Time — 10:00 a.m.

CHAIRMAN — Mr. Warren Steen (Crescentwood):

MR. CHAIRMAN: Committee come to order. We have a quorum and I will start the meeting off by asking Mr. Mercier if he . . .

HON. GERALD W.J. MERCIER (Osborne): Mr. Chairman, we had attempted to work on a draft report for consideration by the Committee, and I'll give copies to the Clerk, it's not that long and I think it would be appropriate if I read it into the record and then made a few brief comments.

MR. CHAIRMAN: Would you just wait half a minute, Mr. Mercier, and then members can get a copy in front of them. Mr. Schroeder, I noticed you had your hand up. Did you want to speak prior to Mr. Mercier going into the report?.

MR. VIC SCHROEDER: No, I'm quite happy with this.

MR. CHAIRMAN: Just getting your name on the list, are you?

MR. MERCIER: Mr. Chairman, the draft report reads as follows.

PREAMBLE

By Resolution of the Legislature, the Committee on Statutory Orders and Regulations was authorized to consult the people of Manitoba with respect to proposals for constitutional reform and report back to the Legislature.

Pursuant to this mandate, the Committee met on November 17 and 18 in Winnipeg; November 24 in Brandon; November 26 in Swan River; December 1 in Thompson; December 8 and 9 in Winnipeg, all in 1980; and January 19, 26 and 27, 1981 in Winnipeg.

In all, the Committee heard submissions from 70 delegations, names of which are attached.

The Committee placed no restrictions on the length of presentations and did not require that presentations be submitted beforehand in writing. The Committee has now completed its task and has consulted with all those Manitobans who expressed a desire to be heard.

The Committee's meetings have all been recorded by Hansard and the full texts of all submissions are available through the Queen's Printer.

SYNOPSIS OF OPINIONS EXPRESSED BY MANITOBANS

While it is impossible to digest completely 10 days of testimony, the submissions from delegations concentrated primarily on the resolution which was currently before the Joint Committee of the Senate and House of Commons and which was unveiled by the Prime Minister on October 2, 1980. In the main, delegations dealt with the propriety of unilateral federal action, the acceptability of the proposed amendment formula, both the concept of an entrenched Charter of Rights and its contents and entrenchment of language rights in the Constitution.

The Committee reports that the overwhelming majority of delegations expressed opposition to the federal government acting unilaterally to patriate and amend the Constitution. Patriation was viewed as a symbolic act which should be the culmination of the traditional Canadian process of compromise and consensus and should, therefore, come as the result of federal-provincial agreement.

Many delegations expressed the view that the Constitution should be patriated immediately but that there should be no unilateral amendments to the Constitution. A minority of delegations supported the view that unilateral federal action was the only way to break the constitutional impasse.

No single issue received as much attention as the proposed Charter of Rights. Opinion with respect to the Charter was about equally divided between supporters of a Charter and opponents. In both camps, there were divisions with respect to the entrenchment of specific rights with supporters of entrenchment often calling for an expanded Charter of Rights. On the other hand, opponents of the Charter often conceded that specific rights, particularly the democratic rights such as the requirement for elections at least every five years and the seating of Parliament in the Legislatures at least once a year, should be entrenched.

The opinions expressed on the Charter of Rights shortly delineated the policy arguments for entrenchment as well as the arguments for continued parliamentary supremacy.

In general, proponents of the charter stressed the possibility of ''the tyranny of the majority'' as expressed by the elected Legislature being used to suppress the rights of minorities. Frequently, the case of the treatment of Japanese Canadians during the Second World War and the current treatment of Sandra Lovelace and other status Indian women who have married non-status Indians, were cited as examples of oppression of a minority.

Proponents of parliamentary supremacy pointed out many examples from other nations which have entrenched charters, particularly the United States with its constitutional Bill of Rights, where similar or worse violations of human rights had taken place. Proponents of parliamentary supremacy argued that where legislation was seen to be unjust it could and should be easily amended by the appropriate legislative body without the necessity of fundamentally altering the system of government which had operated successfully in Canada since Confederation.

Proponents of a Charter of Rights stressed the independence of the judiciary as a guarantee that the claims of a minority or an individual that its or his rights were being violated by the Legislature, would be considered free of political considerations thereby producing a more just result.

To proponents of parliamentary supremacy, the very fact that judges are appointed for life from a

specific profession is an argument against entrenchment. Legislation ordinarily involves a balancing of an individual's rights against the requirements of society as a whole. This balancing can best be done by legislators who are drawn from a wide cross section of the citizenry and who are directly accountable to the people in elections. The judiciary should not be entrusted with a power to review legislation on policy grounds as it could lead to decisions such as the American school prayer and obscenity decisions which have flown in the face of the wishes of the American people.

Many of the proponents of an entrenched Charter of Rights called for entrenchment of more rights than were in the proposed federal charter. There were calls for entrenchment of rights of the unborn by anti-abortionists and there was one delegation which called for entrenchment of a woman's right to control her own fertility, apparently a way of entrenching abortion on demand. There were contrary opinions expressed by proponents of the Charter with respect to provisions in the Charter for affirmative action programs and there were calls for inclusion of broad economic rights including such rights as the right to a job and the right to adequate housing. Others called for entrenchment in the Constitution of private property rights.

Supporters of parliamentary supremacy viewed these wide-ranging calls for inclusions of rights in the Charter as proof that entrenchment of some rights would be percieved as downgrading other rights. Moreover, entrenchment would be viewed as a panacea by all groups or individuals who felt for whatever reason they could not obtain their way through the regular legislative process. Supporters of parliamentary supremacy stressed that resolution of such sensitive social issues as abortion, capital punishment and affirmative action should be left with the elected representatives of the people.

With respect to language rights a majority was in favour of entrenching language rights at the federal level although there was opposition expressed to the entrenchment of bilingualism in the Manitoba Legislature in a revised Constitution. There were some delegations that called for a one language (English) Canada without specifying how the Province of Quebec could be made to accept such a resolution of the language question.

Entrenchment of minority language education rights produced a sharp division of opinion. The philosophical arguments presented by both sides were, in a sense, a mirror of the arguments on the Charter of Rights as a whole although many delegations conceded that the matter of language rights was a more restricted and specific concept than entrenchment of broad rights such as freedom of expression and would, therefore, be less open to interpretation by the Courts.

The Committee also heard representations on several other topics. A majority of those delegations which expressed their opinion on the subject was strongly opposed to the amendment formula proposed by the Federal Government in its resolution primarily on the grounds that it gave vetoes to Ontario and Quebec but not to the other provinces. The use of a referendum to appeal directly to the people of the provinces over the heads of their provincial governments was also strongly opposed.

Several delegations expressed frustration at the pace of constitutional negotiations and urged that the matter be concluded as soon as possible in order that the country could begin to deal with pressing economic problems. A small number of delegations were convinced that Western Canada could never obtain "a fair deal" in Confederation and should, therefore, separate. A far larger number of delegations expressed their love for Canada and their determination to oppose separatism of any kind.

The Committee, therefore, recommends that:

1. The Manitoba Legislative Assembly confirm its commitment to a united Canada; to Canada's federal, parliamentary and monarchial system of government; and to our traditional constitutional methods of maintaining and enhancing the basic rights of all our citizens.
2. The Federal Government abandon its attempt to amend the Constitution unilaterally.
3. The Federal and Provincial governments immediately resume negotiations to reach agreement on an amending formula for the Constitution in order that the Constitution shall be patriated with an amending formula at the earliest possible date.
4. All further proposals for amendment of the Constitution be set aside until the Constitution has been patriated with an agreed amending formula.

Mr. Chairman, the text, of course is being distributed to all members of the Committee and perhaps I could briefly attempt to explain to the Committee the considerations which went into the preparation of the draft report, and the reasons why I believe the Committee should accept it as a fair and balanced summary of the hearings.

In considering this report we should bear in mind that the instructions given to the Committee by the Legislature were very wide. First the Legislature considered it desirable and in the public interest to obtain the opinions of the people of Manitoba on proposals for constitutional reform and accordingly the Committee was empowered to enquire into matters relating to proposals for amendment of the Constitution and to report to the next session of the Legislature.

These were extremely broad terms of reference and the Committee heard 70 delegations, whose testimony has been recorded in 405 pages of Hansard. Moreover, 10 written briefs are reproduced in a further 15 pages of Hansard.

It seems to me obvious that the Committee can either produce a voluminous report, which seeks to advise the Legislature of every individual shade of opinion which was expressed; or the Committee can choose to concentrate only on the highlights and the most widespread concerns which were expressed.

For example, there was one delegation which argued that education should be a federal responsibility. I do not believe a useful purpose would be served by including in our report, a reference to a single recommendation of that nature, particularly when the current situation of unilateral federal action makes consideration of such a proposal premature, to say the least.

In a sense the writing of the report has been simplified by the fact that the Committee began its hearings after the Prime Minister had decided to act

unilaterally to seek his version of constitutional reform.

I believe all members will agree that the contents of the unilateral federal package dominated the submissions by the public to this Committee and consequently the report should concentrate on summarizing the arguments which were presented on the contents of that package.

Accordingly, the report which I propose the Committee adopt, discusses issues of the propriety of unilateral federal action; the proposed Federal Charter of Rights; language rights and the proposed amending formula.

In considering the form of our report to the Legislature, I believe the Committee must face the threshold problem, whether its terms of reference are such as to require the Committee to do anything more than to present a digest of the presentations for consideration by the Legislature. The Committee will recall that it is to report to the Legislature. I would submit that the Committee would be taking too restrictive a view of its responsibilities were it not to attempt to formulate some conclusions for the guidance of the Legislature. Obviously if we are to come to some conclusions and make recommendations we shall have to consider in our own minds what weight we should give to the various presentations. As you know we received representations from many delegations which had never come forward before, to express their view on constitutional matters and which had not participated in any formal sense in any political activity. We received submissions from groups as diverse as the Chamber of Commerce and the Communist Party. Despite the difficulties, I believe we can come to some conclusions as to the thrust of the opinions which were expressed to us on the various matters.

With those brief words of introduction, Mr. Chairman, I would suggest that the preamble speaks for itself and should provide no difficulties as it merely recapitulates the history and procedure of the committee's hearings; the body of the report is the synopsis of opinions expressed by Manitobans; the synopsis deals in turn with unilateral federal action; the concept of the entrenchment of a Charter of Rights; by far the largest section of the report, entrenchment of minority language education rights and the question of the amending formula.

Many delegations, of course, did not deal with all of these issues. In fact, some delegations did not discuss any of them. Nevertheless, by my computation, 61 of the 70 delegations dealt with one or the other of these questions. I believe it is fair to say that those delegations which commented specifically on the concept of unilateral action of the Federal Government — the overwhelming majority were opposed to it — and preferred that patriation be the result of federal/provincial agreement. The question of patriation is dealt with in two paragraphs. By contrast the next eight paragraphs are devoted to the arguments on both sides of the Charter of Rights.

It is true that more delegations endorsed the concept of the Charter of Rights than opposed it — by my count, some 32 to 22 — but it is also true that there was a great deal of dissension among the supporters of a Charter of Rights as to the exact contents of a Charter. Only eight, by my computation, gave unqualified support and endorsement to the Prime Minister's proposed Charter of Rights.

The argument over the Charter of Rights can easily occupy a full day, as it did at the First Ministers' Conference last September, and it will probably be argued at some length within the House during debate, on the Government Resolution on the Constitution. I suspect that any attempt to elaborate on the short statements of the main arguments for and against a Charter of Rights, would merely increase the length of the report without further clarifying the policy issues involved.

Frankly, Mr. Chairman, I do not know whether a useful purpose would be served by the Committee engaging in the debate on the Charter of Rights. We would be attempting to place our own interpretation on the briefs which were received minding them for useful quotations and extra arguments to be placed in the report to strengthen our position.

The members of the Committee will undoubtedly recall that there was quite a variety of opinions expressed on the different aspects of the language issue. I believe the report as drafted, is fair in reporting that there was a majority in favour of entrenching language rights at the federal level, but that there was a far sharper division of opinion with respect to minority language education rights. Mr. Chairman, the arguments for and against entrenchment of minority language education rights are, I would suggest, the arguments for and against entrenchment of any rights. For that reason the report does not seek to elaborate on the reasons for and against entrenchment of these rights.

The final item in the federal package, which was widely commented on by the delegations, was the amendment formula and the referendum procedure. These are, in fact, separate issues as it could be possible to accept the Victoria Formula, while rejecting the referendum feature; or to favour a different amending formula than put forward by the Federal Government while wishing to retain the referendum feature. Nevertheless, the delegations which expressed opinions on the amending formula were overwhelmingly opposed to the federal procedure and the use of a referendum. They were not, however, united on favouring any alternate amending formula. I therefore believe that the report should merely register the objection of the delegations to the two aspects of the federal package.

Finally, in the body of the report I think it would only be fair that we make reference to the frustration felt by many delegations at the pace of constitutional negotiations and the overwhelming pro-Canada sentiments expressed. Mr. Chairman, the recommendations of the Committee, which form the conclusion of the report, are brief and to the point. Number one speaks for itself.

I've already stated that unilateral federal action was opposed. That is the second recommendation. However, I don't believe the people of Manitoba are prepared to accept the status quo. They wish to see the constitutional discussions resolved and for amendments to proceed in Canada. The opposition of the delegations to the federal amending formula and the lack of a consensus with respect to the appropriate amending formula, suggests to me that

we need further negotiations to reach agreement on the amending formula and patriation.

I would also suggest that it is a fair summary of the opinions presented to us, that the people of Manitoba wish to see patriation achieved as soon as possible, and the best way to do that is to restrict negotiations to that issue alone.

Mr. Chairman, I would recommend the draft report for consideration to this Committee.

MR. CHAIRMAN: Mr. Schroeder.

MR. SCHROEDER: Thank you, Mr. Chairman. We have an alternative draft report to present this morning, and I apologise to the Committee for not being able to provide copies. The short period of time between the time of notice of the meeting and this morning and the fact that our staffing is not such as to provide us with as prompt service as we might like sometimes, just has militated against that.

MR. CHAIRMAN: Mr. Schroeder, can I ask you? Is your report a typewritten report or a handwritten one?

MR. SCHROEDER: It is partially handwritten, partially typed and it's all over the place, Mr. Chairman, you wouldn't be able to follow it.

MR. CHAIRMAN: Is it your wish to read it into the record?

MR. SCHROEDER: Yes, Mr. Chairman.

MR. CHAIRMAN: Proceed then, please.

MR. SCHROEDER: Before I do, I'd like to just make several preliminary remarks, the first of which is, that we on this side would like to congratulate the Chairman for the non-partisan and co-operative manner in which this Committee has been chaired throughout. It has been appreciated — (Interjection)— up to now.

Secondly, and as a preliminary comment I would like to say that after the public portion of the hearings ended, the NDP Caucus took the opportunity to review the testimony and the proposed report which I will be presenting, has the general support of our members of the Committee, our leader and the caucus. Some members, however, do disagree with certain portions of our position. We view our Constitution as being an issue which ought to be above partisan politics and we expect and welcome full debate on all the issues.

The hearings have reinforced our historical position, that the future of Canada and Manitoba can best be assured in a Federation with a strong central government. We have a long history of being an economic have-not province and have benefited greatly from a variety of federal programs. It is our fervent wish that in future our economic fortunes will be such that we will be on the giving end of such assistance. We are pleased that the principle of sharing between the regions of this country is being enshrined — or at least is being proposed to be enshrined in our Constitution — and would like to commend our counterparts in Ottawa who have worked so diligently to improve this and other components of the constitutional package.

The most controversial areas discussed at the hearings were the amending formula and entrenchment of a Charter of Rights. There appeared to be a consensus that Canadians should do whatever is necessary to bring our Constitution home in order that any future amendments may be made without reference to the British Parliament. As the hearings progressed, it became obvious that such patriation cannot be achieved without, at the very least, attaching an amending formula to the Constitution. When the Constitution gets home to Canada there must be some means by which it can be amended without necessarily requiring the unanimous consent of all eleven governments within this country.

The Court of Appeal of the Province of Manitoba has recently ruled, in effect, that the current actions of the Federal Government in amending the Constitution of this country unilaterally, are within the powers of the Federal Government. The current state of the law appears to be that when the Canadian Parliament and Senate make a joint address to the British Parliament for the amendment of the Canadian Constitution, the British Parliament will make the necessary amendment based on its past compliance with such requests. It must be added that the British Parliament is not required to do so by any law other than custom and usage. Such custom and usage is not in any way legally binding upon the British Parliament.

It has been suggested that the Constitution be patriated together with an amending formula which would, until another amending formula was found which is satisfactory, give the Federal Government of Canada those powers of amendment which currently reside in the Parliament at Westminster. We firmly oppose such a proposal in that it might give the Federal Government the legal right to unilaterally change any and every article of the Constitution of Canada any time, in any way, in which it sees fit. We believe such federal powers are totally inconsistent with the existence of a federal state. We believe that Canada in its vastness, diversity, cultural mosaic and population patterns cannot exist as a unitary state, which it would be in effect be, if the Federal Government had such powers.

We also reject the other extreme, that of the Alberta formula, latterly known as the Vancouver Consensus. The amending formula proposed therein would allow any province to opt out of any constitutional provision it chose to opt out of. It is the Opt-Out-Of-Canada Proposal. Although we recognize the diversity and differences contained within our country, we do not share the view that we are merely a community of communities. We do not believe Canadian unity can be served by creating a patchwork Confederation in which peoples' rights can be startlingly different from region to region.

It appears as well that although the provinces reached an understanding in a very general sense on the Vancouver Consensus, when negotiations next resumed between the provinces it rapidly became clear that there was no consensus. For instance, if Alberta chose to opt out of some health, education or labour program which would be cost-shared between the provinces and Federal Government, would the Federal Government be required to pay funds to Alberta on an equivalent basis to that being paid to participating provinces?

Although we were not at the meetings, apparently it was the view of Alberta that it should so receive funds. It was clearly the view of a number of other provinces that opt-out provinces would not receive such alternative funding. In any event, we would oppose such a formula on the basis that it creates a patchwork Confederation and on the basis, at least at this time, that it is clearly unworkable. This leaves us with the Victoria Charter, which was agreed to by all the provinces in 1971, although shortly after the conference, Quebec changed its mind and opposed that formula. After examining the submissions of those who spoke on the topic of an amending formula, we have come to the conclusion that the amending formula as proposed in the current parliamentary resolution is one which, with appropriate amendments, deserves our support.

The Victoria formula gives a veto on constitutional change to each of the governments of Canada, the Government of Ontario and the Government of Quebec. In addition, any two Maritime governments together, have a veto. Finally, any two Western governments having between them more than 50 percent of the West's population, have a veto on constitutional change. We would suggest firstly, that the West's veto be similar to that of the Maritime provinces, allowing any two Western governments to have a veto. Secondly, we do not believe that it is fair to give Quebec and Ontario a permanent veto. We agree that at this time, based on their population and on the population in other provinces, they each deserve a right of veto. However, it may well be that 50 years from now, we may have three Western provinces with a population higher than that of either Ontario or Quebec. Accordingly, we would prefer to have the Constitution worded in such a way that a veto be given to any province containing, at the then latest census of Canada, more than 15 percent of the population of Canada. Finally, we oppose the proposal of a referendum for the Amendment of the Canadian Constitution.

Turning to the Senate, we find the new provisions in the federal package, giving the Senate the right to veto any changes with respect to the Senate, totally unacceptable. We say this, although we have not had the opportunity to hear the public, because of the fact that the Federal Government chose to make this amendment just recently near the conclusion of our hearings. Accordingly, the public did not have the opportunity to put its mind to that issue. Although the Federal Government takes great delight in referring to the many years during which the Constitution has been an issue, we point out that this particular amendment was first proposed in the year 1981 and to our knowledge has never been discussed previously. Throughout the history of the New Democratic Party and its predecessors we have stood for the abolition of the Senate and cannot now, in good conscience, support a proposal which would allow that group of privileged rich appointed drones to prevent a duly elected Parliament with the support of the appropriate number of provincial governments, from abolishing the Senate in its present form.

Most of the time of this Committee has been spent in considering the question of whether to entrench a Bill of Rights in our Constitution. A substantial majority of the people appearing before the Committee approve of such entrenchment. Further in general, those briefs supporting entrenchment emanated from groups as opposed to individuals, while most of the submissions opposed to the entrenchment of rights came from individual submissions. We heard many reasoned arguments both for and against entrenchment. Those arguing against entrenched rights argued that entrenchment will allow the courts to nullify proposed progressive legislation; that entrenchment is an abdication by Parliament to the courts; that allowing the courts to adjudicate as to whether laws otherwise within the jurisdiction of the Parliament may be unlawful because they infringe upon rights set out in a Charter, is contrary to our democratic form of government.

Although several briefs proposed specific changes to the Charter providing for either more or fewer entrenched rights, the Committee basically dealt with the very principle of whether or not any rights should be entrenched and this report addresses itself more to that issue than to the issue of specific contents. Members on this side are proud to follow in the footsteps of J.S. Woodsworth, Frank Scott, Stanley Knowles and the many other founders of our movement who have supported an entrenched Bill of Rights for half a century.

We are pleased that the Federal Government has finally seen fit to agree with the viewpoint long propounded by the CCF and the NDP. We note as well that the Victoria Charter of the early 1970s contained a proposed entrenched Bill of Rights. There appeared to be total unanimity on that Charter at that time between all of the provinces and the Federal Government. We do not recall Manitoba members on the other side at that time, opposing the entrenchment of rights. Prominent people and other political parties of course, have also over the years supported entrenched rights and we refer you currently to Jake Epp and George Hees and of course to the late John Diefenbacker.

We do not delude ourselves into thinking that a Charter of Rights will immediately solve many problems in this nation, or that it in itself, will make a great deal of difference to the lives of ordinary Canadians. We do believe however, that it is important for us as a nation to express in the clearest terms, that there are certain rights which our citizens possess which cannot be removed by society. We concede that entrenchment may cause initial uncertainty in the law but we are reminded that on many past occasions, those arguing against change have been heard to use that same argument. It is one which fails to impress in view of the fact that while most Western democracies have adopted new entrenched Charters of Rights in the past 50 years, they have not thereby created any legal nightmare. Where problems have occurred, amendments have been possible and have been made. The current Constitution builds upon the experience of other nations in dealing with Charters of Rights. In fact, we currently have some entrenched rights and our present Constitution has been amended many many times since 1867.

On each occasion, it has been amended only after at least a majority of provincial governments supported the amendments. Generally, the amendments have been based on unanimity. So

much for the argument that once some specific wording is incorrectly interpreted by the Courts, no change can ever be made. In fact, where governments in general agree that the courts are wrong, amendments can be made to the Charter using the above amending formula almost as quickly as any other statutory changes could be enforced. Some have argued that the Charter misleads in that it purports to give rights which people already have without the Charter. The argument is, that every citizen of Canada has every single right which is not taken away from him or her by Parliament or the Legislatures. No action or inaction by any citizen is unlawful unless so made by Parliament or the Legislature. Therefore the notion that somehow this Charter is giving people rights, is considered to be false.

The argument in support of entrenched rights is, that we do not doubt for one minute that under existing legislation we each have those rights not taken away by our Legislatures or Parliament. The Charter however, goes further. Its purpose is to protect those very rights which Parliament and the Legislatures have not taken away, by stating unequivocally that certain fundamental rights cannot be taken away. For instance, each citizen of this country currently has the right to attend the place of worship of his or her choice. Those who oppose the Charter would allow Parliament and the Legislatures the right to restrict your right to attend the church of your choice. They would argue that the majority is right in a democracy and if a Legislature or Parliament chosen by the majority wishes to practice its own tyranny on the minority, then that is its democratic right. Such a Legislature or Parliament would be subject to the discipline of the electorate at the next election. We reject that view by reason of compassion, common sense and history.

Even if an election were to right the wrong of a majority depriving a minority of its rights, we do not believe that a majority should have the right to force its views on the minority on such an issue even for four or five years. Common sense tells us that such rights will not be curtailed with respect to those of us who are in majority positions in Canada, such as Catholics and Protestants.

Such religious curtailment has in fact, happened in Canada with respect to Jehovah's Witnesses in Quebec. Legislation prevented freedom of worship and access to places of worship. Because it was the majority exercising its tyranny over the minority, no electoral consequences flowed. Although it is quite true that without any Charter of Rights and without legislation to the contrary, each Canadian is deemed to have equal rights; those of us who favour a Charter argue that no Parliament should have the right to legislate against a specific minority. We refer to federal discrimination against Ukrainian Canadians who were deported after the general strike in 1919; we refer to Canadians of Japanese descent born in Canada, who were deported to Japan following World War 2. Their right to equality before the law was removed by Parliament. We submit that the Canadian people do not wish to give Parliament or the Legislature such power to discriminate.

We believe that when our constitutuency elected us, they did not mean to give us the power to do absolutely whatever we chose to do. Rather we believe that we have a mandate to pass legislation for the common good. It is recognized that when such legislation is passed, on each and every occasion some people benefit and others suffer. It is up to legislators to make decisions as to what is and what is not in the common interest.

What the electorate does not wish to leave up to the Legislature however, is the right for instance to discriminate on the basis of religion, ethnic origin, language or sex. We believe the electorate in electing us to this Legislature never once thought that they had given us such a mandate and we are prepared to agree that in the event that any laws passed by us do in fact so discriminate, any citizen should have the right to have such a law insofar as it does discriminate, struck down. Such a citizen should further have a right to compensation from the public purse for any damages resulting to him by reason of such discrimination.

We have also had the opportunity, some of us, to read the Reports of the Commons Committee on the Constitution. We believe it is significant that those groups which have in the past suffered from racial discrimination, such as the Unkrainian Canadians, Japanese Canadians and Jewish Canadians, all firmly support the entrenchment of a Charter of Rights.

Further those groups which are the have-nots in this society, such as the Canadian Indians, the Metis, handicapped, women's groups, all strongly endorsed an entrenched Charter of Rights. Civil Rights groups from the Manitoba Association for Rights and Liberties to the Canadian Civil Liberties Association supported a strong Bill of Rights.

Ever since the Second World War the entrenchment of Charters in constitutions of western democracies has gained momentum. The nations of Europe and the rest of the world have entered into international treaties containing bills or charters outlining minimum standards of rights to be afforded to citizens of nations who are members of certain organizations such as the United Nations and the European community. Such treaties have given our citizens certain rights in the international courts, which they currently do not possess in our domestic courts.

We have the example of Sandra Lovelace, a Canadian Indian womam who is being discriminated against on the basis of her sex. A Canadian Indian man who marries a white woman and then divorces, retains all his rights as a Canadian Indian. Sandra Lovelace as a Canadian Indian woman divorced from a white man, retains none of her rights as an Indian person. Because we have no effective Bill of Rights in Canada, Sandra Lovelace has no right to appear before any Judge of any court in her home country in order to challenge the right of Parliament to discriminate against her on the basis of her sex; she is currently before the international courts. If Sandra Lovelace lived in any western European country other than Great Britain, she would be entitled to appear in a court in her home land in order to obtain redress. Of the major western democracies only Canada and Great Britain currently do not have procedures for redressing such grievances internally.

We find this disturbing especially when we consider that as a common law country we are proud of the fact that much of our law is judge-made. That is, a great deal of our law dealing with commerce,

contracts, trusts, etc., has been built up by the courts rather than by the Legislature. The Legislatures of course have always retained the right to reverse court decisions by passing remedial legislation.

We have then placed a great deal more faith in our judiciary than have the European countries who have codified their law to such an extent that judges are little more than triers of fact in cases involving one citizen against the other. Yet the Europeans trust their judges to hear not only cases of citizen against citizen but also citizen against government, where the citizen believes that his fundamental rights have been violated.

We have frequently heard the argument that people would rather have the right to lobby then the right to litigate. In our view the right to lobby is perfectly adequate for the average typical white middle-class, middle-aged male Canadian. He does not need a Charter of Rights.

The right to lobby is however rather meaningless when a person is being told by government, that he is not entitled to attend the church of his choice or where Canadians are deported. Although a great deal of lobbying had been done for instance in the Lovelace case; and although Indian women had a promise from the former Minister, Jake Epp, that he would right this wrong; the issue of sex discrimination never once surfaced during the federal election next ensuing and in fact the party which promised such reform, was soundly defeated on other grounds. To much for the right to lobby for minorities.

The Japanese Canadian Association which appeared before the parliamentary Committee in Ottawa pointed out that while racial animosity against the Japanese was very similar in degree in the United States and Canada, it was recognized by both the North American Japanese Community and the United States Government, that the American Bill of Rights gave the American Japanese something which the Canadian Japanese did not possess; the Japanese Americans were entitled to court processes under the Bill of Rights which were not available to Japanese Canadians. As a result after World War II, many Japanese Canadians were deported to Japan while Americans of Japanese origin were entitled to court process and as a result, Japanese Americans were not deported. Again the right to lobby for Japanese Canadians meant very little in an atmosphere of racial hatred.

The Charter can be of great effect and protection then against the whim of a transitory majority. Parallels have been drawn with the United States Bill of Rights. Constitutional cases for the United States Supreme Court have been mentioned before the Committee. In response we point out firstly, that most of those cases did not deal with any Bill of Rights in the United States, but rather those cases dealt with jurisdictional disputes between the Federal American Government and various state governments. Those kinds of disputes have been ongoing in Canada for 100 years and will continue whether or not we have entrenched rights. A major distinction between the proposed Canadian Charter and the existing American Charter, is that ours does not propose to entrench property rights, therefore those American cases referring to property rights are irrelevant here.

Britain is one of the few countries in the world with no Bill of Rights. Its House of Lords has twice in the last several years passed motions calling for a Bill of Rights for Great Britain. Their proposed bill would be applicable to all legislation passed prior to the passage of the bill, and would apply to all legislation passed after the Bill of Rights had been passed unless a latter bill specifically excluded itself from the operation of the Bill of Rights. The view of the British House of Lords was that this would be adequate protection because no future parliament would dare pass legislation openly admitting that it is contrary to Human Rights.

It is our view that such legislation would not provide adequate protection in Canada. We are a more diversed nation and a federal as opposed to a unitary state. In Britain, parliament speaks with one voice for the country; in Canada we have many Legislatures as well as parliament, speaking for Canada. We do not have the same faith that the Britian House of Lords does that some future government would not come along and pass legislation restricting rights. Such legislation could easily come about during war time, during times of depression or other national crisis. We believe that even during such trying times it is not sufficient merely to pass an Act including appropriate terminology excluding the operation of a Charter on that Act.

The need for protection of the minority becomes much greater during times of crisis and accordingly, we believe that it would be in the interests of Canadians that protections we agree to during non-crisis periods, should be rigorously applied during crisis periods. Gordon Fairweather, the former Conservative Member of Parliament and current Human Rights Commissioner for Canada, stated recently that his experience during the October crisis when he was stampeded into wrongly voting in support of The War Measures Act, taught him the lesson that active politicians can make the wrong decisions regarding rights during crisis times. Needless to say, he supports entrenchment of rights.

The statement that Legislatures cannot give rights because we all have those rights which have not been taken away, is an oversimplification. Sometimes rights are created by the courts. For instance, in the last half of the 20th Century, the common law courts evolved a new remedy for those who suffered loss as a result of a negligent misstatement by one who makes a statement for valuable consideration, knowing that it is to be relied upon.

Another example of such a right evolving through the court system occurred in the first half of the 20th Century, when the courts held that a person who had purchased a product from a store was entitled to sue the manufacturer of that product in negligence and collect damages where the product was defective. We do not believe the law to be perfect today, therefore, under the common law system which we heartily endorse, we would expect that in the future more rights will be provided to us by the courts. When the courts evolve such rights they, of course, create new obligations or responsibilities. As a result of the first case, stockbrokers, lawyers, accountants

and other advisors have been forced to accept more responsibility for advice given, than they had assumed prior to that decision. Similarly, manufacturers became conscious of their liability with respect to product defects, as a result of the second mentioned case.

The role of our courts in law-making in the past and hopefully in the future, is one which should not be disregarded when considering our Constitution. As the Manitoba Association for Rights and Liberties pointed out, the courts are the arena in which issues of rights between citizens are decided every day of the year. That is not to say that the courts are, or should be, superior or even equal to the legislatures in power. Although they make new laws where none exist, as we have previously stated the Legislature always has the power to change judge-made law. That right must remain.

Under an entrenched Charter the courts will not be determining fundamental rights. What they will be attempting to do is to interpret the Charter passed by Parliament. That job will be difficult or simple, depending on the wording of the Charter. The wording of the Charter is in the hands of parliamentarians. They may if they choose, use wording which has been used and litigated in other countries. If they choose, they may use new, unchartered phrases, which will be subject to the interpretation of the courts. That is one of the very reasons for the existance of courts. However, should there be a general consensus that in fact the courts have misinterpreted a clause, or a segment of the bill, agreement on a change could result in an amendment to the Bill of Rights within a matter of months. Certainly that is a shorter period of time than it might take to elect a new government. Because there has been so much talk about such a Charter giving power to the courts from the Legislature, we wish to emphasize that the courts have no right whatsoever to prevent the Legislature from making amendments to the Bill of Rights, and such amendments override previous laws made by either the courts or the legislatures.

In so saying, we point out that in the United States it is the view of many Liberals that the Supreme Court, rather than dragging its heels on progress in areas of human rights, has in general been ahead of the legislatures. This view is in direct contrast to the view of several of those who appeared before the Committee who failed to recognize further, as previously mentioned, that our proposed Charter, drawing on the experience of other nations, avoids pitfalls such as property and the right-to-bear-arms rights.

There are many who would argue that blacks would still be riding the backs of buses; schools would still be segregated; and "Whites Only" employment signs would abound in the south, were it not for the entrenched Bill of Rights in the United States. We note that just last year a known member of the Ku-Klux-Klan was nominated for state office in the south.

We believe that unfortunately respect for human rights does not become greater with passing time, but is rather a cyclical phenomenon requiring continued vigilance. One witness told the Committee in effect, that a Bill of Rights doesn't work because Russia has a Bill of Rights and it is mistreating its Jewish citizens; another person quoted at length from the Soviet Bill of Rights. Such statements and quotes prove nothing other than that their makers are playing games. Is it because of the Soviet Bill of Rights that Jews are persecuted? Is it because of the Soviet Bill of Rights that political dissidents are exiled and placed in mental and psychiatric institutions? Of course not.

These things happen in the Soviet Union despite their Bill of Rights. What their Bill of Rights fails to do is to provide the citizens of the Soviet Union with a remedy. That is, although they may theoretically have their rights spelled out in the Constitution, they have no place to which they can turn to enforce those rights. If their rights are violated they have no right to go before a judge to demand that that wrong be righted, and that they be compensated for the damages suffered. Any Bill of Rights which does not provide such a remedy is useless. An effective Bill of Rights and dictatorship is a contradiction in terms.

We support in principle the entrenchment of a Charter of Rights in the Canadian Constitution. Having said that, we must say that we have deep concerns over the method being used by the Federal Government in entrenching this Charter. The Federal Fovernment is proceeding as though we were a unitary country. It should recognize that we are a federal state and that if the proposed amending formula will be good enough after the Constitution is back in Canada, it should be good enough as a formula to obtain consensus before patriation.

We were disturbed and angered by the Federal Government's failure to allow sufficient debate on this issue in Parliament last fall. The extensions given to the parliamentary committee were in retrospect, of great advantage to Canada. We still suggest that the current parliamentary debate should be postponed for at least several months in order that a further attempt may be made through the mechanism of a Federal-Provincial Conference, to reach consensus in accordance with the amending formula which will be used once the Constitution is patriated. We believe that such an attempt, if made in good faith, might embarrass the parties involved into resolving the current impasse.

It appears that the Federal Government has completely lost faith in the ability of the various levels of government in this country to co-operate with each other. We admit that the performance of our own government is partially to blame for that attitude. Our Premier has consistently attempted to use the Constitution, to divert the attention of Manitobans from the disastrous record of his government. In so doing he has chosen the weapon of Ottawa-bashing to such an extent, that amicable agreement will be more difficult.

The fact that one of the provinces, Quebec, is represented by a political party whose fundamental purpose is the destruction of Canada, does not assist in the matter. The fact that the Premier of another province, Alberta, refuses to recognize separatists in his province as enemies, is a further complication. Nevertheless, the credibility of this Constitution in the eyes of Canadians would be the weaker if no further sincere attempt at negotiations was made before patriation.

That is the proposed report from this side.

MR. CHAIRMAN: Mr. Mercier, and then Mr. Desjardins.

MR. MERCIER: Mr. Chairman, I listened as carefully as I could to the proposed report from Mr. Schroeder. I would suggest that it is more of a political statement rather than a report, along the lines of the type that I had suggested; a report on behalf of how many members of his caucus we don't know. There are apparently an unknown quantity of members of the NDP Caucus who do not support his political statement.

Mr. Chairman, he made a number of statements, one of which was in favour of a strong central government. I think we have, and Manitoba has traditionally, supported a strong Federal Government, and we have said so as a government and we continue to do so.

Mr. Schroeder in his proposal, rejected the Vancouver amending formula, and particularly the opting-out provision. Mr. Chairman, I have listened to him and I have listened to others outside of government who have criticized that formula for its opting-out provisions.

I think what is overlooked, Mr. Chairman, and I would ask Mr. Schroeder and his colleagues to consider, is the fact that the Federal Government has a veto under that formula; it has a veto to protect the national interest. The national interest, I submit, is one which would not allow any significant occurrences of opting out which would be harmful to Canada as one country, and that is the responsibility of the Federal Fovernment under that formula and I suggest it is a worthwhile protection for Canada and for the national interest, and one that was not overlooked in consideration and discussion of that amending formula.

It is one which has been agreed to in principle by all 10 provinces and at the present time six, seven and eight provinces are further involved in refinement of that amending formula, which was submitted at the September Constitutional Conference but which the Prime Minister of this country for one reason or another, did not seriously consider and discuss to any great extent. In fact there is, Mr. Chairman, a meeting tomorrow again of Ministers in Winnipeg to further consider refinements to that particular formula.

Mr. Schroeder has commented on the Senate. Later on, I note he developed a strange alliance with the House of Lords in England and I had to wonder about that. The Senate wasn't really addressed by many people appearing before the Committee. I should indicate to him, although the report takes takes no specific position on that because we are suggesting that all further amendments be done after there is an amending formula agreed upon, that I consider the Senate as an institution of Canada that should be modified; that its traditional job was to represent the regions of Canada, and I don't think it does that very well at all. Some consideration has to be given, I think, to provincial appointments and to appointments on a more — not so much on the basis of population across the country — but more on the basis of equality of provinces and regions so that the Senate can do the job that it was originally intended to do.

On the Charter of Rights, of course we have heard a lot of arguments before this Committee on that question. I just point out to Mr. Schroeder and his colleagues, the opposition of a fellow member of his party, Premier Blakeney, who spoke eloquently at the September Constitutional Conference and who has since continued his discussion as well as his Attorney-General and others, and expressed real and serious concerns about the effect of an entrenched Charter of Rights.

Later on, Mr. Chairman, I will respond to the example that has been used with respect to Japanese Canadians and their treatment in the United States as compared to Canada, because I think the Committee has been misled about the extent to which the Bill of Rights in the United States protected Japanese Canadians. The case of Sandra Lovelace has been referred to on a continual basis. I point out, Mr. Chairman, that that issue can be resolved very simply, very quickly, by a simple amendment to the existing legislation in the House of Commons where the Federal Government, who proposes the Charter of Rights has a legislative majority and can deal with that very quickly; the Conservative Party of Canada has indicated its position on that.

Mr. Schroeder in his report, criticizes the action of Premiers, criticizes the Premier of Quebec and the intentions of the Party Quebecois Government. Let me point out to him also that the man in Quebec, the Leader of the Liberal Party of Quebec who was the main spokesman for the pro-Canada forces in the referendum, opposes Mr. Trudeau's actions. He joins eight provinces in Canada, eight Premiers of Canada, in opposing the unilateral action of the Federal Government.

Mr. Chairman, having made those brief comments on Mr. Schroeder's draft report — and I would like the opportunity to review Hansard and the details that I may have missed in his verbal presentation of the report — I am going to at the conclusion of my comments, at this time move that the draft report which I referred to be adopted by the Committee, and then perhaps the Committee will have amendments proposed by members of the Opposition to the draft report.

But I want to know and I think we all want to know, Mr. Chairman, the position of the Opposition on a united Canada. I think that's obvious. We want to know whether they support the federal system in Canada; whether they support the parliamentary system; and the monarchial system; and the traditional constitutional methods of protecting basic rights of the citizens of Canada. We want to know whether they support the Federal Government in its unilateral actions, or whether they support the recommendations of the draft report, and perhaps I might to assist them, read a quotation from a veteran member of the House of Commons that Mr. Schroeder referred to in his comments, Mr. Stanley Knowles, who was recorded in Hansard in 1964 as stating: "But in more recent years with the exception of the amendments passed under our right to pass amendments to our Constitution regarding things that are purely federal, any amendments that touched the boundary line between Section 91 and Section 92 of The B.N.A. Act, in all cases were not sought by this Parliament until it had the unanimous agreement of the provinces".

That tradition, I suggest, is so well established that it is as good as law. Perhaps Mr. Knowles should be reminded of his previous opinion in 1964, which was in accordance with opinions expressed by Lester Pearson, Diefenbaker, St. Laurent, Ernest LaPointe and McKenzie King. It goes back through history, Mr. Chairman, and this Committee heard a former Liberal Premier of this Province, Mr. Campbell, speak eloquently and clearly on that particular issue.

I think, Mr. Chairman, from Mr. Schroeder's remarks, that his colleagues would support, at least for some time, Recommendation No. 3, that negotiations be resumed to reached agreement on an amending formula and patriation at the earliest possible date, and all further proposals for amendment of the Constitution be set aside until the Constitution has been patriated with an agreed amending formula.

Mr. Chairman, the longer that I am involved with this subject, it becomes more and more apparent as this subject is discussed across this country, that it has proven to be extremely divisive across this country. I think it is absolutely essential — whether or not it is ultimately shown that the Federal Government has the legal power to proceed in the manner that it is — that we end this confrontation. I think there can be agreement among the Federal Government and the provinces if men and women of goodwill meet and sincerely attempt to reach agreement on these issues.

There are much more important problems to be dealt with in this country at this present time, Mr. Chairman, than this issue, in the manner in which it is being handled. It is taking much too much time of leaders of the provinces, of provincial governments, of opposition parties, of the federal parties, when this country faces some serious economic and other problems that should have priority. I don't mean to diminish the importance of the constitutional issue; it is important. I think it should be dealt with — not in the confrontation manner that it has been dealt with in the past six or eight months — that the Federal Government should abandon its present unilateral action and enter into discussions with the provinces, in good will.

So, Mr. Chairman, I would move . . .

MR. LAURENT L. DESJARDINS: Mr. Chairman, before the motion, I wonder if I could speak on a point of privilege?

MR. CHAIRMAN: On a point of privilege, Mr. Desjardins.

MR. DESJARDINS: Mr. Chairman, I would suggest and ask the Minister if we could not adjourn at this time to give us a chance to look at this. You know, this is something that was said and we were talking about taking our time. This is important.

First of all I think that I would like to look at this with other colleagues that are not here today, and I would hope that the members of the Government would provide themselves with a copy when it comes out in Hansard, or maybe copies could be prepared by Mr. Schroeder, earlier and as we said give us time to digest this and maybe come back in a week or whatever. I hope that we could do that before because I wouldn't want the Government to have their hands tied and say, well we've introduced a resolution and I would hope that they would keep an open mind and maybe bring in some amendment or modify their position somewhat; at least give them the chance to do so.

MR. CHAIRMAN: Mr. Mercier, in reply to the point of order.

MR. MERCIER: Mr. Chairman, on that point I would be agreeable to the Committee rising now. As I indicated, I would like the opportunity to review in detail the transcript of Mr. Schroeder's remarks, and I wonder if we could ask that some priority be given to preparing the transcript — even in a draft form — if it could be available tomorrow. —(Interjection)— The Clerk advises me it could be available tomorrow; if we could then meet on Tuesday morning.

MR. CHAIRMAN: Is that agreeable to members of the Committee, that we will rise now and meet again on Tuesday morning at 10:00 a.m.?

On that subject, Mr. Parasiuk.

MR. PARASIUK: I think I would just like to make a few comments on Mr. Mercier's comments, because it is only 11 o'clock.

MR. CHAIRMAN: Well, before I recognize you on that matter, Mr. Desjardins had indicated first that he would like to speak, as well as yourself, Mr. Schroeder and Mr. Blake. Are we going to carry on and discuss the matters? Mr. Mercier wanted to put a motion on the table, which I would have held until those persons who had indicated a desire to speak, but he isn't prepared, I believe, to withdraw his motion pending Mr. Desjardin's suggestion?

MR. MERCIER: Well, I agreed with Mr. Desjardins, that the Committee rise and we'll get a transcript of the remarks and allow time for consideration and meet again on Tuesday morning at 10:00 o'clock.

MR. CHAIRMAN: The Committee will rise and then meet on Tuesday at 10:00 and the Clerk will do everything in his power to have copies tomorrow morning for all members of the Committee.

Committee rise.