of triple E is not simply a voice for the provinces in Ottawa but a voice for all kinds of people who aren't represented. That's basically what this clause is intended to reflect.

MR. CHAIRMAN: Stock Day.

MR. DAY: I'm interested in your phrase that there are reasonable mechanisms for ensuring, for instance, gender balance. We can put it on a smaller scale. If we look at certain school boards in this province, there are either all or predominantly women who are elected to them because it was mainly women running for those offices. Are you suggesting that some of those women's role or election would not be legitimate because it doesn't reflect gender balance? If you have a large proportion of women, or maybe women only, running for Senate, are you suggesting that a mechanism kick into place that would boot some of those women out of the potential of running and of having maybe a hundred percent female Senators from this province?

MR. McINNIS: You're perhaps misinterpreting the word "balance." The reality is that today the House of Commons is 87 percent male, 13 percent female. When we talk about balance, it's balancing that.

MR. DAY: Well, you still haven't answered my question. It's a very clear possibility that we would see the day, as we do in the school boards around the province, where it's all women running for a certain office. If it was all women running for Senators, are you suggesting there should be a mechanism whereby some of them would be disqualified because they're women?

MS BARRETT: No. We're suggesting that there be a mechanism to promote gender balance both in seeking nomination, I suppose, and election.

MR. DAY: A mechanism forced on all parties?

MS BARRETT: Not forced, no. We're asking the rules to look at and include some reasonable mechanism to promote gender balance and also aboriginal balance; in other words, appropriate representation from those categories which have often suffered exclusion as a matter of history, not as a matter of design anymore, I would argue.

MR. DAY: Seeing that you haven't thought that out well, I won't pursue it any further. [interjections]

MR. CHAIRMAN: Order please. We have a long agenda to get through today. We could talk a lot about gender representation if we wanted to, but I think the point has been well made. I think there's a key element here that has to be addressed and understood, and that is that when the term "must" is included – it obviously is a very strong word. Where "should" is included,

obviously there's some room for negotiation. So the principle of equality, we say, is there. The principle of election is there, very strongly, and when it comes to how rules are devised, clearly there has to be some room for negotiation with other provinces and discussion with the federal government. The question that we have now before us is whether or not we want to strike everything after the first sentence in clause 6 and add the items that are included here. I think we've had sufficient debate on it. I don't want to cut you off, but we do have other things of very great significance to move on to.

MR. CHIVERS: A very short point, Mr. Chairman. I want to point out that the language that's used in the gender balance is "should" rather than "must". It's directory rather than mandatory.

MR. CHAIRMAN: Yolande.

MRS. GAGNON: Yes, Mr. Chairman, I'd like to enter this debate. First of all, I'd like to say that in the Angus Reid poll only 8 percent of the respondents said that Senate reform was of prime importance to them, so I don't think we should make a huge case of this. It is very important, but it is not of prime importance. I think Albertans also told us that they're sick and tired of politicians playing for political favour and currying political favour by using their very precious Constitution.

The whole point of Senate reform is that it must achieve regional balance. That is the role of Senate reform. That is what everybody wants. So I think the way the wording exists now in the proposal before us accurately reflects what Albertans said – not what the NDP wants, but what Albertans said. That's the role of this committee. Everything in the report doesn't necessarily reflect what I want or everything my party wants. This report is to reflect on the conclusion we reached using our best judgment based on input from Albertans, and when we have a full debate in the Legislature later on, leading to a free vote, that is the time we can bring in other opinions and partisan opinions. I don't think the purpose of this report is to do that at this time.

MS BARRETT: I beg to differ. We didn't make this up. We got this from the hearings.

MR. McINNIS: What does Yolande find partisan in this statement? I'm just curious.

MR. CHAIRMAN: I think we've had sufficient debate on this. We have other items to move along.

The motion has been made – we all have it in front of us – to amend clause 6 to strike everything after the first sentence and add what's included on this paper. All those in favour, please raise your hand. Opposed? It's defeated.

Let's move on to the next item, which is to strike clause 7 in its entirety.

MR. McINNIS: Mr. Chairman, we should withdraw that because it's consequential to the previous point.

MR. CHAIRMAN: Yes, that is quite correct.

Clause 9 has been corrected in the draft. That is not necessary now.

Clause 15.

MS BARRETT: I'd like to speak to this one. It currently says:

> The Senate should be given the responsibility of reviewing all appointments to the Supreme Court of Canada and national boards and agencies.

I'd be willing to strike part of our amendment to get it through. What we're asking for is that the Senate be given the responsibility of actually ratifying all appointments to the Supreme Court of Canada and then reviewing all appointments to national boards and agencies. In other words, in the first instance they have to approve. In the second instance they can be passive or active depending on whether they're concerned about the appointments to the national boards and agencies.

9:26

MR. ADY: What are you giving up? That's exactly what your amendment calls for.

MR. CHAIRMAN: Actually, no. It's a very substantial amendment. Ratification is much different from review. Right?

MR. ADY: I'm sorry; I missed that word.

MS BARRETT: Oh, yes, it is. I'm saying that what's important to us here is the ratification. You know, if you wanted to change the stuff about the review of appointments, that's fine with me, but the ratification of Supreme Court appointments seems to us very important.

MR. CHAIRMAN: Okay. That's a very important issue.

MRS. GAGNON: Mr. Chairman, I'd like to ask Pam if she heard that at any of the hearings or read it in any of the submissions, and if she envisions a U.S. style of ratification process.

MS BARRETT: Yeah, we did hear it. I don't know if it's enumerated. We did hear it a couple of times though. It could be related to what was going on, in fact, in the United States at the time of our second round of hearings.

Well, really, to be fair about it, if it was important enough to appear as a recommendation for review, it occurred to us that this is one of the areas where you can actually strengthen the powers of the Senate. I mean, everybody at this table before agreed that the real difficulty with a triple E Senate is achieving the effective part. How do you define its role in a way that's going to make it effective? We think this would be one step in strengthening the effective part.

MR. McINNIS: One point to add on that. Yolande, I think you'll find with a lot of these things that it's a matter of not just interpretation but also working out in a pragmatic way solutions to problems that were identified. I would say a persistent problem identified was judicial lawmaking in our system, which has grown exponentially since the Charter of Rights and Freedoms came in. The number of laws that are struck down and the amount of lawmaking done by justices has grown enormously. The question that came up repeatedly was how to put a democratic safeguard and control over that process. I think that in effect probably the strongest solution available to us as legislators – given that the Charter is not so easily amended and given that using the notwithstanding clause is always politically awkward – is to have a ratification process so the issue of judicial lawmaking can be dealt with prior to people going on the bench until age 75.

MR. CHAIRMAN: Okay. I'm sorry, Barrie; were you on that list?

MR. CHIVERS: Yes, I was, Mr. Chairman. I just wanted to reiterate what John has said. This was not an infrequent concern.

The issue with respect to the Supreme Court of Canada and the role it plays with respect to the interpretation and application of the Charter in particular but the Constitution of Canada in general was something that was very frequently referenced, and the data does make reference to it. The other and collateral issue is the appointment process. The appointment process and judicial lawmaking, or the role the court plays, are inextricably interrelated.

MR. CHAIRMAN: There's no question that this is a very significant point, and I gather this was discussed in a meeting of the committee when I wasn't in attendance. I don't know; can anybody refresh my memory on whether or not this ratification versus review was actually discussed?

MS BARRETT: I don't think it was, actually.

MR. CHAIRMAN: Okay.

MR. ANDERSON: It was touched on, but it wasn't explored before.

MS BARRETT: Yeah, it was just because people had said at the time of our September hearings that ratification should be considered.

MR. CHAIRMAN: This is a substantive issue. In my discussions with the drafters, it was preferred to use review rather than to move to formal ratification without having some further discussions with other provinces and the federal government on this issue. If we were to move to the ratification process as opposed to the review process, I think it's a very significant step for us to take. As chairman I was just seeking advice, because as you know, I did have to miss two of those sessions. I just wondered if it had been, in fact, discussed during the course of those meetings.

MR. McINNIS: In my memory of the discussion, I don't think the distinction was ever drawn clearly. I think most of us probably thought we were talking about ratification. Perhaps I'm just speaking for myself on this. I'm not certain we looked at the two options. But the distinction here is: on the court, ratification; on the agencies, review, so we're obviously putting the Supreme Court in a much more important position.

MR. CHIVERS: Mr. Chairman, again I wasn't present for the meeting. I am concerned about this, and I did suggest the change to ratifying, because it's a very important change. I also want to point out that this is framed in directory rather than mandatory language, which I think is important. Also, it doesn't define the mechanisms that would be used to consummate the ratification process. So the concerns with respect to the Anita Hill spectacle, if I can put it that way – and some of which I don't discount, some of them may be legitimate concerns. But the procedures would be within the control of the Senate in terms of determining whether parts of their proceedings should be in camera.

MR. MITCHELL: Mr. Chairman, as with many of these proposals, my colleague and I are having difficulty with this balance between trying to reflect in this report what in fact Albertans told the committee they wanted to have reflected and somehow coming up with recommendations that plug holes in what we were told or, as John says, address issues that were raised but for which no proposal was provided, no solution was proposed. This case is somewhat troublesome. Not a lot of people mentioned ratification, I understand. At the same time, there is much to be recommended by it and for it, and perhaps had people had the chance to get into the kind of in-depth discussion that sometimes this committee has, they would say yes, okay, this is the solution.

We will support this particular proposal because we feel it doesn't extend beyond the mandate of this committee in a serious way. But we do want to make it very clear that this document is not a statement of New Democrat proposals or policies or positions on the Constitution but in fact should be an effort to reflect what Albertans have told this committee, and that will become part of the process of developing positions once this committee has finalized its report.

MS BETKOWSKI: In the discussions I was part of, I certainly didn't feel I heard this strongly enough to change a reviewing to ratifying. I happen to believe that it's a pretty fundamental part of the court system that it not be a ratification process by the Senate, and I oppose the amendment. I don't want to see our courts come into the U.S. kind of system, which this seems to me to be moving us towards.

MR. CHAIRMAN: Okay. Other questions or comments?

All right. All those in favour of the amendment? Opposed? It's defeated.

Now, move on to the next. Added to the first sentence, clause 11. I think we agree with this proposal, but it's just a matter of where we put it in, isn't it?

MS BARRETT: Yeah. Well, if anybody agrees with the concept that you must own real property of a value of such and such amount in order to qualify, let them say so. If not, then we can decide where we put it in.

MR. CHAIRMAN: Yeah. I don't want to prejudge the discussion, but we agree with this concept. It's a matter of where we insert it.

MR. ANDERSON: Mr. Chairman, I assumed that that was part of number 5 with the acceptance of the committee's general recommendations from 1985, because it was certainly in that report.

MS BARRETT: Were both age 30 and real property rejected? I'm not sure age 30 was.

MR. CHAIRMAN: Was that in that report? Let's look at your report, Dennis. You've got a copy of it right in front of you.

MR. CHIVERS: Mr. Chairman, if there's consensus on this, I think we'd be content to leave it to the staff to find the way of making sure that point is highlighted.

9:36

MR. CHAIRMAN: Let's double-check. Let's just check Dennis' recommendations.

MR. ANDERSON: I don't think it had age 30 required if it did have a problem. I assumed it was just the same as any other election.

MR. CHAIRMAN: If it is incorporated in the Alberta Select Special Committee on Upper House Reform, March '85, and I

think it was, then that principle was clear. I don't think we need any further discussion on that though.

MR. ANDERSON: It says, Mr. Chairman, that qualification for candidates to the Senate should be the same as the House of Commons.

MR. CHAIRMAN: Well that, I think, covers it then.

MR. McINNIS: The general principle is what we've just heard?

MR. CHAIRMAN: Yeah, I think we can agree to that. The record will certainly show that in any event.

Can we go on to the next item now? I'd like somebody to explain just what is in mind here.

MR. CHIVERS: Mr. Chairman, the primary issue here, of course, is the use of language: mandatory language and directory language. The present proposal contains the directory language "should" in the present clauses 17 and 18.

In the circumstances here, Mr. Chairman, in view of what Albertans have said, and in view of the fact that there's been a lot of water under the constitutional bridge since the hearing process concluded with the opinion poll last mid-December, it seems to us that it is quite clear that a constitutional accord – and there seems to be general agreement amongst most of the committees that have reported; those data have been presented to our committee. It seems to have been general agreement at the conferences that this was a minimum position, that this must be accepted. Clauses 17 and 18, therefore, we propose should contain the mandatory language rather than the directory language, particularly in the context of this report, so much of which hinges around the significance of the distinction between mandatory and directory language.

MR. CHAIRMAN: Okay. This would strengthen the distinct society clause very substantially then.

Questions or comments?

MR. CHIVERS: The other point, Mr. Chairman, is that we felt that the renumbering is important because it changes the focus.

The third point I wish to make is that the present clause 16, which we would renumber as 18, does not say what the Constitution must contain. It states what it must not contain.

MR. CHAIRMAN: Okay.

Fred Bradley.

MR. BRADLEY: I guess what you're asking is that these things be absolutely placed in certain parts of the Constitution by putting "must" in the language. I'm not sure of where exactly this should be. In my mind, as it reflects my judgment, it should give some flexibility as to where this distinct society should be included rather than saying it must be in the preamble or it must be in the Charter of Rights and Freedoms. I think that's something which can be decided through negotiation at the appropriate time. So I'm one who would leave it as "should" in terms of where the reference to the distinct society should be placed in the Constitution and leave it at that, rather than saying it must be here and it must be there.

MR. CHIVERS: Mr. Chairman, the point is that if he objects to the specification for location, I think our people would be prepared to accept that as long as it's specified that it must be contained in the Charter, we can leave the location. We can make it clear that the location is a matter for other people to determine, and we could suggest that it must be included and should be located in the preamble and in the Charter. I suggest that if that's Mr. Bradley's real objection, then we can handle that problem very simply.

MRS. GAGNON: Mr. Chairman, could we deal with these one at a time, please? You know, deal with 1 under here and 2 under here, that kind of thing.

MR. CHAIRMAN: Sure. Clause 16 be renumbered to 18; in other words, we would move that down to the bottom. Clause 17 would be number 1 in this series, and then clause . . . It's a reordering of the priorities.

Okay. Well, we'll deal with the first item. I take it this is being proposed by – who? – Barrie?

MR. CHIVERS: Yes.

MR. CHAIRMAN: All of these items are in your name?

MR. CHIVERS: Yes.

MR. CHAIRMAN: Okay.

Stock, on this issue.

MR. DAY: I think in respect of what Barrie's saying about there having been some water under the bridge since we had the hearings, we've got to be very careful about that, that we are to reflect what we heard at the hearings. Water under the bridge since then: I don't know that there's been a shift in public opinion in terms of some of the concerns that Albertans have as it related to Quebec and its constitutional place. That's a debatable point. I wouldn't want to go back to constituents or to people who presented at our forums; they might say, "Why didn't you reflect this strongly?" and I say, "Well, times have changed; there's been water under the bridge." I just say that as a cautionary note, Barrie, that we be careful about that.

A reference to clause 16 and the priority of placing here. Albertans are saying with a degree of caution, "Yes, there is some distinctiveness about Quebec that needs to be recognized." Then they say in the same breath but with feeling and real strength that any constitutional recognition of Quebec's distinct society must not confer additional rights or powers. They say that – I'm talking generally – with real strength, with real feeling, real conviction. That's why I see 16 being placed where it is as important and needs to reflect that strength of feeling.

MR. CHIVERS: Rather than responding to each, Mr. Chairman, I'll reserve my comments to the end.

MR. CHAIRMAN: Okay. Fine.

All right. Anybody else want to comment on item 1? I think we sort of have to vote on them en bloc, though, don't we?

MR. McINNIS: I think there's an interrelationship between the three of them. In fact, one wouldn't make sense without the others.

Perhaps I could just make one point and that's this: I think the underlying difficulty is that this clause never gets around to saying what it is that we as a committee support. Within the Constitution, it draws a line here and a line there and a parameter there. It would be much easier if we simply said, "Well, here's our position; this is what we'd like to see." Then it can be subject to

interpretation. I think the difficulty is when we draw those lines. We draw one in heavy ink and one in light ink in interpreting just what it is we're saying. I think the overall effect of the amendment is to put the clause in the same weight as our reservations about the clause just so that it's clear to Quebec that we're not waffling on this and we're not playing games on it. We understand its importance, and we put it in importance alongside our issues. That's all.

MR. CHAIRMAN: Okay. Jack Ady, and then Yolande.

MR. ADY: Thanks, Mr. Chairman. I don't believe that the format as it's printed in the text in any way jeopardizes Quebec being recognized as a distinct society from Alberta's perspective. By the same token, I think there's danger in this committee's reflecting that Albertans said that we would let Quebec have a distinct society at any cost; in other words, whatever they may want as a distinct society and whatever effect it has on us, we will give it. I don't think we want to send that message. Every person, to my knowledge, that came before this committee, at least the ones that I sat on, and spoke to it said, "We're prepared to recognize Quebec as a distinct society, but they should not have additional powers; they should have no powers that other provinces don't have," that they would be given under this clause. So I don't think that we should be downplaying this fact that other provinces will have the same privileges and that Quebec will not receive additional privileges. It's very important to Albertans. It's a very important issue to them.

MR. CHAIRMAN: Okay.
Yolande Gagnon.

MRS. GAGNON: Yes. First of all, as far as number 17, if you say that it "must" be in the preamble, I think that's really watering down "distinct society." I would much rather see it in the body of the Constitution than in the preamble, so I like "should." I don't think we should monkey around with that word.

I also want to say that "distinct society" is very important to Quebec. I think they feel they need that kind of recognition and also that Albertans as time went on – even from the May hearings to the fall hearings – had a more general understanding of what that meant and that they were willing to be generous and say: "Of course. You are different; you have the historical differences and so on." But I do agree that there has to be a narrower definition of "distinct society" in this report, because that's what Albertans told us they wanted, some type of narrowing of the definition. So I have no intention of supporting any changes to the order or the wording of these clauses.

9:46

MR. CHAIRMAN: Okay. We've had debate on this issue. Did you want to conclude, Barrie, with a comment?

MR. CHIVERS: Yes, Mr. Chairman. I agree that this committee has a very delicate task in this area particularly and in a number of other areas, and that delicate task is to perform the duty that we were entrusted with by the Legislature, which is to reflect the views that were presented to us in the hearing process. But I also think that it's imperative for us to note in doing that that those were views that were delivered in a particular time frame which concluded with the opinion survey in mid-December of 1991. There has been a lot of water under the constitutional bridge since that time, not the least of which was the division of powers conference that was held in this province. The discussions in Calgary are not something that we can ignore, and indeed they're matters that we've discussed.

The importance of this cannot be overemphasized. It's a delicate balance, but I think that we would not be fulfilling our duty if we did not at least state very clearly that these are time limited expressions of opinion because we all know intentions change over a period of time, and in a four- or five-month period they change substantially. It seems to me that it's very important that in light of the public debate and so that we're not wasting the public's money, $1.3 billion, on this hearing . . .

MR. CHAIRMAN: Oh, no. Million.

MR. CHIVERS: Million. I'm sorry, Mr. Chairman. A little inflation there.

. . . we have to, in some fashion, deal with that delicate balance. It seems to me that one of the realities is that it's clear that Albertans are not prepared to take these issues if there's a reasonable way of making accommodation. I believe Albertans are willing to make accommodations in order to achieve a constitutional accord. It seems to me that our report should not be framed in a way that indicates that Alberta is not prepared to participate in that constitutional accord, and this language does that.

MR. CHAIRMAN: All right; we've had the debate. Are you comfortable about voting on these en bloc?

MR. CHIVERS: Yes, Mr. Chairman.

MR. CHAIRMAN: All right. I'll ask those supporting the proposed amendments to clauses 16, 17, and 18 to please indicate by raising their hands. Opposed? That is defeated.

We move on to clause 20.

MR. CHIVERS: Mr. Chairman, could we have an indication of who voted? Are we keeping a record?

MR. CHAIRMAN: Oh, we aren't, but . . .

MR. CHIVERS: I would like to request that a record be kept.

MR. CHAIRMAN: A recorded vote on that particular item. All right. All those in favour again? Mr. McInnis and Mr. Chivers.

Those opposed? Ms Betkowski, Mr. Rostad, Mr. Bradley, Mr. Day, Mr. Ady, Mr. Severtson, Ms Calahasen, Mr. Anderson, Mr. Schumacher, and Mrs. Gagnon.

MR. CHIVERS: Are abstentions allowed in committee, Mr. Chairman?

MR. CHAIRMAN: Do you want me to vote?

MR. CHIVERS: Are abstentions to a vote allowed in committee? Because I note Mr. Mitchell did not vote.

MR. MITCHELL: I don't have a vote. I was going to say: for the record, could you please specify that I do not have a vote.

MR. CHAIRMAN: Mr. Mitchell doesn't have a vote. As chairman, do I have a vote?

MR. CHAIRMAN: If there's a tie. Okay.
Let's move on to clause 20 then.

MR. McINNIS: The aboriginal section. It would be much easier if we skipped to the third-to-last page, which has the whole series.

MR. CHAIRMAN: Could I just ask you the technical question on this then? If we were to adopt the next-to-last page, would clause 20 be . . .

MR. McINNIS: Yes, it's included actually. It's nearly all included. There's one small word.

MR. CHAIRMAN: So if we deal with the item on this third-last page, that would encompass the amendments that you have.

MR. CHIVERS: All of the amendments, Mr. Chairman.

MR. McINNIS: Essentially it would.

MR. CHAIRMAN: All right.

MR. McINNIS: Let me say by way of introduction – I know my colleague will want to speak to these as well because he's the principal author of section 24 – that there is no question in our minds that dealing with aboriginal issues in this round is a must in the opinion of Albertans. We did hear time and again from people that they want these issues dealt with. They don't want them to fester for another decade or for whatever period of time. Unfortunately, the net effect of the proposals as drafted would leave us in the position where the stalemate of the last decade could continue indefinitely, and that, I believe, is not acceptable to Albertans.

We're essentially doing two things here. The first is to elevate these issues into the "must" category from the "should" category. That's the first principle, and the second is to have a deadlock-breaking mechanism in place in the event that it's not possible to come up with a definition of what aboriginal self-government means. It's been the bane of this issue for the last decade that governments have not been able to agree, and unfortunately aboriginal people are clearly the losers when that happens. It doesn't hurt the governments in the same way that it hurts the aboriginal people when a deadlock takes place. So my colleague has drafted a deadlock-breaking mechanism to include within this framework.

MR. CHAIRMAN: Okay. Do you want to comment on that, Barrie?

MR. CHIVERS: Yes, I would, Mr. Chairman. I think this proposal with respect to justiciability is a new proposal; it's never been advanced before. It's an important proposal because it does go a long way to balance the concerns, some of which exist in the aboriginal community as well with respect to the courts giving form and content to the concept of inherent right to self-government. The difficulty, of course, is that if you have entrenchment which does not become justiciable until there's an agreement, then we're relegated to perpetual stalemate. There's absolutely no way that there's going to be any pressure on anybody to come to an agreement, and one or the other of the parties can avoid coming to an agreement and can leave us in this perpetual stalemate situation.

This suggestion, Mr. Chairman, I believe is a nice balancing of the two extremes, whereby we impose a requirement that negotiations begin immediately, that negotiations be conducted in good faith, and that every reasonable effort be made to conclude a self-government agreement by all of the affected parties. Then if we make justiciability come into play on the reaching of an impasse, either in the sense that the parties agree that there's an impasse and they cannot come to an agreement or if we make it come into play on the eventually of an impasse in the sense that any one of the parties has not been bargaining in good faith, any one of the parties has not been making every reasonable effort to conclude a self-government agreement, we have accomplished the goal of putting some pressure on the negotiating process and making sure that it's conducted in good faith and with reasonable dispatch and the other requirements of a good-faith bargaining process.

I believe this is a reasonable and realistic balance between the opposing viewpoints which will achieve the goal of making sure that there is form and content to the inherent right to self-government, that it has some meaning, and that entrenchment is not simply an empty gesture. Because entrenchment, as it's expressed in the document, will indeed be an empty gesture because it has no meaning until an agreement is arrived at, and there's no pressure to reach an agreement.

MR. CHAIRMAN: All right.
Questions or comments? Dennis.

MR. ANDERSON: Mr. Chairman, I oppose the changes as suggested, and I do so because I believe that they may well lead to a situation which aboriginal people would not want any more than other Canadians. To force them into the courts with disregard for their own perspective on what self-government should mean and what it may mean to different parts of the aboriginal community, different people within the aboriginal community, I think is not to assist them but rather to potentially harm that circumstance as well as their own.

What we do in the text of the report, and I think do quite effectively, is for the first time say it really is up to the aboriginal people to define self-government and to define how that should work in their own best interests, and then where that affects the rest of Canadians, that should be negotiated before the courts can make a judgment, using those particular definitions that have been created by aboriginal people. I think once again throwing to the courts a question which only native people know best how to deal with is not an appropriate way to do it. So I don't support the change.

9:56

MR. CHAIRMAN: Pearl Calahasen and Grant Mitchell.

MS CALAHASEN: Thank you, Mr. Chairman. When we're looking at the aboriginal people, I thought that in the text of the body of what we've got here, we could look at the idea of the aboriginal people defining self-government. I think what has happened in the past is that definitions or even any kind of information that has come forward has always been defined by somebody else. I know from talking to groups within my own area and some of the aboriginal peoples that allowing the courts to be able to determine what self-government is is not what they want. I think it goes back to the whole business of the Indian Act of how interpretations are done, and I think if we tried to force it through a justiciability clause, it's not the way to go.

I find it very difficult to have a court of people who don't really understand the Indian people being able to help determine what self-government means. I think when we're looking at some of the information, the way the text reads is basically saying that the

aboriginal people will determine what is self-government. I think when you look at the process that's going to be used, it's going to be done together, it's going to be by agreement, and the aboriginal people will be involved in the implementation process that will take place with that. When you're talking about the justiciability, I think that is more like a very, very last resort, because people do not want the justice system to be able to define what Indian self-government is all about.

MR. MITCHELL: Mr. Chairman, I would like to begin by saying that we would accept "must" and "must" in 19 and 20. With respect to 24 in the proposal, it seems to me that it is in fact to say nothing. If the native people want to have self-government defined, once it is recognized in the Constitution they could refer it to the courts and have it defined. To force in some vague way that this should be justiciable is to offer something to natives that it seems to me natives don't want and to state something that simply isn't necessary to be stated. If the natives want it, they can refer it to the courts and ask for a definition.

What this does raise is the possibility, however, of nonnatives referring it to the courts, I suppose, and forcing the courts to review it. I accept what Pearl Calahasen is saying. That seems to me to put the native people in jeopardy to the extent that a nonnative court would be defining something that would be of such fundamental importance to their lives. Perhaps what is needed is a guarantee of the reverse: that in fact it is at their discretion that this would be referred to the courts, if it were to be referred to the courts at all.

MR. CHAIRMAN: Okay. Jack Ady and then . . . Oh, I'm sorry. Barrie, you wanted back in?

MR. CHIVERS: Yeah, because I think it's really important to focus this discussion. The present language is an empty gesture. It's meaningless, because there cannot be any content to self-government absent an agreement. That's the dilemma with the present language: it's an empty gesture, and it is not acceptable to aboriginal people. That is why we need a mechanism in here which will put pressure not only on aboriginal peoples but also on governments to bargain in good faith and make reasonable efforts to conclude an agreement. If what you want to do is have an empty gesture, this is what you will have; I can guarantee it. Your proposals here will be taken as being an empty gesture.

The proposal I've made puts pressure on both parties. It doesn't require immediate justiciability at this point in time, but it allows that option to both parties, and that is an important change in the constitutional debate. You shouldn't just blithely accept this report because it's written this way. This is a new initiative. I think it would give our report a bold new direction and one that I think is worthy of consideration.

MR. CHAIRMAN: Jack Ady and then John McInnis.

MR. ADY: Thank you, Mr. Chairman. We have the aboriginals in this country who have laboured for a long time under the Indian Act, and they haven't necessarily been very happy with that Act. I don't think it's going to make any difference if the courts come in with some prescribed form of native self-government. It's not going to make the natives like it any better, if they don't like it, than they have liked the Indian Act.

There's a process being set out here that allows the aboriginals to have a part to play, a very significant part to play, and they can move along at their own speed as opposed to courts and governments coming along and force-feeding some form of self-government on them that they don't want. We will not have solved one thing if we move in that direction. I couldn't support this.

MR. McINNIS: Pearl Calahasen, in fact, says it says too much, and Grant Mitchell says it says nothing at all. I mean, they can't both be right. One of them is wrong. The question of a last resort is critical to this, because in the clause as written there is no last resort. There's no "or else" in the negotiations. If there's no "or else," then a stalemate can continue forever. What we have in clause 24 as written is – the way Barrie put it was "an empty gesture." I would put it as a status quo. In effect, that's what it is, except perhaps for the words, but the words will have no meaning. We've had 10 years of discussions over what's the meaning of self-government, and it's been fruitless because certain parties don't agree. If we come out with a report that essentially suggests the same thing without any time limit or any resolution mechanism, then it's certainly a step backwards from what the federal government proposed last November, which was 10 years of negotiations followed by entrenchment.

This at least gives an option, a last resort, and that, in the final analysis, is what it's all about: having a last resort. The courts are a last resort for everybody. Nobody goes to court save for a last resort. You know, if you can't resolve something through some other mechanism, you throw yourself at the mercy of the court. Nobody likes to do that, but sometimes in life that happens, when you just are not able to come to an agreement. That's happened for the last 10 years. We're saying that we can't throw that into the future without any time limit, which is in effect what clause 24 as written would do, that there's got to be a mechanism there.

I think the model my colleague has put forward is a fair one. It comes from Canadian law, which he's learned in, and I think it's not a model that people are unfamiliar with. It's essentially a collective bargaining model, and I think that's the kind of process we're involved in: it's a bargaining process. When we say it's up to them to define, in the first part, that sounds good, but then you read the next paragraph, which says very clearly that you have to negotiate. You can't say to someone, "You have no power, no authority, no options; now let's negotiate." That's what it says, in effect, and there's no time limit.

Grant, you can't say it says nothing. It says a lot. You disagree, fine, but you can't say it says nothing.

MR. CHAIRMAN: All right.

Ken Rostad and Dennis Anderson.

MR. ROSTAD: Thank you, Mr. Chairman. I really take issue with Mr. Chivers saying that we should not blithely agree with this as it's written. This is what the people have told us; this is in fact what the aboriginals told us when we met them. There are some posturings by national aboriginal organizations that may have a little different flavour than this, but the Alberta natives that met with us have said they want the inherent right. This says that the inherent right should be recognized.

The move forward, I think, in our whole native dialogue is that the aboriginal people should define self-government. The position used to be that we will define what self-government means. In fact, the clause after that recognition goes on to say that in areas that belong to them, tell us what self-government is. In areas that affect other people, you work with the other levels of government to formulate what powers the aboriginals should have and shouldn't have, which I think is a natural and normal thing that we would sit down and dialogue. I don't think it has to be justiciable until you get that agreement; the natives don't think that it has to

be justiciable until then. There is a commitment by, I think, every level of government to recognize this and to get on with it. In fact, there's a recognition by the people. I don't have the document in front of us as to how many people appeared before us and said: get on with recognizing the aboriginal rights to self-government and land claims and various things.

I fully think that the clauses as written in this report reflect what the native community has told us and what the nonnative community has told us and is a very, very vast step forward.

MR. ANDERSON: Mr. Chairman, briefly, I wanted to say emphatically to Mr. Chivers, who isn't here at the moment, that this is not the status quo. This, for the first time that I know of, says that the native people have the right and responsibility to define self-government as is best for them in the country. That's a fundamental difference from anything that's taken place in the past. As far as the rest of us go, our rights are to make sure only that what affects us is negotiated in that kind of agreement.

I just don't think it's good enough to throw once again to the courts – people learned but far removed from native life, as we're far removed from native life – that right to determine how the lives of those Canadians will be run.

I would, however, say on the second point, Mr. Chairman, that I wouldn't oppose moving to "must" in 19 or 20. I think in both cases those are reasonable amendments, and I'd accept that, but I certainly would not support changes to 24.

10:06

MR. SEVERTSON: I don't support this amendment either. One that nobody's brought out so far is a statement that they left out of our proposal, that "This recognition should be defined in the Constitution within the framework of Canadian federalism." Your amendment doesn't state that at all. It would bother me, along with other statements. Around this table when we met with the aboriginal peoples, they mentioned clearly that they didn't want our courts to decide the definition of self-government. They wanted to have play in that, so I'd be against this amendment.

MR. CHAIRMAN: All right. Well, we've had good debate on the issue. I think we're ready to vote. I think we will put them on, particularly, sections 19 and 20. Comments have been made about the use of the word "must" there, which may be, I would think, dealt with separately from 24.

I think it's worth while noting that no changes have been suggested to 21, 22, or 23, because in fact there is a perfect example of how negotiations have taken place. A definition has been achieved by the native peoples themselves. The significance of that, I think, has been lost on a lot of people, and I'm glad it's certainly supported there by the other members of the committee.

Can I deal with 19 first of all? Barrie has moved these, I guess, but in his absence . . .

MR. McINNIS: No, I think I moved them actually.

MR. CHAIRMAN: Oh, did you? Okay.

Section 19. We would be prepared to move from "should" to "must" there. All those in favour of that? All right. Any opposed? All right.

Section 20, moving from "should" to "must". All those in favour, please indicate. Opposed? All right, that's carried.

Now 24.

MR. McINNIS: Before we vote on 24, two things. One, the point that Gary mentioned was, I must admit, an oversight: within the framework of the Canadian Constitution. It should be added, if that would make any difference. I'm not sure it would in this debate.

The second thing is that my colleague would want a recorded vote on this. Can I just go and get him?

MR. CHAIRMAN: Yes; all right.

Well, before we take a vote, then, we'll try and get everybody who's just had to go out and do television interviews or whatever it is they're up to.

Okay. Now, just for those who have returned, we've agreed to change in sections 19 and 20 the word "should" to "must". That's been voted on. We're now just voting on section 24 and the amendment which has been proposed. All those in favour of the amendment?

MS CALAHASEN: As it's written?

MR. CHAIRMAN: As it's written.

MS CALAHASEN: I'd like to see it in a different way.

MR. CHAIRMAN: All right. You want a recorded vote?

MR. CHIVERS: Yes, Mr. Chairman.

MR. CHAIRMAN: Those in favour again? I'll record you. Ms Barrett, Mr. McInnis, Mr. Chivers.

Those opposed? Ms Betkowski, Mr. Rostad, Mr. Bradley, Mr. Day, Mr. Ady, Mr. Severtson . . .

Pearl, are you voting?

MS CALAHASEN: As it's written?

MR. CHAIRMAN: Yes.

MS CALAHASEN: No, not as it's written.

MR. CHAIRMAN: . . . Ms Calahasen, Mr. Anderson, Mr. Schumacher, Mrs. Gagnon.

MR. CHAIRMAN: It's defeated.

Now, there was one small . . . Sorry?

MS CALAHASEN: I just wanted to know whether or not it could be amended at the end:

> Aboriginal self-government should not be justiciable in the courts until it is defined by agreement "and as a last resort."

Just an addition.

MR. ADY: That amendment has been defeated.

MR. CHAIRMAN: That's hardly necessary. It is a last resort; we know that.

MR. CHIVERS: I'm not clear on what Pearl is proposing, so maybe we should look at the language, Mr. Chairman.

MS CALAHASEN: It's not just as a last resort. What we're talking about is a process that's defined here in the last paragraph, of how it should be by agreement. I think when you're looking at the justiciability thing, it's as a last resort. I think when you're looking at it, that gives the opportunity for Indian people to be able to define their own self-government versus somebody else defining it . . .

MR. CHIVERS: My proposal wouldn't exclude that.

MS CALAHASEN: . . . and only as a last resort.

MR. CHIVERS: Are you suggesting an amendment to my proposal or an amendment to the committee proposal?

MS CALAHASEN: I'm back to the committee's proposal.

MR. CHIVERS: Okay. Where would the words "as a last resort" fit in?

MR. CHAIRMAN: Order please. Pearl, are you proposing a formal amendment?

MS CALAHASEN: Yes, if I may, Mr. Chairman.

MR. CHAIRMAN: What is the formal amendment?

MS CALAHASEN: In the last paragraph of section 24,

> Aboriginal self-government should not be justiciable in the courts until it is defined by agreement "and as a last resort."

Just five words.

MR. CHAIRMAN: "And as a last resort." Where would you put that in? I'm sorry.

MS CALAHASEN: Defined by agreement "and as a last resort."

MR. CHAIRMAN: Okay. I'll accept the amendment, but I must say as chairman that I don't understand it.

Jack.

MR. ADY: I don't think her amendment flows. It's: defined by agreement "and as a last resort." It ties those two things together. It would have to be "or as a last resort" if it were going to make any kind of sense.

MS CALAHASEN: Okay; "or as a last resort."

MR. ADY: I'm not meaning to help you, but . . .

MS CALAHASEN: That's okay. Thank you.

MRS. GAGNON: If there is a stalemate. That's what you mean?

MS CALAHASEN: Yes, if there's a stalemate, this is a last resort.

MRS. GAGNON: And that goes back basically to what the amendment said, I think. [interjections]

MR. CHAIRMAN: Order please. Order. I just want to be clear here. What you're getting at is that you want the courts to be the very last resort.

MS CALAHASEN: Right.

MR. CHAIRMAN: But that's inherent, if I may use that term, in that whole clause. You're just wanting the words in for emphasis. Is that correct?

MS CALAHASEN: Right. That's basically it. Then that way it brings it out, because it's true: it's only as a last resort. It should never, ever go to the courts until the people decide what the definition is. I think that's the crucial part.

MR. CHAIRMAN: Okay.

MR. McINNIS: Pearl probably knows that . . . How do you get it into the court if there's no agreement?

MS CALAHASEN: It's just as a last resort. The people have to make the decision in terms of the definition, and you've done it here.

MR. McINNIS: If you agree, the courts don't enter into it at all, but the problem is if you don't agree. It's that sort of deadlock-breaking mechanism; I think we're with you on that. Unfortunately, just putting in three words doesn't quite get to that deadlock-breaking mechanism.

MR. CHIVERS: If the words were "or until an impasse is reached."

MS CALAHASEN: But a last resort is that.

MR. ADY: We've already defeated that amendment.

10:16

MR. CHAIRMAN: Order please. I'm a little concerned about putting it in this because I think it's inherent in the last sentence. I'm concerned about changing the meaning here. Could we come back to this particular point? I'm sorry, but let's see if we can work out something . . .

MR. ADY: Mr. Chairman, that last amendment is, I think, quite dangerous. Who is to decide when we've reached an impasse? Someone could decide within a matter of months after this constitutional agreement: "Hey, we've got an impasse. We've been talking about native government. Now we're going to resort to the last resort." The government could do it; some outside group could do it and pass it on to the courts. All they have to do is file proceedings. It's a dangerous statement. I couldn't support that.

MR. CHIVERS: But that was the point of my proposal. The impasse is not reached until there's been a failure to bargain in good faith and make every reasonable effort to conclude an agreement.

MR. CHAIRMAN: We've already dealt with the amendment. [interjections] Order please.

Nancy.

MS BETKOWSKI: It seems to me that compelling this with the "or a last resort" could be an excuse for not negotiating in good faith. For example, if the federal government were to simply stand out and say, "We're not going to negotiate; we're going to block this," knowing full well that it's going to go into the court anyway and they're going to win – it seems to me the way it's worded is appropriate. We've said "should", and that's the protector: get on with it; negotiate it; don't take the responsibility away and give it to the court. I think the point is there.

MR. CHAIRMAN: All right. An amendment has been proposed to add the words "or as the last resort." All those who support the

amendment, please raise their hands. Those opposed? Sorry, Pearl.

Now, let's go back to clause 20 just for a moment. In your written document you had suggested that we strike out "which" and replace it with "that." I don't understand what that means.

MS BARRETT: Oh, it's just grammatical. It says "constitutional amendments which directly affect them." It should be "that directly affect them." That's all. Just technical; just grammatical.

MR. CHAIRMAN: Any concerns that anyone has?

MS BARRETT: "That" is the appropriate word.

MR. CHAIRMAN: We'll accept that amendment.

Clause 25.

MS BARRETT: Shall I?

MR. CHAIRMAN: Yes.

MS BARRETT: Okey doke. It was our feeling that what we heard on the road when it came to the possibility of redistribution of responsibilities is reflected in the paragraph that's currently number 30 in the document. That paragraph on page 6 says: "Constitutional Issues that Should be Addressed in the Next Round of Constitutional Discussions," but in fact the reference that's currently made in clause 25 is totally compatible with that of number 30. In other words, it's not instructive; it's not a requirement for a constitutional change right now. It's an acknowledgement that the committee – and really the people of Alberta. Everybody that we talked to about division of power said: "Let's take a co-operative review of this. Let's make sense of the shifting sands of who should have paramountcy over matters of environment, who should have paramountcy over matters of health care, that sort of thing." So it seemed to us that it made sense to bring it up and put it into clause 25. That's all we've done.

In drafting, I've put "subject to the constitutional amendment process" at the end; that's my own wording. We could drop that. We could just use identical wording, if you want. [interjection] Is it important?

AN HON. MEMBER: Yes.

MS BARRETT: I'm sorry.

MR. CHAIRMAN: Okay. On this point, I think it's clear – I don't want to cut you off, Pam.

MS BARRETT: Now I remember. He's right. The reason that "subject to the constitutional amendment process" is in there is because we're talking about the paragraph that was written for us by staff. It concludes, "and the constitutional protection of administrative arrangements between governments." You want that subject to any amendment process. That needs to be spelled out, so it should be in there.

Anyway, the argument is that both of them are compatible and they should be under the same clause.

MR. CHAIRMAN: Just for clarification, what you're doing is proposing to move this from the issues that should be addressed in the next round of constitutional discussions to it being required to be discussed in the current round. That's the effect.

MS BARRETT: No. It's a statement.

MR. McINNIS: I think that's probably fair. It's from the back burner to the front burner and for a reason, which is that the question of powers is an important issue in this round, and we think that Alberta should play a key role in it. The reason we put the clause in about the amending formula is to ensure that no province, including Alberta, would lose proprietary right, interest, or power in this round over their objections, which really is just that we obey the amending formula. I think it's an appropriate clause. What we're saying is that in these discussions there will be discussion on powers and these are the principles that we heard from Albertans, adequately summarized by the staff. It just happens to be an issue that's here and should be dealt with now as opposed to delaying it until a later date.

MS BARRETT: In a way, it is already dealt with just by the paragraph that currently is under 25.

MR. CHAIRMAN: On this issue, Barrie.

MR. CHIVERS: Mr. Chairman, the point is that these issues are inextricably interrelated, and to try to artificially separate them is to deny reality. You cannot put division of powers onto the back burner, so to speak, by putting it in the second category. I don't believe this committee intended to do that, but that's the effect of the division of the titles. Consequently, since division of powers is inextricably related to Senate reform, for example, in terms of what are exclusive provincial jurisdictions and what are not, it seems to me that when you're speaking in terms of an effective Senate, you cannot deal with that at a later time. You've got to deal with it in this round of bargaining. That's what this proposal is intended to accomplish, to make sure that we're not artificially trying to separate concepts that cannot be artificially separated.

MR. CHAIRMAN: Anyway, questions, comments? There was, as I recall, a lengthy discussion in previous meetings, and we tried to divide the list of things that have to be dealt with in this round.

MR. CHIVERS: But what we've done, Mr. Chairman, is put division of responsibilities, as it is called, in both categories.

MR. CHAIRMAN: All right. Any questions or comments about this text? Any further questions or comments? All those in favour of this proposal? Opposed? It's defeated.

MR. CHIVERS: Might it be recorded in *Hansard*, Jim?

MR. CHAIRMAN: All right. Let's record it. In favour: Pam Barrett, Mr. McInnis, Mr. Chivers, Mrs. Gagnon.

Opposed: Mr. Schumacher, Mr. Severtson, Ms Calahasen, Mr. Ady, Mr. Day, Mr. Bradley, Mr. Rostad, and Ms Betkowski.

All right. Let's move on to clause 26. It's a change of the words from "compatible with" to "comparable to."

MR. McINNIS: It's the question of compensation, basically dealing with any potential new initiatives in Canada-wide cost sharing. All kinds of things are compatible with each other without being of the same quality and calibre. We don't feel that we should be able to take dollars to provide programs that are not comparable in terms of their achievement of objectives. In other words, "compatibility" is a much softer wording. So it's really a question of making sure that the funds that are allocated are going for the objectives served. It may seem like a small difference, but

I think in this very important area we should try to be as clear and crisp as we possibly can be.

MR. CHAIRMAN: Questions or comments? Any further questions or comments? All those in favour of the proposal, please indicate. Opposed? Defeated.

10:26

MR. CHIVERS: Might it be recorded, Mr. Chairman?

MR. CHAIRMAN: Do we need a recorded vote on that one? All right. Those in favour: Ms Barrett, Mr. McInnis, Mr. Chivers, Mrs. Gagnon.

Opposed: Mr. Schumacher, Ms Calahasen, Mr. Severtson, Mr. Ady, Mr. Day, Mr. Bradley, Mr. Rostad, and Ms Betkowski.

MR. CHIVERS: Clause 31, is it, Mr. Chairman?

MR. CHAIRMAN: Where are we next?

MR. CHIVERS: It's the Charter one. Mr. Chairman, I had suggested when I originally introduced this that there was another dimension to this that's not reflected in it. So could we add the words "and a public consultation process" at the conclusion of where it says, "in conjunction with a Joint Committee of the Senate and the House of Commons"? I think I addressed it fairly completely initially, but the point here is that the message that we've got is that the public is not satisfied with leaving these matters behind closed doors, that they want to be involved and to be participating, and we suggest this is a reasonable way of doing it.

MR. CHAIRMAN: Okay, do I take it that you're adding to your amendment slightly?

MS BARRETT: "And a public consultation process."

MR. CHIVERS: Yeah. So it would read, "in conjunction with a Joint Committee of the Senate and the House of Commons and a public consultation process."

MR. CHAIRMAN: And a public consultation process. Is there any objection to that?

MR. DAY: To what? Him adding the "and a public consultation process" or to the whole thing?

MR. CHAIRMAN: No; to the whole thing. It's basically a directive as to how to go about the process leading up to '97's review.

MS BARRETT: Yeah, if I can just speak to that for a moment. The whole point is that if you had 10 people sitting around the table, for a long time people are going to say, "Hey, that's not enough; that's not due representation." But if you had other elected people and some sort of public process for reviewing something that belongs to all of us, like the Charter of Rights and the Constitution, then you've already fixed the process.

MR. CHAIRMAN: And the amending formula, which is inherent in that particular requirement, the meeting for '97.

MS BARRETT: Oh, yeah.

MR. CHAIRMAN: Nancy, and then Jack Ady.

MS BETKOWSKI: Does it preclude other governments, like provincial governments?

MS BARRETT: No, because it's first ministers' conferences, you see. It is the first ministers. They're the first identified in this paragraph, so we're adding to that to say that it should include a joint committee of the Senate and the Commons and a public consultation process.

MR. CHAIRMAN: Well, wouldn't we want to recommend the consultation process in the provinces as well, including Alberta?

MS BARRETT: Yeah. I don't think that's precluded.

MR. CHAIRMAN: No, it's not precluded, but I think it may be more specific. Why would we just say to the federal?

MR. SCHUMACHER: Why can't we just add "in the provinces," three further words? "The public consultation process in the provinces."

MS BARRETT: Sure.

MR. CHAIRMAN: Why should we direct that there be a joint committee of the Senate? Why don't we just say, because I know what you're getting at and I think you're right: a public consultation process be carried out by the federal and provincial governments.

MS BARRETT: Fine.

MR. CHAIRMAN: Rather than just trying to specify that it be done by a joint committee of the Senate and the House of Commons.

MS BARRETT: Well, the reason I thought specifically joint committee is because of our concept of making the Senate more effective, giving it certain roles.

MR. CHAIRMAN: Well, that's fine, but I think we have to be a little more specific and say that the provinces should do something of a similar nature.

MR. McINNIS: Just for clarification, the review is by the First Ministers' Conference, which of course includes the Premiers and the Prime Minister.

MR. MITCHELL: So why just specify federal government?

MR. CHAIRMAN: I know what we want to get at. We want to say that in the future, before they have this review, there should be a public consultation process carried out by the federal and provincial and territorial governments. Okay?

MS BARRETT: Right, exactly.

MR. CHAIRMAN: Will you agree to that sort of cobbled-together amendment?

MR. CHIVERS: Mr. Chairman, I just wanted to clarify something. I assume that it was not the intention of this proposal that

the first ministers' conferences would actually make changes. It's just a review.

MR. CHAIRMAN: Oh, they can't.

MR. CHIVERS: Okay. I just wanted to be clear on that because of some of the comments.

MR. McINNIS: Mr. Chairman, we'd be happy to take out the "Joint Committee of the Senate and the House of Commons" and just put, "in conjunction with a public consultation process involving the provinces and the territories."

MR. CHAIRMAN: "The territories and federal government."

MS BARRETT: Fine with me.

MR. CHAIRMAN: Okay?

MS BARRETT: Definitely.

MR. CHAIRMAN: All right; then that deals with that. Do we agree?

HON. MEMBERS: Agreed.

AN HON. MEMBER: Could we have a recorded vote? Just the negatives.

MR. CHAIRMAN: Those opposed? Mr. Bradley is opposed.
All right; the next one is the issue of a social charter.

MR. McINNIS: Yeah, we're jumping around. Section 29.1 is where we propose to put it so that it's clear that it's in the first category of items rather than the second category. It's a proposed new clause, section 29.1. I believe it is an issue that we have discussed.

MR. CHAIRMAN: Let me get it clear. If we were to accept 29.1, your proposal, then clause 32 would be struck?

MS BARRETT: No.

MR. CHAIRMAN: No?

MR. McINNIS: They're quite different issues.

MR. CHAIRMAN: The second sentence in its entirety would be struck.

MS BARRETT: You might not even have to do that.

MR. McINNIS: That is one of our amendments.

MS BARRETT: Yes, it is.

MR. McINNIS: Do you want to deal with 32 or the social charter? It doesn't matter which.

MR. CHAIRMAN: Well, if we deal with 32, 29.1 falls, it seems to me. If we keep that sentence in section 32, then . . .

MS BARRETT: That's right. They are incompatible.

MR. CHAIRMAN: They are incompatible. Okay. So let's deal with your proposed amendment to clause 32, which is to strike the second sentence in its entirety. All right. Let's debate that issue, and then if that does not succeed, I would suggest it would be incompatible to bring forward section 29.1, just as a matter of procedure.

MR. McINNIS: I don't accept that, Mr. Chairman, because they are related but they're not the same proposition. There are two reasons for striking 32, but if you want to get to the social charter issue, well, I suggest we get to it.

MR. CHAIRMAN: All right, let's do 32.

MR. McINNIS: There are two reasons for striking section 32. The first is that clearly we don't believe that's the only way to deal with the protection and enhancement of Canada's social security network. We believe that a commitment is needed by all governments to achieve that in the Constitution as an objective. That's the first one. The second is that the sentence itself makes very little sense because of the use of the word "enshrined." If you want to enshrine something, you don't put it in the realm of "flexible legislative and other arrangements" which, as we know change, from time to time and are the result of some necessary struggles over priorities. So we have two reasons for wanting to remove the second section from 32.

MR. CHAIRMAN: Okay. Questions or comments?
Nancy.

MS BETKOWSKI: Well, certainly this is an issue that is growing, and I think all Canadians are sort of watching it unfold. I get uncomfortable with entrenching the social covenant in the Constitution for three reasons.

Firstly, I don't think we heard from Albertans that they wanted it entrenched. We certainly heard loud and clear that the things they value as Canadians were things like our health care system, like our education system, and they wanted to see some form of commitment. Did they go so far as to say that as Albertans they wanted it entrenched in the form of a social covenant or whatever? The numbers just don't show that in the numbers that we were given.

Secondly, in addition to the clause 32 on the national standards, which I'll come back to, is our national identity clause, which speaks to the basic beliefs and values of Canadian society, part of which, I would argue, is the social framework of Canada.

Then, thirdly, I think we've tried to get to what this is trying to entrench in words that may be imperfect. It's the whole idea in the national standards section where we say:

> Canada's network of social security and social service programs are an integral component of the Canadian identity, and maintenance of these programs is essential to the well-being of Canadians.

To me that's what we heard from Albertans. They didn't go so far as to say, "Entrench it in the form of a covenant in the Constitution." For that reason, I don't support the position that's being put forward.

10:36

MR. CHAIRMAN: Okay. Pam Barrett.

MS BARRETT: Yeah. I'd like to respond to what Nancy had to say. It's true that sometimes we were on different committees and sometimes we were together, because we split up for those hearings, but I'll tell you first of all that a lot of people talked

about the importance of ensuring a clean environment as a constitutional right. A lot of people talked about that. Now, we know that only 44 people specifically asked for a social charter, but a lot more than 44 talked about the constitutional right to environmental protection. That was the number one concern.

MS BETKOWSKI: Twenty-three, Pam, on this list.

MS BARRETT: Twenty-three; no, you're talking about . . .

MS BETKOWSKI: That's an environmental charter of rights.

MS BARRETT: Yes. You're talking about a subcategory. What I'm saying is that if you look elsewhere in the summaries, you'll see that the environment ranked extremely high when it came to matters that people said were very important to them that they wanted protection for. It is from that that we extrapolate a good deal of support for constitutionalization of basic programs that will look after Canadians now and well into the future.

It says, "The Committee believes that these programs are best enshrined." I don't think that's fair. I don't think this committee entirely does. Now, if you insist on wording like this – I mean, you could say that representation was made to us by the public that was mixed on this subject, but to say, "The Committee believes that these programs are best enshrined by flexible legislative and other arrangements," that's not true. I for one do not believe that to be the case, so we can't say this committee believes. We think it's just better to strike it altogether. I mean, if you leave the first sentence in, you've said everything you need to say, quite frankly, if you reject the notion of a social charter. The first sentence says:

> Canada's network of social security and social service programs are an integral component of the Canadian identity, and maintenance of these programs is essential to the well-being of Canadians.

No one could disagree with that statement.

Now, if I'm not going to be able to convince you of inclusion of a reference to a social covenant, let me please convince you that not all members on this committee believe what is written in the second sentence. In that event, it should be struck to be fair to all of us. When I was drafting some of our amendments I didn't write "the committee believes." We used very careful language in our amendments, and I'm asking for the same in this.

MR. CHAIRMAN: All right. Barrie Chivers.

MR. CHIVERS: Mr. Chairman, again we have this delicate balance between reflecting what Albertans said to us and appreciating that we don't operate in a vacuum. These hearings took place in June; they took place in September. We requested that the committee include questions on social charter and social covenant or whatever in the questionnaire, in the opinion survey. We were outvoted. There's a reason why this debate had not evolved at that point in time. There's a reason why the level of concern expressed in Alberta is less than we believe it would be now.

I think we would be foolish to ignore the reality that the social covenant one way or another has become part of the constitutional agenda. It's important in terms of reflecting that to bear in mind what's been expressed in other reports, other committee reports which we've received, and to bear that in mind in fashioning our own position. It seems to me that we would be ill advised in balancing that delicate balance between reflecting the views of Albertans not to take into account what has been happening.

Indeed, it's not as if there wasn't any mention of social charter. There were submissions made to the committee, albeit before most Albertans had heard of the concept. Also, in one section of our report, with respect to the concept of support for common standards on provincially delivered programs such as health care, 244 respondents responded to that issue, which is interrelated with this.

MR. DAY: In the whole discussion on these types of programs being available for Canadians, sometimes we forget, and the reality can be clouded, that the social programs that we have in this country and this province are heralded around the world as possibly being second to none. If not the best, then it's right up there with the best in terms of a social safety net, the social programs that are there. That's not there by accident; it's there because of the will of the Canadian people.

It's also reflected in the Charter. We need to remember that when we talk about the need for a social charter, I think it can be overlooked that in section 36 we're very clearly already in the Charter required – it's right there – to provide

> essential public services of reasonable quality to all Canadians.

Section 36(2) requires

> Parliament and the government of Canada . . . to the principle of . . . equalization payments [so that] provincial governments have sufficient revenues . . .

For what purpose?

> . . . to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

Those are already enunciated.

We heard a concern about these items getting too specific and being constitutionalized in too specific a fashion. As a matter of fact, we'd have to probably go through the computer word check; I don't know that we heard the words "social covenant". We may have. We heard "social charter" from a few people. "Covenant" has been scooped right out of the Dobbie report. As a matter of fact, these words that you have here – I'm not trying to minimize them, but a lot of this is, I believe, very close to what the federal report is saying.

Those are some of the concerns I have.

MR. CHAIRMAN: All right. Other comments?

> The motion has been made
> to strike the second sentence in its entirety.

MR. McINNIS: Just one closing comment. We are going to have a vote on this, and it's important that we express a view, but I would just ask one thing. If it's defeated on a split vote, could it be rewritten to say "the majority believe," if that's the way it turns out?

MR. CHAIRMAN: All right.

MS BETKOWSKI: Are there words that are more offensive than others? It seems to me that the programs are best . . . Is "enshrined" a problem? Is it "protected"? Is that a better word?

MR. SCHUMACHER: Or "accomplished."

MS BARRETT: First of all, the word "believes" and, secondly, the word "best" are very subjective.

MR. CHAIRMAN: I think we have to move on the motion as it exists.

MS BARRETT: I know what you're trying to do, Nancy, and I appreciate it, but if our motion fails, if people are willing to sort of try to rewrite it to accommodate our concerns about it, that will be very good.

MR. CHAIRMAN: All right. The motion is clear, however.

MS BARRETT: Yes, the motion is just right.

MR. CHAIRMAN: All those who support the motion? Opposed? All right; it's defeated.

MR. SCHUMACHER: I'd like to move that
the word "enshrined" be replaced by the word "accomplished"
in that last one.

MR. CHAIRMAN: Would you accommodate "the majority of the committee"? That would make it clear that there is dissent.

MR. SCHUMACHER: Yes, I would.

MS BARRETT: Thank you.

MR. CHAIRMAN: Are we agreed to those amendments?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: Substitute the "try to accomplish."
All right; let's move on.

MR. BRADLEY: Are you going to ask for opposed?

MR. SCHUMACHER: The great dissenter.

MR. CHAIRMAN: Sorry, Fred.

MS BARRETT: Where are we, anyway?

MR. CHAIRMAN: Thirty-eight.

MR. McINNIS: Are we doing the social charter now?

MR. CHAIRMAN: No. Clause 38. There's a reference to gender balance. Do we want to include gender balance in that clause?

MS BARRETT: Provincial representation and gender balance: well, you know, as somebody who's been fighting this issue for a long time, I'll speak to this and move it. I think it's time we started making specific representation. I mean, right now we're in the area of the report that is outside of the Constitution, right? We're in the section of the report that says, "Matters which are best addressed outside the Constitution." This says, "Parliament should make provision for provincial representation on national boards and tribunals." I don't think it's radical in 1992 to propose that we now start talking in terms of achieving gender balance where it's appropriate to try to do so.

We'd just say, "Parliament should make provision for provincial representation and gender balance on national boards and tribunals." "Balance" is a nice word because it doesn't mean that you have to have exactly 50-50 at all times. Balance means we recognize shifting sands, and if one tribunal has a lot more men than women, another one might have a lot more women than men. It's just a goal, a general social goal.

MR. ADY: As it is today. As it presently is.

MS BARRETT: It's not institutionalized.

MR. CHAIRMAN: Yes, Stock. [interjections] Order please. Let's just have one person at a time.

MR. DAY: Referring back to my previous concern on this, I appreciate the attempt here, but I have difficulty with just the member trying to explain how it could be achieved and the mechanism. I also have to reflect the view of a good number of female constituents that I represent who see this type of approach as very paternalistic. They like to think, be they male or female, that they got certain appointments . . .

10:46

MS BARRETT: These are appointments we're talking about.

MR. DAY: . . . certain appointments based on their merit, based on their capability, and that they weren't swept in for any paternalistic or patronizing reasons.

MR. CHAIRMAN: All right; other comments on this issue. John and Barrie.

MR. McINNIS: Let's keep the context in mind here. This is a recommendation that Parliament "make provision for provincial representation." Well, as a matter of fact, everybody in Canada, except for those north of 60, live in a province, so we do have provincial representation. Clearly, this is a suggestion to another body, and I think a positive one, that they should consider the interests of the provinces in making appointments To ask them to consider gender balance is the furthest thing from a mandatory quota that you could imagine. I think it simply says that some of us are different genders as well as different provinces and why don't we think about that sometimes?

MR. DAY: Are you asking for addition of words?

MR. CHIVERS: Mr. Chairman.

MR. CHAIRMAN: Okay. Order please. One person at a time.

MR. CHIVERS: Mr. Chairman, at least it hasn't been suggested by the people that oppose this concept that gender balance is not a constitutional concern of Albertans, and I'm pleased to hear that nobody has suggested that there haven't been presentations made to the committee and that it should be rejected on that basis. It seems to me that is the very basis that it should be acceptable: gender balance is a concern that was presented time and again to our committee, and we should reflect the concerns of Albertans. This does not tie us into anything. It seems to me that we should be reflecting that concern in a number of places. I think it's been defeated in other areas. I suggest that gender balance is a very important concern of Albertans, and Albertan women in particular, and it should be included at this point.

MR. CHAIRMAN: Nancy, and then Jack Ady.

MS BETKOWSKI: Well, I wonder, given the section that it's in, if we might consider "an effort being made for provincial . . ." I would add "territorial."

MS BARRETT: Oh, good idea.

MR. CHAIRMAN: Right. Thanks, Nancy.

MS BETKOWSKI: And "gender balance on national boards and tribunals." "Provision" is too heavy-handed to me in terms of the role of government, but "an effort" is more a commitment. I'm proposing an amendment.

MR. CHAIRMAN: Well, there is quite a difference there, with respect. You know, you might strive for gender balance or something to that effect, but to take out "provision" I think is changing it quite considerably relative to ensuring that provinces and territories have appropriate representation.

I don't want to editorialize too much as chairman.

MS BARRETT: No, you're right.

MR. McINNIS: With respect, it is different, but the other aspect, the territorial part, I think should be included.

MR. CHAIRMAN: Yeah, I agree. Thank you for that suggestion, Nancy.

Jack Ady.

MR. ADY: Thank you. First, let me be very clear on my position. I certainly support females serving on boards and agencies, and I don't want the comments I'm going to make to be interpreted otherwise. I would ask the members opposite who are making this motion: how often did we hear this as an issue? Do you have some statistics taken from the hearings that substantiate this, that there was a problem in Alberta, that women or men came forward and said, "Hey, this is all out of balance; let's fix it"? Or do we have some other agenda here? Could you give me that background?

MS BARRETT: I think it would be a case of two factors. One is that people talked about the importance of equality and equality of access. They did that a lot, first of all, under discussion of, say, Senate reform and, secondly, under other discussions, like under the Charter. So, yes, I think numerically it's fair enough to say that equality was a very big issue, and equality of access.

MR. ADY: Pam, that was in another context. That wasn't in the context of gender. That was in the context of various ethnic groups or whoever to have access to the system.

MS BARRETT: Sure. Yes.

MR. ADY: I don't think women are precluded from the system presently. There's nothing in our system today that precludes women from participation.

MS BARRETT: Can I answer your question, though, please? It'll only take another minute.

The other thing is that on Friday morning when we first started going through this paper, when we first received it, I asked about a couple of things in there. Then finally I said: "So you're saying to me that not all of this is totally, totally objective. From what we heard, we are doing some extrapolations." The answer I got from you and from the chairman, from a number of the government members here was yes. You made the case that it's stupid not to be able to extrapolate from common themes. I think in this day and age it is quite fair to extrapolate from those who didn't specifically address the issue of equality of access under appointments to boards and tribunals that they would agree with that, and those who didn't specifically address gender balance made the case that gender equality is a goal that should be worked towards.

MR. ADY: Could it be said that you're using selective extrapolation?

MR. CHAIRMAN: Order please. Let's not try and have everybody speaking at once. It makes it difficult for *Hansard*, if for no other reason.

Now I have John McInnis and Yolande.

MR. McINNIS: Just a question for Jack. Are you saying that there was opposition in Alberta to gender balance on these tribunals?

MR. ADY: You know that isn't what I said. I said that it was not a big issue, and I was asking you to bring forward some statistic that indicated that it was. Obviously, you don't have it.

MS BARRETT: National boards and tribunals weren't a big issue.

MR. CHAIRMAN: Okay.

MR. ADY: Selective extrapolation.

MRS. GAGNON: I would like to ask Pam if she knows whether present boards and tribunals are weighted heavily either in favour of men or women. Do you know that? What is the situation today on these boards and tribunals? Are the appointments being done in a sexist way? Do you have any proof of that?

MS BARRETT: Well, I certainly had ample proof five years ago, but I don't keep my old statistics with me, so I don't know what's happened. Five years ago both the provincial and federal governments were grossly offside in appointing men versus women to boards and commissions, yes. Really, seriously, it was awful. I can look the statistics up for you. I don't know anymore. I gathered those after I first got elected.

MR. CHAIRMAN: All right. Listen, we've had lots of discussion on this.

MR. CHIVERS: Just one brief comment, Mr. Chairman, because I think it's important in the context of Mr. Ady's comments. He's suggesting that there wasn't any or wasn't much concern expressed directly on this. Well, I want to point out that paragraph 6, the one on the Senate and provincialization of the electoral process, was not even mentioned by anyone at any of the hearings.

MR. CHAIRMAN: Well, fine.

Are we agreed that "and territorial" should be added?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: Thank you, Nancy, for that suggestion.

I gather that rather than just "and gender balance" you want to say something to the effect of "and strive for gender balance." Did you say that or not? Or do you just want it put exactly as it is here?

MS BARRETT: I think it's fine as it is. You were the one who pointed out that you're either going to accomplish it or not. So I think "provision" should remain.

MR. CHAIRMAN: As printed. All those in favour of supporting adding the words "and gender balance"? Opposed? It's defeated.

Yes, Nancy.

MS BETKOWSKI: I had an amendment, I think.

MR. CHAIRMAN: Yes, now you may propose what you . . .

MS BETKOWSKI: Oh, good. I get to propose an amendment.

In discussion here I'm suggesting "and reflect a gender balance."

MS BARRETT: Great. Same diff.

MR. CHAIRMAN: All right. We need not argue it again. Add the words "and reflect a gender balance." All those in favour of supporting that amendment? Opposed? It's carried.

MR. DAY: Mr. Chairman, I'm hoping that the all-male media here will properly reflect the . . . [interjections]

MR. CHAIRMAN: All right. Order please.

Let's move through. Our time is running out. We have to determine clause 42.

MR. CHIVERS: Mr. Chairman, this is merely a suggestion to add constituent assembly to the list of alternatives.

MR. CHAIRMAN: All right. Everybody understands the issue. Section 42. The suggestion is being made to add constituent assembly to the methods of determining Albertans' views on any proposed constitutional amendment.

Gary Severtson, and Yolande.

10:56

MR. SEVERTSON: Well, I'll speak against the amendment, because as far as I'm concerned there's no definition of constituent assembly. It says here "with the opportunity to express their views on any proposed constitutional amendment." I don't see the purpose of going to a constituent assembly that has not even any definition when it already says that we'll go to the people of Alberta either through a plebiscite or referendum.

MR. CHIVERS: Mr. Chairman, I think the issues are fairly clear. It was expressed. I would call for the question.

MR. CHAIRMAN: Oh, Yolande wanted to make a comment.

MRS. GAGNON: Yeah, I just wanted clarification. They're talking about a constituent assembly within the province, not the federal.

MR. CHIVERS: That's correct.

MS BARRETT: That's right.

To further clarify, it's because of the words "any proposed constitutional amendment." You know, if you had a lot, it may be more useful to have a constituent assembly even prior to going to another step.

MR. CHAIRMAN: All right. I think everybody understands the issue. All those in favour?

MR. DAY: Just a very minor point in question. I don't think there's anything intended by the fact that your substitution is asking for a "referendum," for the word "referenda." One technically is singular, and one is plural.

MR. CHIVERS: Right.

MS BARRETT: That's right.

MR. DAY: Are you suggesting there'd only be one?

MS BARRETT: Well, I'll tell you what happened here. I did this. You'll see that in your first document at the top of the section it says "referenda" or plebiscite. Singular, right? So what I thought I would do is put it all into plural, and obviously what I should have done is put an "s" on the plebiscite. You see, I was going to correct it both ways and only corrected one of them.

MR. CHAIRMAN: All right. All those in favour of the motion? Opposed? It is defeated.

National Identity.

MR. CHIVERS: Mr. Chairman, could I just clarify this? I think it'll speed it up. The sentence that begins "the preamble of the Constitution": we don't need that. The operative parts of this proposal are: the clause should also refer to. So these are not intended in substitution for what's in the clause but in addition to.

MS BARRETT: Oh; okay.

MR. DAY: Where was that, Barrie?

MR. CHIVERS: That's section 1. It's the National Identity clause on page 3.

MR. McINNIS: We want to add three more references to the Canada clause: respect for diversity, respect for the dignity, and fairness, equality, and democracy. Not generally thought of as controversial subjects.

MR. ADY: Don't we say that already in a bunch of places?

MR. CHAIRMAN: This is one of my greatest fears: trying to write the National Identity clause by committee.

MR. CHIVERS: Again, it's framed in directory and not mandatory language, Mr. Chairman, in the same fashion as the wording of the document.

MRS. GAGNON: Mr. Chairman, I'd like to ask Mr. Chivers if he'd seen page 9 before he wrote this. To me it's almost an exact duplication, and I don't know but that we haven't said it all, maybe in a different way, on page 9.

MS BETKOWSKI: Yeah, in the text.

MR. CHIVERS: Well, you're saying it's in the text. If it's in the text, then there should be no objection to including it in this section. It should be very simple.

MR. McINNIS: Mr. Chairman, I think the reference that Mrs. Gagnon has made is to a different part in the document. While there are some elements in common, it's not the same, so we respectfully request for the consideration of the committee that the draft we put forward.

MR. CHAIRMAN: All right. The question is simple: do we need to add these additional items to the National Identity clause? Everybody knows what's there. All those in favour of adding? Opposed? All right.

MR. McINNIS: Can you record the vote on that, please?

MR. CHAIRMAN: A recorded voted on that? All right. In favour: Ms Barrett, Mr. McInnis, Mr. Chivers. Opposed: Mr. Schumacher, Mrs. Gagnon, Ms Betkowski, Mr. Rostad.

Mr. Bradley, are you voting?

MR. BRADLEY: I voted.

MR. CHAIRMAN: Mr. Day, Mr. Ady, Mr. Severtson, Ms Calahasen.

MR. McINNIS: Mr. Chairman, we've saved the very best to the last.

MR. CHAIRMAN: All right. The best to the last.

MS BARRETT: That's right.

AN HON. MEMBER: Question.

MS BARRETT: We only have two more.

MR. CHAIRMAN: I'm sorry. Just a minute, are there two more?

MS BARRETT: We dealt with the aboriginal stuff; we're on the social covenant.

MR. CHAIRMAN: Yeah, we dealt with that.

We've had discussion on social covenant in part relative to dealing with section 32, and the motion is now before us.

MR. McINNIS: Mr. Chairman, I think the key point here is that this is not an excuse to have the courts enter into the realm of social policy or even environmental policy more than they do at the present time. What it is is an effort to suggest that within the framework of the Constitution of Canada, the governments define the social contract in a way which reflects our way of life in the 1990s and beyond and the way that people think about these things, particularly in English Canada. I think this is almost English Canada's equivalent to the distinct society clause. It says what's distinct about us. I think there is growing support for this formulation, but I think this is an area where we have to recognize that in the submissions we heard the concern expressed many times in many ways. It may be true that not everyone had their thinking focused on this proposal, but I believe this proposal does address the concern that we heard, is compatible with our form of government, and therefore, we request the committee's support. I think the observation that Stock Day made is worth repeating. This is essentially the wording of the federal unity committee, which I think does at least speak to the issue of growing support for this in the country. I see no reason for Alberta to take a different view, because I think it's fundamentally compatible with everything we heard in the public hearing process.

MR. CHAIRMAN: Any other comments? Are we ready for the question? All those in favour of the proposal, please indicate. Opposed? Defeated. Do you want it recorded?

MR. McINNIS: A recorded vote, please.

MR. CHAIRMAN: All right. For: Ms Barrett, Mr. McInnis, Mr. Chivers.

Opposed: Mr. Schumacher, Mrs. Gagnon, Ms Betkowski, Mr. Rostad, Mr. Bradley, Mr. Day, Mr. Ady, Mr. Severtson, Ms Calahasen.

Now the last item.

MS BARRETT: The last item is one about which we had a great deal of consensus last week, and that was, in substantive form, to make reforms to our own provincial Legislature. I think we didn't quite agree as to whether or not another committee should be struck or if we could do it right here in our own report.

It's our view that we can do it right here in our own report. We got told enough times to clean up our own house. We know where the weaknesses are. We know where the opportunities for provoking each other are. We know where the opportunities for free votes are. We know all this; we've discussed it all. Why not include it in our report? The reason I say this is because I don't think we need another committee. We talked about it lots; we heard about it lots. Why would we strike another committee? We could do it right here and right now.

Therefore, I think we should do a reference section on our own Assembly and in the report make a commitment to undertaking reforms that we've enumerated down here. Most of them, in fact, are not very controversial: for example, the televising of the Assembly's activities. I just came out of a meeting with the Government House Leader in which he revealed that he'd discovered how much this sort of thing would cost. So the fact of the matter is that if we put into our report that we'd like to televise gavel to gavel – that is, for all of our proceedings – well, then it's a commitment that we're going to do it. It doesn't mean we'll do it next week; it doesn't mean, you know, under all circumstances, even if it was 20 million bucks a year, or what have you. It's just a commitment to this kind of reform. Why don't we do it now?

MR. CHAIRMAN: Stock Day, Jack Ady.

11:06

MR. DAY: First of all, we don't have a mandate, I don't believe, in this particular committee to do what the member is asking. Second, I think we need to look at what the conclusion is in the report here. It's actually a virtual acceptance of the fact that "opportunities for individual Albertans to participate directly in decisions" – it's stated here as a given. All the recommendation is saying is that now there be a committee established to review; not whether there should be any measures appropriately applied but in fact how they could. It's a given. There's no resistance to what we heard.

I have one question. In what the NDP have put in here in their list, I don't see two items that are listed clearly in our report, one being recall and one being fixed term elections, both of which this report here is at least implicitly saying we'll give consideration to. You don't list those. Do you have a problem with recall or fixed term elections?

MS BARRETT: No, no. I can explain that. What we were talking about here is internal mechanisms, not electoral mechanisms. We deliberately left that because that was in a separate section. Okay? You're talking about the electoral mechanisms. We're talking about the internal stuff that refers directly to Alberta

participating in decisions and democratizing our system of government.

MR. DAY: Thanks for your clarifications.

MR. CHAIRMAN: Jack Ady.

MR. ADY: Thank you, Mr. Chairman. Stock dealt with mine. It was having to do with the mandate. I don't really believe that this committee has one to deal with this at this time.

MR. CHAIRMAN: Okay.

Other questions or comments? All who support this proposal, please indicate.

MRS. GAGNON: The idea is to put that this committee recommends these things in this report?

MR. CHAIRMAN: Yes.

MRS. GAGNON: Okay.

MR. CHAIRMAN: Opposed? It's defeated.

MR. McINNIS: Mr. Chairman, can I make the suggestion in terms of how we proceed from here on in?

MR. CHAIRMAN: I would be open to that. We've dealt with all the proposed amendments.

MR. McINNIS: I think it's a very modest proposal, and I think you may appreciate it. I would like to suggest that this report go forward as it now sits to the Assembly and to Albertans as the report of the committee. The alternative to that is that we attempt to replicate all of this proceeding within the report by the production of dissents and so forth, but I think that since this is an open session, the record does show where there was an effort to make changes and what the views were in the committee, reviewing the report of some votes. I'm assuming this report will come to the Assembly from this committee, and then the Assembly can deal with it as it sees fit. In other words, we consider this as it now sits to be the report of the committee.

MR. CHAIRMAN: Are you making that a motion?

MR. McINNIS: A suggestion.

MR. CHAIRMAN: Now, keeping in mind the amendments that were agreed to this morning, I was just going to try and review those to make sure we clearly understood what had been agreed to.

We'll just go through your documents that you put forward.

MS BARRETT: Sure.

MR. CHAIRMAN: Clause 2 was agreed to. Clause 6 was defeated. Clause 7 was withdrawn. Clause 9 was withdrawn. Clause 15 was defeated. Clause 11 was withdrawn.

MR. McINNIS: I thought it was included.

MR. CHAIRMAN: No, we agreed that it was included because it was part of the general principles contained in the previous Senate.

MR. ADY: Right. And we refer to the previous report.

MS BARRETT: Both page 30 and no property were in there. Okay.

MR. CHAIRMAN: Yes.

Clauses 16 to 18: the proposals there were defeated. Clauses 19 and 20 were approved, whilst 24, which is at the back of this list, was defeated. Clauses 25 and 26 were defeated.

Clause 31 was approved with an amendment. Could you read that, please, for us?

MRS. DACYSHYN: It should read:

> in conjunction with the public consultation process involving the provincial, territorial, and federal governments.

MR. CHAIRMAN: All right.

Clause 32 was defeated, but there was an amendment in its place, which said . . .

MRS. DACYSHYN: The word "enshrined" should be replaced by "accomplished," and it should read "the majority of the committee."

MR. CHAIRMAN: Right. Okay.

Clause 38: we added "territorial governments," and "reflect gender balance."

Clause 42 was defeated. The national identity clause was defeated, the social covenant clause was defeated, and a new section 37, parliamentary changes, was defeated.

So we understand, then, what we have. All right.

Yes, Yolande.

MRS. GAGNON: Mr. Chairman, I'd just like to report for the record that yesterday I spoke to you about producing this report in both French and English, and you agreed that that would be done.

MR. CHAIRMAN: Yes, it will be done. The report will be translated into French, and copies will be made available in both official languages of Canada.

Yes?

MS CALAHASEN: On the amendments, Mr. Chairman. I just wondered if what was changed on the aboriginal portion will be reflected on page 15.

MR. CHAIRMAN: Oh, yes, all of those will be. Everything will be.

All necessary consequential amendments, both to the summary of conclusions plus the text, will be put together carefully and double-checked. All right?

Now, I assume, then, that – perhaps you may not wish to make the motion that the report go forward. You may wish to; I don't know.

MR. McINNIS: No, I don't mind making that motion. In so doing, I'd like to say that I appreciate very much the willingness of the majority to hold this part of the session in public. I think it does show the public that we are capable of working together and arriving at something that we can live with, and that's really, I think, the most we can hope for from it. So all we can say is: long live Canada.

MS BARRETT: If I can add to that, I'm also glad that we were able to come back to the consensus approach that I think had been taken for most of our meetings.

MR. CHAIRMAN: All right.
Yolande, do you want to make a comment on the motion?

MRS. GAGNON: Thank you. Yes, I want to support the motion that the report go forward, and I hope that when it comes before us in the Legislature there will be a full and open debate with a free vote, which was one of the conditions on which we joined the committee and also an idea that was accepted, at least in principle, yesterday by this committee. I think we have done a lot of very good work. We've listened to hundreds and thousands of Albertans, and I feel quite comfortable in saying clearly that this report does reflect the views of Albertans. It might not reflect my personal views in every single case or the views of my party in every single case, but I think it very well reflects in general the views that came before us. I think that we have achieved a lot of consensus and that we had to do that, because Albertans are very discouraged and cynical right now and unless they see the politicians working together for their benefit, the cynicism will go on. So I want to thank everyone on the committee for the very good discussions, some fun, and the consensus that we've achieved.

MR. CHAIRMAN: Thank you.
Barrie.

MR. CHIVERS: Mr. Chairman, I'm just wondering when we will have an opportunity to examine the final product before printing.

MS BARRETT: One other technical question: can it be released to the public or do we have to wait until the House sits or what?

MR. CHAIRMAN: No; it's obviously a public document.

MS BARRETT: Good.

MR. CHAIRMAN: Bill, can you answer the technical questions?

MR. GAJDA: It can be released to the public prior to being tabled in the Assembly.

MR. CHAIRMAN: As to the technical question as to when you can see the final proposal, I just have to ask a question here. The motion which we're now discussing, which has not yet been passed – I hope it will be agreed that all members will sign the report. Is that your intention?

MS BARRETT: May I say something? It's unusual, though, isn't it? Doesn't the chairman usually sign?

MR. CHIVERS: The standing order requires the signature of the chairman, and I think that would be the approach.

MR. CHAIRMAN: That's right. If that's what you want me to do, I'll do it.

MS BARRETT: Oh, I just assumed, because that other signature page has been taken out, you see. There's this new one in here now.

AN HON. MEMBER: I'm not ashamed to put my name to it.

MR. McINNIS: We have a report which is the report of the committee, and it's clear under Standings Orders that what's wanted is the opinion of the committee, not necessarily the opinion of each and every member.

MR. CHAIRMAN: All right. Well, I just wanted to know if it was inherent in your motion that every member would sign it. If it's not, that's clear.
Yes, Bill, can you answer the technical question?

MR. GAJDA: Yeah. Two things. The transmittal page that Mr. Horsman would sign would be on the select special committee letterhead, so everyone's name would be listed. It's not as indicated on the copies you have, on just a blank piece of paper.
The printers are ready to go with this, pending the changes that we've made this morning. I will have sufficient copies for any kinds of announcements by 10:30 tomorrow morning.

11:16

MRS. GAGNON: And translation?

MR. GAJDA: Translation? Probably not till Friday. We'll have the chance to give the final text to the translation bureau.

MR. CHAIRMAN: Translators are working on it now, but it does take a little while for that to be accomplished.

MS BARRETT: In terms of media access to the amendments – I mean, they've had access to any things they could write down or any things they got in written amendment form – can we release the one you provided yesterday afternoon and show the amendments today? Could we do that?

MR. CHAIRMAN: How soon can you have the final text ready, Bill?

MR. GAJDA: In its final form, printed?

MR. CHAIRMAN: Yeah.

MS BARRETT: Not printed.

MR. CHAIRMAN: Not printed but in its final form.

MS BARRETT: How quickly could you input the amendments?

MR. GAJDA: One o'clock this afternoon.

MR. CHAIRMAN: So it can be ready this afternoon.

MS BARRETT: Great. Thanks.

MR. CHAIRMAN: Yes, Stock?

MR. DAY: Mr. Chairman, I just think it's important to emphasize that this report now goes to the Legislature. The work that's gone into this by this committee reflects what Albertans feel in this term. There are things in this report that all of us agree with; there are things in this report that any number of us disagree with and even strongly disagree with. We need to let Albertans know that this is a report to them and that they will have access to it and to their MLAs to discuss this in a form which they want in the Legislature.

MR. CHAIRMAN: Okay. Well, I want to put the motion then. All those in favour? Opposed? It's unanimous.

As chairman, I want to thank you all for your participation, since this will be the last meeting of the committee, and to just add before I conclude, for the record, the point that is reflected in the committee: that we were indeed very saddened by the loss of one of our colleagues, Sheldon Chumir. During the course of his participation in the public hearing process, he indeed demonstrated a great love and affection for Canada, for the parliamentary process of which he was a vital part, and we have reflected in the transmittal letter to the Speaker a memorial to his participation.

I want to thank Grant Mitchell for coming on late in the day and for his participation with us in the formulation of the report. Despite the fact that he was not part of the public hearing process, he obviously had followed very carefully what had taken place, and thanks to the records that were kept, he was able to contribute significantly to the final discussions.

I want to thank *Hansard* for their diligence and their participation with us throughout the process, their travels with us throughout this great and wonderful province of Alberta to many parts of this vast province in which we live.

I want to thank the staff, Garry, John, and Corinne, and the other members of the staff who have been so diligent in their attendance upon our needs. I hope we haven't been too demanding. I don't think we have been, but they certainly have done an excellent job of compiling information for us, for keeping us abreast of developments as they came forward.

And I want to thank all of you from whatever political party. We did have disagreements, obviously, on key issues as we went through the process. In the 15 hours of in camera meetings, which were part of the process, which was the norm for the development of select committee reports, we had some lively discussions and debate. Perhaps it's unfortunate that not all of those discussions can be subject to public scrutiny, but there are times when issues have to be discussed that are obviously subject to considerable distortion if not reported fully and accurately.

I want to just say that I've enjoyed this last year of activities – it's almost a year now since this committee was established – and from here obviously this report will move on to the Legislative Assembly where it will be debated. As we asked in the amendment yesterday, we want it to be debated and hopefully approved. In view of the importance of the issue, the committee recommends that a vote on the report not be subject to party discipline in the hope that an open, nonpartisan approach will be followed. That, I think, is what Albertans certainly asked us to do as we went across the province and as we read the great volumes of correspondence, briefs, and so on that came forward to us. I do think the report reflects what Albertans have told us.

Now it will be my responsibility in the next few days to go to Ottawa and meet with my colleagues from other governments in a different capacity than as chairman of this committee. But having been chairman of this committee, I think it has strengthened my ability to participate in the discussions at the national level. That, I think, was extremely helpful to me, and your guidance and assistance and lively debate and disagreement from time to time on issues certainly will be reflected as we move through the process with our colleagues from other provinces.

Let me just conclude by saying this. I hope and pray that Canadians, not just from Alberta but from other provinces, will have the wisdom, the courage, and the plain common sense to keep this country functioning and working together. It is the best country in the world.

I don't think I can add more to that. Thank you all very much for everything you've done.

[The committee adjourned at 11:24 a.m.]