

**LEGISLATIVE ASSEMBLY OF ALBERTA**

Title: **Monday, November 1, 1976 2:30 p.m.**

[The House met at 2:30 p.m.]

**PRAYERS**

[Mr. Speaker in the Chair]

MR. PURDY: Mr. Speaker, on a point of privilege, during the debate on the rebate plan in the Legislature last Thursday, I would like to correct page [1719] of *Hansard*, where I indicated that the urban people were supporting the urban people. It should have been that the rural people were supporting the urban people.

**head: INTRODUCTION OF BILLS****Bill 78**

**The Appropriation (Alberta  
Heritage Savings Trust Fund  
Capital Projects Division) Act, 1976**

MR. LEITCH: Mr. Speaker, I beg leave to introduce Bill No. 78, The Appropriation (Alberta Heritage Savings Trust Fund, Capital Projects Division) Act, 1976. This being a money bill, His Honour the Honourable the Lieutenant-Governor, having been informed of the contents of this bill, recommends the same to the Assembly.

Mr. Speaker, this unique bill provides for the appropriation of the sums which have been under consideration by the Committee of Supply for investment from the Alberta heritage savings trust fund, capital projects division.

[Leave granted; Bill 78 introduced and read a first time]

**head: TABLING RETURNS AND REPORTS**

MR. JOHNSTON: Mr. Speaker, I would like to file an answer to the return of the Assembly, No. 175, asked for by the Member for Clover Bar.

MR. HARLE: Mr. Speaker, I'd like to table the annual report of the Department of Consumer and Corporate Affairs.

MR. LEITCH: Mr. Speaker, I wish to table the report required by Section 10 of The Government Land Purchases Act, accompanied by the Provincial Auditor's report.

MR. MINIELY: Mr. Speaker, I wish to table the 1975 annual report of the Alberta Hospital Services Commission containing the audited balance sheet as required by statute.

**head: INTRODUCTION OF SPECIAL GUESTS**

MR. DOAN: Mr. Speaker, I would like to introduce to you, and through you to the members of this Assembly, 44 students from the Delburne school in my constituency, about 30 miles east of Red Deer. They are Grade 7 students of social studies and debating options. They are accompanied by their teachers Mr. Reckseidler, Mrs. Doreen Jones, Mrs. Eileen Osquithorpe, and their bus driver, Mr. Les Deuchar. They are seated in the members gallery, and I would ask them to stand and be recognized.

DR. McCRIMMON: Mr. Speaker, it's a real pleasure for me today to introduce to you, and through you to the members of this Assembly, 60 Grade 12 students from the Ponoka Composite High School. They are accompanied by their principal Mr. Russell Petterson, teachers Mr. Elmer Kusiek and Mr. Harold Dootson, and bus driver Mr. Ed Fipke. They are seated in the public gallery, and I would ask that they stand and receive the welcome of this Assembly.

MR. TAYLOR: Mr. Speaker, I would like to introduce to you, and through you to the hon. members of the Legislature, Rev. E. Grobe, who is a pastor in a Nazarene Church in Calgary, Mrs. Grobe, and two of their children, Monroe and Debby. Rev. Grobe is a former alderman of the city of Drumheller and has played a very important part in the civic affairs in that city. I am sure we are all glad to see Rev. and Mrs. Grobe and their family here today.

Mr. Speaker, may I also introduce a very prominent farmer from the Strathmore area, Mr. Jerome Hanson, who is also seated in your gallery.

MR. HYNDMAN: Mr. Speaker, I would like to ask leave of the Assembly to revert to Introduction of Bills for a moment.

HON. MEMBERS: Agreed.

**head: INTRODUCTION OF BILLS**  
(reversion)

**Bill 80**

**The Municipal  
Government Amendment Act, 1976**

MR. MUSGREAVE: Mr. Speaker, I beg leave to introduce a bill, being The Municipal Government Amendment Act, 1976. This bill will allow for certain changes to The Municipal [Government] Act which will provide for the increase of councillors in small towns and villages. Of particular interest to all municipalities, it will allow for the setting up of wards, the number of aldermen therein, and whether they should be of the city at large.

[Leave granted; Bill 80 introduced and read a first time]

MR. HYNDMAN: Mr. Speaker, I move that this bill introduced by the hon. member be placed on the Order Paper under Government Bills and Orders.

[Motion carried]

#### head: ORAL QUESTION PERIOD

##### Status of Women Report

MR. CLARK: Mr. Speaker, I'd like to direct the first question to the Deputy Premier and ask if the government has indicated its official response to the brief presented to the cabinet by the Alberta Status of Women Action Committee.

DR. HORNER: Mr. Speaker, yes we have. I would be pleased to table four copies of that response.

MR. CLARK: Supplementary question to the Deputy Premier. Can the Deputy Premier indicate the government's response to the request to set up a cabinet committee of equal opportunity and the minister responsible for the status of women?

DR. HORNER: Mr. Speaker, I indicated to the organization in question that in fact we do have a cabinet committee set up that has specific terms of reference relative to equal opportunity, and that at the same time we do have a minister in the Executive Council charged with the supervision and administration of the Women's Bureau.

MR. CLARK: Mr. Speaker, a further supplementary question to the Deputy Premier. Would the Deputy Premier be in a position to indicate the government's response to the request for the establishment of a secretariat consisting of departmental officials who would co-ordinate and implement recommendations of the status [report]?

DR. HORNER: Mr. Speaker, I suggest that that's outlined in some detail in the speech I just tabled. In essence, the cabinet committee now has an *ad hoc* secretariat composed of those deputy ministers who are involved relative to their ministers in relation to the cabinet committee on social planning. Therefore, any additional secretariat — I'm hoping the Leader of the Opposition isn't suggesting we should expand the civil service.

MR. CLARK: A further supplementary question to the Deputy Premier. Is the Deputy Premier in a position to indicate to us when the government plans to appoint the citizens' council on the status of women that was requested of the government in the Alberta Status of Women Action Committee brief?

DR. HORNER: Perhaps I could refer that question to my colleague, the Minister of Social Services and Community Health.

MISS HUNLEY: Mr. Speaker, this matter has been before us for some time, and we felt really that we were getting a good deal of input from many women's organizations. In discussions with the director of the Women's Bureau, we have felt that we have the opportunity for adequate consultation and no advisory council charged with that specific responsibility is necessary at this time.

MR. CLARK: Mr. Speaker, one further supplementary question to the Premier. Has the Premier received a request from the Alberta Status of Women Action Committee for a meeting with the Premier, and has he been able to establish a date for such a meeting?

MR. LOUGHEED: Mr. Speaker, I have received that communication. As a result I reviewed the document, which was submitted only three weeks ago by the Alberta Status of Women organization to a cabinet committee which we delegated to be chaired by the Deputy Premier, and respond to on behalf of the government.

That matter was then taken to Executive Council and reviewed. We instructed the Deputy Premier to respond, as he has here again in the House, to the positions on the recommendations on behalf of the government. Those answers obviously were not satisfactory to the group that made the submission. It's our view that any further discussions aimed at altering our position from an organizational point of view would not be productive.

Some other matters have been raised, though, that were not contained in the brief, where we have requested further input. These involve such matters as matrimonial property and day care centres. After further evaluation, if a meeting of that nature is deemed to be in the best interest certainly we will accede to it, but only if we feel it will be productive. I don't think anything would be gained by a meeting merely reiterating the answers that the hon. leader has elicited in the House today.

##### Student Housing — U of C

MR. CLARK: Mr. Speaker, I'd like to direct the second question to the Minister of Housing and Public Works and ask if he plans any initiatives at the University of Calgary as far as the student housing problem is concerned.

MR. YURKO: Mr. Speaker, the over all policy of the government in relation to housing is to provide assistance where necessary to the low-income group in our society, as well as some area of the middle-income group. In all cases, the greatest needs lie with families rather than single individuals. Indeed, the policies therefore relate to families. Families are defined in a variety of ways: a lady with a child, for example, is classed as a family. It has generally been considered until this time that a single individual, for example a student, has options in terms of accommodation that families which involve more than one person don't have. As a result the policies have primarily been directed towards families rather than single individuals, such as students. Married students have access in all cases to all our programs, be they rental or home-purchasing programs.

MR. CLARK: Mr. Speaker, a supplementary question to the minister. Has the minister had an opportunity to look at the submission put forward by the students of the University of Calgary and a private developer in Calgary, which would end up with 250 additional accommodations being available for single students at the University of Calgary? What's the government's response to that proposal?

MR. YURKO: Mr. Speaker, that developer the member of the opposition is referring to did approach my office with respect to the possibility of using 8 per cent money under the core housing incentive program for building housing in the vicinity of the University of Calgary aimed directly at various types of students. He was informed that the policy under that core housing incentive program is specific and relates to families, and rent-regulates half the units built under that program to people or families making an income of \$8,000 to \$12,000 per annum. If he wished to build units in the Calgary area under that program and rented the rent-regulated units to students who had families and lived in the area, it was certainly appropriate for him to apply. However, if he wished to use that program to build apartment units for single students, then indeed the program wasn't applicable.

#### **Enoch Band Development Agreement**

MR. PURDY: Mr. Speaker, I'd like to address a question to the minister responsible for native affairs. In view of the signing today in Edmonton of the Head Lease agreement between the Enoch Indian Band and the federal government, represented by the Hon. Warren Allmand, respecting a proposed industrial, recreational, and residential complex near Edmonton, is the minister able to indicate the extent of the involvement of the provincial government toward realization of this development?

MR. BOGLE: Mr. Speaker, the signing of the Head Lease took place at noon today between Warren Allmand, the federal minister, and Raymond Cardinal, the chief of the Enoch Band. It represents a culmination of three years of work on the part of the band in its desire to establish a community for non-reserve people. It should be pointed out to hon. members of the House that the land in question is federal land, therefore provincial laws relating to municipalities do not apply. However, preliminary discussions are under way between provincial and federal officials to resolve adequately any outstanding concerns that may exist.

I should also mention that the track record between the Enoch Band and the county of Parkland is excellent. Members of this Assembly may recall that earlier this year an agreement was worked out whereby a school for children from the reserve as well as children from the county was to be built on reserve land by the county of Parkland. In this government's opinion, this is a most appropriate way for joint development between both the reserve and non-reserve people.

MR. PURDY: A supplementary question to the minister, Mr. Speaker. To what extent does the provincial

government plan to assist this development financially?

MR. BOGLE: Mr. Speaker, the province is not directly assisting the proposed development on the Enoch reserve in any way. However, I might mention that very close co-operation does exist between the band council and the Edmonton Regional Planning Commission which, as all members of the Assembly will know, is funded to a great extent by the province.

#### **St. Paul Auction Mart**

MR. NOTLEY: Mr. Speaker, I would like to direct this question to the hon. Provincial Treasurer. It's a follow-up to a question I posed to him on Friday concerning the St. Paul Auction Mart. Is the minister in a position today to report to the Legislature on why the Government of Alberta did not put the firm through bankruptcy proceedings in order to collect as much as it could of the outstanding debt?

MR. LEITCH: Mr. Speaker, I haven't been able to get all the information on that yet. I expect to have it by tomorrow.

#### **Government Loans List**

MR. TAYLOR: Mr. Speaker, my question is to the hon. Minister of Consumer and Corporate Affairs. With reference to the list of loan guarantees to co-ops and loans to REAs, which the hon. minister stated was sent to government MLAs the other day, would this be sent to opposition MLAs if so requested?

MR. HARLE: Yes, Mr. Speaker, I'd gladly be prepared to send a list to the members of the opposition.

#### **Hog Industry**

MR. COOKSON: Mr. Speaker, I'd like to ask a question of the Minister of Agriculture. In view of a recent report by *St. John's* magazine about the attrition of the hog industry in Alberta to other parts of Canada, perhaps, I wonder if the minister could comment on whether there have been any submissions to him, either from the Hog Marketing Board people or other organizations in the province, with regard to whether this is a problem or not.

MR. MOORE: Mr. Speaker, I have had discussions with the Alberta Hog Producers' Marketing Board, with the packing industry generally in Alberta, and with farm organizations relative to the decrease in hog production in Alberta over the course of the last eight to 12 months.

MR. COOKSON: Perhaps a supplementary, Mr. Speaker. Could the minister comment on whether he has been able to determine the reason for this shift in production to other parts of Canada, in particular to Quebec?

MR. MOORE: Mr. Speaker, it's a matter of opinion, but certainly there are a number of reasons, probably

the foremost of which are the feed grain policies, which favor eastern Canada in pricing in terms of feed barley produced on the prairies, and most assuredly the freight rate situation between here and eastern Canada.

MR. COOKSON: Perhaps one more supplementary to the minister, Mr. Speaker. Will the minister be making further submissions to the federal government with regard to this very serious problem, in particular through central Alberta, which has heavy hog production?

MR. MOORE: Mr. Speaker, a number of representations have been made, both by me and by the hon. Deputy Premier and Minister of Transportation, relative to both the problems I mentioned. Discussions are being held, and certainly we would hope that some relief will be in sight with respect to not only the manner and method in which feed grains are priced and sold in western Canada and the comparative advantage we might have because of our production here . . . Indeed, I know that the Minister of Transportation, who may want to respond as well, has been making numerous representations relative to freight rates.

MRS. CHICHAK: Mr. Speaker, a further supplementary. With respect to this matter of the hog industry, has the minister given consideration to providing some sort of assistance or direction to give some security of employment to employees who have been with packing plants for many years?

MR. MOORE: Well, Mr. Speaker, we've been involved in a number of ways in trying to ensure that the hog industry in Alberta prospers and that we have sufficient numbers of hogs to keep our killing plants busy. Indeed, the announcement I made in this Legislature a year ago in November of a \$41 million sale of contract hogs to Japan has been very substantial for many of our hog producers. I was told as late as last week that while hog prices in Alberta were in the range of 43 to 44 cents, persons who had signed those contracts to produce for the Japanese market were receiving in excess of 60 cents per hundred. We intend, Mr. Speaker, to continue to assist wherever we can in that kind of marketing which will help our farmers.

The real problem with respect to hog production in this province and elsewhere in western Canada has been the ups and downs in the market place insofar as the producer is concerned. That's what the long-term contracting concept was all about.

Quite frankly, Mr. Speaker, the challenge is there to the meat packing industry to do the same kind of thing in the Canadian market. I've told the meat packing industry on more than one occasion that until it is prepared to sit down and try to work out a reasonable proposition wherein a young farmer who is going into hogs with an investment of from \$100,000 to \$200,000 can be assured of a stable price for a good period of time, it's not likely that we'll be able to increase hog production dramatically in this province. I say that because there are a lot of other both farm and off-farm opportunities in Alberta. It's just not likely we would be able to persuade persons to make those very large investments with-

out some great co-operation from the meat packing industry.

MR. LOUGHEED: Mr. Speaker, might I just supplement the question because of the timing. Hon. members will recall that a very important delegation from Japan visited with the government on Friday. I was asked by the leader of that delegation if we could summarize for him the priorities we saw in trade between Alberta and Japan. We listed three. The first was quite clearly an expansion of the sale of our agricultural products, particularly processed agricultural products, which bears on the question of the hon. Member for Edmonton Norwood.

#### ADC Loans — Interest Rates

DR. WALKER: Mr. Speaker, my question is to the Minister of Agriculture. Could the minister please advise if there has been any increase in the interest rates of direct loans from the Agricultural Development Corporation?

MR. MOORE: Mr. Speaker, the interest rates for direct loans from the Agricultural Development Corporation are reviewed twice annually and established on April 1 and November 1. I'm happy to report that the interest rate of 9 per cent, which was established 6 months ago, will not be increased, and direct loans will continue at 9 per cent until the next review in April 1977.

#### Professions/Occupations Review

DR. BUCK: Mr. Speaker, I'd like to address my question to the Minister of Social Services and Community Health. It's a follow-up to a question I asked in the spring session and has to do with the licensing of physiotherapists. Is the minister in a position to indicate the status of physiotherapists and if an act will be brought in that will license physiotherapists in this province?

MISS HUNLEY: The whole area of occupations and professions is being closely reviewed. A number of professions, I think about 25 that relate to my portfolio alone, are requesting their own act or revisions to their act. Consequently, we have not been moving forward with any one until some long range policy decisions are made. As a result, no new acts will be introduced this fall. We will probably be moving in consultation with the other professions as we can toward spring and during the months ahead, keeping in mind that a massive amount of legislation is requested.

MRS. CHICHAK: A supplementary to the hon. minister. Is it necessary for physiotherapists, or any of the groups which have approached the hon. minister for legislation, to have legislation in order to provide their services? Or are they able to function and develop and are some safeguards in place that don't necessarily require the legislation the hon. member is currently requesting?

MISS HUNLEY: I think if I talk too broadly in these areas I would be catching a lot of professions that the legislation referred to doesn't particularly refer to. I think each one has to be dealt with on its own merits, and the whole concept of what's being asked for has to be examined as to the overall public good in the future. That's what we are attempting to do at the present time.

#### **Farm Gate Prices**

MR. MANDEVILLE: Mr. Speaker, my question is to the hon. Minister of Agriculture. Could the minister indicate whether the Anti-Inflation Board has been in contact with the province in regard to monitoring prices set by farm marketing boards in Alberta?

MR. MOORE: Yes indeed, Mr. Speaker, the Anti-Inflation Board has been in contact with the Agriculture Products Marketing Council.

MR. MANDEVILLE: Supplementary question, Mr. Speaker. Could the minister indicate what the policy of the government will be with regard to enforcing guides in dealing with farm marketing boards?

MR. MOORE: Could the hon. member repeat his question? I'm not sure I caught it.

MR. MANDEVILLE: Mr. Speaker, the supplementary question is: could the minister indicate what the policy of the provincial government will be when it is dealing with enforcing guides that are going to be set by the Anti-Inflation Board in regard to marketing boards?

MR. MOORE: Mr. Speaker, the hon. member is automatically concluding that in fact the Anti-Inflation Board is going to be involved in farm gate prices. As far as I'm aware, those are not the facts of the matter. We suggested to the Anti-Inflation Board that such bodies as our Public Utilities Board, which establishes price for fluid milk, have followed and will continue to follow the purpose and intent of the Anti-Inflation Board guidelines. Indeed, we provided to them the manner in which prices are determined. As far as I'm aware, they have no wish to reduce any of the prices established by any of our boards, including the Public Utilities Board which establishes milk prices. It's not our intention to pass that authority on to the Anti-Inflation Board from our own regulating authorities at the present time.

MR. NOTLEY: Mr. Speaker, a supplementary question to the hon. minister for clarification. In view of the fact that farm gate prices are exempt and in view of the comments the hon. minister made in his most recent answer to the Member for Bow Valley, on what basis has discussion been between our farm products marketing council and the Anti-Inflation Board?

MR. MOORE: Mr. Speaker, I think it's fair to say that farmers in general, and our farm marketing boards which have the power to establish and set prices, are generally wanting, if they're receiving a reasonable profit now, to follow the intent and purpose of the

anti-inflation program. Any discussions on that basis have taken place with respect to various boards I refer to, partly as an effort by them to show that indeed there is no pricing situation in this province among agricultural products marketing boards that gives unfair advantage to the producer and is charging the consumer more than what might be appropriate.

MR. NOTLEY: Mr. Speaker, a supplementary question for clarification, again to the hon. minister. In view of the stated position of the federal government when the whole program was enunciated a year ago that farm gate prices would be exempt, does the minister mean to say that the AIB is now seriously considering placing those farmers who are making a reasonable profit but are supplying their services through a marketing board under the same rules and guidelines they might apply to profits in the rest of the private sector?

MR. MOORE: Mr. Speaker, I can't hope to speak for the intention of the Anti-Inflation Board. Indeed, that's not my statement at all. If the hon. member prefers to believe that the Anti-Inflation Board is following that intent, he might inquire of it.

#### **Japanese Trade Mission Talks**

MR. R. SPEAKER: Mr. Speaker, my question is to the Premier for elaboration. The Premier indicated that a list of priorities was set up for discussion with the Japanese trade mission. I wonder if he could itemize the other areas outside of agriculture.

MR. LOUGHEED: Yes, Mr. Speaker, I probably should do that. I said there were three. The first was in the area of agricultural processing and products. We particularly put emphasis on rapeseed oil and rapeseed meal, and on the processed meat products referred to earlier.

We said a second area would be markets, and that would be reduction of tariff and trade barriers in the area of petrochemicals, particularly tertiary and upward grading.

The third area was in specialty forest products which I think to some degree was a surprise to our visitors. They were not aware that we rated that renewable resource with that degree of emphasis. We felt that if we could improve our marketability in the Pacific Rim, particularly in Japan, of some of our specialty forest products, it would certainly be helpful for the vitality and viability of a number of our northern communities.

MR. R. SPEAKER: Mr. Speaker, a supplementary to the Premier. In the area of coal, for example, did the Japanese trade mission request longer term royalty commitments? Were they renegotiating, or were there just exploratory talks in that area?

MR. LOUGHEED: Mr. Speaker, it was not an area I emphasized in my meeting with members of the mission, but they did have a separate meeting with the Minister of Energy and Natural Resources. I would refer that question to him.

MR. GETTY: Mr. Speaker, I think the matter of coal was raised with me in the context of two areas. The Japanese people were concerned that the level of government royalties would not be so high as to make Alberta coal non-competitive in the world, since the Japanese feel they will be buying coal throughout the world market. I think it's fair to say that when they understood those factors that go into the make-up of the Alberta coal royalty, they felt this would not be a problem.

MR. R. SPEAKER: Mr. Speaker, a supplementary to the Minister of Energy and Natural Resources. Was there any indication from the delegation that they had X million dollars to invest in our tar sands, oil, or petrochemical industry — that they had a number in mind when they came to Alberta?

MR. GETTY: No, Mr. Speaker.

## ORDERS OF THE DAY

### head: **GOVERNMENT MOTIONS**

3. Mr. Lougheed proposed the following motion to the Assembly:

Be it resolved that the Legislative Assembly of Alberta, while supporting the objective of patriation of the Canadian constitution, reaffirm the fundamental principle of Confederation that all provinces have equal rights within Confederation and hence direct the government that it should not agree to any revised amending formula for the Constitution which could allow any existing rights, proprietary interests or jurisdiction to be taken away from any province without the specific concurrence of that province.

MR. LOUGHEED: Mr. Speaker, in moving such a resolution, I do not think that it is overstating it to say that it may be one of the most important this Assembly has ever debated in terms of its far-reaching implications upon Alberta's future and upon the kind of nation we will have in the future.

Mr. Speaker, let's make it clear at the outset that this constitutional debate on November 1, 1976, was not initiated by actions taken by Alberta, but by the Prime Minister of the country, Pierre Elliott Trudeau.

Mr. Speaker, the question of patriation and constitutional change has not been one of our priorities as a government. Frankly, over the course of five years in office, it has rated well down the list, far after matters [such as] the precarious nature of our economy that I spoke about in this Assembly on October 13, or about improving the quality of our education and our hospital services, and many others. But, Mr. Speaker, it has been brought to the forefront by the Prime Minister of Canada in his very important letter to the provincial premiers of March 31, 1976, which was tabled in this Legislature on April 9 of this year.

Until the summer of 1975, in fact, patriation was only being considered at the official level and in a relatively cursory way prior to March 31, 1976, not by

the Executive Council. However, Mr. Speaker, the threat of unilateral patriation of the Canadian constitution by the present government in Ottawa has forced the Government of Alberta and this Assembly to concentrate extensively upon the issue, to examine carefully the implications for Alberta. It's no exaggeration to say that they are grave ones.

Mr. Speaker, to frame the debate on this motion, it's been suggested to me that it might be useful first to examine the history of the British North America Act, because the history is so relevant to the motion before us today which refers to "the fundamental principle of Confederation that all provinces have equal rights". Members are aware that the British North America Act in 1867 was the coming together of separate entities, four in total: Upper Canada, Lower Canada — Ontario and Quebec, if you like — New Brunswick, and Nova Scotia to form a federal state, not a unitary state. Under that important legislation which is known as the Canadian constitution, certain rights were assigned to the federal government exclusively, and certain rights were assigned to provincial governments exclusively.

In addition, under Section 109 the ownership of resources belongs to and shall belong to the provinces. Another important part of the British North America Act of 1867 was that as between each provincial government there was essential equality. Nova Scotia did not receive [lesser] rights than Quebec; New Brunswick no lesser rights than Upper Canada.

It was interesting, Mr. Speaker, that the wise framers of this Constitution that has served us well for 109-odd years did not provide in the Constitution for a method of amendment. Some argue, because in their minds it was implicit, what that method of amendment would be: it would be an amendment whereby the parties, all of them, would agree to changes of substance that affect the distribution of powers as between each other, as between the provinces and the federal government — a view that has not only historical support but a great deal of logic, because that was the nature of the Confederation of Canada.

Mr. Speaker, for framing the reference of the motion again, let's review some of the key sections. Under Section 91, Mr. Speaker, the members are aware that the exclusive jurisdictions of the federal government are outlined. They include "the regulation of trade and commerce"; they include "the raising of money by any mode or system of taxation"; they include such matters as banking.

Then under Section 92 it states:

In each province the legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated . . .

Listed there are such matters as:

Direct taxation within the province in order to the raising of a revenue for provincial purposes . . . . The management and sale of . . . public lands belonging to the province . . . . The establishment, maintenance, and management of hospitals . . . . [and] Property and civil rights in the province.

Mr. Speaker, Section 93 again states:

In and for each province the legislature may exclusively make laws in relation to education,

subject. . . to [certain] provisions . . .

The basic exclusive responsibility is the responsibility rested with the provincial governments.

Then Section 109, to which I've already referred, states:

All lands, mines, minerals, and royalties belonging to the several provinces of Canada, Nova Scotia, and New Brunswick at the union, and all sums then due [or] payable for such lands, mines, minerals, or royalties, shall belong . . .

the operative two words

. . . to the several provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any trusts existing in respect thereof, and to any interest other than that of the province in the same.

Mr. Speaker, those are the key sections I wish to refer to in my remarks today, Sections 91, 92, 93, and 109.

Mr. Speaker, all hon. members and all Albertans are indebted to the efforts by the government of the day in 1930 in assuring the natural resources transfers act in the province of Alberta under the British North America Act provisions, whereby on July 10, 1930, Alberta, even though a province since 1905, was placed in the same position as every other province in Canada under the provisions of Section 109, and that very important bill gave full resource ownership to the province of Alberta. Mr. Speaker, that 1930 natural resources transfer tax, which I guess in a way is a sort of basic foundation of this province, was granted because we were entitled to be equal in rights to the other provinces in Canada. That was the principle involved.

The matter of amendments and the history of amendments to this very important document are worthy of members' study. Amendments were effected through co-operation, consultation, and unanimous agreement of the 10 provinces: in 1940, under the matter of unemployment insurance; in 1951 and 1964, relative to old age pensions; and in 1960 on the matter of retirement of judges.

Yes, it's true that unanimity is difficult. It should be, for in my view, Mr. Speaker, a constitution should not be easy to change. But evidence is clearly before this nation today that when the circumstances are right, it can be changed, it has been changed — and that has been proven.

Mr. Speaker, in 1949 an important amendment was made unilaterally by the federal government under Section 91(1) under the revisions which provided for:

The amendment from time to time of the Constitution of Canada, except . . .

and that's the most important word

. . . as regards matters coming within the classes of subjects by this act assigned exclusively to the legislatures of the provinces, or as regards rights or privileges by this or any other constitutional act granted or secured to the legislature of the government of a province . . .

could then be done by the federal government.

There was quite a debate in 1949. The then Prime Minister, the Rt. Hon. Louis St. Laurent, made it particularly clear in speaking about that matter in the House of Commons and throughout the country that there was no attempt by that amendment to involve in any way any shift in the distribution of powers as

between the federal government and the provincial government, or in any way to affect the rights and privileges of provinces. Quite obviously those would include the rights and privileges under Section 109. So for those other areas there is now within Canada the ability for the federal government, on its own, to make such amendments as it sees fit in terms of altering the Constitution for matters that come exclusively within the federal jurisdiction.

Mr. Speaker, the next matter that should be raised is the relationship between Canada, the federal state of Canada, and the British Parliament on this British North America Act. Since the Statute of Westminster in 1931, full sovereignty has been accorded Canada as a nation, and the British Parliament has always acceded to every request from Canada emanating from the federal government for any change in the British North America Act. The British Parliament has never altered any such address or turned it down, and they will not in the future.

Mr. Speaker, there are some, I think just a few, wishful-thinking Albertans who believe we can stop unilateral action of the sort feared by Mr. Trudeau by appealing to the British Parliament. I suggest we forget about that. We're a federal state, but the federal government has the conduct of international affairs. The Prime Minister of the United Kingdom, in answer to a direct question which I put to him when I visited with him in September, said that there was no way the British Parliament would not accede to whatever address came jointly from the House of Commons and the Senate, presumably during the year of 1977, with regard to the British North America Act and its patriation to Canada. He considered it entirely an internal Canadian problem.

Mr. Speaker, there have been considerable efforts over the years at amending formulas and to finding an amending formula for Canada satisfactory to the provinces and the federal government. It was a very intensive period from 1961 to 1964 when this was pressed by all concerned. On October 14, 1964, at a federal-provincial conference, the Prime Minister and all 10 premiers, including the then Premier of Alberta, the Hon. Ernest C. Manning, agreed to the text of a bill. That bill is An Act to Provide for the Amendment in Canada of the Constitution of Canada. In essence it is what has become known as the Fulton-Favreau formula. It's important enough, and seems to have been so completely ignored in the course of time, Mr. Speaker, that it's worthy of some reiteration.

Under Part I, Section 2, it states:

No law made under the authority of this Part affecting any provision of this act. . . , or affecting any provision of the Constitution of Canada relating to

(a) the powers of the legislature of a province to make laws,

(b) the rights or privileges granted or secured by the Constitution of Canada to the legislature or the government of a Province,

(c) the assets or property of a province, or

(d) the use of the English or French language, shall come into force unless it is concurred in by the Legislatures of all the provinces.

It goes on to say in Section 3(1):

No law made under the authority of this Part affecting any provision of the Constitution of

Canada that refers to one or more, but not all, of the provinces, shall come into force unless it is concurred in by the legislature of every province to which the provision concurs.

In short, Mr. Speaker, if there is a direction of a constitutional change that clearly deals with a province or group of provinces — and one could contemplate fisheries in that — then it is those provinces that need to be involved in concurrence.

It then goes on to provide by Section 5:

No law under the authority of this Part . . . shall come into [effect] unless it is concurred in by the legislatures of at least two-thirds of the provinces representing at least fifty per cent of the population . . .

Then it further provides for a delegation of legislative authority either by the federal government to a group of provinces and only those provinces need agree, or by a group of provinces or a single province to the federal government and only that province agreeing.

So what the Fulton-Favreau formula had as its basic context was the concept that no powers of the Legislature to make laws, Section 92, 93; no rights or privileges granted under the constitution, Section 109; no assets of the province or property of the province could be altered under a constitution unless all provinces agreed. It then went on to refer to exceptions that could be made, exceptions that would provide some degree of flexibility.

Mr. Speaker, I think it's important to understand the Fulton-Favreau formula, the agreement made in October of 1964 that the Premier of the province of Alberta, in this seat at that time, agreed to. It's not inconsistent with the motion before the House. In fact in many ways the Fulton-Favreau formula goes further in restraining the Constitution than we do in the motion proposed before the House today. I will explain that as I go on in my remarks.

Mr. Speaker, as hon. members are well aware, the Fulton-Favreau formula and that agreement of October 1964 never became effective, for shortly thereafter the Quebec government withdrew its support. The position taken by Quebec at that time was that it was not prepared to agree to an amending formula if at the same time additional provisions were not added to the Constitution as requested by the Government of Quebec which, among other things, would provide for constitutional guarantees of culture and of certain other internal matters. As a result, the entire exercise collapsed.

Just as an interesting footnote, Mr. Speaker, it collapsed. And when it collapsed because of the decision that was taken by one of the two central provinces, there was never the slightest suggestion that they should nevertheless proceed and override all the other provinces, even though at that time the Prime Minister of Quebec had been there, had met, and had agreed on that particular provision.

Mr. Speaker, the next step in this saga was the effort by Prime Minister Trudeau and Attorney General John Turner for constitutional revision that led up to the Victoria conference in June 1971. Besides the amending formula, a number of other matters were discussed and agreed to. One of the matters discussed extensively was the Supreme Court of Canada. It was the concern of some provinces, and we share that concern — we had it

then, we have it today — that the Supreme Court of Canada is appointed solely by the federal government as a court of final resort in this nation but also acts as an interpreter of the Constitution. There are those of us in a federal state who are concerned with that process, a process wherein that court sits and lives in the nation's capital in Ottawa yet is in a federal state. There is a feeling that there should be some provincial input in the selection of the judges appointed to the Supreme Court of Canada.

Mr. Speaker, another matter discussed and agreed to at the Victoria conference in June 1971 dealt with language rights. The premiers in attendance with the Prime Minister also agreed to give constitutional status to the federal Official Languages Act, providing it did not diminish any legal or customary rights or privileges of languages other than English and French. Contrary to some myths, Mr. Speaker, it does not impose bilingualism on this country. It doesn't force any Canadian to speak another language. It has nominal legal impact upon Alberta. Our predecessors agreed with these provisions, and so do we.

Mr. Speaker, the major conclusion that came out of the Victoria conference was the agreement on the amending formula. It provided this — very different from the Fulton-Favreau formula of the mid-1960s — that any of the provisions of the Constitution, no exceptions, could be amended under this formula if there was the agreement of the federal government, plus the agreement of the Government of Ontario and the Government of Quebec, plus the agreement of any two of the four Atlantic provinces and any two of the four western provinces having 50 per cent of the population of the region — in effect, British Columbia plus one of the other three provinces in the western region.

Mr. Speaker, an election was pending in Alberta in June 1971, and the Progressive Conservative Party took the position that it did not accept the Victoria amending formula, and that, if elected, it would assess the entire matter from scratch and in no way feel committed to it. Mr. Speaker, I said as much as that specifically in my remarks in this Legislature in the first session in which we were the government. I refer hon. members to *Hansard*, March 29, 1972. Mr. Speaker, on June 22, 1971, the government of the day announced that the cabinet had met that morning and accepted the Victoria charter without reservation, and was prepared to recommend it to the Legislature.

Mr. Speaker, the first ministers' meet in this country — it seems to me they meet more frequently than one would expect. When the first ministers met for a dinner on April 9, 1975, we were almost through dinner and the Prime Minister raised, in my view, almost what I thought was a footnote — I'm sure it wasn't an afterthought — that he wanted Gordon Robertson, who was then one of the senior members of the civil service of Canada, secretary to the cabinet committee on federal/provincial matters, to start a new round of discussions on patriation of the constitution. We all said we were prepared to have some discussions, but there was no agreement and no commitment. Discussions were with my colleague the hon. Minister of Federal and Intergovernmental Affairs and me with Gordon Robertson in August 1975. They were tentative and clearly



inconclusive.

Mr. Speaker, then came the very important letter of March 31, 1976. It was tabled in this Legislature on April 9 this year. But because of its importance, Mr. Speaker, I think it is critical that portions of it be read on this motion into the record of *Hansard*. Starting on Page 6 and concluding at the bottom of Page 9, I would like to read the letter the Prime Minister wrote to all the premiers in Canada with regard to patriation of the constitution.

We must, then, consider three alternatives that are open to us in these circumstances.

Let us begin with the simplest alternative. The Government of Canada remains firmly of the view that we should, as a minimum, achieve "patriation" of the B.N.A. Act. It is not prepared to contemplate the continuation of the anomalous situation in which the British Parliament retains the power to legislate with respect to essential parts of the constitution of Canada. Such "patriation" could be achieved by means of an Address of the two Houses of the Canadian Parliament to the Queen, requesting appropriate legislation by the British Parliament to end its capacity to legislate in any way with respect to Canada. Whereas unanimity of the federal government and the provinces would be desirable even for so limited a measure, we are satisfied that such action by the Parliament of Canada does not require the consent of the provinces and would be entirely proper, since it would not affect in any way the distribution of powers. In other words, the termination of the British capacity to legislate for Canada would not in any way alter the position as between Parliament and the provincial legislatures whether in respect of jurisdictions flowing from Sections 91 and 92 or otherwise.

However, simple "patriation" would not equip us with an amending procedure for those parts of our constitution that do not come under either Section 91(1) or Section 92(1) of the B.N.A. Act. To meet this deficiency, one could provide in the Address to the Queen that amendment of those parts of the constitution not now amendable in Canada could be made on unanimous consent of Parliament and the legislatures until a permanent formula is found and established. In theory this approach would introduce a rigidity which does not now exist, since at present it is the federal Parliament alone which goes to Westminster, and the degree of consultation or consent by the provinces is a matter only of convention about which there can be differences of view. In practice, of course, the federal government has in the past sought the unanimous consent of the provinces before seeking amendments that have affected the distribution of powers.

A second and perhaps preferable alternative would be to include in the action a provision that could lead to the establishment of a permanent and more flexible amending procedure. That could be done by detailing such a procedure in our Joint Address and having it included in the British legislation as an enabling provision that would come into effect when and only when it had received the formal approval of the legisla-

tures of all the provinces. The obvious amending procedure to set forth would be the one agreed to at Victoria in application to those parts of our Constitution not now amendable in Canada (part I of the attached "Draft Proclamation"). This could be with or without modification respecting the four western provinces. (On this last point, the federal government would be quite prepared to accept the proposed modification and it is my understanding that the other provinces would equally agree if the western provinces can arrive at agreement.)

If we took the above step, we would achieve forthwith half of our objective of last April — "patriation" — and we would establish a process by which the other half — the amending procedure — would become effective as and when the provincial legislatures individually signify their agreement. Over a period of time, which I hope would not be long, we would establish the total capacity to amend our constitution under what is clearly the best and most acceptable procedure that has been worked out in nearly fifty years of effort, since the original federal-provincial conference on this subject in 1927. Until full agreement and implementation had been achieved, any constitutional changes that might be needed, and which did not come under Section 91(1) or Section 92(1) or which could not otherwise be effected in Canada could be made subject to unanimous consent. This would impose an interim rigidity for such very rare requirements for amendment, but, as I have said, the practice has, in any event, been to secure unanimous consent before making amendments that have affected the distribution of powers.

A third and more extensive possibility still, would be to include, in the "patriation" action, the entirety of the "Draft Proclamation" I am enclosing. In other words the British Parliament, in terminating its capacity to legislate for Canada, could provide that all of the substance of Parts I to VI would come into effect in Canada and would have full legal force when, and only when, the entirety of those Parts had been approved by the legislatures of all the provinces. At that point, we would have, not only "patriation" and the amending procedure, but also the other provisions that have developed out of the discussions thus far. Here again, of course, until all the Provinces had approved the entire Draft Proclamation, any constitutional change which did not come under Section 91(1) or 92(1) would be subject to unanimous consent.

As you can see, there are several possibilities as to the course of action now to take. So far as the federal government is concerned, our much preferred course would be to act in unison with all the provinces. "Patriation" is such a historic milestone that it would be ideal if all Premiers would associate themselves with it.

But if unanimity does not appear possible, the federal government will have to decide whether it will recommend to Parliament that a Joint Address be passed seeking "patriation" of the B.N.A. Act. A question for decision then will be what to add to that action. We are inclined to think that it should, at the minimum, be the

amending procedure agreed to at Victoria by all the provinces, with or without modification respecting the western provinces, and subject to the condition about coming into force only when approved by the legislatures of all the provinces as explained above.

Mr. Speaker, that is quite an extensive reference to that letter, but it's quite obvious why it was necessary.

The possible confusion members can have with the reference to 91(1) and 92(1) — I've already referred to 91(1) as being that portion which provides for amendment by the federal government on its own with regard to matters within its own jurisdiction. And 92(1) should be read. It states:

The amendment from time to time, notwithstanding anything in this act, of the constitution of the province, except as regards the office of the Lieutenant-Governor.

And what the Prime Minister was saying in his letter is that there are two provisions now in the Constitution for amendment, but in each case they apply to amending in areas that do not affect the other party to Confederation.

Mr. Speaker, we responded to the Prime Minister's letter with a telegram, and tabled it in our House on April 9. It stated as follows:

The Government of Alberta feels strongly that any unilateral move by Parliament, on the federal government's initiative, to remove the Constitution from Westminster would be a clear violation of the historical precedent of Canadian constitutional development and the conventions and customs which have grown up over past decades concerning provincial participation in this very important [move]. It is our firm view that such a major move should not be done unilaterally at the initiative of the federal government, but should be carried out only with the consent of the provinces who are full partners in Confederation. The maintenance of the legitimate and historical powers of the provinces may be at stake if patriation is carried forward unilaterally.

Of course, the question as to whether the B.N.A. Act should be sited in Ottawa rather than in London, England is a non issue. Our special concern relates to the manner in which this is carried out and the possible adverse effects on our federal system and its future course.

Mr. Speaker, the government then began a careful assessment of this matter. We are fortunate to have assisting the government some very able and brilliant people, very able and brilliant consultants.

Mr. Speaker, I want to comment on the letter from the Prime Minister and the portions I mentioned, and read what I think is very significant with regard to them. The first very significant point is the view expressed by the Prime Minister that they can patriate the Constitution without the consent of the provinces — item one, and all that that implies; secondly, that the need to obtain the unanimous consent of the legislatures with regard to amendment is merely a practice and not a right; next, that the amending formula obviously favored by the Prime Minister is the Victoria formula, that they are considering what is known as option two which is the Victoria formula, and that option two would be patriation with the Victoria formula but would only come

into effect after all the provinces had concurred — that's what's said in the letter of March 31, 1976. Next, the Prime Minister concludes with his observation that it will have to decide what to do. So the position we're in is the possibility of a decision that could be made unilaterally by the federal government that affects the Constitution of this country and the future of this Legislature.

Mr. Speaker, there were a number of subsequent developments with respect to the letter that I should report to the Legislature.

The next development was on June 14, 1976, again at another dinner. This was at the Prime Minister's residence in Ottawa with the premiers. The Prime Minister pressed the premiers to respond to his letter of March 31, 1976, and to the three options, at our premiers' conference scheduled for August in Alberta. I insisted that it was a very complex matter; that we had other priorities, which included a post-control plan, the cost-sharing agreement, and other matters, but that if he insisted, we would place it on the agenda. It was placed on the agenda only as: preliminary and exploratory discussions on the patriation of the Constitution.

The premiers' conference was held in Edmonton and Banff on August 18, 19, and 20. A few days earlier, at Government House in Edmonton, the ministers of intergovernmental affairs and the attorneys general of Canada met for a very lengthy two-day session. We were ably represented by our Minister of Federal and Intergovernmental Affairs and our Attorney General.

The majority of the discussion during that period was on option number three and any additional provisions that provinces would like to see included in any draft proclamation. Our Minister of Federal and Intergovernmental Affairs and our Attorney General then reported to the cabinet on August 17. We had a fairly full agenda that day. The second item on the agenda, if I recall it now, was the Constitution. We got to no other matter that day. We spent the entire day on the subject.

During the course of the discussion it became apparent that the key for Alberta in the future was not what amendments to the Constitution we might be successful in obtaining under any amending formula, but what amendments might be made that would in fact be detrimental to the province of Alberta. We took that view because we have felt for some time now that to a large degree, the future of this country depends on the effectiveness of strong provincial governments strengthening the regions of the west and the Atlantic provinces. We felt and do feel that Alberta has a leadership role to play in that regard because of our geography, because of our resources, and because of our attitude.

By the very nature of the dynamic changes occurring in Canada, we felt there would be considerable pressures in Canada to resist this change. It was our conclusion that we should look at any amending formula not so much in terms of what we might be able to succeed [in] in making an amendment. Because essentially, Mr. Speaker, in a word we would say that, reasonably interpreted, the framers of Confederation of Canada, on balance, did a pretty good job with great wisdom. Sure, they couldn't have foreseen all the things such as we now have in environment and other areas, but on balance, have

foreseen it quite well. What's needed is not so much changes in constitution, but greater feeling in Canada of working together in terms of consensus and recognition that Canada should change and the regions of the west and the Atlantic provinces should become stronger.

Mr. Speaker, we then reached the conclusion reflected in this motion before us today. At the premiers' conference in Edmonton I noted that the discussion was preliminary and exploratory, and that there needed to be future meetings. On August 18 I advised the other premiers of our position on the amending formula as set forth in this resolution. As we expected, because there were other important matters on the premiers' conference agenda, we ran out of time on the constitutional issue, and we agreed to meet in Toronto on October 1 and 2.

Initially I refused to disclose my position publicly, because I was chairman of the conference and I felt that I should not use the position of conference chairman to present an Alberta point of view. Unfortunately the matter became public, not, I can say, by any Alberta delegates. It became essential and only proper to respond to the press gallery and to the citizens of the province with regard to our position prior to the Toronto meeting. This was done at a news conference at Edmonton on September 28.

Mr. Speaker, the Toronto meeting on October 1 and 2 was very important. I read into the record of *Hansard* on Wednesday, [October] 20 my letter of October 14 to the Prime Minister that reported on that particular meeting. It was a difficult meeting, but it involved some positive factors. Among its positive factors were the features of agreement: the matters unanimously agreed to relative to immigration, language rights, strengthening of jurisdiction of the provincial government in taxation of primary production, provision that the declaratory powers of the federal government to declare a particular work for the general advantage of Canada would only be exercised when the province affected concurred, and other matters. There was agreement on the objective of patriation.

On the amending formula there was a result that I think is well known to all of you. That is the position that eight of the provinces did agree to the Victoria formula. British Columbia did not. They wanted the same veto that the provinces of Ontario and Quebec have and, in this sense, would be in the same position as Ontario and Quebec. Alberta held to the view that a constitutional amending formula should not permit an amendment which would take rights, proprietary interests, and jurisdiction away from any province without the concurrence of that province. In this regard Alberta was referring to matters arising under Sections 92, 93, and 109 of the British North America Act.

Mr. Speaker, I've been asked, why the line-up of eight to two, or nine to one — and I think we might as well deal with it as nine to one. Ontario and Quebec have a veto, so pretty obviously, I suppose, if you were representing their governments and you could get a situation where you could veto any particular provision and other provinces could not, it's to your advantage to support that position. Mr. Speaker, we should read the Ontario point of view first, with that in mind in particular.

British Columbia wants a veto like Ontario and

Quebec. The position of British Columbia is entirely different from the position of Alberta. Ours is based on principle: equal rights for provinces in Confederation. We'd take the same position if we were the Government of Manitoba or the Government of New Brunswick. That's a very important point.

Mr. Speaker, the argument of the Government of British Columbia is that it is a large and growing province. I guess we could compete with them on that if we wanted to, but that's their position. They wanted to be a separate region, hence have their own veto.

The three maritime premiers were at Victoria and feel committed by the positions they took there. The Premier of Newfoundland — I just happened to be talking to him about two hours ago and told him I was making this address — said that they could live with the Alberta position. I thought that was an important thing for me to be able to say.

Mr. Speaker, the Manitoba and Saskatchewan governments follow the New Democratic line — that's just obvious — that the central government must be dominant in Canada in order to assure the most effective state control. It's clear from what they've said. It's obvious from the whole posture of the New Democratic Party.

Mr. Speaker, this brings me to Alberta's position and the reasons we take it. First of all, we believe all provinces have equal rights in Confederation. We do not believe Ontario has any more rights in Confederation than Alberta. Equally, Mr. Speaker, on principle we do not feel that Alberta has more rights than New Brunswick. The argument relative to population is not sound in terms of taking away rights or powers. It's not sound because we already reflect [it] in our federal state, the elected House of Commons, an appointed Senate, an elected House of Commons based on population, with four Members of Parliament from Prince Edward Island, 19 Members of Parliament from Alberta, and 95 from Ontario in the new line-up. That's where the population of this country has its voice.

Mr. Speaker, the contributions to a nation and to Confederation surely aren't judged by the number of people. That is a matter of representation done, handled, and responded to through the representation in the House of Commons. But we have 10 distinct entities as provinces, and it's a fundamental principle of ours that we're all equal. Hence we reject the Victoria Charter which gives greater rights to provinces simply because they have more population.

Secondly, Mr. Speaker, we're prepared to recognize the thinking that went into the Fulton-Favreau formula that there are certain areas where a unanimous position need not be required — for example, in delegation of power to the federal government or in matters affecting certain areas that quite obviously don't affect others, and other areas should not be able to stop them from proceeding by way of agreement. The transfer of powers from the federal government to a provincial government should be able to occur if the two governments agree, without necessitating some province in another part of the country blocking it. Therefore, as the Fulton-Favreau formula has established in those situations, certainly we would look at something such as two-thirds of the provinces or some other basis which was considered

in Fulton-Favreau, provided it does not in any way have a formula that can take away powers and rights and interests from a province without the concurrence of that province.

Mr. Speaker, I know that people have some concern about four-letter words, and "veto" is a four-letter word. I know it takes some ability in terms of communicating what we are trying to do, and I'm trying to do it to this Assembly today. What I have just said is, Alberta does not want a veto. It does not want the same position as British Columbia. It wants an equal position with Ontario on the basis that rights can't be taken away from us without our concurrence. That's a different position.

Mr. Speaker, what could be more reasonable in a confederation than a situation where if there is a desire for constitutional change, that constitutional change should preserve the rights we now have, the powers we now have. If there is a desire to change them, that desire should not be effective in regard to any particular province unless that province concurs. I think that is a practical and logical way for constitutional amendment.

Mr. Speaker, I object to the federal government proposing to patriate the constitution in a federal state without the agreement of the provinces. We're not against the objective. Frankly, we don't think it's any big deal, but we're not against it. The motion is in support of it. But to have it done unilaterally by the federal government on a joint address by the House of Commons and the Senate in my view will take and diminish — as significantly perhaps as anything else that has ever happened — the nature of the federal state we have in Canada today. All Canadians should think long and hard about that, whatever province they're in.

Mr. Speaker, I want to take a moment to deal with some of the arguments against Alberta's position. The first is that it makes the constitutional change too rigid. Mr. Speaker, I've already pointed out that we've had a number of important changes in which there has been unanimous agreement.

I think of difficulties of agreement in Confederation. How about the date of March 27, 1974, when 10 provincial governments, including Alberta, and the Prime Minister could sit down and agree on one price across this country for oil and gas — what could be more sensitive than that? What could show a spirit of Canadianism on behalf of Albertans more than our attitude on that day which seems to be so quickly and conveniently forgotten?

Mr. Speaker, on this argument I've also dealt with the fact that outside the area mentioned in the resolution, the Fulton-Favreau concept could be utilized, and that that would reduce any rigidity in terms of argument that's there.

Mr. Speaker, I just have to shake my head at what they call in Ontario the "Prince Edward Island argument". Well, I just want to propose one amendment that we get together on, and see what the Government of Ontario and the people of Prince Edward Island . . . We move that the province of Prince Edward Island, as of the first day of next year, hereby be abolished. Well, what about the 110,000 people there? They shouldn't concur in that? They should have that overridden? In regard to that argument, I say they have just as many rights as the people of Ontario on the basis of having their own

province as we do here.

I've already mentioned the argument that we want a veto; I hope I have made it clear that that's not what we want. That's not what this motion proposes. We want the right that no province can have anything under Sections 92, 93, and 109 taken away from it without the concurrence of that province. Mr. Speaker, I don't think the resources of Labrador should be able to be taken away from the province of Newfoundland without its concurrence. Yet that's what the Victoria Charter could contemplate.

Mr. Speaker, I've mentioned before that it's not something we want simply for Alberta. It's a view we have about Confederation. We would take the same view if we were the government in another province.

Mr. Speaker, it's also been argued that our position is strictly based on the production of our resources. Well, it's a very major point. It's a basic reason, but it's not the only one. I've said before that I think Canada would be stronger and will be stronger if the west and the Atlantic regions are stronger. It will only happen if we have the resources to counter the strength of the federal bureaucracy and the central Canadian power base in the Toronto New Democratic Party. It will only happen with strong provincial governments. And it's already being significantly eroded, Mr. Speaker. The Victoria amending formula would further erode the strength of provincial governments in Canada.

Mr. Speaker, I therefore would like to deal with the implications of the Victoria Charter if we agreed to it, or if in some other way it became the law of this country. Let's look at our resources. Let us contemplate one, two, three, or four years from now when a proposed change to the British North America Act is made by the federal government, perhaps at the urging of the Government of Ontario, and is supported by Quebec, Nova Scotia, New Brunswick, Manitoba, and British Columbia. It would provide that under Section 109, which provides for the ownership of resources by the provinces, the following shall thereby be added: subject to the qualification that if at any time there develops a scarcity or shortage of any resource in the nation as determined by the federal government, then the management of such resource shall be transferred, notwithstanding the above, to the federal government. Mr. Speaker, the phrase in my notes here is: "ball game over".

With regard to intent, I notice a constant reference these days to the Canadian oil sands. Mr. Speaker, I don't normally do this, but there are some who say we are overly alarmed. I refer to an editorial in the *Toronto Star* of August 24 which puts it this way:

The truth about Alberta's oil and gas is that it is a vital national resource too valuable to be entrusted to exclusive provincial authority in any circumstances.

If you want your intent, the intent is there.

Mr. Speaker, the position of the New Democratic Government of Manitoba on this matter is clear. I remember frequently the position of the former Premier of British Columbia on this matter, so the scene that I outline in terms of that possible amendment and who would vote in favor of it is something that one should not consider as anything other than a real possibility. The Ontario government would certainly consider that it was in its best interest to make such an amendment.

I was fascinated the other day — because we often argue in this House about Confederation and equality in Confederation — I was interested to see that the former Attorney-General of Canada, the former Minister of Finance, who was involved in this amending formula at the Victoria conference, stated in a speech on October 25 in Toronto:

We may have to do some rethinking about how we have been using our federal-provincial structure. Ontario has been the main beneficiary of Confederation. It has enjoyed a common market from sea to sea.

Well, Mr. Speaker, that's an admission I thought might take some time to develop, but it is there, "the main beneficiary of Confederation".

One of the arguments put to me by the Premier of Ontario on this subject was, well Peter, we agreed on uranium; we agreed that uranium should be a national resource. So I had the effective Department of Federal and Intergovernmental Affairs do some homework on that subject. What I found, of course, was that it came into force in 1946 on the basis of a matter of defence arising out of uranium, peace in the world, and the aftermath of the atomic blasts. The important information provided to me was as follows: judging from *Hansard* at this time the provinces were not unduly concerned by the federal government's actions and they made no complaints that were recorded. The fact is that none of the provinces had discovered any uranium deposits until 1948, which made the transfer a little less complicated.

Mr. Speaker, just to underline the Victoria Charter: the federal government, Ontario, Quebec, two Atlantic provinces, either Manitoba or Saskatchewan plus British Columbia. And what would be its effect on the future potential of Alberta? Such a qualification to 109 as I have mentioned.

First of all, they would be able to determine in Ottawa the pace of oil sands development. Secondly, they would be able to determine in Ottawa the maximum rate of provincial revenue from resources. Next, they'd be able to determine in Ottawa the rate of production of our resources.

Mr. Speaker, I'm not standing here in the Legislature of Alberta today with any scare tactic. I'm talking about a harsh reality. Alberta has already shown what it feels about Confederation, and we'll stand with the record of any province in Confederation on our contribution. For no province in the history of Canada — and we've debated it many times in this Legislature — has made the contribution to Confederation that this province has made by agreeing to phase in its wellhead prices for oil and natural gas over a period of time. Nobody has come close to the billions of dollars of contribution made by this province to the rest of Confederation.

But, Mr. Speaker, it's not just resources I'm concerned about; it's the rights and powers of the Legislative Assembly to make the laws, to deal and respond to the concern of our citizens in the area of direct taxation. It's important to us to maintain that right to have our own corporate tax incentive system here. It's important for us to maintain our right in the area of hospitals to decide, as we did last week, what we would have with the heritage savings trust fund.

Incidentally I hadn't noted that, but let me just add it. What about the heritage savings trust fund under the Victoria Charter?

We want to preserve in this Legislature the right to make our decisions regarding education curricula. We want in this Legislature to maintain the right as a province under the Constitution to make decisions with regard to property and civil rights, and that includes the vast bulk of the statute law of this province. It includes the climate of our commercial environment here in this province. It includes the maintenance of the free enterprise system in Alberta being decided here.

Mr. Speaker, I know the gravity of this motion. I know the gravity of the position we're taking. I know that we're taking a position — and the word in the motion is to "direct" the government. Some have said to me that we put ourselves in a strait jacket with that position; that we really leave ourselves little flexibility; that we stand on principle; that we perhaps give an excuse to the federal government to say, Alberta won't agree so we'll override their view regardless of the historical nature of Confederation.

On the other hand, I felt that as a government we had to come to the Legislative Assembly on something as fundamental as this. We had to come here and have each member stand in his place and say whether he agreed or disagreed with this position, and, in weighing the two and in weighing the importance of the Legislature, to have a voice and a say in something so fundamental. I felt that was more important than the concern that was expressed, because it really is something of principle. It's not a matter that we're bargaining or negotiating, it's a position of principle.

It's true, the federal government can move unilaterally: to patriate the Constitution; to provide in the address that the Victoria formula will apply; to provide in the address not the provision in the Prime Minister's letter of March 31, 1976, that it comes into effect with the concurrence of all 10 provinces; and to argue in the House of Commons sometime early in 1977 that the Government of Alberta, supported by its Legislative Assembly, has said that it does not agree with the Victoria formula, but that eight provinces do; so, eight provinces agreeing, we feel we have the support of the nation at large. We will therefore bring in a formula and ram it down the throats of Albertans. Yes, it is possible, but the alternative is surrender.

Mr. Speaker, we have good legal advice on the doctrine of mutually exclusive sovereignty that they do not have the legal right to do this; that these rights have been assigned exclusively to the provinces; that they cannot be taken away without the concurrence of the provinces; and an amendment to the constitution on a formula not agreed to by that province would not be effective in the sense of that doctrine.

Mr. Speaker, we are well enough aware that we have that legal advice but that it can be looked at in a different way by the Supreme Court of Canada, which, in its recent decision on the Anti-Inflation Board tenancy, went quite a way in terms of interpreting a centralist tendency. We have to be conscious of that. But, Mr. Speaker, I take the position, and I support this motion with the full realization of the consequences involved. But the alternative is surrender. Mr. Speaker, I don't intend to, for we are equal partners in Confederation. We're right on our principle. We are no less a province than Ontario. This country is going to be stronger. It's going to be

more unified, and it's going to be provincial governments with courage that will make it so. [applause]

MR. CLARK: Mr. Speaker, in taking part in this debate this afternoon, I want to say at the outset it is my intention and that of my colleagues to vote in favor of this government motion which is on the order paper.

Mr. Speaker, there are really four areas that I would like to comment on in the course of my remarks here this afternoon. First of all, I'd like to say to members of the Assembly that this question of bringing home Canada's constitution, the BNA Act, has been in the forefront of a great number of discussions between the province and the federal government for all of some fifty years. I can recall, before I was a member of this Assembly, the efforts which, if my memory is correct, were started in 1960 by the former Prime Minister of Canada John Diefenbaker which followed the work done by the Minister of Justice at that time, Mr. Fulton. I well recall sitting in my seat in this Assembly, approximately where the member from Lac LaBiche now sits, in 1964 when the Legislative Assembly spent some time debating what at that time was commonly referred to as the Fulton-Favreau formula, and the efforts by the government of this province and other governments in Canada at that time to come to some sort of agreement. I recall, and I am sure the Premier does too, the Confederation for Tomorrow Conference in Toronto in 1967, Canada's centennial year. I also recall being at the meetings in Victoria when the Victoria Charter was agreed upon by the provinces of Canada and the federal government. I recall being in this Assembly on more than one occasion since 1973 when the paramount concern of all members of this Assembly was the question of what the federal government's next step would be as far as Alberta's resource struggle was concerned.

I say to the members of this Assembly gathered here this afternoon and to people who will take the time to read *Hansard*, that yes, this has been a 50-year struggle to try to bring Canada's constitution home. But there are two very, very different and vital ingredients in the question before this Assembly this afternoon.

The first of those two ingredients is that the Prime Minister has indicated that if the provinces cannot agree, the federal government will consider moving unilaterally. In my reading of the 50-year struggle, that is a completely new component in the whole process.

The second factor, the second new ingredient, Albertans would be very wise to keep in mind is what this province has been through from 1973 to 1975, especially with regard to the efforts by the federal government to have a very, very strong hand in determining the control of the resources in this province. I say to the people of Alberta and to people outside this province that Albertans are going to look at any effort by the federal government in the area of constitutional patriation with a somewhat jaundiced eye because of the experience we have had over the past three or four years on the question of the control of our natural resources.

I know some of my — I was going to say some of my good friends, but I'll just say some of my friends in

Ontario point out that Albertans take a very narrow viewpoint in this area. The real question to put to them is: how would Ontario respond if it were in Alberta's position? And without exception the discussion stops there.

So I say to the members of this Assembly that what we are debating here carries on the debate that has gone on for 50 years in Canada. But there are two unique circumstances or special ingredients here. One is the Prime Minister's announcement that he intends to move unilaterally; second, the efforts by the federal government to move in on our resources in the course of the last three and a half years.

The second comment I want to make to members of the Assembly is simply this. I believe there is a great misunderstanding of Alberta's aspirations, of the desires and long-term goals of the people of this province by people outside Alberta, especially as you go east. It seems to me that all too often they are inclined to forget the kind of contribution this province makes when we sell our oil and gas at prices well below the world price. Members will recall, I believe it was when the last federal budget came down, in responding to the announcement the Premier made that night, I said I thought it was high time the rest of the people of this country were prepared to sit up and look squarely at the kind of contribution Albertans are making to keep Confederation together today. It's high time the people of this country recognize that once again.

I say to my colleagues in the Legislative Assembly that perhaps as MLAs we haven't done a very good job either of telling that story when we're outside Alberta. It isn't just in the area of oil and gas, but there are all sorts of areas we can point to — the area of medicine, the area of education, the business community — where Albertans are leaders in this country, native-born Albertans. Perhaps it's high time we stuck our chests out, not only because of the manner in which we have been able to develop our resources but also because of the kinds of contributions Albertans have made across the length and breadth of this country, governmentally, in the business community, medical community, educational community, and all sorts of other communities we as Albertans are loath to mention on too many occasions.

Mr. Speaker, I would now like to move into the area of the debate on the motion before us. Mr. Speaker, I think members should be aware that the kinds of concerns before this Assembly today are those which have been here many times before. I recall being at the conference in Victoria in '71. The statement made by the Premier of that day was that there was no doubt in our minds that the federal government should be spending its time trying to repair the damage it had done to the economy instead of worrying about constitutional niceties. That's as valid today as it was in 1971, if one only wants to look at the area of what's going to happen after the anti-inflation program is over, just that area let alone all sorts of others.

When we look at Alberta's basic position today, I say to the Premier and to the members of his government that I think it would have been helpful, not only to Albertans but to people outside this province, if in the course of the past several months

the government had perhaps become involved in the presentation of a number of basic concerns to Albertans — albeit the Department of Federal and Intergovernmental Affairs has a large number of advisers, hopefully capable advisers at that.

It seems to me, looking at the real problem before us, that there are resources of many Albertans out there that we haven't really tapped. Whereas this province is only as strong as the conviction that Albertans have towards supporting the basic position, so I would have hoped that the provincial government would have become involved — whether it be a matter of establishing some sort of constitutional review committee outside the government — in some group in Alberta, not only to take in people in the academic community but in the business community and other walks of life. It seems to me that some very basic discussion might well have gone on in the public sector some time before now. A draft position paper, such as might have been put forward by the province, could deal with the question of entrenchment and the question of unanimous agreement between the federal government and the provinces.

I doubt whether there is an Albertan or a Canadian who wouldn't feel that educational rights should basically remain the long-term prerogative, the complete prerogative, of the province. I doubt whether there's an Albertan or a Canadian who would be in favor of the federal government taking over all the controls in the area of health. It seems to me that this public discussion we might have carried on in the province of Alberta over the last number of months might well have looked at the question of language rights as set out in the Victoria Charter, the question of political rights and their relationship to The Individual's Rights Protection Act of Alberta. Unquestionably, provincial regulation of matters dealing with property and civil rights as set out in Section 92 has to remain the prerogative of the province. Provincial regulation dealing with areas of property and civil rights, an area that fits into the same category, obviously has to be the responsibility of the province. The right to economic security, the right to control our resources, the right for a province to continue to be able to be in charge of its financial situation: these rights must remain within the jurisdiction of the province.

I raise these areas, Mr. Speaker, simply to say that perhaps we've lost something in not having some sort of constitutional review committee in this province so that many, many more Albertans would really know what's at stake here than do today. We prepared a discussion paper for our own caucus with regard to possible constitutional amending formulas; I'm prepared to file a copy of that with the library. But I simply say that I believe Alberta's position outside Alberta would be much better understood had we gone through that particular situation.

One of the areas we also might well have looked at, perhaps got the benefit of a great deal of advice from the province, would have been the recognition of municipal governments as a third level of government in Canada. When we talk about future changes, likely this is one of the areas which should be given very, very serious consideration.

Now, Mr. Speaker, I'd like to move on to what Alberta's position really has been. I think the Premier this afternoon attempted to outline fairly, from his

viewpoint, the position of this government.

I indicated that I was at the conference in Victoria. Two things have changed very dramatically in this country since that time. One has been the experience we've all been through as far as resources are concerned. The second is the unilateral action of the Prime Minister.

In trying to search out the position of the province of Alberta, I refer to a letter to the Prime Minister dated February 10, 1976, signed by the Premier. I'd like to read just three or four sections from that letter, starting with the second paragraph:

I understand the procedure that you contemplate for patriation would take three steps: approval by the Legislatures of the Provinces and by both Houses of Parliament; legislation by the British Parliament; and the issue of a proclamation by the Governor-General.

In our discussions with Mr. Gordon Robertson last May, I outlined the two major concerns and conditions that the Government of Alberta had with respect to acceptance of the amending formula.

This is dealing with the amending formula as proposed at Victoria. I draw very careful attention of the members to this next point:

1. The proposed amending formula provides for consent of "at least two of the Western provinces that have, according to the then latest general census, combined populations of at least fifty per cent of the population of all the Western provinces". Our position is that the consent of any two Western provinces should be sufficient.

I say to the members of the Assembly that this was the letter that went from this government to the Prime Minister on February 10, 1976. This was after the last provincial election. This was after the long row with the federal government about the ownership of our resources. Yet, as recently as seven or eight months ago, in February of this year, we were prepared to accept, not more of a guarantee for Alberta than was agreed upon in Victoria but a lesser position.

I think it would do all of us good to ask ourselves: how did we get ourselves locked into this kind of position as recently as eight or nine months ago? I look forward to hearing some response from the government on this particular matter. This wasn't a position taken by the former administration. This is within 1976. I think it's vital that we have this debate this afternoon to lay all the cards on the table.

The Premier indicated in the course of his remarks earlier today that the cabinet really hadn't become involved in this question until later on, I think it was March. But this is a letter from the Premier to the Prime Minister with a copy to the Minister of Federal and Intergovernmental Affairs. I wonder where all our experts were until then. I must say I get a little eerie about the kind of advice we've received since then.

Now, Mr. Speaker, moving on to the second letter I'd like to draw attention to. This is a letter that I think clears up or at least tells the federal government that Alberta has changed its position since February. I refer to a letter of October 14 from the Premier to the Prime Minister. I'll read the whole paragraph on the amending formula.

Considerable time was spent on this important subject and the unanimous agreement of the provinces was not secured on a specific formula. Eight provinces agreed to the amending formula as drafted in Victoria in 1971 and as proposed by you in your draft proclamation. British Columbia wishes to have the Victoria Formula modified to reflect its view that British Columbia should be treated as a distinct entity with its own separate veto. In this sense it would be in the same position as Ontario and Quebec. Alberta held to the view that a constitutional amending formula should not permit an amendment that would take away [rights], proprietary interests and jurisdiction from any province without the concurrence of that province. In this regard, Alberta was referring to matters arising under Section 92, 93 and 109 of the British North America Act.

Mr. Speaker, the members of Her Majesty's Loyal Opposition can support that position. We could not support the position of the government of this province in February of this year.

Now I'd like to refer to a third document. That's the document which the hon. Premier referred to this afternoon. It's the April 7, 1976 telex to the Prime Minister. I'd like to read into the record the third paragraph in that telex to the Rt. Hon. Pierre E. Trudeau, Prime Minister of Canada from the Premier:

The Government of Alberta feels strongly that any unilateral move by Parliament, on the federal government's initiative, to remove the Constitution from Westminster would be a clear violation of the historical precedent of Canadian constitutional development and the conventions and customs which have grown up over the past decades concerning provincial participation in this very important matter. It is our firm view that such a major move should not be done unilaterally at the initiative of the federal government, but should be carried out only with the consent of the provinces who are full partners in Confederation . . .

Mr. Speaker, we strongly support that position. I'll have more to say about that in a moment or two. The support of that position isn't something that's taken place recently. If hon. members would like to check, on July 2 of this year my office released a statement endorsing this position: that patriation should not be done unilaterally by the federal government and that patriation should take place only after an amending formula has been worked out between the provinces and the federal government.

The next area I'd like to comment on deals with the implications of unilateral patriation by the federal government. The scenario that we see on this side of the House is that if no agreement is worked out between the provinces and the federal government, the federal government will then move unilaterally, bringing home Canada's Constitution without any amending formula.

To us, this appears to mean that our constitution would be more likely to come from judicial interpretations than from political decisions. If the federal government brings home Canada's constitution without an amending formula having been agreed to by the provinces and the federal government, we will find ourselves in a situation where changes to the Constitution of this country will not be made by the

politicians who are accountable to the public but, in fact, any changes in the Constitution of this country will flow as a result of decisions by the Supreme Court of Canada. Not being a member of the legal fraternity, I don't want in any way to detract from the Supreme Court, but this, in my judgment as a layman, will end up making the Supreme Court more important than the elected politicians when it comes to the future makeup and future direction of our constitution in this country. It seems to us that unilateral patriation with no amending formula would mean that the Supreme Court, its jurisdiction and manner of selection of judges, would necessarily become a matter of critical importance and critical examination by the provinces.

When one looks at the recent decision of the Supreme Court of Canada as far as the anti-inflation program is concerned, once again as a layman it seems to me that the federal government and the trend towards centralized power in the federal government was enhanced. When the federal government receives more authority and power there is only one loser, the provinces. So we cast a very jaundiced eye at the prospect of having the Supreme Court of Canada really become the group that in the end will be making decisions on our constitution, rather than the politicians elected by the people of the various provinces and by the people of the country in the House of Commons.

I'd like to make just one more comment in this area. The implications we see as far as the Supreme Court is concerned flow from our belief that once the Constitution comes home to Canada, the likelihood at that time of a federal government working to get an amending formula between the provinces would be much less. There would be much less enthusiasm for the federal government to try genuinely to work with the provinces to come to an agreement.

So, Mr. Speaker, I'd like to conclude my remarks by saying that it is our intention to support this resolution before the House. I say four things to my colleagues in the Assembly, namely, Albertans, when out of this province might do a much better job of telling the people of Canada about our long-term goals and aspirations and the kinds of contributions that Albertans have made to Canada; secondly, we strongly support the position that no federal government, or group of provincial provinces along with the federal government, should be able to take away the rights of a province as set out in 92, 93, and 109. We should have learnt that lesson in this province over the past three years. We take the position that there must be an agreement on an amending formula by all the provinces and the federal government before the federal government should move in any way, shape, or form to bring home the BNA Act to Canada.

It's with that view in mind, Mr. Speaker, that I'd like to move an amendment:

That Government Motion Number 3 be amended by adding after the words "concurrence of that province" the words: "and that it should refuse to give its support to any patriation prior to obtaining the unanimous consent of all provinces for a proper amending formula".

What this says is that it directs the Government of Alberta to refuse to give its support to any patriation prior to obtaining a unanimous consent of all the provinces for a proper amending formula.



MR. LOUGHEED: Mr. Speaker, if I may speak to the amendment that has been proposed here, tentatively, we would have presumed that that was implicit in the motion that was there, because we state in the basic motion that it refers to supporting the objective of patriation. It was implicit in it that we would refuse to give support to any patriation prior to obtaining the unanimous consent of all provinces for a proper amending formula.

My first reaction to the leader's amendment is quite favorable. We think it really was implicit in it, but if the hon. Leader of the Opposition thinks it should be underlined in the way he suggested by the amendment, that certainly is not something we would find difficult to deal with.

MR. SPEAKER: I assume we're discussing a point of order.

MR. CLARK: We're discussing the point of order, Mr. Speaker. In discussing that point of order raised by the Premier, might I say to the Premier that in fact we do believe that it is of sufficient importance to underline to the federal government that we think this amendment is worthy of the consideration of the members of the Assembly and, hopefully, will receive the support of members of the Assembly.

MR. NOTLEY: Mr. Speaker, I have a number of serious misgivings about the resolution before us, which I am going to outline when I have an opportunity to speak on the major resolution. But, Mr. Speaker, I do want to say that as far as I am concerned I don't personally see any objection to the amendment. All the amendment is saying is that before our patriation takes place there would have to be agreement among all ten provinces as well as the federal government. As I mentioned, I have some differences with the thrust of the resolution itself. Before we actually bring back an amending formula, it seems to me that there should be consensus among the ten provinces and the federal government. That being the case, I'm prepared to support the amendment.

The only caveat I would register, however, lest we think this will cut down the importance of the judiciary, is that I would suspect that in any case where judicial interpretation of the Constitution is involved, regardless of what amending formula we finally arrive at, there will be many cases decided by the Supreme Court and a good deal of litigation. But because the amendment essentially says there should be agreement in the patriation process before it is vested in Canada, I'm prepared to accept it.

MR. LOUGHEED: Mr. Speaker, if I could now speak to the amendment, unless you wish [me] to respond to the point of order, we take it as being implicit in the basic original motion. But if, as I said in my remarks on the point of order, the Leader of the Opposition feels that this should be added to it, we certainly have no objection. In fact, as I consider it quickly, I would find myself in some difficulty not supporting it, because the letter of April 7, 1976, that the hon. Leader of the Opposition read into the record and I read into the record really says that. So I could hardly write the Prime Minister on April 7, 1976 and not support the amendment.

[Motion carried]

MR. NOTLEY: Mr. Speaker, in rising to take part in this important debate, I wish to make a number of points, not only about the amending procedure that is contained in the resolution before us but because what we are looking at at this point in time is Alberta's position in the country. I want to make reference to my view of the future of Alberta in Confederation. But in beginning my remarks, I was intrigued to listen to the Premier cite some of the statements made by the Fathers of Confederation. Mr. Speaker, I agree that by and large the Fathers of Confederation did a pretty good job in drafting this Constitution. The division of powers between the federal authority and the provincial level, considering it was more than a century ago, was remarkably well thought out and even to this point in time is still largely workable. But having said that, Mr. Speaker, I was not able to concur with the suggestion that somehow because there was no amending formula set out, the Fathers of Confederation had concluded there should be consensus before any changes were made.

If one carefully recalls the time, when Canada was formed it was not formed as a sovereign country. The Premier is quite correct. Canada did not receive its sovereignty until the Statute of Westminster was passed in 1931. In 1867 Canada was still a colony. The first Prime Minister of this country, Sir John A. Macdonald, proudly boasted, "a British subject I was born, a British subject I will die". Indeed, when one reads some of the remarks by that earnest gentleman — for example, Mr. Speaker, at the Quebec conference in 1864 he talked about the relationship of the provinces to the federal government in the confederation they were about to build. Speaking of the errors of the United States, he said:

... each state reserved to itself all sovereign rights, save the small portion delegated. We must reverse this process by strengthening the general government and conferring on provincial bodies only such power as may be required for local purposes.

So said Sir John A. Macdonald, the patron saint of the Tory party and not, if one reviews history closely and accurately, a proponent of strong provincial rights.

Mr. Speaker, when I listened to the Premier he made great mention of the Fulton-Favreau formula. There is no doubt the Fulton-Favreau formula provides a good deal more rigidity than the Victoria Charter. No question about that at all. The Premier correctly assessed that. But in singling out the New Democratic Party as the only villain of the piece, the Premier forgot to mention certain other people. For example, after the paper on the so-called Fulton-Favreau formula was tabled in the House of Commons, if one cares to read a speech by the Rt. Hon. John Diefenbaker on April 6, 1965, where he talks about the Fulton-Favreau formula, he makes a number of very pertinent and, I think, relevant criticisms. He says:

I am not going into this except to repeat what I said, that if this plan is accepted they will be placing Canadian [Confederation] in a straight-jacket which will deny future amendments, however necessary they may be. They will place

the Canadian constitution in a position in which each and every province will have a veto.

In the course of his remarks Mr. Diefenbaker goes on to cite a number of constitutional authorities to make the point he makes very well: that the Fulton-Favreau formula would be too rigid for a modern nation which from time to time is going to require constitutional change.

Mr. Speaker, when I look at the resolution before us, it seems to me that we're starting in the wrong place: all provinces have equal rights within Confederation. Well, Mr. Speaker, in any assessment of the Constitution the place I believe we should be starting is that all citizens, regardless of where they live in Canada, should have equal rights in this country. And in the course of a lengthy introduction not one mention has been made of the most important point: entrenching a bill of rights — the Bill of Rights that the Rt. Hon. John Diefenbaker proposed before the House of Commons some years ago — taking that bill of rights and entrenching it in the Canadian constitution so that it applies not only federally but provincially. Mr. Speaker, it seems to me that should have been the point of departure, not only for all of us as Canadians but especially for a Conservative government.

Mr. Speaker, during the course of the Premier's remarks he took what I thought were a number of rather cheap shots at the Premier of Saskatchewan. I really am not overly concerned if the Premier of this province is annoyed and continually upset about the New Democratic Party. Fair enough. But I think most Albertans and most Canadians who watched the various federal-provincial conferences on oil policy would agree that one of the most articulate proponents of legitimate provincial rights at those conferences was the Hon. Allan Blakeney representing the province of Saskatchewan. I was fortunate enough to be an observer and watch two of those conferences. And this province is fortunate indeed that at critical junctures when we were discussing the question of oil pricing they had an effective ally in the Premier of the province of Saskatchewan.

I should also point out to the Premier that if he reviews history carefully, yes, the natural resources were transferred to the province of Alberta in 1930, as they were to the province of Saskatchewan. I would also point out that the leader of the government at that time was the hon. Mr. Brownlee, the leader of the UFA party which was the predecessor of the CCF and of the New Democratic Party in the province of Alberta. [interjections] Mr. Speaker, they're a little worried about that, but the fact of the matter is that in 1934 the UFA at its provincial convention voted formally to join the CCF. That's a matter of historical fact. That the Tories are not totally up on the history of Alberta is their problem, not mine.

MR. TAYLOR: That's why Alberta kicked them out.

MR. NOTLEY: But, Mr. Speaker, the fact of the matter is that in 1930 it was a UFA government in office that brought back natural resources in that year.

So as a member of the legislature, I resent the sly inference that when it comes to Saskatchewan and Manitoba's position — and there are important dis-

tinctions between the two provinces — somehow Saskatchewan isn't concerned about provincial rights. The facts speak otherwise, Mr. Speaker. Whether or not the members of this legislature recognize it, the people of Canada and Alberta do.

Let me turn from that issue to the amending formula itself. I don't believe anyone suggests that we should have an amending formula so flexible that powers can be transferred easily or at the whim of the federal Parliament. On the other hand, I don't think it's wise to have an amending formula which is so rigid that we place provincial areas of jurisdiction, set out more than 100 years ago, in a formula for amending the Constitution which just makes it virtually impossible to change those designated powers.

I would point out to the members of the Assembly, Mr. Speaker, that what we are looking at is not just natural resource jurisdiction, as the Premier properly pointed out, but existing rights, proprietary interests, or jurisdiction. In his letter he cites the sections of the BNA Act that would be covered by the intent of this resolution. Quite clearly what that would do and what as a legislature we would be supporting, is make it virtually impossible to transfer a division of power that was worked out more than a century ago as it relates to provincial jurisdiction without the consent of every single province.

Mr. Speaker, again, no one argues that he should be able to change the Constitution easily. But that's not the issue. The issue we have to examine carefully is whether or not the position this government is taking today, that there should be the agreement and a concurrence of that province, is a reasonable position.

One thing that the Premier did not mention was the emergency power; what the impact of this proposal will be on the emergency power of the federal government. The question of uranium was cited. If that matter had become an issue in the early 1940s, I would imagine that there would have been a very strong feeling that uranium should have been put under federal control because we were at war. What are we going to do if we do face a genuine national emergency? I'm not suggesting the emergency that some hon. members will probably cite from past judicial precedents. I believe there are probably two basic areas where the peace, order, and good government clause can be invoked: one is if the country is at war or, according to one judicial decision almost three-quarters of a century ago, if there is a state of national drunkenness. The Leader of the Opposition probably makes a good argument about the questionable wisdom of some of the judicial decisions in the past.

The fact of the matter is, Mr. Speaker, it seems to me that our position has to be fairly clear on where Alberta stands on the exercise of the emergency power provision by the federal government when, from time to time, it is required. What are we saying about that in this resolution? At best, Mr. Speaker, our position is somewhat ambiguous.

Let me move on from that particular discussion to look at whether or not it is necessary for Alberta to move beyond the position of at least eight, and in actual fact nine, of the other provinces. I think it's a fair comment that British Columbia accepts the Victoria Charter. They would like to be looked upon as a region. Personally I have a little bit of difficulty

accepting that distinction on the part of Mr. Bennett. Nevertheless, on this issue they support the Victoria Charter.

As the Leader of the Opposition pointed out, the Premier's new-found insistence that the future of the province is once again at stake doesn't seem to be borne out by the letter of February 10. I won't reread that again, Mr. Speaker, but it certainly was something I found rather interesting. When I look at *Hansard*, during the discussion on March 10, 1976, the Premier is again taking what I would call a very flexible position. Just to quote part of his answer, "I think it is important, if at all possible, that there be enough give and take that we can come to some conclusion on the matter ..."

At that time, Mr. Speaker, it's obvious we were not ready to set up the lines of defence around the borders of Alberta. There was still some flexibility in the approach we were taking.

I suggest to you that while there are some changes to the Victoria Charter, and I'm going to outline them in a moment, the Victoria Charter by and large affords the basic protection that a government in Alberta would want. By and large. There are some areas I'm going to come to in a moment, but it should be clearly pointed out that we already have an agreement among all 10 premiers, including at least two of those Toronto New Democrats, that one section of the Constitution that members across the way have been bothered about time and time again, the declaratory powers section, that somehow the federal government could come in and declare a particular work for the general advantage of Canada. I have often heard it suggested, you know, that that's a real danger, the federal government is going to try this.

Well, Mr. Speaker, according to the Premier's letter of October 14, there was agreement among all 10 premiers that that should not be exercised unless there was the consent of the province affected. I think that's an important agreement; an agreement that includes two premiers in this country who are supporters and members of the New Democratic Party, who recognize that there is a legitimate and important role for provincial rights.

I also look, Mr. Speaker, at the joint Senate/House of Commons report on the Constitution. One can read it through, and by and large this document supports the Victoria Charter and its number of suggestions, but of a minor nature. But in principle it supports the Victoria Charter. Among its members are Senator Cameron, MPs Marcel Lambert, Stan Schumacher, Gerald Baldwin, and Eldon Woolliams — hardly radical socialists about ready to destroy the free enterprise system. I believe that was the quote we heard.

I believe when the former Premier of this province went to Victoria, having very strong views — and I read very carefully some of the statements he made before he travelled to Victoria — but recognizing that there has to be a certain give and take in any confederation, he took the view, and in my view quite properly, that at least the Victoria Charter was a place to start. I think that showed statesmanship on the part of Mr. Strom.

What disturbs me, however, as I listened this afternoon and as I heard the pounding of desks, is not really the details of this resolution, although I think it's rather ambiguous — and as I mentioned, as far as

the Victoria Charter is concerned, in the remaining moments of my speech I'm going to make some suggestions I hope the Legislature will consider — frankly what disturbs me is some of the statements made as to the kind of confederation we as Albertans want.

I happened to be at a meeting of international ombudsmen where the hon. Premier spoke. And I respect his point of view. I don't agree with it, but I respect it. I would hope that in this House we are big enough to respect all points of view. I would hope that when we discuss this important matter we discuss it on that plane.

But the point the hon. Premier was making was that we should move to a looser kind of confederation. Again, the point he was making was that if we are to have a strong, united Canada, we must have strong provincial governments. That's fine. No one argues that. But it's a question of the emphasis.

When I listened to the tremendous round of applause that statement got this afternoon, I thought how far we have come from the excitement generated in 1958 when Diefenbaker went across this country and people all over Canada thought as Canadians, not as Albertans, not as Nova Scotians, not as people from New Brunswick or as Quebeckers, but as Canadians. At that time, those of us involved in politics at university knew perfectly well that provincial rights wouldn't have stood a chance. Provincial rights advocates would go down one after another. And they did, because there was tremendous feeling for this country, the recognition that we do need a strong, effective, federal government.

I'm not at all apologetic about standing in this House and saying that. I'm not apologetic in saying it in Spirit River-Fairview, and I'm not apologetic in saying it in Calgary, or Cardston, or Milk River, or Red Deer. Because as far as I'm concerned, Mr. Speaker, the worst thing that could happen would be for us to move to such a weak, ineffective central government that we would have balkanization. Before too long this country would be little more than a mini-United Nations.

Mr. Speaker, I think that before we get caught on this Alberta power trip, we have to consider what the implications to Canada as a whole will be. Sure, there are a lot of grievances, a lot of legitimate grievances. No question about that. When the Premier mentions that Ontario has benefited from Confederation, and he cites Mr. Turner to back that up, I agree with him. There's no question about that. But the grievances we have, in my judgment, should be settled within this country, settled strongly within this country, and settled with a recognition that if we are to have solutions to some of these problems it's going to require continued federal leadership.

When the Premier mentioned over and over again his concept of a new Canada, why was it that none of the Atlantic premiers endorsed his position? I was down in Nova Scotia a few weeks ago, and wherever you go, there is a good deal of criticism about the federal government, but their view is very strong that they want effective federal leadership. They may want to turf out the present administration, but they don't want to change the Constitution or balkanize the country.

The question of our attitude toward this country, the powers exercised and who has those powers, is

in my view one of the most crucial issues before Canadians today. I don't blame any strong premier for trying to acquire more power. But that doesn't mean we should necessarily stand behind him and say aye, ever ready, aye.

In the remaining moments I have this afternoon, let us look at the resolution before us. We are not talking just about natural resources. We are talking about any existing rights, proprietary interests, or jurisdiction: all the basic powers, Mr. Speaker, set out when the British North America Act was established more than 100 years ago. I suggest to members of this House that that is going too far.

When the Premier was forced to cite an example of why this was necessary, he cited the example of natural resources. Why don't we say that then, Mr. Speaker? Why don't we single out natural resources if that's what we're worried about, instead of a formula here which would freeze, virtually in perpetuity, provincial power?

Again, Mr. Speaker, I think we have to ask ourselves: why is it that the rest of Canada is not supporting us? Do people in P.E.I. not care about their provincial rights? Do people in Saskatchewan or Manitoba not care about their provincial rights? Is it all just a nasty, mean provincial government? People in Ontario don't care about their provincial rights? If one looks at the constitutional history of this country, there has been no more ardent supporter of provincial rights, almost an obnoxious supporter of provincial rights, than the province of Ontario. The example cited was a natural resource example. If we are worried about them, let us say that.

That being the case, Mr. Speaker, I would like to move an amendment that all words after the words "Canadian Constitution" be struck out and the following words be substituted therefor:

affirm the equal rights of Canadians within confederation, and direct the government that it not agree to any revised amending formula for the Constitution which would permit the permanent transfer of existing rights, proprietary interest or jurisdiction accruing to a province under Section 92(5) and Section 109 of the British North America Act (1867), and under Sections 1, 2 and 3 and the attached schedules of the British North America Act (1930), namely provincial jurisdiction over natural resources, without the specific concurrence of the Legislature of that Province.

Mr. Speaker, in speaking to this amendment, its purpose is quite clearly to place before the members of the Assembly a clarification of where we stand at this point in time: that our concern is over provincial control of natural resources; that on provincial control of natural resources we believe as the province of Alberta — and we are instructing our government to say that in negotiations with other parts of Canada — that there should be no transfer of provincial resource jurisdiction without the specific concurrence not only of the province but of the Legislature.

I suggest, Mr. Speaker, in closing my remarks — I realize that the time is already slightly over — that what is needed is a position taken by the Legislative Assembly of Alberta which clearly stakes out our concern over Alberta's control of its own natural resources, which recognizes that if we are going to reach an acceptable amending formula there has to

be some flexibility in any approach, which recognizes the agreement the premiers have already reached on the declaratory interest section of the Constitution for works of general advantage.

Mr. Speaker, I submit that the amendment I have proposed would strengthen the hands of Alberta, would make our position more credible. I would not want to speak for other provinces, but I would rather suspect that some of them, whether a majority I don't know, would be ready to support us on this kind of stand.

MR. LOUGHEED: Well, Mr. Speaker, in speaking to the amendment, it's pretty obvious I think that we for our part would reject it completely out of hand. It is an amendment that flies right in the face of the remarks we have made as to the purpose of the original motion. It's an amendment that would strike out the whole area of Sections 92 and 93 and would permit the federal government, with the concurrence of certain provinces, to take away rights from the provincial government without its concurrence. We said that our position is one of principle. We do not think there should be an amending formula that can so erode and so weaken provincial governments in the future.

The remarks made by the hon. Member for Spirit River-Fairview where he seems to weep his tears for the ineffective federal government, when we have seen the actions that have occurred over the course of the last few years, are simply beyond belief. We've seen an erosion of powers by the provincial government in many, many fields. We feel it is essential that the provincial governments be strong. If matters such as direct taxation, property and civil rights, the management of our hospitals, the jurisdiction over our education — if all these matters can be eroded away from us without our concurrence, then it's simply a different kind of Canada. I can't see any merit whatsoever in the amendment.

MR. SPEAKER: Are you ready for the question on the amendment?

AN HON. MEMBER: Question.

MR. NOTLEY: Mr. Speaker . . .

MR. SPEAKER: I'm not aware of any right of the mover of an amendment to close debate.

MR. NOTLEY: Okay.

[Motion lost]

MR. HORSMAN: Mr. Speaker, in rising to take part in this debate for the few moments left this afternoon, I just wish to go back and refresh the memories of some of the members as to the remarks just heard from the hon. Member for Spirit River-Fairview. I found it quite startling to hear — as I'm sure most members of the House did, and as the Premier just alluded to in his recent remarks — the crocodile tears shed by the member for weakening the leadership of the federal government.

AN HON. MEMBER: Amazing.

MR. HORSMAN: Do I take it to mean that he felt the federal government was weak in its leadership on the question of imposition of anti-inflation programs, and that he now supports the leadership demonstrated by the federal government in that respect? Can I ask him if that in fact is what he has in mind when he talks about weakening the leadership of the federal government? I suggest that the Premier has indeed expressed it very well, and that these are strange tears to be shed.

I think it would also be interesting, Mr. Speaker and members of this Legislature — I found it very interesting — just to review for a moment a few of the statements made by the hon. member, particularly with regard to leadership which had been afforded to this country in past years, very ably I might say, by the Member of the House Commons for the seat of Prince Albert, the Rt. Hon. John Diefenbaker. I find it amusing indeed that the Member for Spirit River-Fairview does on occasion bring up his name with approval in this House. But I suggest he could go further in reading what John Diefenbaker has had to say over the years about what he thinks about socialism and the . . .

MR. NOTLEY: What's that got to do with the Constitution?

MR. HORSMAN: . . . tendency of socialism to centralize power in the federal government and the purposes for which that centralization is sought. I really think that the Leader of the NDP, the Member for Spirit River-Fairview, has today been trying to walk on eggs. I don't think he's succeeded, because [in] what he has had to say about being in favor of provincial rights for the protection of our natural resources, I think he has tried to becloud the issue. Mr. Speaker, I think he has failed, as the vote indicated, to convince anybody in this House that this resolution before the House today is really only an effort to protect the natural resource rights of the province of Alberta.

In introducing the resolution the Premier made it perfectly and abundantly clear that we are debating a matter of principle here today, not solely the question of natural resource revenue, and that is an attempt by the Leader of the NDP to becloud the issue and to make it appear to the rest of Canada that in fact all we are interested in doing in this resolution is to protect our natural resource revenue. That is not the case. We must return to the actual facts of this matter and review the situation of this province on the matter of principle so clearly outlined today by the Premier.

May I just say, Mr. Speaker, what an experience it was to listen to the Premier's remarks this afternoon in introducing this motion, the clarity with which he expressed the historical development of the British North America Act, and how this country came into being. I think it is a remarkable example of the leadership we enjoy in this province. I don't think I've ever heard it expressed as well as we heard it today. I think that is very important for all Albertans, and I hope that Albertans were listening to what the Premier said in this House this afternoon.

This is a federation. We are part of a federation and not a unitary government. That in itself I think was one of the most remarkable things, the clearest point made by the Premier today. I hope people can

understand what a federation is all about. After all, the smaller colonies which went into Confederation in 1867, Nova Scotia, New Brunswick, were somewhat reluctant to give up the rights they enjoyed at that time to enter a larger confederation. It took many years of talking and working together to arrive at the consensus that allowed the introduction of the British North America Act. It was those small colonies resisting central control that put the British North America Act in the form it is today.

From a historical point of view, may I refer the members of this Assembly to the reluctance of the small colony of Prince Edward Island to join Confederation, to enter Confederation under the British North America Act, because they feared the central power. They feared what might happen to them, a very small island with a very small population at that time, as it is today. They were reluctant to enter because of this fear, and it took a number of years before they were convinced that it would be in their best interest to do so. I suggest that we the legislators today should remember with a good deal of clarity the concerns expressed by those Fathers of Confederation just over a hundred years ago.

When Alberta and Saskatchewan entered Confederation in 1905, Mr. Speaker, we came into this Confederation with the same rights enjoyed by the other participants. We've only been in this Confederation for 71 years. We've seen a number of things occur. Earlier today reference was made to 1930 with the Natural Resources Transfer Act by the federal government.

Just as an aside, Mr. Speaker and members of the Assembly, I found the attempt by the Leader of the NDP to claim current-day credit for that act from a very tenuous relationship with the former government to be the most amusing thing he said today.

MR. NOTLEY: A formal motion.

MR. HORSMAN: Well, Mr. Speaker, the hon. member has interjected that there was a formal motion. Perhaps the formal motion occurred during the dying days of that party, and maybe that's what lead to their demise. So if I were the hon. Member for Spirit River-Fairview I wouldn't trot out that tenuous little relationship too often to the people of Alberta . . .

MR. NOTLEY: [inaudible] didn't do any good either.

MR. HORSMAN: . . . because really, Mr. Speaker, the derision of the people of this province would be heard far and wide.

But if I may return to my remarks, I thought an interesting point was made today by the hon. Leader of the Opposition. This relates to the question of judicial review. Of course there will be judicial review of any constitution from time to time. Historically speaking, the first judicial review of the British North America Act, which occurred up until the late 1940s, found an appeal from the decisions of Canadian courts directly to the Privy Council, which of course is a division of the House of Lords and was a judicial body primarily responsible for giving the ultimate judgment to decisions of courts throughout the Empire. Of course, the appeals to the Privy Council provision were removed from the British North America Act by amendment in the late '40s.

But up to that time I think it would be useful for those of you who are interested in constitutional history to review what took place with those judicial decisions. I think the rights of the provinces today arise in large part from the decisions made by that Privy Council, in that those rights, those interpretations of the rights under the British North America Act, came about to a large extent as a result of decisions by the Privy Council in favor of the provinces.

When I first heard all of this in law school, I recall that I was perhaps a little concerned that that had been the direction taken by the Privy Council, and their thinking in those days that perhaps it was important to have a central government with strong powers. I agreed that there must be a central government with strong powers, but I rather regretted that direction. However, now we are faced with appeals on matters relating to the Constitution going directly to and having the final decision resting in the hands of the Supreme Court of Canada. I'm just a little concerned about that today, Mr. Speaker.

I think in his remarks today the Leader of the Opposition touched on this concern very well. I certainly don't want to stand here in this Legislature today and attack the Supreme Court of Canada, certainly not in advance of decisions it may make under a new constitution. But I think it is absolutely essential — and the other provinces, of course, have agreed with Alberta in this respect — that the make-up of the Supreme Court of Canada be a matter of real concern for any amended constitution brought to this country. I commend the Leader of the Opposition for raising this today. Certainly the recent decision which went against the position taken by the province of Alberta and others, friends of the Member for Spirit River-Fairview with whom we joined hands on that particular reference to the AIB . . . To our regret we see, I think, a tendency developing towards more centralization and more interpretation of control in the hands of the central government.

Mr. Speaker, this is a complicated question. But I suggest that as members of the Legislature we can see — and all we really have to see in dealing with this motion is the matter of principle referred to today by the Premier. I don't intend to go back through the constitutional history of Canada any more than I have in making my remarks to date, except to say this: I support the concept of one Canada referred to by John Diefenbaker when he went across this country in 1958, but I suggest that the one Canada John Diefenbaker was talking about was not one Canada with all power resting in the central government. It was one Canada where every Canadian would have certain basic and inalienable rights. It was one Canada where it didn't make any difference what your racial background was, what your religious beliefs were, or where you came from in this country: you would have the same basic rights.

I don't ever recall hearing John Diefenbaker say that the rights of the provinces should be diminished. Quite the contrary. Quite the contrary. If the hon. Member for Spirit River-Fairview will go back and read the platform of the Conservative Party in 1958 — which I'm sure he'll find edifying, and perhaps it may change some of his views — he will find that that election was largely fought on the issues of returning rights to the provinces . . .

MR. NOTLEY: What about the pipeline?

MR. HORSMAN: . . . returning rights to the provinces, rights that had been eroded during a wartime period by a strong and powerful central government. So when I go to Ottawa tomorrow morning, I hope to have the opportunity of meeting with the right honorable gentleman mentioned by the member in question. I shall certainly refer to him, if I have the opportunity, the endorsement of his views that he has had in this House today. But I daresay he will be most surprised to learn of the interpretation placed on his views by the Member for Spirit River-Fairview.

I must restrain my partisan attitude, which I find difficult to do from time to time, and, in view of the hour, come quickly to the conclusion of my remarks, which is quite simply this. This is a matter of principle, the principle, put as simply as possible, being that Alberta is no less a province than the province of Ontario, and Prince Edward Island in respect to its rights under Confederation is no less a province than the province of Alberta.

MR. YOUNG: Mr. Speaker, I beg leave to adjourn the debate.

MR. SPEAKER: May the hon. Member for Edmonton Jasper Place adjourn the debate?

HON. MEMBERS: Agreed.

MR. SPEAKER: The Assembly stands adjourned until 8 o'clock this evening.

[The House adjourned at 5:32 p.m.]

[The House met at 8 p.m.]

MR. YOUNG: It's a real pleasure for me to participate in this debate this evening. I have looked forward to it for some days. I'm not suggesting, Mr. Speaker, that I look forward to my participation in it, although I have to say I consider this the most fundamental issue with which this Legislature could deal in this particular session. For that reason, I have tried my level best to understand the complexity of what we're about.

I'd like to start off this evening by saying that I'm a Canadian, and I'm an Albertan. Before I was an Albertan, I lived in three other provinces. Mr. Speaker, I have lived somewhat less than one-third of my life in this province.

Despite some of the remarks this afternoon, I consider I am no less a Canadian and no less an Albertan for taking the point of view I shall take this evening. The resolution, as I see it, and the support of the resolution does not in any way take away from one's responsibility, citizenship, or pride in Canada.

Mr. Speaker, look at the resolution for a moment. The first objective deals with supporting the concept of patriation under certain conditions. Surely there is no doubt that all Canadians would like to see our Constitution patriated. Mr. Speaker, many Canadians feel there is a tinge of colonialism — at least that's the way I sense their feeling — about having to go to another country to have a portion of our Constitution amended. It's for that reason, if for no

other, that I am sure all Canadians would like to see the Constitution patriated. History shows that while we may feel that way, the fact that our Constitution must be amended by the British Parliament in no way suggests that we as Canadians are not the masters of that constitution. Our problem is to get agreement among ourselves on how best to have the Constitution amended or patriated.

Mr. Speaker, I don't think I have detected any real urgency in Canada for the patriation of the Constitution. Surely the fact we don't have it in Canada is an irritant. Perhaps it hurts our pride. As I analyse the challenge before us, patriation is the same as saying we have found a formula for amendment. I shall develop the argument that the diversity of viewpoints suggests in fact that we have not found that formula, at least not unless some changes are made in positions of provinces in the near future.

The second portion of the resolution says we support the principle of the existing rights and proprietary interests or jurisdiction of any province, and that these should not be removed without the concurrence of that province. Mr. Speaker, I think this is a fundamental point. Our Constitution deals with the balance of power between the provinces and the Parliament of Canada. To be able to amend the Constitution against the will of one province and to take rights away from that province to me is a fundamental change in the Constitution as we have lived and known it for 100 years.

Mr. Speaker, the last portion of the resolution, the portion of the amendment today, made it more clear I guess that we desire unanimous consent. I'll say more about that later as far as patriation is concerned.

I would like to say there is a distinction between a veto and concurrence. As I understand it, if the federal government and all provinces, save one or two, could come to an agreement on changing the balance of power, veto would mean that one province could deny the change to all the others. But as I understand concurrence, it would mean that if all provinces, save one, two, or even three, came to an agreement with the federal government on the change in the balance or distribution of powers and authority, those provinces could choose not to apply that change. But by that means they would not block the others from enjoying the shift of power if they wished to do so. I think considerable stress needs to be laid on that point.

Mr. Speaker, I'd like to focus for a moment on the Constitution and what it is. I'd like to commence by saying — as hon. members know — that I'm not a lawyer. So I will probably get out of my depth here. But let me try briefly to put to hon. members this evening what I have learned about the Constitution.

As I understand the Constitution, there is both a written constitution and an unwritten constitution. I'd like to focus on the written statute for a moment. Mr. Speaker, we talk about the BNA Act as the Constitution. In fact, my brief study shows that it's the BNA Act and a number of other statutes. Depending upon the authority one reads or chooses to cite, it may be four, eight, or 25 statutes. I don't know. But it's some other number. So let's not look at the BNA Act as a simple document and say, this is the Constitution. It is not. That is a portion of the written constitution which we have before us.

Clearly, Mr. Speaker, in the British North America Act we have what I will classify as three different types of powers or rights, if you will. The first group is what I consider the exclusive rights, the exclusive authority, of the federal Parliament. To illustrate these responsibilities, many of which are set out in Section 91, they are banking, finance, criminal law, et cetera. I won't repeat the list. In his very good address this afternoon the Premier outlined a good portion of them.

Now, Mr. Speaker, while I'm on the rights which are exclusively federal, I'd like to make the point that as a consequence of amendment to the British North America Act in 1949 — it's sometimes identified as the British North America Act, No. 2 — it has been possible, in fact, for the federal Parliament to amend and change on its own that portion of its rights if it chose to do so.

The second group of rights are those exclusively provincial which belong to the provincial legislatures. Mr. Speaker, among others those include property and civil rights, the right to direct taxation, and the right to establish municipal government. The ability to amend and change that aspect of the written statute of the British North America Act has been in the hands of the provinces since Confederation.

Mr. Speaker, I turn to the third group of powers. These are the focus of all the debate as far as I'm able to ascertain. These matters are of mutual concern to federal and provincial authorities. They are the ones on which the balance of power hangs or shifts or turns. They are the reserved areas. In the British North America Act as it now stands, these portions can be changed only by reference to the Parliament of the United Kingdom. In these areas address must be served to the United Kingdom Parliament, and it amends for us. I suppose these could be called the last vestige of colonial development, if we want to put it that way.

Mr. Speaker, it seems our founding fathers forgot to provide means of amendment for these areas, or assumed they should never be amended, or possibly assumed we'd always be a colony, which back in 1867 may not have been a bad assumption. You know, a lot of water has gone under the bridge since 1867. But these are the ones of concern to us today in this debate.

For a moment, though, I'd like to refer to the portion of the Constitution which I described as unwritten, because I think it has considerable significance for the outcome of the debate before Canadians today, that is the amendment of the Constitution.

Mr. Speaker, unlike the Constitution of the United States, as I have mentioned ours is not neat, it's not all written. The unwritten portion is established by custom, by usage which has grown up over a long period of time, in fact since Confederation, maybe before. Perhaps I can illustrate what I understand to be one of those customs. At the time of Confederation, 1867, the role of the Governor General was quite different from today. At that time, with reference to Canada, the Governor General was expected to have a real, significant influence on developments in Canada. The government of the day was expected to listen to his advice from time to time.

That is now changed by convention, by usage, by custom. Now the Governor General listens to the advice of his counsel and generally speaking does

what that counsel suggests. So by convention, we have changed what is in fact in the written part of the British North America Act. As I understand the authorities, the reading and history, convention has nullified, if you will, and has brought a totally different meaning to what is written in part of our Constitution.

Mr. Speaker, I guess I'm talking about constitutional conventions. They rest not on law — and that's important, not on law — rather on the general acceptance of the public, the governments, the legislatures, and Parliament. I think if the federal government proceeds in a manner which is contrary to the generally accepted conventions, a great wrong and harm will have been committed to our Dominion.

Mr. Speaker, I would like to turn for a moment to the problem of amendment over the years. The Premier has referred to it today: in fact there have been 16 amendments to the written portion of the Constitution over the last one hundred and some years. There's no question that some of them, prior to 1949, referred to that area of exclusive jurisdiction of the federal government and didn't in any way affect the provinces and didn't need unanimous consent. But all those which affected the balance of power between the federal government and the provincial legislatures did indeed have unanimous consent.

Mr. Speaker, I submit that the fact that occurred has led us to two developments. One, we can take issue with those people who say that a formula requiring even unanimous consent, which is a very rigid formula, is not a strait jacket. With leadership at the federal level on the right issue which would be generally accepted by all Canadians, Mr. Speaker, I submit it is possible to amend the Constitution. If we had that kind of leadership on that kind of issue, the point could be made for all Canadians that this kind of amendment is in order for the general good of all Canada and of its provinces.

Mr. Speaker, I think the other development that flows from these amendments is that we have in fact established a precedent, a custom, a usage, a convention if you will, that there is now a requirement for consultation with the provinces and for unanimous consent. Let me say right away that is not a legal requirement, as I pointed out. In the interests of time I won't quote Rt. Hon. Louis St. Laurent, but he made the point some years back, quite well I think, that in fact there does not appear to be a legal requirement on the federal government to get unanimous consent. But, there is a convention, and from his point of view that convention was binding and would require the federal government to get consent of the provinces. He went on to state that in his opinion failure to do so would not be regarded as fair play in the British tradition which, Mr. Speaker, flows from the country many of us trace our roots to and which relates to part of the unwritten constitution, in my view anyway.

Now, part of the argument — perhaps the central point of the argument which we had before us today — is the type of Dominion, the type of Confederation we see in the future. If one reads the literature, one sees two groups of people: centralists who desire a stronger central, federal Parliament; on the other hand those who would like to retain a balance of power along the lines we know today. Perhaps a

federalist position vis-a-vis the centralist or unitary government position would be the best way to describe it.

So, Mr. Speaker, at this point I think I would just suggest to all hon. members that in dealing with these arguments it becomes necessary to look behind the argument of the person and try to determine the philosophy of the person, because we're getting into the realm of politics and what one sees as one's ideals or objectives in terms of the Constitution. To me that's where the argument starts to develop very rapidly.

I'd like to put in one other statement. It seems to me that patriation, if it is achieved in one way or another, will add some clarity and certainty to a situation which is now somewhat clouded. Mr. Speaker, as I see the situation in analysing the respective positions of the federal and provincial governments, it seems that while the federal government may be able in law to argue that it can unilaterally patriate the Constitution, the fact of doing that would strengthen the role of the federal government quite significantly. However, if we go the convention route and the unanimity route as far as patriation is concerned, and seek an amending formula, that will add certainty which probably weighs on the side of the provinces. It's uncertain whether it does, but at least it adds clarity. I think that's one reason we have a jockeying of position and a reluctance on this matter. Mr. Speaker, of course if we could come up with an amending formula, we would have patriated the Constitution. Patriation doesn't mean putting it on a plane and shipping it from London to Ottawa. Patriation purely and simply means finding an amending formula so that we can take care of it in our own house. Once we've got that done, the problem is solved.

So, Mr. Speaker, let me now go back to the point I want to conclude on. I see arising out of the argument of convention — that is tradition, custom, usage — the strongest reason that there should be a unanimous decision and concurrence on the amending formula on the part of the provinces. I believe that responsible leadership, that statesmanship properly exercised, can get us to that point. I believe that to do otherwise, to amend unilaterally, would cause great problems in our Dominion, would demonstrate a lack of statesmanship which I think has been observed by prime ministers for many years. As we know, the debate has gone on for many years. Mr. Speaker, I would assume that responsible political leadership would require that a degree of unanimity be obtained before any patriation could be undertaken.

In conclusion, Mr. Speaker, I would like to reiterate that we are talking about a balance of power between provinces and the federal government. The nature of our Constitution is quite different from that in the United States. We're not talking about citizens' rights in the same sense at all. Perhaps that could be worked in, but that is not part of the immediate debate today. I think the powers of Parliament and of provincial legislatures should be changed, but slowly. I am not one who thinks we should be able to change quickly any basic balance of powers in the Constitution. If only 16 changes, and a major portion of those not relating to the balance of powers, were required in one hundred and some years, Mr. Speaker, surely



there is no urgency to make major changes now.

We have to keep in mind that the Constitution we're talking about should endure through the ages, not something which should be made — and I was disappointed this afternoon to hear the argument by the hon. Member for Spirit River-Fairview that the only consideration of this House had to do with natural resources. That is not correct as far as I personally am concerned, and I do not believe it to be correct for most members here. We all know that our position on natural resources is a very temporal position. It may change in a decade, two decades at most. Mr. Speaker, we're talking about something much more fundamental and something that should dwell through the ages. It should have very lasting durability.

Mr. Speaker it is for the reasons I have advanced that I favor the kind of resolution we have before us, a resolution which would not prevent a shifting of the balance of powers by evolution, if you will, by general concurrence throughout all Canada, but every province wouldn't have to agree. It's the kind of thing, I believe, which occurred when the Canada Pension Plan was introduced. There the federal government wanted to become involved in what had heretofore been regarded as provincial jurisdiction. By agreement with the majority of provinces, it was able to do that. The remaining province chose to tackle the same issue on a different basis. In fact, as far as Canadians are generally concerned we have a very good pension scheme worked out — that is if it doesn't go bankrupt in the long run, but that's beside the point. The constitutional problem was overcome effectively and in a way that we would see it overcome in the proposal contained in this resolution.

Mr. Speaker, I strongly urge hon. members to support this resolution.

MR. TAYLOR: Mr. Speaker, I certainly would not want to lose the opportunity of saying a few words on a resolution of this nature. First of all, I'd like to deal with exactly what the resolution says and does, so we know where we stand and where we're heading. The objective of the resolution, the patriation of the Canadian Constitution, is supported. I can say I support the patriation of our Constitution, but I'm not in any wild hurry about it. I could continue to live happily if the Constitution remains in England another year, another two years, another three years. I think most people in Canada would feel very much the same way. Unless we can agree on an amending formula, there certainly will be great chaos once we get the Constitution here.

If the Constitution can be brought back unilaterally by the Canadian government from where it rests today, some bright Prime Minister might get the idea that the Canadian government can amend it unilaterally. That is not a hoax, that is a real possibility.

I frankly think the Constitution should come back with the agreement of the provinces, after we have an amending formula worked out. In my view it would be completely illegal, and I hope the courts would so declare, if the Canadian government ever attempts to bring it back unilaterally without reference to the provinces.

The second point of the resolution deals with the equal rights of the provinces within Confederation. It states that the government "should not agree to any

revised amending formula for the Constitution which could allow any existing rights, proprietary interests or jurisdiction to be taken away". I think that is a very important part of the resolution.

That leads me to the point brought forward by some hon. members, but mostly in editorials in some papers, which questions whether the Premier and the government of this province is bargaining in good faith if the Legislature passes a resolution like this.

I suggest that those who are arguing that we would not be bargaining in good faith are missing the major point of bargaining. When the school teachers go to the school boards to bargain for increased wages, they don't bargain for reduced wages. I've never heard of any labor group bargaining to get their wages reduced or their rights reduced or their working hours increased. Nor would it be sensible for them to do so. Nor do they bargain for the right to have wages. That they have wages is already established, and they bargain for an increase. And when the provincial government sits around the table with the Canadian government, it's not bargaining on whether we have rights. Those rights are already there. Surely it's for an increase and not for a decrease or a destruction of the rights we already enjoy.

In my view, those who suggest that our government should bargain for a reduction of our rights are missing the whole purpose of collective bargaining. The hands of the government are not tied in regard to bargaining, as I see it. The government will be bargaining for increased rights, not reduced rights. They will not be bargaining over what is already in the Constitution. We have those rights established. Certainly they can discuss changes that may eventually take place, but there should be no reduction in rights that the provinces now enjoy. If any provincial government attempted to pass a bill of rights in this country today which took away rights the people cherish and honor, such as the right to worship, the right to freedom of thought, freedom of association, there would be a terrible uprising of the people of this country, and properly so.

Now the hon. Member for Spirit River-Fairview suggests there has to be flexibility, and he said it should be give and take. That's fine, but if we give up our resources what are we going to take? If we give up our rights, what are we going to take? That's not flexibility. If I suggested to him that the coal miners went to the coal operators in a flexible way to give up some of their wages, he would think that was ridiculous. It's just as ridiculous for him to ask this government to go to the bargaining table with the idea of giving up rights, embedded in the BNA Act and in our Constitution, that we have because we are Canadians.

I would also like to deal with the suggestion that effective leadership is tied in with this matter. Surely we can have effective and strong leadership in Canada within our present Constitution. We've had strong leadership from time to time in the Canadian capital within our Constitution. I heard the Rt. Hon. John Diefenbaker, when he spoke in the Drumheller Arena in '58, discuss the matter of one Canada, and I agreed with his concept of one Canada. But never did he say we expect to have one Canada at the expense of the provinces. He was just as adamant in protecting the rights of the provinces, increasing the rights

of the provinces, and making Canada stronger. We won't make Canada stronger by making the provinces weaker. That would be impossible. A chain is as strong as its weakest link. If we weaken our provinces, we weaken our whole set-up in Canada today. So when the hon. member speaks of effective leadership, surely he is not giving the whole story when he leaves out the part about effective leadership within the Constitution that has been set up.

Another point I'd like to raise is that this involves more than just natural resources, and the hon. member who just spoke dealt with that problem. It involves people, it involves education rights, it involves language rights, it involves the right of direct taxation of the provinces, it involves a myriad of rights which have been set out in writing in the Constitution. When the provinces entered Confederation, whether it was the first four or those who joined later, they entered on the basis of the Constitution, that they would have these rights. I think to change that now without the consent of the people who agreed to it would actually be making a mockery of the Constitution that we have today.

The Hon. James Richardson dealt with the matter of language rights in the letter he sent I suppose to all members. I got mine this morning. For a moment or so I would like to deal with alternatives to what the Government of Alberta has suggested. What are the better alternatives to protect the rights of the people of Alberta and the other provinces, to protect the rights of Canadians? I think we have to look at every alternative on its own merits that comes along.

Before the Hon. Mr. Richardson, who recently resigned from the Canadian cabinet, dealt with the formula he is suggesting, he dealt at great length with language rights in Quebec. Mostly he mentioned additional language rights. He was not talking about going to the bargaining table to take away some of those rights from the province of Quebec. I don't think any premier of the province of Quebec would enter bargaining with the view of giving up what they agreed to when they entered Confederation. I certainly wouldn't if I lived in Quebec or had anything to do with the Quebec government. When we formed a confederacy in this country, Quebec people entered because their language rights were being protected.

Maybe we should stop a moment. Had they not entered Confederation at that time with their language rights protected, had the Fathers of Confederation said, no we will not consider that at all, and formed a Confederation of Ontario, New Brunswick, and Nova Scotia, which could have been done, what would have happened? If we look at history, I think it's very evident that today Quebec would likely be part of the United States of America. They would have had no equal rights, no language rights down there. I think one of the strong points that must enter the minds of the people of Quebec is that by being part of Canada today, they have their language rights embedded in the Constitution. The hon. Mr. Richardson is speaking about additional language rights bargained around the table, not the language rights they hold today.

By the same token, I suggest the province of Alberta has every right to go to the bargaining table to bargain for additional rights, but certainly not to give up any rights we enjoy today in regard to natural

resources or education. If that is taking a position not in harmony with collective bargaining, then I just don't follow collective bargaining. As I've said before, no worker ever goes to the bargaining table with the idea of getting wages. He's already got the wages. He's going there to get an increased wage, not a reduced wage. I've never seen them go to a bargaining table to get reduced wages. In light of today's society there's every reason to go to the bargaining table for increased rights, but not to give up the rights we had when we entered Confederation. To do so would simply make a mockery of Confederation. I just don't think we want to do that.

On the other hand, Mr. Richardson goes on to the matter of what he thinks is an amending constitution. He says:

I believe that an ideal amending procedure for Canada would be agreement of the Parliament of Canada combined with the agreement of any six provinces containing at least 60 per cent of the population of Canada.

When I look at his formula, at first it sounds quite good. But what would happen if you come to that type of formula he is suggesting? Under the June 1, 1976, Statistics Canada census, the population is 23,110,000 — let's say 23 million. The population of Quebec is 6,200,000, of Ontario is 8,300,000. So Quebec and Ontario have 14.5 million people. The balance of Canada would be the difference between 23 million and 14 million, which is around 9 million people. That would mean, under the hon. Mr. Richardson's formula, that Quebec and Ontario plus four other provinces would have to be agreed. The four other provinces with Quebec and Ontario would have to make up that difference in population.

I really don't see very much difference between what Mr. Richardson is suggesting and what the Victoria Charter suggests. The population of eight provinces of Canada is about 8,600,000. So the eight provinces of Canada couldn't even change the Constitution. Eight provinces couldn't change it under his formula, unless Quebec or Ontario were one of those eight. But Quebec and Ontario with the four smallest provinces of the country could change the Constitution. Again, the hon. Mr. Richardson's eyes are dim the same as a lot of our eyes were dim for many years in regard to the rights we have in the Constitution today. There, there are no equal rights for the provinces that are going to be forced into this type of thing: for the other two, three, or four provinces who don't agree with the proposition. I don't think the hon. Mr. Richardson's suggestion in regard to the formula would be acceptable to the people of Canada.

Now let's look at the Victoria Charter. While I had nothing to do with the Victoria Charter — I was neither in the discussions, nor was I at Victoria — the men undoubtedly went there sincerely, hoping to come up with something that would be acceptable across Canada. Again I suggest that their eyes were dim as far as the Constitution is concerned, because there they were jeopardizing the rights of a number of provinces. For instance, their formula was that every province with 25 per cent of the population would have a veto, if you want to call it a veto. They might just as well put "Ontario and Quebec" in there, because they are the only two provinces that qualify under that formula. I don't know why they went to all this rigmarole of trying to pull the wool over the

people's eyes by saying "every Province that at any time before the issue of such proclamation had, according to any previous general census, a population of at least twenty-five per cent of the population ...." Twenty-five per cent of the population today would be close to 6 million people. No province is even close to it, except Quebec and Ontario. I would have thought more of this Charter if they had put in "Quebec and Ontario" and forgotten this rigmarole of trying to have people figure out which provinces they were talking about.

Then it says "at least two of the Atlantic provinces;" with no stipulation in regard to population, unless something is carried over into the next part. It says, "at least two of the Western Provinces that have ... at least fifty per cent of the population of all the Western Provinces".

Now why did we put the maritimes in a position like that? They're not second-class citizens, they're third-class citizens. They don't even have to have 50 per cent of the population. P.E.I. and New Brunswick would be the same as Nova Scotia and New Brunswick, with the greatest population. So the Victoria Charter is inconsistent in that regard.

In at least two of the Atlantic provinces they forgot about the population and are starting to get a little close to the idea of the rights that each province held. But they didn't go quite far enough. When we came to the western provinces, we said at least two of the western provinces that have at least 50 per cent of the population. Why did we discriminate against the western provinces if we're going to say any two of the four Atlantic provinces? I just can't follow that kind of thing. It doesn't make sense to me. The population in western Canada is far higher than the population of the maritimes, so that couldn't have been the reason. The population of the four western provinces now is over 6 million. The population of the four maritime provinces is about 2.2 million. So I certainly don't know what the thinking was, and perhaps we will never know. But the very fact that we're discriminating either against the Atlantic provinces or the western provinces, and by the same token making sure that Ontario and Quebec have veto power, in my view makes this Victoria Charter unacceptable to the people.

The people of Alberta never had an opportunity to consider the Victoria Charter. Certainly I don't think any government is bound by what took place in Victoria at that time. Knowing what we know today, I certainly couldn't stand up to the people of Alberta and support this; nor have I ever supported or tried to support the Victoria Charter before an Alberta audience.

No equal rights are suggested at all, and again the population fallacy comes into play. This is something I think we should take a pretty careful look at, because it's been the reason so many people have not had their eyes opened. The wool has been pulled over their eyes through this population fallacy. It is actually a fallacy.

If like many European countries this country had one government across the whole of Canada, then I could follow the population factor. The population could do that without any difficulty. You'd take 60 per cent, 70 per cent, or 80 per cent, whatever you wanted. But we don't have that type of country. We have the central government with rights set out in the

BNA Act, and we have 10 provinces with rights set out in the BNA Act. Consequently, how can we work on a population basis?

Until the hon. Premier of this province enunciated the reasoning, I think many people were struggling for some explanation of this point. They said we have to consider population. I think the hon. Premier has lightened the eyes of many, many people. As a matter of fact, many told me they heard the Premier in a broadcast from Toronto in which he dealt with this point. They said, that thought that the population factor is looked after in the House of Commons never occurred to us before. That is the way it should be. How many thousands of people across this country have had their eyes dimmed in regard to that all through these years. It was certainly dim when the Victoria Charter — even the eyes of all the Premiers according to this, because they all agreed to it on the basis of population, entirely forgetting that we were not a one-government country, but that we were a country with 11 governments with their powers set out.

How can you start dividing those powers when you have them already set out in a written constitution as belonging to the Canadian government in some respects and other rights belonging to the provincial governments? That is a vital point in my view. That point has led to the dimness of vision in regard to this whole thing, in regard to amending the Constitution, because if we did it on a population basis we would be ignoring the rights of the provinces, ignoring the rights that have been set out in written form in the Constitution.

That we shouldn't do. That is what we are doing in both the hon. Mr. Richardson's formula and the Victoria Charter. We're ignoring the rights of the provinces which do not agree, because it could very well be one of the provinces that was not one of the two in the Atlantic, or not one or two in the western provinces. Those people would lose their rights entirely, rights that have been given to them and guaranteed by the BNA Act.

So if we look upon the BNA Act as a partnership agreement in which the senior partner has certain respective rights in certain fields and the 10 provinces have rights in other fields, then we have to look upon it as a partnership arrangement. And those rights should be maintained around the bargaining table. When it comes to the changing of this, surely we're not going to say that we're going to make some change over the head of one or two or three of the provinces whose rights have been guaranteed by our Constitution. Such would be tantamount to saying we are not considering your rights at all. They could very well say, as some people are starting to think across Canada, we'll withdraw from the confederation of Canada. I think that is the last thing we want any province in Canada to do.

Yet there are a lot of able men. I was surprised when I read the names of some of the men in a meeting recently in Victoria who are becoming so flabbergasted with the taking away of rights from the people and the provinces that they want to separate. When we talk about separation in Quebec, we might also talk about separation in other parts of Canada if the Canadian government sticks to its idea of unilaterally bringing home the Constitution and unilaterally amending the Constitution. When that day comes

we're no longer a nation. We're no longer operating under the BNA Act and the acts we formed to become part of this great country.

Well, I can't go for the Richardson formula or for the Victoria Charter. I think they're both built on fallacies and that they would be a denial of the rights we enjoy today.

Another suggestion has come to me, this from people who are concerned particularly about losing their natural resource rights in this country. I don't agree with this formula either. It's a suggestion. That is that it be based not on population but on the provinces that have the resources, and that vetos — if one province has one resource, that province must have a right to retain that or veto any taking away of that resource from them. If there are two or more provinces, 50 per cent of the provinces would have the veto; three or more, 50 per cent of the provinces. But again, that does not consider the people, and it does not consider the equal rights set out in the Constitution.

So, Mr. Speaker, when I view the whole thing and then start looking at the populations of Canada as they are today, and working it on population and provinces, I can see some very terrible things happening.

For instance, under one formula, taking 60 per cent of the population and eight or more provinces, including the two territories, Quebec and B.C. could be left out and all the other provinces could change the language rights of the province of Quebec or take the timber or the mining ores from the province of British Columbia. I wonder if Premier Bennett ever thought about that. There would be quite a hue and cry from the people of British Columbia if eight other provinces and the Canadian government were going to take away those rights that they have today under the Constitution.

Yet that's what would happen if that formula was adopted. If there is another set-up of the provinces, Newfoundland, P.E.I., Scotia, New Brunswick, Quebec, Manitoba, Saskatchewan, Alberta, and British Columbia could change the Constitution for Ontario and Nova Scotia. We could take the fishing rights away from Nova Scotia or, say, the off-shore mineral rights would now belong entirely to the federal [government] just after they had reached an agreement. Or we could take away Ontario's timber or fruit lands and say the resources of that are so important, food and and fruit are so important that the Canadian government has to have that; they'll distribute their share across the country. I wonder what Premier Davis would say about that, or Premier Regan in Nova Scotia. But that points out the fallacy of starting on population and so on without recognizing the point brought to us so vividly by the Premier and the Minister of Federal and Intergovernmental Affairs in this province.

Another set-up: Quebec could be left out entirely by all the other provinces ganging against them and denying everything promised them in the BNA Act. Everything we worked for, that we agreed to, the sanctity of contract, would go right out the window as far as they were concerned. Why should we have the right to say that they can't speak French in Quebec? I certainly think we have the right to say we don't want it pushed down the throats of the people of the rest of Canada. But I have no objections to the people of

Quebec speaking French. I think it's a wonderful thing for the country to have French taught and spoken in Quebec. I have some wonderful friends there, and I like the province of Quebec. It would not have its characteristics at all if that was taken away from them. Under that constitution Quebec could lose those rights without even having any say about it, be the only one objecting.

I could go on to some others, but I'll bring it to a conclusion, Mr. Speaker. I said before that the Premier of this province gave a masterful address today. But better than that I want to pay tribute to him for opening the eyes of thousands of people in Alberta and across this country to the recognition and recognizance of the fact that they have rights as a province under the BNA Act and should not lose those rights. I think if the provinces of Canada can get the vision of what could happen if we give up that right of equal rights under the BNA Act, with the population also having something to say through the elected members of the House of Commons, then we would be in danger of jeopardizing the future of this entire nation.

Yes, we have a tremendous country. We have a good Constitution. Mr. Speaker, I think we should retain the rights we have as provinces and as people, and that when we go to the bargaining table we not give up the rights we have under the vital things of education, resources, direct taxation, language rights, et cetera, but rather, enlarge on those and expand them in order to make each province even stronger than it is today. Every time we make a province stronger, we don't make Ottawa weaker, we make the Canadian nation stronger and better.

MR. R. SPEAKER: Mr. Speaker, first of all I would like to reaffirm our position [as] opposition with regard to this resolution. We support it in its amended form and certainly feel that it is very timely and merits our support whole-heartedly.

In reaffirming our position, we reaffirm the fundamental principle of Confederation that all provinces have equal rights within Confederation. Secondly, prior to patriation an amending formula should be agreed upon by all provinces and the federal government. Thirdly, we certainly support the object of patriation. But I believe that we do not press the issue, we do not urge the government to press the issue if it brings us into a situation of confrontation or causes a division in Canada at the present time. I believe we are in a very precarious position in Confederation if you listen to the discussion within some of our provinces, listen to the current discussion in one of the provinces that is having an election at the present time. I think we have to press forward with caution. Those, Mr. Speaker, are our three positions that we reaffirm.

In my discussion this evening I'd like to examine and discuss two parts of the resolution: first of all the part that says "reaffirm the fundamental principle of Confederation that all provinces have equal rights with Confederation"; secondly, I'd like to discuss the second part, specifically the part that says "that it should not agree to any ...", and it goes on.

Mr. Speaker, in questioning the reference to the fundamental principle of Confederation that all provinces have equal rights within Confederation, we should ask what that means, and attempt to clarify

that as much as possible. In the remarks by the Premier this afternoon, we understand what he is driving at. We understand when he indicates to us that we should be no less a province than Ontario, no less a province than Prince Edward Island. I think we understand what he is saying when he makes that statement about Alberta in Confederation. But I'd like to examine this statement and try to clarify and raise the question with the Premier, Mr. Speaker, so he might clarify the concept of equal rights within Confederation, more for me and possibly for the people of Alberta.

I'd like to raise this question: is it in fact a principle of Confederation that all provinces have equal rights? For example, the right to have separate schools under Section 93 of the BNA Act and the related section of The Manitoba Act, The Alberta Act, The Saskatchewan Act, and the Newfoundland Terms of Union act, does not provide equal rights but different rights for different provinces according to their circumstances.

As another example, we're all aware that the prairie provinces were for years denied control of their public lands, a right enjoyed by the founding provinces, B.C., and Prince Edward Island, from the day they joined Confederation. Even today, do not different provisions exist for different provinces with respect to control over their natural resources: the rights of the older provinces resting in Section 109 of the BNA Act, and the rights of the prairie provinces, including Alberta, resting on the more tenuous foundation of the natural resources transfer agreements of 1930, which was raised a number of times in this Assembly today. We ask, therefore, not on my part to be rather cantankerous, but as a point of information: what are the government's references, what are our references for the assertion that all provinces have equal rights within Confederation?

Mr. Speaker, to carry this point a little farther, perhaps the government is suggesting that all provinces should, and I stress the word "should", have equal rights within Confederation. But if we reflect on what I am saying, is this really what we want to say? Do Quebec and Alberta want the same rights with respect to language and culture? I think not. That which would satisfy Alberta in this area would never satisfy Quebec. Should all provinces have equal rights to low-cost energy supplies? Surely this is not our position. Do Nova Scotia and Alberta want equal rights with respect to the ownership of offshore oil resources? I am sure we recognize that is a facetious position relative to our geographic locations.

On the other hand, do we not want rights which will safeguard our particular and legitimate interests regardless of whether any other province has them or wants them? As provinces are we not in the same position as individuals in society where the indiscriminate demand for equality is increasingly used to eliminate individuality and diversity? We want equality only in those areas where we are weak or deficient, but we want special status and protection in those areas where we have made special achievements or where our interests are somewhat unique. Mr. Speaker, I sincerely believe that this government and the governments of other western provinces would do well to clarify their thinking, because we have made some inconsistent representations on this subject in the recent past.

For example, at the Western Economic Opportuni-

ties Conference in 1973 the western provinces presented a brief on transportation. It pointed out that the federal government's transportation policies were originally designed to serve the east, so the west demanded equality, transportation policies that show equal regard for western economic development. But at the same conference, Mr. Speaker, the western provinces presented a brief on agriculture. In this brief it was pointed out that relatively speaking agriculture is much more important to the western economy than it is to the economy of central Canada. National policies and programs which treat all provinces equally are castigated as having failed to meet the special needs and circumstances of western agriculture. So with respect to agriculture the west demands not equality but special recognition.

Mr. Speaker, I want to say there's nothing wrong with that type of position. I'm not arguing the merits of it being good or bad. I support what has happened with regard to those two matters. But when you examine them in the framework of equal rights, there appears to be an inconsistency. I think that's the thing we have to question in trying to define what we mean by equal rights in Confederation.

I would say, Mr. Speaker, that the government may have answers to this from the Premier to clarify what I have said. Maybe what we are saying, if I can reword the resolution, is that we reaffirm the fundamental principle of Confederation that each province is entitled to the attainment and protection of those rights deemed by the Legislature of the province and the Parliament of Canada to be essential to the interest of that province within Confederation. We are saying we are entitled to attainment and protection of rights we have. Maybe that's what we're saying. I feel that is more explicit and is defining what we are actually saying.

Mr. Speaker, the other part of the resolution I'd like to comment on is the last sentence which says:

... and hence direct the government that it should not agree to any revised amending formula for the Constitution which could allow any existing rights, proprietary interests, or jurisdiction to be taken away from any province without the specific concurrence of that province.

Mr. Speaker, I agree with that part of the resolution. I do not argue with it. At the same time I feel it is rather negative, that it could be expressed more positively and express our ideas just as well. I do not believe we are asking for a blanket veto power in that part of the resolution. What we are asking is that no rights be taken away from a province without its concurrence, Mr. Speaker, and that's the important part of the resolution. That's the intent.

But I believe the phrase "direct the government that it should not agree" is too restrictive and too negative. I would like to suggest that when we present this type of concept, we should make a more positive statement to the people of Alberta, a more positive statement from this Legislature. I believe that this type of statement, with the same intent, may express our feelings from this Legislature:

The Legislative Assembly hence directs the government to seek the attainment and protection of those rights deemed by the Legislature of this province to be essential to the interest of Alberta within Confederation and secure a revised amending formula for the Constitution which

would prevent any existing rights, proprietary interests, or jurisdiction from being taken away from any province without the specific concurrence of that province.

Mr. Speaker, I only reword those for clarification and for the purpose of putting our intent in more positive terms. I feel we understand what is being said in this Legislature about equal rights, but I do not think it is completely clear at this time. I raise the questions through examples. Hopefully, in the response of the Premier or the house leader, that type of concern or clarification can be raised.

With those words, Mr. Speaker, I want to say I support the resolution as amended. We believe it will certainly add strength to the representations we will have to make as a province in the days or years ahead. Over the period of time between now and spring, we will be watching and listening very carefully to the actions of the government. In the spring we will certainly expect complete reporting and clarification, and some positive work by our government.

MRS. CHICHAK: Mr. Speaker, we have listened to this debate this afternoon and this evening. Each time another speaker has risen and made his remarks, I have taken a few pages out of the debate I had prepared; so much so, Mr. Speaker, that I'm not sure my remarks tonight are going to be coherent.

AN HON. MEMBER: Agreed.

MRS. CHICHAK: However, that is not to say they will be any less important than those of the hon. Leader of the Opposition.

SOME HON. MEMBERS: Agreed.

MRS. CHICHAK: I'd like to touch on a few points that have not been put forward and perhaps bring to mind some of the inequities that have existed and continue to exist. Perhaps this is where the shortfall is with respect to the BNA Act, why we need an amending formula, and why such a formula must be agreed upon prior to patriation.

Mr. Speaker, from other parts of Canada we have been accused of being blue-eyed Arabs, sheiks, misers of black gold, and many other terms. We have been called less than Canadian. Mr. Speaker, as one of my honorable colleagues indicated earlier this evening, he had resided in various parts of this country, felt some allegiance to all parts of Canada, and didn't particularly feel he was an Albertan first and then perhaps a Canadian. Members of my family reside in four different provinces of Canada: British Columbia, Alberta, Saskatchewan and, believe it or not, Ontario. I think the position or the intent or the concerns being expressed in this debate today are concerns not simply for us as Albertans, but for all Canadians, because someone in this Legislature has a member of his family residing in almost every part of this country.

Remarks were made by hon. members asking whether in fact we are asking for equality, whether the principle is for equal rights for all provinces, and whether we should not be asking for various differences peculiar to the region. I think we can throw many arguments into this debate that can distract and draw one away from the real issue that lies

before us, and that is the principle of no one province being any smaller or less than its neighbour.

I would like to reflect on some of the historic background in various areas that may not have been touched in the same manner as the point of view I wish to put across. When the autonomy bills were creating the provinces of Alberta and Saskatchewan in 1905, I believe there was quite a controversy in the debate during that period. Perhaps the controversy caused quite a divisiveness amongst the members in Parliament.

Four major questions arose with respect to the powers being given to the provinces and those being retained by the federal government. Perhaps the four that caused the strongest and greatest debate were the questions of the school system, the disposition of public lands, financial terms, and the number of new provinces. Of course there was very strong opposition at that time to the federal government maintaining control over public land. It's interesting to note that some of the very strong opposition to that position was carried forward by such people as Mr. Borden and Mr. Monk, who were Conservative leaders in Ontario and Quebec. I think it's important to note that people representing citizens of Canada at that time, even in central Canada, had a feeling that no new provinces created at a date later than the British North America Act should have the basic rights, privileges, and powers given to the founding provinces.

Nevertheless it's interesting to note that The Alberta Act of 1905 had provisions which included certain exceptions. Section 3 of The Alberta Act provides that:

The provisions of *The British North America Acts*, 1867 to 1886, shall apply to the Province of Alberta in the same way and to the like extent as they apply to the provinces heretofore comprised in the Dominion, as if the said Province of Alberta had been one of the provinces originally united

Then certain provisions were provided.

Two exceptions might be noted and perhaps repeated. Section 20 of The Alberta Act sets out that: "Inasmuch as the said Province", referring to Alberta, "will not have the public land as the source of revenue, there shall be paid by Canada to the Province. . . ." and then the matter of providing revenues or funds for the province to run its business and to develop.

Section 20 was to cover Section 21 of the Alberta bill, which of course sets out that:

all Crown lands, mines and minerals and royalties incident thereto . . . shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada . . .

I didn't quote Section 21 completely, but a part of it. I'm quoting it here specifically because to overcome the kind of problem the new provinces being created would have — the ability the provinces would have to overcome the financial burdens and problems — Section 18 of The Alberta Act provided precisely for funding by the federal government, by Canada, to the provinces to enable them to function. However, it seems to me that the consciences of the legislators in Parliament must have been troubled, if not as a result of the debate that took place at the time of the

passing of The Alberta Act and the two bills creating the provinces, then the continued debate over a period of years with respect to providing the kind of equality or the rights and privileges that were given to the founding provinces.

The correction came, and it's interesting to read the wording with respect to the correction putting the province of Alberta and all other provinces in the same status as the founding provinces. The Alberta Natural Resources Act has a very interesting preamble. I think it sets out very well the principle we are debating today. I'd like to read that preamble particularly to stress the point we're trying to convey to the rest of Canada. The preamble to The Alberta Natural Resources Act, 1930, sets out:

Whereas by section 21 of *The Alberta Act* . . . it was provided that "All Crown lands, mines, minerals and royalties incident thereto, and the interest of the Crown in the waters within the Province . . . shall continue to be vested in the Crown and administered by the Government of Canada.

And the act carries on:

And Whereas it is desirable that the Province should be placed in a position of equality with . . . other provinces of Confederation with respect to the administration and control of its natural resources as from its entrance into Confederation in 1905 . . .

The agreement that was signed sets out:

In order that the Province may be in the same position as the original provinces of Confederation are in virtue of section 109 of *The British North America Act, 1867*, the interest of the Crown in all Crown lands, mines, minerals, (precious and base) and royalties derived therefrom within the Province, and all sums due . . . for such lands . . . otherwise provided, belong to the Province.

In our debate we are simply setting out that we want to maintain the status that at the time of Confederation certain rights and privileges were granted to Ontario, to Quebec, and to the eastern provinces. I do not believe that any province created subsequently entered Confederation on the philosophy or the intent that it should be of any less importance or have a smaller degree of ability with which to develop the economic growth and well-being of any province across Canada.

I'd just like to reflect back to Section 18 of The Alberta Act because it provides payment to the provinces of Alberta and Saskatchewan, which were not founding provinces. It provides payment of support based on population. The reason I want to go back to this, Mr. Speaker, is because the greater the population, the greater the assistance from the central government. If one would examine the logic or the determination with which Ontario, central Canada, has strived to maintain a more equitable position with respect to transportation tariffs and favorable taxation formulas, I think it is rather clear that it is of benefit to design national policies that would benefit the province with the greatest population.

That also leads to a power struggle. We may not wish to use the term. Nevertheless we must face realities, as we have had to face them since 1905. The centralization of power in one province through the money institutions, manufacturing, industries of

every nature will keep various regions of this vast country at a continued disadvantage.

The Alberta Act, Section 24, sets out that the powers granted to the province are subject of course to the provisions of Section 16 of the Statutes of 1881 with respect to the Canadian Pacific Railway. I am referring to that aspect of it because I would like to show that in 1881 certain legacies — I would call them legacies — were given to the Canadian Pacific Railway for all time. A trust was attached to those legacies. The trust was that the Canadian Pacific Railway would provide a transportation service to all of Canada irrespective of cost. Where such service became inequitable, the offset was that they would benefit from vast tracts of land and natural resources.

Something went wrong somewhere along the way. Under the BNA Act, Section 92(10), the federal government reserved unto itself the matter of transportation. It retained the area for itself on the premise it would oversee that all parts of Canada would have fair and equitable consideration with respect to transportation. I think it has been pretty evident in recent years how far short the federal government has fallen in its obligation to Canadians. I think [that is] one of the many reasons it is essential to have an agreement on an amending formula before patriation, before there is the opportunity for a unilateral decision with respect to any rights or privileges being taken away from any Canadians.

The railway regulations and administration under the National Transportation Act have the function of defining and implementing a national transportation policy. In terms of railways this act sets standards and criteria regarding rate making — and I'd like to underline "rate making" — railway rationalization, the rights of the railway to increase, reduce, or abandon existing railway services, and subsidization for uneconomic passenger services and branch lines which they are required to operate in the public interest in exchange for the vast tracts of land and resources given them in trust.

I have had a considerable amount of research done with respect to the inequities of transportation rates. I'll not go into too many of them, but I would like to cite a couple which I believe are very relevant. I'd like to quote the kinds of rates that apply basically with respect to commodities. Research has provided me with the information [on] a shipment of rapeseed meal from Lethbridge to Toronto — and they now give the rate from Toronto to Lethbridge; the mileage is the same, 1,989. The minimum weight applicable is 50,000 pounds and beyond that 80,000 in bags — they give the bulk description. The rate per hundred pounds from Lethbridge to Toronto, 83.5 cents; the ton-mile rate, .84 cents. Rapeseed meal from Edmonton to Toronto — mileage 2,001, a difference of 12 miles — same weight, same criteria: rate per hundred pounds, \$1.655; ton-mile rate, 1.654 cents. Carload rates on margarine, Mr. Speaker, again Lethbridge to Toronto, Lethbridge to Montreal; Toronto to Lethbridge, Montreal to Lethbridge. Lethbridge to Toronto mileage, again 1,889; rate per hundred pounds, \$6.69; ton-mile rate in cents, 6.727; the type of rate applicable, commodity rate. Lethbridge to Montreal 2,172 miles; the rate, again \$6.69; ton-mile rate is 6.160 cents; again the type of rate applicable is commodity rate.

Now let's take it the other way about. Toronto to

Lethbridge, mileage 1,889; rate per hundred pounds, \$4.50. The previous one was \$6.69 going the other way; ton-mile 4.525 cents; rate applicable, agreed charge, not commodity. Montreal to Lethbridge, mileage 2,172, the same as the other way. Rate per hundred pounds; \$4.50; ton-mile, there is a little difference here, 4.144 cents; type of rate applicable, not commodity, agreed rate.

Mr. Speaker, I have three pages of these, I don't think I'll go into them. I referred specifically to Section 92(10), because it deals with transportation. It seems to me that somewhere along the way the Canadian Transport Commission in reviewing the inequities has been so busy studying the problems of the CPR and CNR that it forgot to look at the problems Canadian people have.

It's true that the patriation of the Constitution was not a priority here in Alberta, nor is it today. But, Mr. Speaker, the Prime Minister of Canada made it a priority. We can only speculate why. It may not be very long before there is another federal election. He may have wanted to do that while he was still in office. He may have wanted to change the face of our great Canadian government or the structure of our provinces.

Perhaps he doesn't feel he has enough power in Ottawa and can't effectively change that power without a lot of debate from concerned Canadians across this vast country as to what is happening to them. The only way he could do it, perhaps, was unilaterally, quietly, by the administrative arm and only bring the aftermath into the House of Commons and the Senate and say, we've done this, now you should okay it.

Mr. Speaker, what is a priority today in this Legislature and ought to be in every legislature across this vast land is: what is happening with our rights, with our equality, with our equities, with our inequities? What security have we as to what we can do and how we may plan our destiny for the future? What position are we in today to carry forward a kind of country, a kind of Canada that our grandchildren and great-grandchildren will be able to say: our forefathers built a great land for us; we must carry forward with it, we must do it in peace, we must do it with common sense, we must do it with good government. What is the value of our lives? What is the value of our struggle to determine a destiny for each of us? What is the value in our considering that we are all brothers and sisters within this vast domain, that we have real concern for each other, and that we will not take the position, because we have the opportunity or have won the right to be able to usurp or use a greater power over the other, that we will use that to the detriment of our neighbour?

Since the time Alberta and all the other provinces joined Confederation, particularly in regions where there are vast disparities, I think it has been recognized that a great deal of power has been centralized in Ontario, by the majority of its population and by the federal government in allowing inequities to exist contrary, and I say contrary, to the British North America Act. Mr. Speaker, we can say all we like about turning the points around, about bringing up questions of national interest. I think the demonstration to date has been such that there leaves much to be desired as to whether the policies of our national government have truly been equitable for all

Canadians.

I think it is time to establish that if the provinces maintain some basic rights in the structure as we first saw them, being strong and developing healthy, can maintain a levelling off and perhaps force the central government to put into place such national policies as would bring about equity and remove disparities from across this country. For once let us all be Canadians on an equal footing.

Thank you Mr. Speaker.

DR. PAPROSKI: Mr. Speaker, to speak on this motion dealing with the BNA Act is to speak regarding the central pillars of Confederation. From the outset I want to indicate support of this motion as amended.

In this Legislative Assembly we all know and realize that this discussion and debate is dealing with Confederation, with those pillars of Canada, the BNA Act, and dealing with Alberta, its relationship with other provinces in Canada and the rules governing the provinces, the federal government, and that relationship.

Mr. Speaker, when I became an MLA in 1971 and in my second term in 1975, I never thought the hallmark of our Confederation, the BNA Act, would come up for debate in the Alberta Legislature. But it has, and I for one, as many other members — and I'm sure all members if they had the time — would participate and share their responsibility and their voice for their constituents on this very important item, hopefully in a very clear and precise way. Although there is repetition, Mr. Speaker, I feel this is needed to underline the importance of this particular motion and the issue at hand here today in the Legislative Assembly of Alberta, because I think it reflects on all of Canada and not only on Albertans.

Mr. Speaker, I'd like to review very briefly some of the history and historical aspects that lead up to this and that may have some bearing in clarifying the situation — not to be unnecessarily repetitive.

Mr. Speaker, the present Constitution of Canada, in what is a classic short definition of the word "constitution", can be stated as follows:

... the document in which are set out the rules governing the composition, powers and methods of operation of the main institutions of government, and the general principles applicable to their relations to the citizens.

Mr. Speaker, the Dominion of Canada must be described as currently having both a written and an unwritten constitution, as has previously been stated by one of the speakers. I wish to make some comments regarding that. I think it's very important. Mr. Speaker, the written constitution, as has been indicated by the hon. Premier, under the Fulton-Favreau formula, An Act to provide for the amendment in Canada of the Constitution of Canada, proposed in 1964 that the written constitution of Canada should include the following: the British North America Acts, 1867 to 1964, passed under British parliamentary statutes; The Manitoba Act, 1870, under Canadian parliamentary statutes; The Parliament of Canada Act, 1875, under British Parliament; the Canadian Speaker (Appointment of Deputy) Act, 1895, Session 2; The Alberta Act; The Saskatchewan Act; and The Statute of Westminster, 1931.

Mr. Speaker, these are all statutes of the British Parliament or the Canadian Parliament, but it appears



very clear that these items constitute the most important part of the present written constitution of Canada, not the British North America Act alone.

In addition to the Canadian and British enactments already referred to, there are some 130 British statutes which apply to Canada. Many of them are of course not constitutional in nature, and many are outdated and of no importance; for example, The Slave Trade Act.

Mr. Speaker, going on to the unwritten constitution. As has been stated before in this House, the unwritten constitution is every bit as important as the written portion. It should be underlined that much of the British North America Act is transformed and made almost unrecognizable by the operation of the unwritten portion of this act, which in all these instances consists of the established customs and usages. Mr. Speaker, this is of great importance.

Mr. Speaker, the present constitutional situation is extremely complicated throughout because neither Parliament nor the provincial legislatures respectively have attempted to codify the contents of their vast unwritten constitutions which antedate Confederation. Mr. Speaker, because of time limitation, I'll have to skim over some of this but I think it's very important to highlight those items.

The central point I make here, Mr. Speaker, is this, and the argument can be made: unless we are very careful in drafting a new constitution, a new formula if you wish, this nation could find itself in the first dawn of a new written constitution which indeed could have many, many surprises, and we could forget some of the unwritten rules we set down. Mr. Speaker, I suggest a mature nation, and I repeat, a mature nation such as Canada, should not have and should avoid any constitutional surprises.

So, Mr. Speaker, some background current issues have been clearly and precisely stated by the Premier. I suggest those should be reviewed from time to time by hon. members when they need refreshing in this area. I would like to quote a speech to the federal Liberals by Prime Minister Trudeau on March 5. He was reported by the Canadian Press — *Edmonton Journal*, March 10 — to have threatened to act unilaterally to bring the Constitution to Canada if the federal and provincial governments cannot agree on a procedure to do this. Mr. Speaker, a threat by the Prime Minister of Canada in this day of maturity in our nation.

I ask the question, and I know the Prime Minister will be reading these remarks and all the remarks made here today: does he actually fear a strong provincial government with a strong federal government, or does he prefer a strong federal government and weak provincial governments across the country? Mr. Speaker, I think he should calmly review his position. According to the same news story, Mr. Trudeau also stated that he will first seek both the agreement of the provinces and the opinion of the Commons and the Senate whether the Constitution should be patriated.

Mr. Speaker, the issue is not patriation. I suggest the majority of citizens of Canada and Alberta would like patriation. I feel very confident of that statement. But the question and issue here, not to be blurred by anything else, is: under what rules is that patriation going to take place? Mr. Speaker, the Premier today and previously, on March 11, placed the issue square-

ly. I quote him from a March 11 report of the *Edmonton Journal*:

It's our view that Canada is a confederation formed by founding provinces. In many ways, it's a fragile enough confederation, with regional disparities and a need to assure that provincial jurisdiction is adequately realized and protected.

Mr. Speaker, on October 20 we had the letters and the response from the Prime Minister tabled. Today the issue is at the forefront. It involves all provinces, all of Canada, all Canadians, and the federal government.

Mr. Speaker, and members of the Assembly, Canada has survived from 1867 to 1976 under the present rules. There was no urgency. Mr. Speaker, I suggest that the urgency is the economy of the country. But for some reason known only to him, the present Prime Minister has created and politicized an issue around the central pillars of Canada and for some reason has created an urgency. It's sad. Only recently, Mr. Speaker, one of his arch cabinet ministers who has now resigned, Mr. Turner, stated publicly that Canadians are losing faith in their country. I suggest it is because of this type of glib action and totally unnecessary threats by our present Prime Minister — maybe not meaning exactly that, but it comes out that way — glib comments on the new economy and so on have resulted in this loss of faith in Canada.

For some reason, Mr. Speaker, he has created this false urgency to patriate the Constitution when we know other matters are of greater importance: the economy, jobs, the cost of living. As the hon. Premier has indicated, we must and should be paying attention to that area. However, the Prime Minister has brought it as an urgent matter for consideration, and we must deal with it. Mr. Speaker, I hope the Prime Minister realizes and takes heed and, as I indicated before, calmly reviews the matter. I hope he will seek unanimous agreement, and only unanimous agreement, before he patriates the Constitution.

Mr. Speaker, all provinces have grown to this stage with those rights, although from time to time the existing rights have possibly been improperly applied. But we have grown up with other provinces. Mr. Speaker, I suggest that to change them without unanimous agreement is not only irresponsible but is forfeiting our history which has made Canada strong. Mr. Speaker, I hope that not only Albertans but all Canadians will stand firm to protect those rights for their provinces. For if they do not, they had better carefully consider what surprises may come.

Mr. Speaker, to continue to deal with the amending clauses, may I suggest the first problem here is that no one has any certain knowledge why an amending clause was omitted from the BNA Act. The second problem, Mr. Speaker, is in the area that arises from the fact that there is even dispute about what constitutes an amendment to the BNA Act. But in any event the important point is that some 15 undisputed important amendments have been made, and they've been alluded to today and commented on. Of course I would like again to reinforce the return to the admitted provinces in 1930 of natural resources earlier reserved. In 1949, Mr. Speaker, authority to

the Dominion Parliament, subject to some exceptions, to amend the Constitution of Canada.

Mr. Speaker, I would like to quote Chief Justice Laskin — whom we all know of course — *Constitutional Law*. Second Edition, 1960, pages 30 and 31 — that since the 1949 amendment mentioned above, the Parliament of Canada can amend by statute the Constitution of Canada, except for the vital matters of the distribution of legislative power and a number of other matters.

Mr. Speaker, the important point is that currently when the Dominion Parliament wishes to amend the BNA Act with respect to provincial legislative powers, there is a constitutional convention requiring the Dominion to consult with and obtain unanimous consent of the provinces before requesting such amendments from the British Parliament. Mr. Speaker, I underline "unanimous".

Mr. Speaker, I won't quote completely as to the constitutional effect of this convention as it arises in a speech of the late Louis St. Laurent to the House of Commons when Minister of Justice. I'd like to paraphrase one portion: he held that the federal house has no right to deal with matters allocated to provincial legislatures; that if any change is proposed which would affect a legislature, consent of the provincial governments would have to be obtained before an amendment to the BNA Act could be secured. Mr. Speaker, there is ample evidence in this area.

So, Mr. Speaker, this Legislature and all legislatures and the federal government have the basis to work on, have the history to work on, and have many comments from many authorities. Mr. Speaker, I have a few more but I haven't the time to speak on it because of the time limitation. The Alberta government point is clear. I hope, Mr. Speaker, the reason, law, and custom, the convention, the covenant, will prevail for the benefit of all. Mr. Speaker, no student of Canadian political institutions ever suggested that a new amending process might properly be secured without the unanimous agreement of the federal and provincial governments.

So, Mr. Speaker, this type of evidence, whether unwritten law or convention, is at once very compelling reason to support this motion as amended. The second compelling reason is obvious, Mr. Speaker. Each province should be treated as equal in the partnership of Confederation. Surely, Mr. Speaker, no Canadian in this country should feel that he or she could take away the established rights — written, unwritten, or conventional — of another citizen of another province anywhere in Canada. Mr. Speaker, such rights are the essence of Canada. They're the essence of Canadianism; what we believe in and what we have fought for.

It has been stated that a constitution ought to be both an inspiration and a mirror of its community. Taken in a broader sense, a constitution does not have to be all written. It does not have to be all unwritten. But the BNA Act is both, and it's a model for other countries. What is essential is that the people understand, accept, and even love their government. And I know, Mr. Speaker, that the Prime Minister with his lovely wife understands that word as do we all.

Concluding, Mr. Speaker, I make three pleas to this Legislature, to all the legislatures in Canada, to the

federal government and, as a result, to all citizens. The plea to this Legislature is to accept unanimously this motion as amended. Let us not confuse the issue: the contention that each province and the federal government ought to continue to be equal partners in Confederation, which is in keeping with the spirit of the founding fathers of the country. The existing rights, proprietary interests, or jurisdictions [are] not to be taken away from any province without the specific concurrence of that province. This applies, Mr. Speaker, and it bears underlining, to all other provinces which again is in keeping with the spirit of the founding fathers of this country. Patriation of the BNA Act is not the issue. We all agree with patriation. But if it is to occur, the existing rights will be maintained and secured with unanimous consent for the amending formula.

The second plea, Mr. Speaker, is to all legislatures to review their position and hopefully to agree with this motion as we have today, in order that their rights for their citizens also be secured and protected. I wonder how many provincial governments would go to their electorates to seek a mandate on any basis other than equal rights for their citizens, for their province. Would they win, Mr. Speaker? I think not.

Would Saskatchewan feel upset, Mr. Speaker, if another province decided to remove their jurisdiction for their resources? Would British Columbia feel upset if another province decided that education shall not be under their purview? Would the Ontario government be upset if their rights over hydro-electric power or health were removed? Would Quebec be upset if their rights were removed — and they have a lot of rights. Would Newfoundland or Nova Scotia feel upset if their offshore mineral rights were not granted to them? Could any province say to its electorate, Mr. Speaker, that British Columbia, Ontario, or Quebec is more important and deserving than this province or that province? I think not. Could they say, we want a new constitution — to quote *The Halifax Herald* editorial, August 23, 1976 — that makes seven of 10 provinces and the Yukon and Northwest territories second-class citizens in Confederation or any variation of that. Mr. Speaker, I think not. I hope not, Mr. Speaker, because I suggest the electorate would wipe that government out, as they should.

Alberta's position is clear: equality is the principal issue, minimally the existing rights. To be clearer, Mr. Speaker, a formula for other parts of the Constitution is not the issue. It's the Constitution dealing with provincial rights, namely Sections 92, 93, and 109. Mr. Speaker, a Victoria type of formula or variation probably and possibly would be accepted with the other other parts, but not with Sections 92, 93, and 109. Yes, Alberta does want to protect its rights. It does want to protect its resources, and why not? But as the Premier has indicated this afternoon, Mr. Speaker, it goes beyond those rights, beyond the rights of just the resources. It deals with education, health, and so on, as has been indicated. It's also protecting the rights of other provinces.

Mr. Speaker, the final plea is to the federal government. Mr. Speaker, I suggest they review their position again in the light of the statements made here today and in the past, and the comments from authorities regarding provincial rights. For the federal government as an equal partner has a very,

very unique responsibility to reflect on the wishes of all provinces and all people of Canada, not above or apart from each other but equally as, I suggest, Alberta is doing today.

Mr. Speaker, Alberta as much as any province wants stability, wants to express its individuality, wants to maintain its initiative, and does not want to feel dependent on other parts of Canada. Yet, Mr. Speaker, in a paramount way it wants to contribute to, add to, and augment this nation, our country we dearly love, Canada.

Thank you.

MR. LITTLE: Mr. Speaker, I'm very proud this evening to be able to participate in the debate to this motion which deals with a matter which has far-reaching implications not only for all Albertans but for all Canadians. The matter of reviewing and restructuring Canadian federalism certainly merits our fullest attention. This is what is really at issue. Mr. Speaker, my remarks today are directed towards examining the urgency of the issue and emphasizing the necessary equality of all provinces within the Canadian federal system. Therefore, Mr. Speaker, I would like to take a few minutes to make some observations regarding the British North America Act, the subject of today's debate.

This Act is actually the codified portion of our Constitution. Its purpose was and is to create separate areas of jurisdiction so that both the provincial and the federal levels of government would have sovereignty over their concerns. The BNA Act has enabled the application of established political practices to Canadian politics. A recent editorial from The Halifax Herald emphasizes that the BNA Act was left in Britain as a trust in order to ensure the protection of each member of the Confederation of Canada against any grouping of signatories which would reduce that member's status. The editorial poses this question: are we all mature enough to avoid that kind of thing happening today? It then proceeds to list several issues which tend to imply we are not.

The most recent initiative for patriation of the BNA Act has come from the federal government. This is a point we should not forget. There are, however, some reasons for desiring patriation. It has become a source of humiliation for some to have our principal constitutional document residing in a foreign land. There is a need to bring in line with the needs of contemporary politics jurisdictions set out in the BNA Act. Perhaps this does require a constitution more accessible to Canadians. However, the BNA Act has been accessible while in Britain. It has proved possible to amend it. Indeed some constitutional experts hold that it is better to continue with the informal amending procedure associated with having the BNA Act in Britain. It prevents Canadians' deciding upon an amending procedure which is either too rigid or too flexible.

Mr. Speaker, this brings up the question of the need for and urgency of the patriation of the codified portion of our Constitution. The principal argument for patriation appears to be an appeal to national pride. It is worth noting, however, that Canadians have never regarded their constitutional documents with much reverence. In his discussion of the 1968 constitutional conference, Donald Smiley, the noted Canadian writer on the Constitution, notes that the

federal government felt with a great deal of urgency that the new Constitution would be, as the existing one never had been, a symbolic focus of Canadian political allegiance. But Canadians already have a focus of political allegiance in the Crown, personified by the Queen, the Governor General, and the ten Lieutenant-Governors of this country.

There does not appear to be any great need for immediate patriation. Indeed the very importance of the matter indicates we should consider patriation, amending formulae, and a reworked constitution very soberly, very carefully, and without a great deal of concern. The dangers of rushing into this question can be seen by reflecting upon the number of nations in which constitutional change has been either too rapid or too slow.

Constitutional concerns, including the question of patriation, have been under discussion in this country since 1927. Some observers might say we have already talked far too long. These discussions, however, have frequently been interrupted. Times have changed. Governments have changed. We in Alberta have changed since the last serious talks in 1971. This government did not participate in the negotiations leading up to the 1971 conference. Yet, Mr. Speaker, in a newspaper I read the question: why has the Alberta position changed in this late stage in the negotiations?

For one thing, our government's position has not changed. For another, the term "late stage" indicates just what I have been lamenting: this false sense of urgency which seems to accompany this whole debate. The Prime Minister decided near the beginning of this year that the Constitution should be fully Canadian. I agree. But why does he feel the need to impose deadlines on this discussion? Why does he seek to restrain the areas of discussion to topics convenient for a quick decision? Mr. Speaker, the subject is of such importance that the debate should neither be dictated nor circumscribed by political consideration. The matter must be discussed according to the nature of the Canadian situation and the principles underlying our particular federal system. Discrepancies of opinion must be settled by reasonable discussion and argument, and this will require a considerable amount of time.

Two formulae for amending the Constitution deserve consideration: the Fulton-Favreau formula of the 1960s and the Turner-Trudeau [formula] of 1971, better known as the Victoria formula. Fulton-Favreau provided for different procedures of amendment depending upon the way the subject for amendment fitted into federal/provincial relations. The significant procedure involved unanimous provincial consent and the consent of the federal government for matters involving provincial rights, powers, and jurisdiction.

This is to be contrasted with the Victoria formula which allowed amendment, even in matters of vital concern to all provinces, to be decided on by a majority of provinces, provided that Quebec and Ontario and at least two of the four Atlantic provinces and two of the four western provinces having over 50 per cent of the western population are included in that majority.

The first formula, unanimity, would appear to me to conform to the fundamental principles of Canadian federalism. The latter formula sacrifices certain

ideals in order to achieve flexibility in amending the Constitution. Unfortunately current discussions have been based on the Victoria amending procedure. Principles appear to have been sacrificed in the name of flexibility or compromise.

A federal system of government is founded upon means of representation based upon considerations other than population. Geography as well as population is represented in our federal government. The Senate, which was intended to provide political input representing the provinces, has proven totally ineffective for that purpose.

The only remaining means for protecting the rights of the different and distinct areas for expressing provincial interests is through strong representations made by provincial governments in federal/provincial meetings. To abandon this role would be irresponsible.

How can some provinces within Canada be asked to take a secondary status behind other provinces? How can some provinces even tolerate this type of request? The BNA Act sets up differing jurisdictions for the federal and the provincial governments in order to establish the supremacy of the legislatures in each jurisdiction. This means that each province is sovereign with respect to the matters allocated to it by the BNA Act. Within its borders this sovereignty is characterized and demonstrated by the ability of each province to amend its own constitution. This power is established by Section 92(1) of the BNA Act.

What effect would alienating control over the amending provincial jurisdictions have upon the sovereignty of our provinces? This question could no doubt be more properly answered by constitutional experts. It is my understanding that such an alienation of power would make a mockery of provincial sovereignty. The same argument now made in favor of patriation of the BNA Act would be relevant in the case of a province whose jurisdiction could be diminished and infringed upon without explicit concurrence. Indeed it would have greater relevance since the real decision-making power is alienated.

Ontario, Quebec, and later British Columbia have all made cases for their having pre-eminent status in Canada. They base their cases on their populations. What they now seem to forget is that they are already represented on a popular basis in our federal Parliament. It is inconceivable that Ottawa would take a step against the interests of either Ontario or Quebec.

Ontario and Quebec are well represented in the House of Commons. I do not think they need any veto power in federal/provincial conferences. I believe all provinces deserve equal rights in such conferences. When amendments are proposed which affect the jurisdictions, the rights, or the proprietary interests of provinces, all provinces should agree in order for that amendment to be made. Is this necessarily an unwieldy proposition?

Let us look briefly, for example, at the United States. It is true that our southern neighbor does not require unanimous agreement from its states. It is also true that the states have much greater representation in their federal government than do the provinces in Canada. Moreover, in a country with approximately ten times the population, there are five times

as many states as there are provinces. As it is, the U.S. federal government must seek agreement from 38 other governments before decisions are made. In light of this situation, can we consider obtaining agreement of 11 governments to be an insurmountable obstacle to amendment? I can't see it as such.

Mr. Speaker, I intended to be brief in order to let others participate in this serious and extremely important debate. I would, however, like to look at the implications of accepting the Victoria formula. It would create two standards of provinces within Confederation. All would be equal, but some would be more equal than others. The very acceptance of such an amending formula would tend to restructure Confederation. Combinations of provinces, so long as they included Ontario, Quebec, and/or British Columbia, could exploit the other provinces. The unanimity principle is the only defence against such potential threats.

In conclusion, Mr. Speaker, I would question the urgency with which the objective of patriation is now being pursued. Let us not be hysterically stampeded. I would also question the desirability of patriation before agreement on amending procedure have been reached. Senator Eugene Forsey has said that such a step would put the country in a total strait jacket. It would be absolutely pointless to do so. I would like to reiterate that equality is a necessary condition for the provinces within Canada. To accept anything else would be to accept secondary status in Canada. Colonialism within Canada is totally unacceptable. Therefore, Mr. Speaker, I have pleasure in offering full support to this motion.

MR. RUSSELL: Mr. Speaker, I beg leave to adjourn debate.

MR. SPEAKER: May the hon. minister adjourn the debate?

HON. MEMBERS: Agreed.

MR. HYNDMAN: Mr. Speaker, this motion will probably be called again on Wednesday. Members of the opposition have indicated they would agree to proceeding with government business all tomorrow afternoon, and members of the government caucus have given notice of motion as designated government business. Tomorrow afternoon we will proceed with the bills at second reading and committee stage on the Order Paper. The Assembly will not be sitting tomorrow evening.

I move the Assembly do now adjourn until tomorrow afternoon at 2:30 o'clock.

MR. SPEAKER: Having heard the motion by the hon. Government House Leader, do you all agree?

HON. MEMBERS: Agreed.

MR. SPEAKER: The Assembly stands adjourned until tomorrow afternoon at half past 2.

[The House rose at 10:25 p.m.]