LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS
Tuesday, 9 December, 1980

Time — 10:00 a.m.

CHAIRMAN — Mr. Warren Steen (Crescentwood).

CONSTITUTIONAL REFORM

MR. CHAIRMAN: Gentlemen, we have a quorum. I might tell all members of the committee, especially for Mr. Blake's sake, is that you will see three microphones down the centre of the table. They are on at all times and they will pick up a lot of chatter between members — any one of the three by the water jugs down the middle. The centre microphones are on all the time to pick up conversation, etc., so you have to watch your language and what you say to one another. Mr. Desjardins, if you disagree with Mr. Uskiw or something, it will often get picked up.

MR. LAURENT L. DESJARDINS (St. Boniface): You don't have to tell us.

MR. CHAIRMAN: I don't have to tell them anything. Members will also take note that there are hearing aids that various members can use, so now Mr. Kovnats is going to hear everything that's going on in the committee and really be able to participate.

MR. DESJARDINS: Mr. Kovnats, the Deputy Speaker.

MR. CHAIRMAN: Deputy Speaker, right. I warn you about those centre live mikes that are on at all times for your private conversations.

Last night at moments before 10 o'clock, we broke and the Manitoba Teachers' Society were informed that they would be the first spokesmen of the day. Are there representatives of the Teachers' Society present? Would you come forward, please? For Hansard's sake, would you give us your name?

MR. MURRAY SMITH: My name is Murray Smith. I'm a member of the provincial executive of the Manitoba Teachers' Society. That is the group which reviewed and approved the brief which is going to be presented. I have with me Linda McDowell, who is chairperson of the Status of Women in Education Committee, a regular committee of our society. This brief is signed by the President of the Society and normally Mr. John Wiens would be here to present it, but he had to leave this morning to hold the west together by going out to Vancouver. Our first vice-president is out in St. James-Assiniboia holding Metro together by representing the society there. So, your committee have Murray Smith and Linda McDowell presenting the Society's brief.

Before starting, I would like to express the view of many of our executive members. This exercise seems to be a little after the fact. There were several suggestions that the value of making a presentation to this committee was very much reduced by the fact that the Premier had already committed the province's government to one view on the issue of the Constitution and the Charter of Rights and Freedoms. To some of us it seemed a little bit like the old joke of giving someone a fair trial and then hanging him, but we concluded that it was not appropriate to opt out of such a process merely because we had doubts about whether there would be significant changes in the government's position. We believe in the democratic process and we believe in having the Manitoba Teachers' Society heard, so we are here for that purpose.

The Manitoba Teachers' Society welcomes the opportunity to enter the constitutional debate. We believe that it is our responsibility as teachers to participate in discussions which will help shape the future direction of this country. In particular, we are concerned with the entrenchment of a charter of rights and freedoms.

We strongly believe that a charter of rights and freedoms should be included in our Constitution. Only in this way can we guarantee that rights and freedoms fundamental to a modern society such as ours become a reality for all Canadians. Entrenchment would also serve educationally by making Canadians more aware and more proud of the wide range of freedoms we enjoy. It would indicate to all Canadians and to the rest of the world what we believe to be the unalienable rights and privileges that every citizen of a democratic country should possess. Entrenchment would ensure that the charter of rights and freedoms takes precedence over all laws of both provincial and federal parliaments and would therefore, not depend upon the vagaries of day-to-day governments. In our opinion, a Constitution including a charter of rights as an integral part would lead to an enhancement of our status as Canadians and to increased Canadian unity.

The types of protection Canadians should have under a charter of rights and freedoms are those recognized as universal rights and freedoms, and in addition, are those sensitive to the specific needs of Canada.

We believe that rights fall into two categories: individual rights applicable to every citizen of Canada, and collective rights applicable to groups of individuals. The individual and collective rights which we list are those we believe to be essential educationally and socially and are by no means exclusive of other rights Canadians should enjoy as a matter of course.

Among the components necessary for a successful functioning democratic society at least two are essential: an educated citizenry and the belief in the intrinsic value and worth of individual citizens. The rights enjoyed by individual citizens are a reflection of such a belief. How and where the rights are protected are an indication of the strength of the belief. In our opinion, the greater protection comes from entrenchment in the Constitution rather than from inclusion in general legislation. We believe our Constitution should include the following individual rights:

1) Fundamental freedoms: the right to freedom of thought, to freedom of opinion, to freedom of

speech, to freedom of association and to freedom of the press; and to freedom from discrimination on the basis of colour, creed, marital status, family status, physical handicaps, political beliefs, race, sex, nationality, or ethnic origin;

2) Political rights: the right to vote and participate in the political process as equals;

3) Legal rights: the right to equality before the law and the right to an impartial hearing by an independent tribunal;

4) Egalitarian rights: the right to equal access to educational opportunity and the right to an education appropriate to the individual's need;

5) Economic rights: the right to equal access to employment and equal compensation for work of equal value; the right to live and work anywhere in Canada.

The collective rights we list include rights which groups can exercise on behalf of individuals and rights which individuals have only because they belong to particular groups. We believe these rights are of particular importance to Canada and to Canadians. These collective rights include:

1. Economic rights: the right of employees to organize and to bargain collectively;

2. Language rights: the right of an individual to education in French or English whesre numbers warrant; the equality of Canada's two official languages in social services, the courts, and the Legislatures;

3. Native people's rights: the right to adequate and appropriate representation on governmental groups; the right to preservation of native language and cultures; the right to the special legal status of Section 91(24) of The BNA Act; and the right to full legal equality of men and women under Sections 11 and 12 of The Indian Act;

4. Women's rights: the right to adequate and appropriate representation on all governmental groups; the right to equality under the law without regard to sex; the right of native women to full legal equality under The Indian Act.

We include, as part of our presentation, a submission prepared by the Society's Status of Women in Education Committee which speaks more explicitly to our concern for women's rights. We urge you and all those involved in the discussion of the Constitution to strongly support the concept of entrenchment of a Charter of Rights in the Constitution and urge that such a Charter include the items previously outlined.

Now, Mr. Chairperson, I would ask Linda McDowell if she would come and present the second portion of our brief.

MRS. LINDA McDOWELL: Since teaching has long been an equal opportunity profession and since women have long contributed to that profession in the Province of Manitoba, the Manitoba Teachers' Society's Status of Women in Education Committee would like to make their submission.

The Status of Women in Education Committee of the Manitoba Teachers' Society wishes to register its support for the proposal that a Charter of Rights be entrenched in the Canadian Constitution. We wish further to request that such Charter of Rights include specific mention of the rights of women, with particular attention to the wording of the provision so that there will be no ambiguity which could give rise to future long and costly tests. We would also request three further changes which are also related to this matter.

A Charter of Rights is essential to guarantee those human freedoms which we, who espouse the principles of parliamentary democracy, believe to be essential to all of our people. Fundamental human rights are too important and too fragile to be left to the discretion of the government of the day, for, as we in Canada know, past governments have all too often shown themselves to be vulnerable to the pressures of sensational events and vocal minorities. Furthermore, if we give more than lip service to the idea that our nation's most precious resource is its children, then we should do everything possible to safeguard their rights as well as our own.

When the rights of women are discussed, we in Canada are frequently assured that our rights are protected by the tradition of British common law. We beg leave to doubt this statement in view of the fact that Canadian courts of this century have used the 1876 English precedent "that women are persons in matters of pains and penalties of the law, but not persons in matters of rights and privileges."

In our century women have had to prove their right to personhood in order to become lawyers, judges and senators. Women have found themselves disadvantaged in employment and in matters of marital property. Native women who marry white men have discovered that not only do they lose their rights to normal personhood but they are not even Indians any more.

In 1867 there were no women involved in the writing of The British North America Act. There were no mothers of confederation at Charlottetown, at Quebec or at London, regardless of the fact that Victoria was the ruler of the British Empire. Women of Canada were the constitutional silent majority. Surely a country which now has the opportunity to reassess its Constitution should be both willing and eager to allow the women who form 50.2 percent of its population to be recognized and to have a voice in any amendments.

Previous statements about Canadian women's rights have often meant little. The Canadian Bill of Rights of 1960 did not give us any appreciable gains and even though many provinces have human rights legislation, Alberta is the only one which makes specific mention of women. Even Manitoba, which has proven its good intentions with such forward-looking legislation as our Family Law, has not yet managed to overcome the problem of providing equal safeguards for both sexes.

As women and as teachers concerned about the welfare of the girls and boys in our charge, as parents and as responsible citizens, we must be prepared to fight for a better deal for both halves of our population.

There can be no doubt that certain groups of Canadian women are particularly disadvantaged in the area of basic rights. Of the 493 cases of alleged discrimination reported by the Human Rights Commission of Manitoba last year, 299 were considered serious enough to be formal cases. Discrimination on the basis of sex was by far the chief complaint, accounting for 22.9 percent, while race or colour, the next in importance, accounted for 15.9 percent.

As the province which first granted women the right to vote, we have a long tradition of fair play and a reputation for enlightenment to uphold. In view of this, it would be unthinkable to do anything other than to support a provision for women in any charter of rights.

The changes in the Constitution with regard to the Charter of Rights that we wish to be considered are three in number:

(1) A Charter of Rights should be entrenched in the Canadian Constitution, superceding all previous discriminatory laws;

(2) That such charter make specific mention of the rights of women in such words as "Every individual shall have equality of rights under the law without regard to sex" and that such charter state further that "equality of rights under the law without regard to sex shall not preclude programs designed to redress current imbalances arising from past discrimination";

3) That Section 12(1)(b) of The Indian Act be repealed and that all Indian women clearly be guaranteed the same rights enjoyed by their white sisters, regardless of marital condition or choice of husband.

Further, we are concerned about a related matter: that so-called "protective clauses" especially as related to employment should be approved by the women they are supposed to protect. This could be achieved through the Advisory Council on the Status of Women and its provincial counterparts. Too often in this country women have been protected out of the best jobs.

If we are prepared to make these changes we will have some hope of being what we say we are — a country which offers equality of opportunity to all of its people. Women will be allowed to take their places in the nation's workforce and in its government without the frustration and expense of constantly having to prove themselves eligible to do so. Furthermore, Canada will be able to take its place among those nations of the world which subscribe to the United Nations' principles of freedom and equality for all and we may yet be able to sign the United Nations' convention concerning discrimination against women with a clear conscience.

So long as our country refuses to safeguard the rights of any of its citizens the rights of all of its citizens are at risk.

Thank you.

MR. CHAIRMAN: Would the two representatives from the Teachers' Society permit questions from members of the committee?

Mr. Mercier.

HON. GERALD W. J. MERCIER (Osborne): I have two questions . . .

MR. DESJARDINS (St. Boniface): Excuse me, Mr. Chairman, on a point of order, just to be safe, could we accept Mr. Filmon's resignation and move the nomination of Mr. Mercier on the committee?

MR. CHAIRMAN: Yes, that was an oversight of mine at the start of the meeting. Mr. Filmon resigned from the committee as of last night.

Mr. Brown.

MR. ARNOLD BROWN (Rhineland): I would move that Mr. Mercier replace Mr. Filmon on this committee.

MR. CHAIRMAN: All agreed? (Agreed). I was going to do it at the end of this presentation but — (Interjection)— All right.

Mr. Mercier.

MR. SAMUEL USKIW (Lac du Bonnet): Mr. Chairman, is it possible to add names to the committee or has the resolution already done so?

MR. CHAIRMAN: No, the committee is a committee of 11 structured by the Legislature.

MR. USKIW: We have 11 members on the committee?

MR. CHAIRMAN: Yes, seven and four; seven government members and four from the opposition.

MR. USKIW: Eleven is the number in the resolution, is it; the Standing Committee?

MR. CHAIRMAN: The Standing Committee. It's not a Special Committee. It's a fixed number, but as you know, Mr. Uskiw, we do change members off and on, on both sides.

MR. USKIW: I understand. I thought we could put Mrs. Westbury on.

MR. CHAIRMAN: Well, Mrs. Westbury has been free as far as I am concerned to ask questions. I have never treated her any different than any other member and to date we haven't had a vote or a disagreement amongst us. The Chair has never been challenged that I have never had to use the government majority for support and there has been Mr. Walding and Mrs. Westbury who have taken part in debates and I don't think that Mrs. Westbury has felt any different from any other member who might be an official member or not.

MRS. JUNE WESTBURY (Fort Rouge): On the point of order then, Mr. Chairman, if I may say so, when I am here, yes, I am treated equally. Certainly I have no complaint about the way these meetings have been conducted. However, when the committee was circulating around the province it was rather difficult for me to attend the meetings that were attended by the committee and so in that sense it is not possible for a non-member to participate equally. I just wanted to make that point.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, through you to Mr. Smith and the part of the brief that he prepared at the bottom of Page 2, he referred to economic rights, the right to live and work anywhere in Canada. Mr. Smith, could you advise the committee whether there are any regulations in effect in Manitoba that would restrict teachers from outside the province taking teachers' positions in Manitoba, or are there any restrictions that you are aware of in other provinces that restrict teachers from Manitoba

going to other provinces? Is there, for example, any residency requirements?

MR. SMITH: To my knowledge, there are no residency requirements but certainly a teacher must be certificated in the province in which she wishes to teach. Somebody coming to Manitoba from another province must meet the requirements of the Manitoba regulations and not everyone can do that. Teachers from Manitoba who wish to go to another province may find that they are less well qualified in that other province than they believed themselves to be in Manitoba. This section, however, was not written with special reference to teachers. We were thinking perhaps more of the industrial employment situation that we heard about, especially in the Atlantic provinces.

MR. MERCIER: I appreciate that Mr. Smith but I also thought that you would be more familiar with the workings of the teachers' organizations and I would therefore ask you if you are aware of any discrimination either in Manitoba against teachers coming into Manitoba or other teachers going to other provinces?

MR. SMITH: I don't regard the differences that there are in provincial requirements as discrimination. I think it is possible for teachers to move from one province to another. In fact, they are a pretty mobile group these days in much the same way as it is for lawyers.

MR. MERCIER: My second question is really not in reference to any material in your brief, but could you give some perhaps brief general description of what teaching takes place in our junior highs or high schools on the Constitution? Would that mainly occur in history, I suppose Canadian history classes or Canadian studies classes?

MR. SMITH: There is a required Canadian history course at the Grade 11 level and certainly constitutional issues would be considered there. The Grade 12 course has modern political problems which could involve constitutional issues. In our particular school, we have a current events class which could certainly raise discussion of the present issues.

MR. MERCIER: Are you — I'm sure you're not — you would have to express a personal opinion on this, I'm sure it's not an opinion of the Teachers' Society, but are you satisfied that in the schools students are made sufficiently aware of the Constitution of Canada and the history of the Constitution?

MR. SMITH: I'd be very surprised if students going through the schools in any country are superbly aware of the constitutional provisions of their country. I would certainly prefer that our students know more about the government of their country, that they be politically more alive and active, but I think what happens in the schools reflects the attitude of the community as a whole. We are not as politically active and sophisticated as some other countries. I think the attitude of our young people reflects that.

MR. MERCIER: Thank you very much.

MRS. WESTBURY: Thank you, Mr. Chairperson. A statement was made, I think something to this effect, that education has provided equality of opportunity for many years. Does that include appointments to principalships and vice-principalships both in the elementary and high schools? Would you comment on that and give us an up-to-date report on that, please?

MRS. McDOWELL: There is equality of opportunity in theory at least. If you were to look at the numbers, you would find that there are relatively few women in administrative positions particularly in secondary school. I think in all of the Winnipeg School Division, there might be 20 percent of administrators are women. In theory there is nothing to bar women from becoming administrators in the eductional system. In practice, of course, it may be that people in the educational system have the same sorts of attitudes that are sometimes found elsewhere in society, that women perhaps they consider are not as interested — that's less and less true I might say. By the way, Manitoba is not much different than the rest of Canada in this respect although in some places in North York and so on there are more women in administration, but generally there are not as many women in administration as 50 percent, by any means.

MRS. WESTBURY: Further to that if I may or did you want to add something Mr. Smith.

MR. SMITH: If I might, I would add the comment that the Winnipeg School Division is presently negotiating with the Human Rights Commission, a program to alter the balance between male and female administrators in the division.

MRS. McDOWELL: I might also add that Winnipeg School Division has the best record in the province, so if 20 percent is true of Winnipeg it can only go down from there in other school divisions.

MRS. WESTBURY: Mr. Chairperson. It's improving because a few years ago I was at a meeting and I was told there was one principal in the entire Winnipeg School Division who was a woman. How does that relate to the rural urban area. You said 20 percent in Winnipeg. Do you think that rural Manitoba is as high a percentage as that?

MRS. McDOWELL: It would be a much lower percentage in rural Manitoba since the disappearance of the one-room school, which is generally where women were principals. Winnipeg has by far the best record. Many rural school divisions would have no women administrators.

MRS. WESTBURY: That leads me into my next question. From Page 3 of the second part of your brief, Item 2 — recommend that such charters state further that equality of rights under the law without regard to sex shall not preclude programs designed to redress current imbalances arising from past discrimination. You just refer to the fact that there's negotiation going on. But yesterday afternoon we were hearing from a number of gentlemen who made

statements to the effect that when you grant rights to one segment of society you take away rights from another segment of society. It's awfully hard not to make a speech about that statement but would you please?

MRS. McDOWELL: Perhaps I should ask the segment of society which would be losing the rights to make the first statement, and I'll reply to it.

MR. SMITH: I don't think it will be necessary for Linda to reply because we find ourselves in substantial agreement on these issues. In fact I have worked on the Committee for the Status of Women in Education of our Society.

My own interpretation of how to look at this issue is that the present situation results from decades of intentional or unintentional discrimination — that there are very few women members of the Legislative Assembly for historical reasons which stretch back to the beginning of Manitoba, that there are very few women principals in secondary schools for reasons which are tied into our whole status conscious, employment conscious, income conscious society, which says that people are valued in accordance with the position they hold and the income that they earn, and that in past decades at least, men had some superior claim to those high-status positions and that society granted them this superior claim, women along with men accepting this stereotype. Now that we are trying to free ourselves of the stereotype we have a choice between being officially neutral and waiting for events to take their course, in which case I believe that it will take another century to redress the present inequities resulting from past discrimination.

I therefore believe that there need to be positive programs to shift the balance in a direction so that, for instance, the numbers of administrators of each sex is closer to the proportions of members of the teaching profession. Men and women are approximately equal in the teaching profession — there is today no reason why they shouldn't be equal in the numbers of secondary school administrators, but unless we do something active and deliberate to shift the balance, I think we'll be back here in 2080 with a very slight degree of progress.

MRS. McDOWELL: I might add a couple of things to that. I could make the point that in our profession, I think perhaps women have earned a little consideration. If you were to look at the numbers of women and men teachers in the Province of Manitoba in various decades, I think you would find that the times when there were great numbers of women were the times when salaries were low and I think we've served our apprenticeship.

I might also make two more points if I may. One, is that having women administrators in schools serves a purpose other than allowing women to participate more fully in their profession, you might remember that your students come to our schools and they look to us to some extent as role models and when you have had students who have never known a woman to be in a position of authority, in education or elsewhere, I think those students will then not expect, if they are girls, to go on to that sort of situation.

Thirdly, I might make the point that women have always been regarded as perhaps eligible to be principals of elementary schools. Our particular battle also at the moment besides the numbers one is to be regarded as able to be principals of secondary schools, and I think that those women who have been, such as Sybil Shack and others, have proved that we are able to do so.

MR. SMITH: Perhaps one additional point if I might and that is whatever we have said about the schools themselves could be repeated with appropriate changes in wording for the Department of Education.

MR. CHAIRMAN: Mrs. Westbury have you any further questions? Mr. Uskiw.

MR. USKIW: On Page 3 of the Status of Women submission you cite the example of the kind of wording that you would prefer. In Item 2 that such a charter makes specific mention of the rights of women, i.e., every individual shall have equality of rights under the law without regard to sex.

Now on reading your example of the kind of wording you would prefer, that to me doesn't imply any special rights to women, it merely implies what is a non-discriminatory position. Would you agree with that?

MRS. McDOWELL: I think it could be regarded as that, yes.

MR. USKIW: Yes. See I don't object to that at all. My assumption is that that is the case, it isn't the case in practise as you say, but it is the case in terms of the law. I don't believe anyone is permitted to discriminate on the basis of sex or race or religion.

MRS. McDOWELL: There have been instances however, where women for example have been discriminated against on the cause of pregnancy, and if that isn't on the base of sex I'm not sure what it.

MR. USKIW: All right let's pursue that. I presume that if a man was pregnant he might be so discriminated against too, but that isn't biologically possible. (Interjection)— That's right, June says it hasn't happened often. So really you're talking about another dimension. But I don't believe that women have been discriminated against because they are women in law, in terms of our present law.

MRS. McDOWELL: What about the situation with Indian women and what about certain labour regulations in the past?

MR. USKIW: No I accept that. I accept that has to be redressed. What I am suggesting is that what you were suggesting is not discrimination in favour of women. You're merely asking for redressing of a practise which I don't believe anybody disagrees with.

Now in practical application, how do you see any change in wording in the Constitution redress what has been the practice other than through educational processes and general enlightenment of society as a whole over a period of time? How do you redress that if — let's say that you had entrenched in the Constitution the equality features that you want, but

the personnel officer says, well, I have interviewed 10 people for this position, six of them were women but they were all not qualified. How do you redress that no matter what you have put in the law?

MR. SMITH: Under The Manitoba Human Rights Act, for example, the unsuccessful applicants have the right to lodge a complaint and I think, too, that the example of The Manitoba Human Rights Act is appropriate with respect to the special programs to redress present inequalities, because as the Winnipeg School Division is doing where the employers and employees can agree upon such a program and then get the approval of the Human Rights Commission, they can embark upon a scheduled shift in balance without being called into court for contravening the anti-discriminatory clauses and that is why this little section is in two bits.

MR. USKIW: That being the case though, then what is the problem with the Constitution as it is? If you now have a course of redress, your example being the Human Rights Commission intervention, then what can you achieve by changing the Constitution?

MR. SMITH: What we're concerned about is that if the Constitution has only the anti-discriminatory clause, it could be used to overrule the provisions of The Manitoba Human Rights Act or other provincial Acts and thereby make illegal the kind of positive programs that we feel are necessary.

MR. USKIW: Are you saying that a male applicant could challenge the constitutionality of the actions of the Human Rights Commission?

MR. SMITH: There were examples like this in the United States, the famous . . . case is the best one.

MR. USKIW: I see, I see. So really what you are suggesting then is that you are in fact wanting discrimination in reverse to a degree, without being challenged under the Constitution by an aggreived male applicant.

MR. SMITH: We want such a program to be possible under certain restrictions, conditions, such as for instance, that it must obtain the approval of the provincial Human Rights Commission. We would not want it that an employer could embark upon any positive program that he happened to think might change the situation favourably. We would want these to be adjudicated by some impartial body as they are in Manitoba now. We believe that The Manitoba Act has a lot of merit.

MR. USKIW: I am just trying to understand the mechanics of what you are doing. If you have 10 applicants for a position and the personnel officer suggests or recommends a male applicant for the position and that throws your quota out so to speak, you have 10 administrators and you have the majority of the 10 being males, and your intent is to try to equalize that and here you have another example of a successful male applicant. How do you then challenge the personnel officer that he should have selected a female applicant?

MR. SMITH: Any of the unsuccessful women applicants may lodge a complaint and perhaps have a board of arbitration to hear the complaint, perhaps merely the investigation by a human rights officer would be sufficient.

MR. USKIW: But my point is though, would they not have to prove that there was some discrimination on the basis of sex rather than qualifications?

MR. SMITH: My personal inclination is that once may be defensible, twice may be defensible, three times becomes a pattern, 10 times becomes a defensible pattern.

MR. USKIW: I understand. You're saying it's a bit of an overview approach to sort of follow the track record of an employer, so to speak, and if it seems evident that there is a distinct pattern then that would be some argument in favour of intervention to redress the discrimination in your opinion.

MR. SMITH: You could relate the kind of promotion that they are making to their recruitment practices, to their training program, to the encouragement offered to employees to undertake additional training.

MRS. McDOWELL: And to the qualifications for which they ask, are they realistic or not for the job.

MR. SMITH: There are, of course, some double binds in that sort of thing, I expect you realize this. An interesting case in California where a school division advertised for an assistant superintendent. The board decided in advance that other things being equal, they would prefer to appoint a woman because all the other senior administrators were men. The advertisement came out and said that the successful applicant must have a superintendent's certificate and two years of successful experience in California. They were astonished when they got no applications from women.

MR. USKIW: No, I understand the objective. It's just that I fail to see how an entrenched constitutional provision does for you what otherwise is not possible to be done. I really think there has to be a willingness on the part of people to do that.

MR. SMITH: Maybe I should emphasis that what we are most concerned about is that the Constitution not prevent things which are now possible.

MR. USKIW: Okay, okay, that's the point of clarification I was looking for.

MR. CHAIRMAN: Any further questions to the two delegates? Mr. Einarson.

MR. HENRY J. EINARSON (Rock Lake): Mr. Smith, I listened to your comments before you related to your brief and you indicated that it was a sort of fait accompli in presenting this brief to us here this morning, because of the fact that the provincial government had launched a court case on three counts challenging the Prime Minister of this country to what he is doing.

I was sitting here wondering and thinking about another analogy that I may be able to put to you, and I thought of the public insurance that was brought in by the NDP party back in the early

Seventies in this province as commitment made by the NDP party and I am wondering if you did, and of course I don't know if you did or not, present a brief to the committee at that time voicing your views whether you were for or against a Crown corporation being developed to operate public insurance for the Province of Manitoba. Would you say that is a similar analogy and would offer the same kind of criticism that you offered in this case?

MR. SMITH: I think there is a difference between having hearings by the Law Amendments Committee on a bill which has already been introduced in the Legislature, which is the normal procedure that we are accustomed to in Manitoba — we had it for instance with respect to the family law bills on two occasions — and asking for presentation of public opinion on an issue on which the government has not introduced legislation but has taken a firm position and I wasn't thinking particularly of the court case. I was thinking of the fact that our Premier has made perfectly clear what he believes the Government of Manitoba will adhere to in its attitude to the Constitution and particularly to the Charter of Rights.

MR. EINARSON: But, Mr. Smith, the point I am making is, is it not the sort of after-the-fact as you stated in this particular case? The fact is that a party is committed to something and regardless of what you have to say about it, it's still going to be carried out. That's my point that I am asking.

MR. SMITH: All legislation which is introduced in this Assembly is open to amendment. In the last session we had legislation which was even withdrawn. Now surely that validates the process of people coming to talk about legislation which is before the House.

MR. EINARSON: All right then, Mr. Chairman, we have a resolution before us, that is, the Prime Minister has put a resolution before us which concerns us. I'm wondering, and you mentioned here in your brief, language rights, the rights of an individual to education in French or English where the numbers warrant; the equality of Canada's two official languages in social services, the courts, and the Legislatures, and Section 16(1) declares that English and French to be official languages of Canada and would recognize their equality of status and use in all institutions of the Parliament and Government of Canada.

I'm wondering, as teachers, do you feel that the French language or the English language should be embodied in the Constitution right across this nation or do you feel that the better way, which we started a number of years ago in Manitoba, was to teach the French language to those who are non French in the schools rather than trying to legislate it in the country, throughout the country, probably against many people's will?

MR. SMITH: I was under the impression that the Supreme Court had already ruled on the issue of both languages being used in the Legislature and courts of Manitoba.

MR. EINARSON: You understand that, as a BNA Act, that the French language is used in the House of Commons and the province of Quebec, and I can add here in this Section 16(1) and it also derives from Section 2 of The Official Languages Act of Canada which was brought in by the federal government in 1969. I have met a number of people, for instance, who are non French, young fellows, people who wanted to join the RCMP, who were not allowed to or were prevented from doing so because they could not speak the French language. Do you think that is fair and right?

MR. SMITH: My own reaction is it would depend upon what duties they were expected to assume. If they are expected to be able to perform their duties in any part of Canada, then I would think both languages are necessary.

MRS. McDOWELL: And is there not also the aspect of willingness to learn as well and opportunity to learn?

MR. EINARSON: I thank them for that comment, and also I would like to ask your views and how you feel. I'm merely throwing questions to get your views on this because of the clause that you have here. Say, for instance, someone who has worked in the civil service of the federal government for 25 years and because the law is suddenly changing as of 1969 their services are no longer required because they are unable to speak the French language and then that means that they no longer have a job. Would you say that is a form of discrimination or not?

MRS. McDOWELL: It's my understanding that they have the opportunity to learn the language. I understand that the federal government has a number of schools in Ottawa and people are sent, civil servants are sent to learn the language at government expense. So it would seem to me that there is an option there.

MR. EINARSON: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Parasiuk.

MR. WILSON PARASIUK (Transcona): I just wanted to amplify on one of Mr. Einarson's question, the original question regarding whether in fact the hearings might be perceived by some people as being after the fact. Were you both aware that in the spring of 1980, Howard Pawley, the Leader of the New Democratic Party, asked for the establishment of a legislative committee to hear the views of Manitobans on the Constitution. This culminated in the Premier introducing a resolution towards the end of the Legislature establishing this particular committee to hear the views of the people on the Constitution and report back to the Legislature. We did not get called; we weren't established. We didn't have the opportunity to hear the views of the public before the government took a very firm inflexible position with respect to the Constitution and took the federal government to court. Now, were you aware of those particular facts regarding this particular legislative committee?

MR. SMITH: Yes.

MR. PARASIUK: Thank you, I can appreciate your position then.

MR. CHAIRMAN: Any further questions? Seeing none, to both of you, thank you kindly. The Alerted Canadians Alliance, W.F. Green. Mr. Green, will you be addressing us and reading off a prepared text and, if so, do you have additional copies?

MR. W.F. GREEN: I have a zerox copy there.

MR. CHAIRMAN: All right. Proceed, please.

MR. GREEN: My name is W.F. Green, speaking for the Alerted Canadians Alliance. I will answer questions after I have finished in about six or seven minutes.

Unlike federally financed francophone groups, organizations acting on behalf of the general public receive no government assistance of any kind. Members have to donate time, effort and funds to only partially present their side of what is going on in this country. In our opinion, a national emergency exists. This candid brief is the voice of ordinary men and women in various walks of life, from many racial backgrounds, including French, who reside in every province. Some for years have noted carefully planned, disruptive changes in our traditional way of life proceed toward a defined objective. More recently, others have become alarmed by what they see on every hand. Bluntly stated, our representative cross section of the population is convinced that an extremely efficient and determined minority segment is about to gain permanent control of the entire country by undemocratically forcing undesirable, unwanted legislation through Parliament.

Such a deplorable situation has arisen owing to an uninformed, divided opposition refusing to square up to stark reality. Consequently, wishes of at least 60 percent of the electorate are ignored. In this way one ethnic-dominated party is able to stay in office with only two elected representatives from the huge, western half of the nation. To all intents and purposes, government and opposition appear to be captives of the same ethnic minority. Passage by a gullible Parliament in 1969 of the unconstitutional Second Language Bill has managed to make possible virtual French direction of the armed forces, national police, Crown corporations, as well as personnel in most levels of all governments, that is, federal, provincial and municipal. This influence is also being increasingly noticeable in educational circles, the news media, every field of public service, transportation, industry and business. At the present rate, use of French will before long exceed and replace public use of English and other tongues. I would like to emphasize "and other tongues". English is the target, the No. 1 target. When it goes, the others will follow it.

Enforcement of this second language everywhere permits introduction of French schools, teachers, churches, priests, doctors, lawyers, families, relatives, stores, industries, federal government departments, etc., in non-French areas. These new communities remain exclusively French, spurning the assimilation mosaic which created the greater Canada outside Quebec borders.

Furthermore, under the proposed mobility clause in a new or amended Constitution, Quebec residents will qualify for employment in every provincial work project across the country and receive preferential consideration by right of ability to speak French.

I see in last night's paper that Quebec was complaining that the mobility clause would result with people going into Quebec. Ontario has already experienced being barred from Quebec. The shoe was on the other foot. Co-operation, goodwill and a harmonious living atmosphere among the multitudes of people comprising Canada's population is absolutely essential to national unity. Islands of elitism will be permanent sources of dissention, increasingly so as they enlarge, permitting any minority to change this constitution to gain superior status or power will be to commit national suicide. Instead, any alteration should be designed to bring the maximum benefits to the maximum number of people.

Under the 1931 Statute of Westminster, the British Parliament granted complete sovereignty to Canadian provinces with power to federate. They have never done so but should take immediate steps to do this, then legally restructure the federal government. To ensure necessary unity, each province joining will have to declare English the one common language. Should Quebec decline, it already has the authority to attempt to operate alone. The rest of the provinces, particularly the four western ones, will have to act very quickly to forestall possibly unconstitutional tactics by the seemingly hopeless combination at Ottawa. Strong constructive leadership by the west can encourage Ontario and the Atlantic provinces to take heart and join in restoring control of Canada to its people rather than let it pass into the hands of one sector or element.

These thoughts are not those of a single movement of concerned citizens. There is widespread apprehension that the existing unnecessary and contrived constitutional crisis will end in chaos unless contemplated changes can be prevented.

Representatives from this and seven other national organizations met privately in Ottawa on October 15th last, to formulate and issue a consensus of opinion regarding this vital issue. Here is one of its six paragraphs: "Since Confederation, the BNA Act has safeguarded stable institutions operating in the best interests of citizens everywhere. Replacing such a proven Charter with a republican-type document could transfer legal control for all time to come to one ethnic minority. To permit the present administration to continue on its divisive and utterly irresponsible course, promises to result in financial, political, and social disintegration."

In conclusion, we completely endorse another short paragraph: "This meeting strongly objects to the inclusion of human rights in any constitution which will enable governments to further intrude into the private lives of citizens. We also object to entrenchment of language rights. Such action would place language beyond reach of all future Parliaments."

Thank you for the courteous hearing.

MR. CHAIRMAN: Mrs. Westbury.

MRS. WESTBURY: Mr. Chairperson, through you to Mr. Green. Mr. Green, where is the headquarters of the Alerted Canadians Alliance?

MR. GREEN: Winnipeg.

MRS. WESTBURY: Is it a Manitoba organization? I've never heard of it.

MR. green: No, as I said, I attempted to explain . . .

MRS. WESTBURY: Unfortunately we didn't get copies.

MR. GREEN: It's Dominion-wide, members in every province. It was started in June of 1976.

MRS. WESTBURY: Would you tell me what the membership is approximately, please?

MR. GREEN: No organization tells their membership but I can just say this, that we started out with a broad side to have 950 newspapers including all weeklies and ethnic papers, other than French of course, and although not too many of them ran the article, there were enough to do it that we had replies from every province. We started by issuing membership certificates but we found out that was too much work and expense so we discontinued that early in 1977. Recently, since the election of 1979, the public has shown far more interest in what is happening than they had before. They thought it would blow away but they now realize with this constitutional matter that we are facing a national crisis.

MRS. WESTBURY: Well anyway, enough to throw out the 1979 government and replace it. Mr. Chairperson, through you again to Mr. Green, have you ever in Manitoba felt . . .

MR. GREEN: Would you speak into the mike, please.

MRS. WESTBURY: Have you ever in Manitoba felt that any of your rights had been threatened by reason of your . . .

MR. GREEN: Every day of the week.

MRS. WESTBURY: Excuse me, may I finish the question please, Mr. Green.

MR. GREEN: Beg pardon?

MR. CHAIRMAN: Mr. Green, would you permit Mrs. Westbury to complete her questions before you start to answer and Mrs. Westbury, for Mr. Green's sake, if you would put the mike a little bit to your right as you look at him, your voice will go into the mike more directly. He's having difficulty hearing you.

Mrs. Westbury, would you repeat the question.

MRS. WESTBURY: Thank you. I am suffering still from the flu so I apologize for that. My voice isn't as good as it used to be.

MR. GREEN: That's fine now. I can hear you now.

MRS. WESTBURY: I'm practicing however. Would you please tell us whether by reason of your sex, colour, racial origin, language, you have ever been discriminated upon in the province of Manitoba and in what way, please.

MR. GREEN: My racial background consists of five European nationalities. My roots . . .

MRS. WESTBURY: I'm sorry, I wasn't trying to probe or pry into . . .

MR. GREEN: Well, you asked me. I'm trying to answer your question.

MRS. WESTBURY: No, I didn't. I asked you if you have ever felt discrimination on the grounds of your racial background or any of the other areas that I described.

MR. GREEN: Personally, I don't know that I can but I do know that there are millions of Canadians who do and I am bothered every day by having to read and listen to French. That is not necessary in this part of the country. Just today we got — yesterday we got in the mail from Canada Post, a thing in two languages, side by side. All they need out west is English. Quebec have their French. We don't care what they do in Quebec.

MRS. WESTBURY: Excuse me, through you, I would just like to pursue this for a minute. How were your rights threatened by receiving something in two languages?

MR. GREEN: Everything comes in two languages now from any federal government. The banks issue bilingual statements.

MRS. WESTBURY: But what I'm — I'm sincerely trying to find out how you felt threatened by receiving something in two languages? How did that threaten anything in your life?

MR. GREEN: I don't know how else I can express it.

MRS. WESTBURY: So you really didn't feel threatened by receiving that?

MR. GREEN: I beg your pardon?

MRS. WESTBURY: You didn't feel threatened by receiving that?

MR. GREEN: My privacy is threatened, yes. My freedom of choice is interfered with.

MRS. WESTBURY: You didn't have the choice of whether you read the English side of the page or the French side of the page?

MR. GREEN: I would prefer the choice of having all my literature received in the English language. This is according to the BNA Act, that is the official language of the country.

MRS. WESTBURY: Thank you.

MR. CHAIRMAN: Any further questions of Mr. Green?

Mr. Einarson.

MR. EINARSON: Yes, Mr. Chairman. I would like to ask Mr. Green, the Official Language Act, and here I bring it back to you, Mr. Green, of '69, were the people of Manitoba asked whether they approved or disapproved of that legislation?

MR. GREEN: Not to my knowledge.

MR. EINARSON: Was the B & B Commission, when it was established back in the early '60s, was that

asked by you or any of your friends whether you wanted that Commission to be appointed?

MR. GREEN: That Commission was actually a waste of time as far as I'm concerned because this was after the fact. Before they changed such a vital thing as the language they should have got the people's vote across the country whether they were in favour of it or not but it was put through by one party and the other members of other parties either weren't aware of it or were afraid to stand up and express their opinions on it but to change the language of a country, if we were going to revert this and put it back in France, do you think the French people would put up with what we are putting up?

MR. EINARSON: Third question, Mr. Chairman, to Mr. Green. Were you asked whether or not you approved of the Metric System that's been established in this country?

MR. GREEN: No, you're quite right. This is the cause of the so-called separatist movement in western Canada. There are several things that have gone on by this present government that they were not consulted and will never be given a chance to give their opinion on.

MR. EINARSON: Mr. Chairman, I posed several items here to the witness. Also a question was asked of you, Mr. Green, as to how you felt your freedom was jeopardized? All these things that have been done in the past whereby the people of this country, I would say the majority of the people of the country, were never asked whether they wanted them or not. But there was a price tag attached to it. Is that not a part of jeopardizing your freedom — not asked about whether you agreed to the cost of it or not?

MR. GREEN: I would say that's correct, yes.

MR. EINARSON: So the things and the history that we've seen in the last number of years in Canada, and I just want to make sure that I understand you correctly when you talk about the resolution that is before us in Canada, as to what the outcome could be, what the future could be for say, and you mentioned the fact that you were a background of say, five different ethnic groups, European groups. I'd like to ask you, what's your view about the other minority groups across this country? Where do they stand in this whole picture?

MR. GREEN: The other minority groups in Canada feel that they're the third rate citizens, second rate or third rate citizens because according to this present setup English and French are the founding races. This is not true. There were other nationalities right in Canada from the very earliest times. The theory that two races can operate harmoniously in a country doesn't operate any country in the world, and then to have about 35 or 37 percent of the population regarded as second class citizens or third class citizens — it's never going to work.

MR. EINARSON: Mr. Chairman, another question to the witness, Mr. Green, and I think you're concerned about your rights in this country. How do you feel about the entrenchment of your rights into the Constitution as opposed to not entrenching?

MR. GREEN: What they are proposing is something entirely contrary to the Canadian way of life. As I understand it, Britain, which is regarded as a fountainhead of liberty in the world, they don't have any Bill of Rights to guide them. As near as I know, the Magna Carta is about the only written constitution that they observe.

MR. EINARSON: Just one more final question, Mr. Chairman. In the United States, is it not a fact, Mr. Green, or probably you could say whether it is or not . . .

MR. GREEN: Well yes, the United States is a case in point. We have an example, it doesn't work there — the Bill of Rights doesn't work there because it slows up action that is required in times of emergency, like in the depression. They had, I think it was something like 10 years before they were able to bring in labour legislation that would have helped the situation at the time.

MR. EINARSON: So in conclusion, Mr. Chairman, to Mr. Green, just so that I get your message. All your rights, and it should be in legislation, put on the statutes, that are dealt by parliamentarians and legislators and not the courts. Is that correct, Mr. Chairman?

MR. GREEN: This is right. The people, they act for the people, right? That's the principle of democracy.

MR. EINARSON: Thank you, Mr. Chairman.

MR. CHAIRMAN: Any further questions. Mr. Uskiw.

MR. USKIW: Yes, I'm very intrigued by your last statement. You say that Parliament should have the say in what takes place in Canada. You have just complained about the fact that parliamentary decisions have been made that you're not happy with. All the various things that you're objecting to were passed by a majority in Parliament, so I'm trying to understand how you can take the position that you are being discriminated against because of decisions made by Parliament, and then at the same time say only Parliament should make the decisions.

MR. GREEN: Parliament was manipulated.

MR. USKIW: Well no, but is it not a fact though that everything that passes Parliament must pass by a majority of the Members of Parliament voting for it?

MR. GREEN: This is right. That is the principle of democracy, and that's what we want today, to let the people decide on these things, not just a handful that are mislead.

MR. USKIW: But the point is that the people did elect the government in power that's there today; it was there 10 years ago and 20 years ago and 50 years ago. Whether they made right decisions or not is here nor there, the question is do you quarrel with their right to make those decisions, being elected?

MR. GREEN: Under the present setup they're perfectly justified in doing what they did, yes.

MR. CHAIRMAN: Any further questions to Mr. Green? Seeing none, thank you kindly, sir. Church

and Society Committee, Manitoba Conference, United Church of Canada. Sorry, Mr. Green, there's no further questions.

MR. GREEN: Thank you very much.

MR. CHAIRMAN: Thank you, sir. The United Church of Canada, Manitoba Conference.

REVEREND CARL RIDD: Mr. Chairman, Mr. Steen, could I give the copies of this brief? We did have some circulated in your first round of hearings. I don't know whether the people at this table still have those copies or whether they do not. I have some extras.

MR. CHAIRMAN: The Clerk will circulate them, Reverend Ridd. You can proceed.

MR. RIDD: Thank you. Mr. Chairman, we appreciate very much the chance to speak with you. We know how busy you've been, we're delighted you've been busy because it shows that there's a concern among our people that opinion be expressed on this point. The document you're being given at the moment is in two parts actually. We give as an appendage the copy of the document much briefer that we are sending to the federal hearings on this subject because we want you to know what we are saying to them. We are saying to them, in effect, that we do not think the Charter of Rights and Freedoms as presently proposed is at all adequate. We state the reasons on that why we think it is inadequate. We oppose very vigorously the haste and divisiveness with which it was being done although there's a two month stay in that which we are glad to note. It may not be sufficient but we are glad that unseemly and divisive haste has been changed or moderated slightly anyway. So those are points that we make to the federal hearings and we add them to your document here, that you may know that we are not simply coming down on one side of all these questions or another but are trying, in a fair and balanced way, to look at the whole picture.

So in this brief to you we simply confine ourselves to the question of whether there should be entrenchment of rights and freedoms in a patriated Constitution.

We oppose the position taken on our behalf by the Premier of Manitoba when he rejects entrenchment of human rights and freedoms in the proposed Constitution. We hold on the contrary that these rights and freedoms must be entrenched in order to be protected to the fullest of our national ability. We take this position for the following reasons:

First, if fundamental freedoms and rights are to be protected, people must be able to see them and know them in one place. They must not be buried in thousands of places in different statutes and Parliaments, or they will become merely the preserve of the lawyers and politicians. This is too much the case already.

2. Entrenchment we think will make erosion of these rights maximally difficult, beyond that attainable via ordinary legislation or by priority statute.

3. The present Canadian Bill of Rights, though it does collect some of these rights in one place, lacking priority status, is seriously deficient in its ability actually to protect these rights.

4. The Manitoba Human Rights Act is likewise deficient in actual ability. It has serious flaws. Here we acknowledge very gratefully that report of the Citizens' Task Force of the Manitoba Association of Rights and Liberties and it refers only to this province. Though it is one of the best of such Acts in Canada, it is still not the instrument we need.

5. Our various Canadian Parliaments and Legislatures, contrary to the asseverations of the Premier have not historically safeguarded rights and freedoms of Canadians in a distinguished manner. We give some examples there. I won't read all this because I know you people are under constraint of time and I wish to respect that and be as brief as I can. Just concluding that section — the sentence. The Task Force on Canadian Unity remarks, "There have been enough episodes in recent Canadian history to make us believe that some basic rights should be protected by the Constitution."

6. The McDonald Commission on RCMP wrongdoing is unveiling evidence constituting a special reason for needing the firmest possible protection, namely, the illegal treatment of citizens by their own police.

7. We disagree profoundly with the Premier when he casts the debate into the either-or form of Parliament or judiciary. We think by this he blurs the question and does all his people a disservice in Canada as well as in Manitoba. Contrary to the Premier, Parliament will always be able to be supreme, even though entrenchment occur; for it has power to change the laws while judiciary power has only to interpret within the laws as given. We invite you to compare the handbill printed by The Canadian Advisory Council on the Status of Women for a similar criticism of this too simplistic, but lamentably often heard objection. We fear our own Premier may have been the original fount of this misunderstanding through his speech at the Federal-Provincial Conference last September. It was a very moving speech. I remember hearing it, I think on the radio, rather than on television. On the radio you can hear the words better because you're not distracted by even visual images. He spoke, as he always does, with weight and consideration and with obvious sincerity and made a point with which I, at that time, rather agreed. But it was only after getting further into the point that I have come to disagree with that very substantially presented point that he made at that time. We dread that with entrenchment, Parliament will not have as ready a means of changing fundamental rights and freedoms and this added difficulty but not impossibility is what we desire. We think that to make it more difficult for Parliament to attack these rights is the proper course.

8. The Premier's criticism of an entrenched Constitution's inflexibility regarding new emergent rights is likewise mistaken and misleading, since as the Task Force Report on Canadian Unity suggests, various combinations of constitutional entrenchment and supplementary legislative provision can achieve a supple enough mix, while still ensuring basic rights in the firmest way.

9. Parliaments and Legislatures are not, in fact, presently able to protect sufficiently the rights and freedoms of Canadian people; hence, ombudsman. We do not see entrenchment as replacing the

ombudsman function, but as eliminating some of the day-to-day labour of it, by making human rights more evident and more difficult to abregate.

10. Entrenchment will help secure the evenness, and there I thought it well to call attention to the pun that I meant. By that, the word evenness is from the same word as equity. If there is not equity of justice, then there is no equity in the justicial sense from coast to coast.

11. One of our fundamental desires is to stand in this matter with a variety of disadvantaged groups in our society, foremost among whom are our native peoples. Our Parliaments and Legislatures, historically, have been shamefully slow to perceive and to do justice with respect to them. We are unwilling, as they are on the whole, to see the Constitution brought home without the strongest possible protection for them against later injustice by the powerful majority — that's us — in the name of the national interest.

12. The CHRC, which has made long study of human rights, supports entrenchment of a Charter of Rights. Mr. Gordon Fairweather, Chief Commissioner of the CHRC, himself a former provincial Attorney-General and a P.C. Member of the House of Commons has even urged that the terms of this Charter not be subject to repeal in any circumstances including a national emergency. We agree.

Then we give you some newspaper figures which you read in the papers, speak for themselves, and finally;

14. Though we cite historical precedents, legal and constitutional argument, the opinions of students of these things more learned than ourselves and finally, even public opinion, we are animated centrally and joyfully in these remarks by what we understand from the Christian gospel. This is too great a matter to be set forth here in all its richness, variety and complexity; but with whatever differences of emphasis and specific application we might come, we finally hold together that human life in this world is lived out under God, that He wills all people to have the right to protection against unjust power, and to a just share of wealth and opportunity; and that we are called by God to help achieve this so much as we can in time and history. In this effort we are joined beyond theology with all those who think likewise, whether they are Christians or not.

Then we have a brief paragraph that concludes, which points out that we are by no means happy with the Charter of Rights and Freedoms as presently contemplated by the federal people with the terrible weaknesses in it and we have sent a brief to them on that ground.

The final paragraph then, on Page 3. Nevertheless, we are convinced of the need for an entrenched Charter, strengthened, and call on the provincial government to reconsider its present position of opposition, a position which we think accords ill with those things most needed in Canada today, and with our present level of understanding of those humane traditions from which we have all come.

Thank you.

MR. CHAIRMAN: Thank you. When I introduced you, sir, as Reverend Ridd, some of the members of the committee didn't hear me clearly. Which name do you prefer to be called, Carl Ridd, Mr. Ridd, or Reverend Ridd — or from your basketball days — King Carl?

MR. RIDD: I apologize to you, sir, because I should have told you. I thought mid-course in this, I didn't even tell them who I was and all they see is this line, Manitoba Committee of Church and Society. I feel myself among friends, I am Carl Ridd, with you. Thank you. I do teach at the University of Winnipeg in the Department of Religious Studies, if that's relevant to you.

MR. CHAIRMAN: Would you permit questions in relation to your brief?

MR. RIDD: I surely would.

MR. CHAIRMAN: Mr. Blake.

MR. DAVID BLAKE (Minnedosa): Mr. Ridd, how many people would be on their committee, the Church and Society Committee of the Manitoba Conference? How many people would be on your committee?

MR. RIDD: There are about ten all together, there are other people who are co-opted from time to time, so it varies.

MR. BLAKE: And they would be drawn from throughout the Province of Manitoba?

MR. RIDD: Yes, that's right. In fact over this particular brief we had a special meeting of that committee in which people did come in from country points. And they, of course, are responsible — this committee is responsible ultimately to Manitoba Conference, and although Manitoba Conference only meets once a year, and consequently hasn't seen what we have put here, they will see it and we have reason to think they will stand with it.

MR. BLAKE: My reason for asking that is that various other stands have been taken by the church, probably in Canada, when I think about a year or two ago, when there was some survey done throughout the congregations, it was found that by a very large percentage they didn't agree with the position taken by the United Church Moderator or stated as a position of the church. This would represent a good cross-section, and would represent the views of the congregations throughout Manitoba of the United Church?

MR. RIDD: I think it on the whole would, because I feel more confident about that because that seems to be the general view of citizens in Manitoba, not because I feel that church people would necessarily stand with committees like this one. You're quite right that many of the positions taken by some of our leading people are not supported by the grass roots and in particular that's going to happen for the next two years, with our present moderator, Lois Wilson, of this city. There are going to be a lot people who are quite offended by what she says, but nevertheless, I think the growing minority, in terms of numbers, are going to stand with positions that she takes, and she's helping them to do so.

MR. BLAKE: In Item 12 of your brief, where the study of human rights supports entrenchment and

you go on to quote Gordon Fairweather, where he has even urged that the terms of the Charter, not be subject to repeal in any circumstances including a national emergency, which you agree with — I'm afraid I couldn't agree with Mr. Gordon Fairweather either, knowing who is. I think if you were to do a poll of the average man on the street in Manitoba, I don't think they would agree with this either. I think in the case of a national emergency there has to be some form of action taken that wouldn't allow for a referendum or whatever to be called. But that's my personal view. I just want to state that under Item 12 I couldn't agree with it on a personal basis.

But your brief has been well presented, Mr. Ridd, and I compliment you for taking time to present your views to us, because you people are also busy and these things aren't put together that easily.

MR. RIDD: Thank you, Mr. Blake, could I just respond to that point you made. I imagine that it would not, that the point that Mr. Fairweather makes, if it were taken in a kind of referendum across the country, probably the majority would not agree with him. There are many other things with which the majority would not agree which our government nevertheless does, and quite properly does, and we expect such commentators and our legislators to move us beyond the mere public opinion, rather to what is best for us.

MR. CHAIRMAN: Mr. Parasiuk.

MR. PARASIUK: In part, following on from Mr. Blake's questions. Point No. 5, to some degree contradicts or qualifies Point No. 12. You say in Point No. 5, while we do not wish to suspend emergency powers altogether. Aren't you really saying then that in a national emergency there could be some suspension but not any type of absolute unqualified suspension?

MR. RIDD: Yes. Thank you for finding that — for reading it properly. I did skip that passage I realize, and when Mr. Blake was asking me, I thought somewhere in here we've got it. And I wanted to look him in the face and respond to him, so I didn't want to be saying, well somewhere in my notes. But there it is, yes, we do see a tension — a healthy tension between the, on the one hand and on the other hand and we want to live in that tension. Yes. Thank you.

MR. PARASIUK: On another point. I as well want to compliment you on your brief and to appreciate the fact that the church itself has looked into this matter of what might be called social justice. Other politicians, some in surprisingly high places, have commented negatively on the United Church involving itself in questions of social justice. I think that you've, on behalf of the church, done us a service by bringing your perspective to us on the question of an entrenched Bill of Rights.

I don't see anywhere on — I guess I'm referring to your appendix, that's the brief to the Committee Hearings on the Constitution, Federal Government?

MR. RIDD: Yes.

MR. PARASIUK: Could I ask you a question on that as well?

MR. RIDD: Sure.

MR. PARASIUK: Point No. 4, you say, we also name in passing, women's rights and the rights of the handicapped, which lack sufficient protection presently. Do you include — I guess you did in your original one. You include the whole question of native rights as well there? Treaty rights?

MR. RIDD: Yes, we made special remark of native rights, somewhere in here.

MR. PARASIUK: In the blue one, okay.

MR. RIDD: Yes. Point 3, Mr. Parasiuk, just under that point to the Charter itself we can respect, and we do single out native rights in great particular. We mention these others, women and handicapped, in passing. I'm sorry the point just above Point 4 which you are looking at. We do single out the native need in great particular.

MR. PARASIUK: In the yellow attachment there, the brief to the federal Parliament on the Constitution, that brief says in Point 2, while we recognize that the Premiers of the objecting provinces are, to a large extent playing a political game of "abuse of the Feds", and are out of step with the majority of their own citizens, in relation to that paragraph, you then go on to point out that the undue haste in which the Federal Government is acting, with respect to this resolution, in fact just adds fuel to the fire. And I agree with you, or with the church, when they make that comment. I think that's the big problem that we have in Ottawa.

However, to turn it back to the provincial side, don't you think there could be some better process of consultation, negotiation compromise on the whole issue of the resolution, if, just after the Prime Minister announced his resolution, the Premiers had gotten together and accepted the suggestions of Premier Blakeney of Saskatchewan, to come up with a set of counter-proposals? At that stage, and this was a meeting chaired by Premier Lyon in Toronto, just after the Prime Minister announced his resolution, the majority of Premiers at that meeting decided that they wouldn't go that route at all. That rather than presenting any type of positive recommendations, seeking some type of compromise, which is the way things have traditionally worked within our federal system, that they instead would take the course of taking the federal government to court immediately, going to the court as a measure of first resort, as opposed to a measure of last resort, and therefore, in a sense, really preventing any type of dialogue between now and whenever the resolution might go through Parliament. Do you think the province could have acted in any other way?

MR. RIDD: I suppose they could have, and you're asking me to be a bit prophetic on this point. We're all making guesses about what could have been and I appreciate that was another course that could have been taken, and that perhaps eventually will. I've come to the conclusion, and that's actually what I wished for, at that time, I wished that there would be a serious coming together and a serious dialogue because I don't think there is one. But I've come to

think, subsequently, just watching the evolution — this is my personal opinion, it's not that of any other member of the committee, necessarily, although they might think so too, if I pose it to them — that maybe we have to undergo a little bit longer, this period of confrontation and mutual abuse. That is, we weren't quite ready for make-up yet, and that while it made good sense, and while one wished that they could have been ready for that kind of sitting down together, that maybe the case has to go to the courts and so on and so forth, and maybe that was part of the leverage which caused the two-month hiatus till February, down in Ottawa, and so on and so forth.

So, perhaps a little bit more of good, healthy fighting and slugging might turn out to make it possible for real consultation to occur. That's my prophetic guess about the matter.

MR. PARASIUK: Just one final comment. Other people have described the process that you just described of fighting as one of thesis antithesis, leading to some type of synthesis, maybe that will happen.

MR. RIDD: True, I am an intellectual, and I recognize the Hegelian virtue of it, but the actual metaphor I thought of, and please don't tell my wife this, or actually I love her enough that you probably could, the analogy that occurred to me as I thought about that, is the sort of fighting that husbands and wives, of those who dearly love one another, really and truly do and sometimes must do before the forgiveness and reconciliation can happen. So it was a much more humble analogy that I had in mind than that.

MR. CHAIRMAN: Mr. Parasiuk, are you finished?

Mr. Walding.

MR. D. JAMES WALDING (St. Vital): I might ask a question or two. It has sometimes been suggested or inferred that people who are against the entrenchment of a Bill of Rights are somehow opposed to those rights. You haven't said that and I would say the opposite, and those who are opposed to that . . .

MR. CHAIRMAN: Mr. Walding, may I stop you for a moment and ask you if you would push the microphone a little to your right so that when you're looking at the representative, that you'll also be speaking into the microphone. Some of here were having difficulty hearing you.

MR. WALDING: I see. The question arises I believe, when you come down to certain matters of the interpretation of rights. Let me give you a couple of examples. The United Church, I understand has a very good magazine or paper that it publishes. I don't whether it sells advertising or not.

MR. RIDD: If it's The Observer, it does.

MR. WALDING: Supposing that a group came to you and wanted to purchase advertising in that paper that was frankly objectionable, or obscene or something that the church would normally not wish to publish, and you did not accept the advertisement. Would you then be happy that the matter was taken to court, that this person or group was not able to exercise his freedom of expression, or the freedom of the press? Would it make you happy that an entrenched bill was used to do something that is objectionable to your church?

MR. RIDD: Oh yes. Because I believe to the bottom of my soul in the democratic process, that if the church were taken to court over this thing it would probably be, in the long run, healthy for human freedom that it be done. Yes, the editorial decision not to accept the advertisement would be subject to court scrutiny and maybe to even reversal, but in the long run, and this is my faith, it would do good in that the arguments for both sides would be presented and I would trust that the court would make the same decision, finally, that the editorial people had made, and if they did not, then I — that is assuming that I agreed with the original editorial decision to not publish it, and if they did not, why then after a time people might become aware and once again say that there should be no freedom to say slanderous and simply wrong things.

So I believe that the process would work out in the long run, the way it should.

MR. WALDING: You intend to come down on the side of freedom of the press, or freedom of expression, rather than any standards that members of the church might wish to see in a magazine coming into their homes.

MR. RIDD: Well not quite, I don't see them as mutually exclusive and in fact there have been cases, I forget just what it was, but The United Church Observer did refuse to run an ad, I wish I could remember what it was, but there was a bit of a hullabaloo about it, and about its refusal. It was, to my way of thinking, to yours probably too, a very obvious kind of ad that they shouldn't have run. Maybe it was — let's say it was the Ku Klux Klan or something like that, and they decided not to, a thing which they decided was racist. I think that was a proper decision and I also think that no entrenchment of rights in the Constitution would enable such a wrong kind of ad to get its way into a magazine against the will, not only of the magazine but of the people.

MR. WALDING: That's the point that I'm making. If you say that you believe in freedom of the press and freedom of expression, and you want it entrenched, is that not going to raise problems for you when these arguments are used in a court case to force you to do something that you or your organization would not wish to do, in the normal course.

MR. RIDD: Yes, it will raise problems, but democracy is complicated and it is the raising of problems, and I would like the problems to be raised and resolved.

MR. WALDING: Okay, then we move to one other question, if I may? You stress on the second sheet here that you wish to see native rights entrenched in the Constitution. I don't know what people mean when they use the term native rights, but I'm wondering if you understand native rights as to

include the power to decide who should live on a reserve, whether the band should have that power. Is that a native right?

MR. RIDD: It might be. I don't pretend to know what native rights even I, myself, would want in there. What we mean — and I think the members of the committee don't know that either — we would like to hear what the native people and, of course, they don't speak with one voice. That's another part of the complication but we would like to know what finally they might propose to be in it and then we would like to consider whether that can and should — I don't want to just give them a blank cheque, so that anything they write up automatically goes in. That would not be true consultation with them either but we would like to hear what they think would protect them and to think whether we think it would and whether, in doing so, we would be fair to all of the contending needs of other minorities and of all of us and therefore write it up in that way.

MR. WALDING: I understand that presently the right to decide who shall live on a reserve does reside with band councils and that to do away with that would be a matter of taking away a presently existing right. Let us suppose that Indians bands expressed the desire to retain that right and it was entrenched, but that is the provision that is now acting in a discriminatory way by keeping white men and Indian women married to them off of reserves. You are aware of the fuss over that matter. Would that bother you that entrenching a native right as such would also be contrary to what might be considered a human right?

MR. RIDD: Yes, it would bother me and therefore I would incline on first considering that particular point, not to be willing to enshrine it in the Constitution. I personally, that one, just as I wouldn't wish to enshrine in the Constitution the right of Newfoundland or the right of Quebec or the right of Manitoba to prevent citizens from other provinces from coming to live here. But that would be one where the native people and I, myself anyway, would want to have very earnest debate before we put it in that form. Although I realize that they are different kind of people and have to be protected differently from what we in Manitoba or the Newfoundland people with even their 23 percent unemployment and so forth have to be. So that there is a scale of need of protection, and the native people are rather high on that scale so I would be willing probably to protect them in special ways that I wouldn't be willing to protect the rest of us. But I wouldn't want to protect them in just any way that they might see fit, such as that.

MR. WALDING: You're telling me then that you would wish to give extra protections or extra rights to one particular group of Canadians because of their ethnic origin that you would not give to all Canadians.

MR. RIDD: Yes, and I would say the same for people who are handicapped; that I would be willing to give them certain spelled-out rights that I wouldn't be willing to give us. I mean I would give no more rights necessarily, but that I would be willing to spell out in a Constitution those rights in order to make them stronger, yes.

MR. WALDING: No further questions.

MR. CHAIRMAN: Mr. Schroeder.

MR. VIC SCHROEDER (Rossmere): Mr. Chairman, just to follow up on that last question with respect to Indian bands, would you not agree, Professor Ridd, that in fact there can be tyrannies of majorities on Indian councils, just as well as there can be outside and therefore, there would surely in any entrenched Bill of Rights be the caveat that ultimately it is that Bill of Rights that prevails and not some group which is using its majority on some council to be tyrants against the minority as in the case of Sandra Lovelace.

MR. RIDD: That's right. I would like by this to put a fence around those minimal things which must be preserved at all costs.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Sir, I note your paragraph 14 of your brief and I ask you a general question following upon that paragraph. Do you believe that the laws of our society should support Christian values?

MR. RIDD: No, I believe they should make Christian values possible to be lived out, and if that's what you meant, then yes, but that the laws should express a specifically Christian orientation as such. I don't think that's what the laws are to do. What that is, there ought to be laws which support human existence and a Moslem ought to find them in our country even, which is more Christian than Moslem obviously as hospitable as a Christian would.

MR. MERCIER: What would be your opinion, sir, if the Supreme Court of Canada under an entrenched Charter of Rights interpreting the words "freedom of religion" struck down The Lord's Day Act?

MR. RIDD: I'm sorry, I didn't hear.

MR. MERCIER: Struck down The Lord's Day Act.

MR. RIDD: Oh, yes.

MR. MERCIER: What would be your view of that?

MR. RIDD: My personal view and,again, I haven't consulted with my committee or, beyond that, the larger constituency of the church and I might be in a minority position with this thing, though I think not. My personal view would be that would be perfectly all right and would be perhaps the striking down of an anachronism, I don't mean that The Lord's Day Act did not at the time that it was framed do a very serviceable thing to human beings. What it actually did was win a day when they could be free from having to work and of course, it was rooted at that time since it was — what, about 1906, or 1910, or something like that — it was rooted in a society which saw itself quite self-consciously as a Christian society and therefore had Christian values at the basis of it. But we are now not that sort of society. This is a vast theological idea which is hard to get

across in 20 seconds as I shall try to, but the ultimate genius and greatness of Christian reality as understood by, I will say, all of us at the core of it, though that would be — I don't know — a small percentage probably, is that Christianity is that particular vision of life, or myth I will call it, with great respect.

Truth, it's that particular myth, that particular way of seeing things which is able to break even itself. That is the important thing for Christianity is not the preservation of Christianity, but the preservation of what is human and right, godly. So that if Christian values are lost, that might be the very way in which the will of God should become manifestly done. Is that intelligible in that short . . .?

MR. MERCIER: Sir, from your position then that you would not object to the striking down of legislation like The Lord's Day Act and you would appreciate that there would then be no restrictions on commercial activities on Sundays or any other activities; that it would be regarded as a normal day of the week.

MR. RIDD: I thought that your question actually meant, would I be as a Christian sorry to see the loss of some sort of Christian privilege, and my answer to that was, no, I wouldn't be sorry because I think it's a privilege that was proper and indigenous and honourable, authentic at the time, but doesn't pertain anymore. But, yes, as a citizen, as a Christian viewing the actual world of human affairs I would object to the loss of such an event, and as a citizen I would probably resist it. But I answered your question on what I took to be your meaning, you know, would I be as Christian at the loss of Christian privileges? Sorry, no, but as a citizen and one who looks at the world with Christian eyes, yes, I would be quite sorry but I would want some transmogrified Lord's Day Act to replace it.

MR. MERCIER: How would you resist that, sir, under an entrenched Charter of Rights?

MR. RIDD: I'm not sure of the bearing of your question.

MR. MERCIER: Where the Supreme Court would make a final decision binding on the Parliament and Legislatures; how would you resist that?

MR. RIDD: I'm trying to envisage the set of circumstances where the courts would be able to do it. I can't . . .

MR. MERCIER: I'm suggesting to you, sir, that hypothetically there could be a challenge to the validity of legislation like The Lord's Day Act; that it would eventually go to the Supreme Court and the Supreme Court would make a decision striking down the legislation under the interpretation of freedom of religion and they would thereby make a binding decision on the Legislatures and Parliament.

MR. RIDD: That would be a risk, wouldn't it? That everything that we cherish would be under, so that, yes, I am sure that in the early going, particularly under entrenchment, we would have to find all sorts of new ways to accommodate those things that we hold dear and want to preserve. It might initially be a problem. My belief is that by such challenges and such resolvings, it would be worked out.

MR. MERCIER: Thank you, sir.

MR. CHAIRMAN: Mr. Schroeder.

MR. SCHROEDER: Professor Ridd, to follow up on that particular line of questioning, I'm sure you're aware that most countries, in fact, there are only several countries left on this planet who do not have an entrenched Charter of Rights, do you know of any where a Lord's Day Act or a similar provision has been struck down as a result of such an entrenched Bill of Rights?

MR. RIDD: I don't know of any but that doesn't prove a thing, I am afraid, I wish it would, since I just don't know.

MR. SCHROEDER: As well, in our entrenched Bill of Rights, I hear someone on the opposite side, Mr. Einarson, referring to his favourite country of Russia and I would point out that in that particular Bill of Rights there are no remedies which is one of the problems with very many Bills of Rights in countries such as Russia and Iran where we heard several days ago about Bahai people being murdered, notwithstanding the Bill of Rights. It was pointed out that they are being murdered, not because of the Bill of Rights, it's notwithstanding the Bill of Rights, because there are no remedies under that Bill of Rights. But here we do have a Bill of Rights which even if some judge misinterprets some provision of it, there are other remedies. We can amend the Bill of Rights. If the vast majority of Canadians would choose to retain The Lord's Day Act, then it would be a very simple matter to petition their various governments and have a very quick change enacted to the Bill of Rights to interpret it in such a way that this type of provision would not be offensive to the amended Bill of Rights. Is that not correct?

MR. RIDD: Yes, that's what I assumed the whole machinery would be after we began to bring forward and strike down humane provision by, what I would take to be a misuse of the entrenched Bill of Rights.

MR. SCHROEDER: Thank you.

MR. CHAIRMAN: Are there any further questions to Mr. Ridd? Seeing none, thank you very kindly, sir.

MR. RIDD: Again, Mr. Chairman, thank you very much for your hearing and your existence. I thank you.

MR. CHAIRMAN: The Manitoba Association for Rights and Liberties. Paul Walsh and Jill Oliver or Abe Arnold.

MR. ABRAHAM ARNOLD: Mr. Chairman, I'm going to introduce the delegation very briefly. I presume you have copies of our brief and our addendum. I am here in place of our president, Dr. James, who is busy in his classroom. I would like to say by way of introduction that MARL is primarily concerned with the question of protection of human rights and civil liberties in the Constitution. Very soon after the

Manitoba Legislature adopted the resolution to hold these hearings, we appointed a representative committee to study this question, consisting of William Neville of the Political Studies Department, University of Manitoba; Muriel Smith, a former member of the Manitoba Human Rights Commission; and David Walker of the Political Science Department, the University of Winnipeg. This committee met several times during September and October and each of them placed their own views in writing. These views together with a draft brief were presented to the annual meeting and conference of our association on November 6 and 7.

At that time an enlarged committee of some 15 people then became involved in the further development of our brief and ultimately it was presented and approved in substance at a special meeting of the newly-elected Board of Directors of our association on November 12.

The brief which has resulted does not necessarily represent the individual view of any one member of the original committee, although elements of their submissions are included in it. The brief as a whole does represent the consensus view of the Manitoba Association for Rights and Liberties as developed through the various meetings which have been outlined.

Now since this committee first began to sit, this Legislative Committee, there has been some movement in Ottawa as you know with the extension of the deadline for the parliamentary committee until February 6. It has also been indicated that there will be some amendments to the proposed Charter and I would like to inform this committee that about 10 days ago I attended a meeting where the Solicitor-General spoke and expressed the hope that there would in fact be movement in the text of the Charter in the direction proposed by Gordon Fairweather of the Canadian Human Rights Commission, and by other groups such as the Canadian Civil Liberties Association.

It is hoped that such changes would be enhanced if we could persuade the Manitoba government to reconsider its position against an entrenched Charter. I therefore direct your attention to our brief on this question in particular, which will be presented for us by Jill Oliver and Paul Walsh.

MR. CHAIRMAN: Just before you start, may I point out to you that the hour being 11:50, I would get some directon from the committee. It's a fairly lengthy brief. Do you want to stop at 12:00 and have the delegation come back and conclude this afternoon or is your brief in two parts, yourself and Paul Walsh, and do one of you have one portion that's approximately 10 minutes and then we can handle that one?

MRS. JILL OLIVER: Mine, I don't think will be any more than 10 minutes. I might just add that it's impossible for me to come back this afternoon.

MR. CHAIRMAN: My apology. It's . . .

MR. DESJARDINS: Mr. Chairman, I thought the meeting was until 12:30.

MR. CHAIRMAN: I thought it was 12:00 o'clock as yesterday was. My apology. You have plenty of time. Please proceed.

MRS. JILL OLIVER: In Canada and in Manitoba there is clearly a great deal of popular support for the idea that our new constitution should offer protection for human rights and civil liberties in what has come to be known as an entrenched Charter of Rights.

Canada has a system of government based on democratic standards and traditions and the ultimate test for any declarative statement on human rights is how well we put these fine words into effect in relation to our own highly acclaimed democratic standards.

By this self-imposed test it should be realized by the proponents of an entrenched Charter of Rights as well as by those who oppose it that the issues involved are not as clear-cut as they may appear from either side of the question.

It is important for those who strongly support the concept of an entrenched Charter to understand clearly the concerns of those who either oppose it or seriously question it.

Those who tend to oppose or question the need for a Charter, suggest that by and large our rights have been and are fairly well protected under our present system of legislative enactments, common law and practices stemming from those British traditions which we acknowledge as a primary source of our own democratic government. While occasional weaknesses in our system of rights protections are admitted by the opponents of a constitutional Charter of Rights, they are not considered significant enough to warrant the curtailment of the powers of Parliament that would be brought about by a Bill of Rights entrenched in the Constitution.

However imperfect may be our institutiions, to believe that human rights are important is, surely, to believe that they ought not easily be amended, abridged or tampered with. Ours is a heterogeneous society; it is one in which very different traditions and understandings of human rights exist side-by-side: it is one, therefore, in which both the opportunities and the temptations exist for the numerically greater to impose on the numerically weaker. Ours is a society characterized by bigness as an organizational principle: in business, in labour and most especially in the state itself: it is one, therefore, in which the organization may easily and indifferently oppress or intimidate the individual.

It is important, however, to recognize that what is at issue is the fact that majorities — or those who are numerically greater — are easily misled into thinking that minorities have no rights — or at least fewer rights than have the majority.

The principle of majoritarianism — that majorities shall prevail and rule — is both a necessary and acceptable one in our political life. To transfer that principle to the area of human rights, however, is to run the risk of saying that rights come and go, as majorities come and go. If one does take that position, then some things we have regarded as fundamental — the right to vote, freedom of conscience, free speech, and so on — would in fact have to be regarded as ephemeral and transitory.

Alternatively, if we believe that certain rights — and perhaps those largely defined by long tradition, usage and acceptance — are basic and subject to more than the whims of today's transitory majorities, then we might well have to conclude that such rights

should be at some remove from today's transitory majorities. In short, one would have to conclude that some things should be placed beyond the immediate reach of Parliament; and we do.

To assess how much importance should be assigned to the supremacy of parliament vis-a-vis rights protection, it is necessary to fully understand the notion.

"Supremacy of Parliament" suggests that those who pass the laws somehow have complete control over the legislative process and, by implication, the meaning of these laws in our everyday life. It implies that parliamentarians are in charge of policy development, law-making, implementation and adjudication. In fact, we know now that this is an unrealistic expectation of elected officials, in Canada or in any other western democracy. The specific institutional arrangement of federalism with its independent and concurrent spheres of power implies that neither level of government is supreme. Rather it indicates that different governments have different roles, some aspects clearer than others and that if one body seeks to enact laws beyond its constitutional authority, it is likely to be challenged in the political arena and in the courts. At best, we have the primacy of Parliaments but certainly not the supremacy of any single Parliament.

The second assumption is that parliamentarians are in control of what government does in society. Both academics and more popular writers such as Walter Stewart, have written intensively on the difficulty of Legislatures controlling the public service. While we still may cling to the notion of rule of law as the guiding principle for bureaucratic action, the fact of the matter is that, in the minds of many, governments are beyond the control of legislators. No one is in control. And there are sufficient examples to substantiate this subjective viewpoint. Since rule of law by itself is no longer a valid operational concept (although it still is a legitimate ideal in parliamentary democracy) action is needed to ensure that the intentions of elected officials, that is, the will of the people, are expressed in laws, regulations, orders-in-council, etc.

Most North American governments have already acknowledged their inability to cope with the administration of their laws by setting out new processes for dealing with abuses in the public administration system. The most common approach is the establishment of the office of an ombudsman, a relatively new feature of our parliamentary system. As an officer reporting directly to the Legislature, the ombudsman is able to use his authority — particularly the power of public disclosure — to ensure that the exercise of authority is consistent with the principles of parliamentary democracy. By challenging the rule of the majority, that is the Cabinet, the ombudsman effectively supports the Legislature.

Both levels of government have responded to the questions of individual rights vis-a-vis the public and private sectors by establishing human rights commissions. In some cases these are officers of the Legislature but most frequently they are officers of the government reporting through the Minister as would any civil service agency.

This approach to the problem of human rights centres on individual cases of discrimination where an individual takes the initiative and lodges a complaint against a public or private organization. In many instances these cases lead to changes in legislation and a greater public awareness of human rights.

The major drawback is that these commissions alone are insufficient in dealing with all the problems that arise in the field of human rights. Their roles vary from province to province and Canadians are likely to find that enforcement procedures are uneven. Protection from discrimination in one province does not necessarily mean equal treatment in another. As commissions are created by, and subject to, provincial Legislatures, and consequently the political executive of the day, their roles vary from year to year. Citing just one example of a change that has downgraded the effectiveness of a provincial commission, we find that the Manitoba government under Premier Sterling Lyon has cut back the budget of Manitoba's Human Rights Commission to the point that its educational role has been abandoned almost entirely, staff is limited to case work only and few resources are set for promotional activity.

MR. PAUL WALSH: Mr. Chairman, as many delegations before this one we've, rather than just keep drinking water and carrying on before you, we've decided to share the burden of the presentation of our brief, and rather than read out the next 17 pages our our brief, which I'm sure you can follow or we could in a congregational read alternately, what I would like to do to save time and to come to some conclusion of our role before the 12:30 adjournment is to leave the balance of our brief with you, ask you to read it, not just pile it on the mountain of printed material that you already have and to try and synopsize by way of argument what is now contained in the other 17 pages of our submission. Because I think that . . .

MR. PARASIUK: Mr. Chairman, on a point of order for clarification.

MR. DEPUTY CHAIRMAN, Abe Kovnats (Radisson): Order please, on a point of order.

MR. PARASIUK: Just for clarification. I think Mr. Walsh's suggestion is very good. What I'd like to have understood is whether we could have the rest of the report read into Hansard so that it would be included in the Hansard of today's proceedings plus your comments. But I think the specific points that you've outlined in your brief, I think, should be included in Hansard, and I think it's possible to do that.

MR. WALSH: I surely don't participate in that debate.

MR. PARASIUK: No, I'm raising that as a point of order to the Chairman, and I'm just wondering . . .

MR. DEPUTY CHAIRMAN: As Chairman, I would advise that the report will be reported or your brief will be reported in detail as presented.

MR. WALSH: Thank you, Mr. Chairman.

MR. CHAIRMAN: Would you carry on please.

MR. WALSH: And taken as read, if that's possible.

MR. CHAIRMAN: And taken as read — yes.

(Remainder of Mrs. Jill Oliver's brief).

The proponents of constitutional rights protection now have their attention focused on the proposed Charter of Rights which is part of the 1980 Constitution Act.

In speaking to this issue to members of the Manitoba Legislature, we must respond to the position of Premier Lyon in opposing the charter as expressed at the last federal-provincial conference. We respectfully take issue with the Premier when he suggests that there is no historical justification for the entrenchment of human rights in the Canadian constitution.

Premier Lyon did cite the obvious example of the mistreatment of Japanese Canadians during the Second World War but then he pointed out that Japanese-Americans received similar treatment in the U.S. which does have an entrenched Bill of Rights. This demonstrates that even constitutionally entrenched rights do not provide absolute protection from the abuse of human rights and civil liberties. We are informed however, that the American Bill of Rights did make it possible for Japanese-Americans to receive substantial redress after the war and such redress was not available to Japanese Canadians.

There are a number of earlier and more recent examples of restrictions on civil liberties imposed or attempted by the federal government and also by various provincial governments. The most rotorious of these was the imposition of The War Measures Act in connection with the 1970 October crisis in Quebec.

It should be noted however, that the FLQ episode of 1970 was not the first time that there was a suspension of civil libeeties in Canada in time of peace. As painful as it may be to us as Manitobans we must recall that it was in 1919 during the Winnipeg General Strike that the Canadian government amended The Immigration Act and the Criminal Code to deal with individuals accused of sedition. As a result aliens could be deported without trial and Canadians imprisoned for alleged "Bolshevism". But there was no excuse for the arrest and imprisonment of numerous Winnipeg union leaders and ordinary working men other than an attempt to defeat the legitimate efforts of the labour movement to achieve better working conditions.

Most recently in our own Manitoba Legislature an attempt was made to put into the statutes a provision for search and seizure without due process as part of The Energy Authority Act introduced at the last session. We believe this section of the Act was withdrawn primarily because of the intervention of MARL which was the only organization, alert enough in the heat of mid-summer, to protest this potential invasion of civil liberties before the Law Amendments Committee.

It is also widely recognized today — and John Diefenbaker who gave us the first Canadian Bill of Rights recognized it from the outset — that the actions of the Federal government in 1946 in response to the Gouzenko revelations about a spy network in Canada, represented an unwarranted suspension of civil liberties for the persons suspect of being espionage agents; they were held incommunicado, denied counsel and interrogated before charges were laid.

There are other examples including the Padlock Law and the Roncarelli case during the Duplessis era in Quebec which took many more years to obtain redress than they would have if there had been constitutional protection. There was also the attempt of the Aberhart government of Alberta to restrict freedom of the press. More recently the Supreme Court of Canada refused to invoke the Diefenbaker Bill of Rights to strike down an anti-demonstration bylaw in the city of Montreal. It is felt that constitutional protection for freedom of assembly would have led to a different court decision in this latter case.

Moreover, during the recent federal-provincial constitutional conference that failed, the Globe and Mail recalled:

> In 1968 we wrote, "anybody who doubts that Canadians need to be protected from governments that would deny (their) rights has only to remember the infamous Ontario Police State Bill."

The report of the Task Force on Canadian Unity (A Future Together - Observations and Recommendations, p. 106) states: "There have been enough episodes in recent Canadian history to make us believe that some basic rights should be protected by the constitution." In addition to mentioning the treatment of Japanese Canadians in World Ward II and the October crisis in Quebec, the task force cites "the recently revealed illegal activities of our security forces, not to mention the general pervasive growth in the power of governments."

Reference to the pervasive growth of government as an added reason for constitutional protection of human rights is supported by the recent experience of the Canadian Human Rights Commission. While every province in Canada has a Human Rights Act and a commission to enforce that Act, it is the federal Human Rights Commission that has proven to be the strongest rights enforcement body in the country through the powers assigned to it under the Canadian Human Rights Act. Its work is limited of course to the federal jurisdiction, but its experience, in little more than two and a half years since The Federal Act was proclaimed, indicates that a large part of the commission's efforts are devoted to combatting restrictions on human rights caused by the pervasiveness of various government departments.

The Canadian Human Rights Act gives the federal commissioh power to review regulations, rules, orders, bylaws and other instruments embodied in Acts of Parliament and under this section it has accepted various complaints of discrimination and infractions of rights by various departments of the federal government. On several occasions the right of the commission to investigate government departments has been challenged in the courts by the government itself. To date, the courts have sustained the power of the commission to investigate complaints against the government.

Notwithstanding its success in this regard, the federal Human Rights Commission has taken a stand in favour of an entrenched charter of rights in the constitution and has recommended the inclusion of

additional rights beyond those proposed in the current Constitution Act or in the draft Constitution Act of 1978.

It is also noteworthy that here in Manitoba the provincial Human Rights Act is binding on "The Crown and every servant and agent of the Crown." Nonetheless, while there have been complaints of rights

1. Extract from Final Report of the 1978 National Conference: Human Rights
in Canada The Years Ahead, p. 4, Commission Activities:
Brief to the Joint Senate House of Commons Committee to study the Constitutional Amendment Bill - Sept 7/78 (see Special Report Recommendations III(1) - the entrenchment of a Bill of Rights).

It was recommended by the Commission that the proposed federal Charter of Rights and Freedoms be broadened to proscribe discrimination based on physical handicap, marital status and sexual orientation. It was also suggested that the Charter be amended to permit special programs which under the Canadian Human Rights Act may differentiate in favour of certain groups who may have suffered or likely to suffer discrimination.

The Joint Committee recommended that marital status be added to the prohibited grounds of discrimination if problems of differential treatment of single and married persons in the tax laws, pension legislation or unemployment insurance can be resolved. It also recommended that the Charter should not prevent special programs on behalf of disadvantaged groups.

infractions by government departments, the provincial Human Rights Commission has not been able to effect the resolution of any complaint against the government. We note that for the first time the Manitoba Human Rights Commission has established a tribunal to hear a complaint against the government on age discrimination (the Aubrey Newport case) but it took two years before the Commission decided to move on the complaint. Apart from the question of enforcing the provisions of the Human Rights Act within the government bureaucracy, it is noteworthy that The Manitoba Act has not yet been given primacy over other statutes. In fact, only three provinces, Quebec, Saskatchewan and Alberta have given their Human Rights Acts primacy.

In his argument against an entrenched Charter of Rights, Premier Lyon suggested that "Parliament and Legislatures are better equipped to resolve social issues than judges who are not accountable to the people."

In urging that "some key individual and collective rights should be entrenched in a new constitution", the Unity Task Force also noted the importance of judicial decisions in constitutional matters and therefore recommended "changes to ensure the independence of the Supreme Court of Canada and to make it credible to all Canadians including those in Quebec." We will refer to the role of the judiciary again later in this brief.

Premier Lyon has also argued that "an entrenched charter, by its inflexibility, would inhibit the development and acknowledgement of new rights."

The Task Force on Canadian Unity explained in its report that an entrenched Charter of Rights need not be so inflexible as to inhibit the development of new rights. The Task Force recommended that some fundamental rights could be entrenched while others are left to a "combination of legislative and court protection." The possibility was also suggested "to entrench only general principles and to incorporate details in ordinary legislation, federal and provincial. (From Task Force Report: Coming to Terms The Words of the Debate.)

We are also concerned with Premier Lyon's comments on freedom of religion in relation to prayers in our schools and the combatting of "cult activity". If freedom of religion means what it says, a non-Christian student should indeed not be compelled to recite or listen to a Christian prayer, day after day, as though it were an established state prayer. And what reason is there for government to get involved in combatting any so-called "cult" unless that cult can be shown to be involved in criminal or otherwise illegal activity? A "cult" may simply be a religious group which does not have widespread recognition or acceptance. There is no need to advocate a general policy of combatting cults unless we propose, in fact, to recognize a state religion. This of course would indeed mean that we have no freedom of religion.

Another major argument against the inclusion of a Charter of Rights in the Canadian Constitution is that this would be an infringement of provincial power over civil rights granted under The B.N.A. Act. Section 92 of The B.N.A. Act which sets out provincial powers, lists "Property and Civil Rights in the Province." This linkage should alert us to the difference between civil rights and civil liberties. The report of the Unity Task Force makes it clear that "civil rights" in the context of The B.N.A. Act are not synonynous with "civil liberties". Civil rights in this context, says the report, "refers mainly to matters of private law, such as property, torts, contracts and estates." Some aspects of fundamental rights protection may be included in civil rights, the task force report adds, such as "defamation, trade union certification and the status of married women." To the extent that the charter infringes on government it does so in favour of the individual vis-a-vis all levels of government.

In a final reference to Premier Lyon's statement at the constitutional conference last September we note his comment that the existing "federal and provincial bills of rights" already give us the "alleged advantages" of "symbolic and educational value" ascribed to an entrenched charter. We assume that for Manitoba he is referring to The Provincial Human Rights Act. Although this Manitoban statute is not known as a "Bill of Rights" it must be acknowledged that it does include a greater number of categories for protection against discrimination and consequent human rights infractions, than do most other Provincial Human Rights Acts and a greater number of categories than those included in the proposed charter. We have already indicated some limitations of The Manitoba Human Rights Act and our own research and studies show that there are further

deficiencies. (See report of the MARL Citizens Task Force on The Manitoba Human Rights Act.) In addition, it must be stressed that The Manitoba Act is not a Bill of Rights in the generally understood sense of guaranteeing equal protection under the law and other related traditional rights of a democratic society.

Summing up our position to this point we would therefore urge that the Manitoba government recognize the need for the extension of human rights protection in our province. Considering the fact that the Canadian government with the agreement of the provinces has signed the International Covenants on Human Rights we believe there is an obligation on the provinces together with the federal government to further the objectives of these covenants in Canada through a constitutional Charter of Rights.

We consider that the presentation of a Charter of Rights at this time has the positive value of promoting greater discussion on the whole area of human rights and civil liberties in Canada today and we trust and hope that these discussions can be directed along positive lines. We believe that the inclusion of a Charter of Rights and freedoms in the constitution will not only be of greater symbolic value but will also have a more far-reaching educational value than the existing Canadian Bill of Rights.

One important reason that the courts have been found wanting in dealing with issues of human rights and civil liberties, is because the existing Bill of Rights does not have a primacy over other statutes. The courts have therefore not acted with greater firmness and sensitivity on human rights issues because the judiciary recognizes that any act of parliament may be set above the Bill of Rights. It is felt that if the Canadian parliament, hopefully with the ultimate support of all provincial legislatures, declares in favour of a Bill of Rights in the constitution, that this will make a compelling impression on the members of the judiciary to persuade them to deal more forthrightly with civil liberties issues and in accordance with the broader perspectives on human rights and fundamental freedoms which are coming to be widely accepted.

Regarding the text of the Charter of Rights as presented in The Constitution Act 1980, there are many serious reservations. Considerable concern has been expressed about section 1 which says that the Charter shall be subject only to such "reasonable limits as are generally accepted in a free and democratic society with a parliamentary system of government."

This section is considered too vague and has been seriously criticized by civil libertarians as making it possible to justify all the limits that have previously been invoked against human rights in Canada including the example cited earlier in this brief.

We believe with the Canadian Civil Liberties Association that this section would actively undermine the role of the intended Charter of Rights to restrain legislative violations of human rights. We believe that this section ought to be completely removed or substantially changed. If a limitation clause must be included in the charter, it should be restricted to limits which can be demonstrated to be necessary and the onus should be on the government to demonstrate the necessity for any limitation.

With regard to paragraph three on the right to vote, there is concern about the use of the phrase "without unreasonable discrimination or limitation". It is felt that there should be no limitation of voting rights other than those of age and nationality.

We also share with the C.C.L.A. the opinion that "any restriction on legal rights such as habeas corpus should require the most overwhelming of emergencies". We believe that the charter ought to explicitly state the intention to overcome the restrictive interpretations which undermine the value of the 1960 Canadian Bill of Rights. We also believe that the possible use of The War Measures Act ought to be made more difficult by a Charter of Rights. Further, that it ought to protect the individual against unreasonable search and seizure and offer better protection of the right to counsel.

Section 15 of the charter is widely regarded as not going far enough in that it does not protect women's rights in society generally and it is felt that other non-discrimination rights should be included, such as protection of the handicapped. This section ought to ensure equal protection under the law without any unreasonable discrimination. We further believe that the reference to the rights and freedoms of the native peoples of Canada in Section 24 is insufficient and that there ought to be some clearer protection for native rights included in the charter.

Gordon Fairweather, Chief Commissioner of the Canadian Human Rights Commission has already testified before the parliamentary committee and urged elimination of weaknesses in the charter including some of those cited above. Earlier he also proposed that the sections dealing with equality before the law and equal protection under the law for all people without discrimination should "not be subject to repeal in any circumstances including a national emergency". (October 25 address to the National Black Coalition of Canada.) Mr. Fairweather, who is a former provincial Attorney-General as well as a former P.C. member of the House of Commons, has also urged that since Canada is a signatory to the U.N. International Covenant on Human Rights - an action which was taken by the federal government, in agreement with the provincial governments — that therefore non-discrimination rights such as those included in the U.N. Covenants should be written into the charter and also be placed beyond repeal.

The Manitoba Association for Rights and Liberties strongly favours an entrenched Charter of Rights.

However, we believe that there ought to be more time allowed for discussion. For this reason, we would urge the Manitoba government to reconsider its position against the entrenchment of rights in the constitution and to participate in that discussion in a positive manner.

The Canadian people have already expressed themselves in favour of a constitutional guarantee for basic human rights as demonstrated not only at various human rights conferences,

> The third Canadian Conference on Multiculturalism, Oct. 1978 "strongly recommends that the Canadian Bill of Rights be incorporated in the constitution of this country to ensure proper protection for peoples of all ethnic backgrounds".
>
> The First Canadian Conference on Human Rights sponsored by the Canadian Human

Rights Commission in Dec. 1978 included the following recommendations in the special report presented to parliament:

(1)p.6 III Human Rights Legislation

It is recommended that an amended and enlarged Bill of Rights be entrenched in the Constitution, in order to safeguard the freedoms and inalienable human rights of all individuals in Canada.

(2)It is recommended that the Bill of Rights take precedence over all other Acts of Parliament and guarantee equal rights to all.

Extract from p. 13, VII Education

(1)It is recommended that all levels of the judiciary should be sensitized regarding human rights issues.

but by the results of the Gallup poll on this question taken last summer in which 91% of the respondents answered "yes" across the country and in the west, including the prairie provinces and B.C., the response was even higher at 95%.

In spite of the criticism often levelled at public opinion polls, we do know that polls have also become a tool of the government. We would urge the Manitoba government that in recognition of the deriving of its power from the voters, it ought to respond to public opinion by contributing to the development of an improved Charter of Rights rather than completely opposing a Charter of Rights in the constitution.

Respectfully submitted for the Manitoba Association for Rights and Liberties: Dr. Ralph James, President; Paul Walsh; Jill Oliver; Abraham Arnold, Executive Director.

(End of Mrs. Jill Oliver's brief.)

MR. WALSH: The point I would like to make is that it seems to me that there is an onus on those who propose a change to present arguments on behalf of that change, not only in the generality, which I think has been done by a myriad of delegations that have been before you, but in the specific as well. And to attack and debate the arguments that are being made on the basis of their logical consistency and their inherent strengths.

The primary argument that's been made on behalf of those who are against an entrenched Charter, is that somehow the Legislatures are better at protecting rights than courts. This debate has carried on and should be at this juncture, if it has not already been, punctured, because that distinction between legislators protecting rights as opposed to judges protecting rights is bogus. It's a bogus notion to suggest that somehow the responsibility is being shifted or can be more responsibly dealt with in one forum as opposed to another.

My understanding of the role of the different branches of authority in our community are that the Legislatures will pass laws of general applicability and it's up to the courts on an individual case to mete out justice. So when I as an individual have a tort of which I might complain or a cause of action that I want to bring, I don't go to the Legislature and say I have been wronged — so and so has come through a red light and hit my car or so and so has breached my contract or so and so has infringed any one of a myriad of less important rights, but rights nonetheless which I rely on. I go to the court and say, the defendant has to deliver damages to me or has to be enjoined or has to have a mandamus order to comply with the law. So the general laws are enacted by Legislatures and the specific enforcement of those laws are meted out by the courts. And the precise impact, the precise, not the general but the precise impact of any law and its interpretation to the specific case is always given by the court. If you go across the street on any given day in nine different court rooms you can see judges dealing with problems of individuals vis-a-vis the others, be it the state or other individuals trying to resolve rights, every day, and judges are doing it on a day-to-day basis, they don't regard it as strange or unusual that one person complains that a right of his has been infringed, and the defendant says no it hasn't and the matter is then resolved. The resolution of disputes has always been left to the courts. The question now is whether there are such fundamental, broadly framed rights, that they should be placed a further level beyond attack or amendment. Isn't that what the discussion is all about? And if it is, who can say in this body either from the audience or from the Legislature, that the rights that are enumerated in the proposed charter, should be flexible or subject to legislative change from year to year, or from election to election?

Freedom of conscience, do we want to amend that? Freedom of religion, do we want amend that; thought, belief, opinion, expression, press, media, peaceful assembly? So how hard a case is it to present? How hard is the notion to accept that these fundamental, basic, underlying, substructure of freedoms ought to be placed one further step beyond easy variation? I think, not difficult at all, and the argument that other jurisdictions and other places have Bills of Rights that are more or less effective fails to meet the point. The point is that we are here in Canada, we have a tradition that has been developing over the last ten, fifteen or twenty years, the logical culmination of which is an entrenchment of the Bill of Rights. So we have Human Rights legislation, we have ombudsmen, we have Law Reform Commissions, and it seems to me that if you follow that logical progression, an awareness on the part of the public; maybe starting at the end of the Second World War; maybe in response to the holocaust that took place during the Second World War; maybe as a result of media providing information on a more rapid basis, and the recognition of how liable we are to the infringement of our rights on a day-to-day basis; a growing consciousness by people that they need ombudsmen, that they need Human Rights Acts; that they need commissions and boards, and finally a recognition in Canada at last, that the individual should be free to go to court when any of his fundamental rights are infringed.

Now I started off my comments by saying that the onus is on those who want the change. That should always be the way. So I bring to you four or five cases.

Some of you may personally know a gentleman named Fitzpatrick. He came to the Court of Appeal and said, I'm a single parent, but I'm a man, and I'm a single parent with a child and I would like to get social allowance. And the court said to him, the legislation said, the only single parent entitled to social allowance who was looking after a child is a

mother. You are clearly, by the beard on your face and the self-asserted masculinity of your gender, a father, and threw him out. If there were legislation, and The Human Rights Act of Manitoba was considered by Mr. Justice of Appeal Guy, and the other Judges of Appeal when he came again and again to the courts, if there were Human Rights legislation, he would not have been discriminated against on the basis of sex. So there has been sex discrimination in Manitoba, in the legislation that a Human Rights Act — it's only a hypothesis, but probably would not have allowed to carry on.

There was a gentleman in Ontario named Rae, who made a statement to the police after he was bludgeoned into doing so, that the Court of Appeal found admissible, and the Supreme Court of Canada found admissible, because in Canada there is no basis for excluding a statement, merely on the basis that it was not voluntary, although that's the first test.

A Bill of Rights may, reverse that decision.

There is a gentleman in the Court of Appeal who worked there two years ago named Newport, who turned 65 and lost his job. He said, I was discriminated against on the basis of age. Its been two and a half years and his case hasn't come to adjudication. If there were a Bill of Rights that said, you cannot discriminate on the basis of age, Mr. Newport could have gone to court, maybe even had his case adjudicated by his former employers, I don't know, and argued the point in a month, or two or three, and said, I want an order of the court, because I as an individual, have suffered on the basis of some prejudice or abrogation of my rights.

And if we look at the specific Human Rights Act and the basis of the commissions, we don't have an independent commission in Manitoba. We have a commission whose membership changes with the government of the day, and interestingly enough, the person who should have most to say about rights doesn't come before this committee, the Chairman of the Human Rights Commission in Manitoba, hasn't been here to present a brief. Mr. Fairweather in Ottawa, whose position is secure as a result of appointment for a period of years, he can feel strong enough to either support or not support the government of the day. But the Human Rights Commission is made up of members, and was in the previous government too, members who previously served as poll captains, and poll clerks and other such people in the conduct of elections. The loyal troops were rewarded. Well that's hardly the kind of Human Rights Commission that we can look to as being independent to answer the problems of people who feel they are being wronged by the government or by the Legislature.

So with the Social Services Advisory Committee, if you have a welfare problem, or if you aren't getting enough money, it just so happened that the entire board turned over as the government turned over.

These kind of situations, when the single individual is affected, he must have access to a body, a tribunal, which whether its appointees were at a point in time of a political persuasion, and it has been pointed out to the presentors of other briefs, that it appears as though there are a preponderance of former Liberals; probably the only excuse in this province for being a Liberal if you are a lawyer these days, on the bench. That may be, but those judges today have a tenure and are not subject when the Liberal government changes, if it ever does, to being removed and replaced by Conservative or NDP judges. Those judges regard their job as secure and can pass judgments favouring or not favouring the government or tribunal of the day. And I think there is a long and honourable history in this country, whether you agree with the method of appointment of judges or not, there is a long and honourable tradition that the judges have done their jobs properly and have not been the lackeys or mouthpieces of the government of the day. So that while you might be critical of the method of appointment, I think that there is no real criticism about the kind of job that's being done.

Our argument, the moral argument, is that the Constitution of a country, and we do have a written Constitution, is the framework for which everything else is to be decided, and the phraseology given to this portion by the Prime Minister is a good phraseology, the people's part; the individual person's part, so that the articulation of these rights is not final, is not exhaustive, it says so on its own, it doesn't take away any other right that may not be articulated, but it gives the individual person some basis upon which he can hope to be protected if his individual case can not merit the attention of the Legislature, if he's not the person that wants an extension of time for bringing a law suit, or for the other kind of private member who comes before you. For the private person, the Fitzpatrick, the Rae, the Newport, for these people, and there are more than just three, there are many people who don't go to court, you can't document their cases. There are many people whose rights to social allowance may not be recognized because of the composition and the attitude and the social philosophy of the board as it shifts from time to time, as political fortunes in this province, shift from time to time.

So I say to you, that the argument about the Legislature as against the courts is a bogus argument. It should be punctured now and the debate should take place around the issue of whether there are individuals; whether you can envisage the case where an individual would need the protection of the court to protect his right to Assembly, to protect his right to expression, either in the media — there's just the most recent case that you've had to amend legislation because the Supreme Court of Canada has ruled on an issue as to whether a newspaper has to validly hold the view of the writer of a letter to the editor.

Maybe those kind of problems should be litigated in this kind of forum. I don't think that the debate is all one-sided. I don't come to you pretending that even though I take a position and that moral takes a position that there isn't the other side to the argument, and that we still don't live in a free and open and democratic society, even though we haven't had a Bill of Rights these hundred and many years. But what I do say, is that we are becoming aware as time passes, that governments want to do more and more for the citizens. When a newspaper fails, there'll surely be someone who will argue that the government should step in, and there has been somebody arguing that. If anything happens that's bad, somebody will raise the issue that government

should do something, and in many cases government will do something and government will get bigger and bigger and bureacracy will get larger and larger, and that people are coming to recognize the need for ombudsmen which didn't happen 50 years ago; the need for Human Rights Commissions which didn't happen before and now are coming to the realization that a Bill of Rights would be appropriate.

I'm sorry I didn't read the 17 pages, but I think that I've been able to synopsize in an argumentative kind of a way, the position of the Manitoba Association of Rights and Liberties.

Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Walsh, I would ask you at this time, would you submit to questions of clarification?

MR. WALSH: Oh, without question. Miss Oliver of course is present, as is Mr. Arnold who can answer questions as well.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Walsh. Let me just deal with a couple of issues that you raise. You refer to and I don't want to refer to an ongoing specific matter, but you refer to the question of discrimination on the basis of age. Would you acknowledge, Mr. Walsh, that there are wide-ranging opinions on that subject, from the view that there should be no discrimination on the basis of age at all to other jurisdictions which only restrict discrimination to between the ages of 18 and 65? And would you acknowledge that there are complex problems associated with pensions, etc., on that particular issue?

MR. WALSH: I find that any situation involving status can be accommodated by people, when they are used to it. In other words, people can live under oppressive circumstances for times, without even being aware that those circumstances are oppressive and can accommodate themselves to a variety of situations. Sure I acknowledge that the pension plans, and that over time we've come to accommodate ourselves to the notion that people should retire when they're 65. I may have held that notion too. I think I held it until I was about 35 and started to contemplate the notion that I maybe was on the other side of the dividing line, when the census came through and said, are you between the ages of, and the last age was 35 and over, and suddenly realized that I was in that compartment of people of 35 and over. I say to you on that question, that my personal view, and once again you ask a question that isn't covered in the brief. My personal view is that there should be no discrimination on the basis of age, that if a person is 64 one day, and 65 the next, he should be able to carry on his job without discrimination regardless of all the other considerations. And if you enact that kind of legislation, the pension plans and all the other trappings of society that have come about as a result of the previous situation, will modify themselves in short order to the new reality.

So, there are problems, there are concerns and it is always the problems of the legislator to look to the fallout of any positive change he wants to make. And the fallout may be considerable and there may be a lot of dislocation, and he may want to do it gradually, but the notion should be, at least on the basis of discrimination as to age, that if a person is healthy and wants to keep on working, that someone shouldn't say happy birthday, here's your gold watch, out you go. And that everything else should fall in around the basic notion that there shouldn't be discrimination on the basis of age. Other than that you become very fudgy on just about every right that you have. There should be freedom of speech, except if you say, the following ten things, which are modified to the eleven and to the twelve and to the thirteen. You're right. Most people take a much less dogmatic and fixed view than I do, even within our association, and there are those problems. But I see the solution to those problems by acknowledging the principle and modifying, over time, the situation to accommodate to it, rather than the principle to the situation.

MR. MERCIER: Mr. Walsh, I didn't want to argue what was your own personal view on the question, but I want to ask you the question. What makes you think that judges are better equipped to deal with that issue, and decide that issue, than our legislators?

MR. WALSH: That seems to be the crux of the debate. As to whether the issues that we want to enshrine in our Constitution are fundamental, basic infrastructures in our society, principles to which we hold generally, across the nation and to which almost all of us would adhere, or whether these are notions which can blow a little more in the wind. So it may be that 20 years ago, freedom of speech would have been held much more dearly than non-discrimination on the basis of age. So the question that you have to answer as a legislator is, have we come now to the position where non-discrimination on the basis of age has now matured in our minds to the same extent that it is now held as dear a concept as freedom of speech. If it has, then we should enshrine it in our Constitution; it it hasn't, if it's still a concept that we want to modify and abridge, and permit only in certain circumstances and to certain extents, then you say no, that notion is not yet so dear that I would want to entrench it and enshrine it in a Bill of Rights. I personally think that it is, so I would want to entrench it and enshrine it in a Bill of Rights. But if I can throw back the question to you, if we have freedom of speech in a Constitution, I don't see how any one could argue against that. You're right, the debate may not be over on the question of discrimination on the basis of age. It is for me. I have a very fixed view on it. Maybe it could be modified on further debate, but at this point in time, I've come to a tentative conclusion. I would welcome an opportunity at a different forum to convince you of that point but I think that society generally, as with women's rights, as with discrimination on the basis of age, has come to a sophistication on this point and recognizes it as an important fundamental part of the structure of our society. It's not as old as the other rights which we have been able to articulate over time, but I think that it is coming to be held just as dear. It isn't a perfect answer but it's the one that's proposed.

MR. DEPUTY CHAIRMAN: Mr. Mercier.

MR. MERCIER: No, I don't think he answered the question, but let me ask you another question, Mr.

Walsh, on your reading of the proposed Charter of Rights, would it be your view that the courts would in Canada import the principle from the United States that illegally obtained evidence would not be admissible in criminal trials?

MR. WALSH: I bring up the Rae case — the answer to that is no, not on the basis of the present draft. There is no question about that and Mr. Tarnopolski on behalf of the CCLA was very clear in his submission to the Joint Committee that wouldn't be the case. That was one of the faults he felt was with the legislation. There is some belief that there are going to be revisions even in that aspect and we can only await the outcome of the revision. So, as presently drafted, the answer is no and that the Rae example would still be carried on if the document were passed in its present form. The reason I raised it and I couched my phraseology specifically to say that perhaps in a Bill of Rights, because if you read the balance of our brief, we find that there are many shortcomings in the Bill of Rights. But that's what the dialogue is all about, both in Manitoba and in Ottawa, and the hope is that as a result of the dialogue the apparently impervious ears of the federal government will come to the notion that there are serious deficiencies and they have done that. They have extended the time and they have promised amendments. So,who knows what those amendments will be but one would hope that they will at least go so far as to enshrine the principle of voluntariness. Because if you will recall in the Rae case, it wasn't only the evidence that was obtained through the involuntary statement, it was those portions of the involuntary statement itself which found their way into evidence. So the Rae case is not authority for the proposition necessarily about forbidden fruit. It is authority for the proposition that even an involuntary statment can find its way into evidence.

MR. MERCIER: Mr. Walsh, in your opinion, do you believe that the right to council decisions that have been held by the Supreme Court of the United States would be imported into Canada?

MR. WALSH: I don't know.

MR. MERCIER: Do you have any views as to whether they should be?

MR. WALSH: I think it's difficult. I think we went through a process with the breathalizer legislation where lawyers were scrambling all over the place for five years looking for loopholes and they found that they were banging their heads into brick walls all over the place, until the only real — you might call it a weakness — but the only real softness in legislation is that if the police don't give you a right to phone your lawyer before you blow into the breathalizer. That was the only real softness in the legislation so far as permitting an acquittal for refusal is concerned. I think that the same kind of litigation would flow. In other words, I think that once this is enacted, there would be a lot of litigation before the courts which would eventually sift out and sift down to an ordinary flow. So the answer to the first question again is, I don't know; and to the second point, it would have to see how it worked on the society. I'm not standing here saying we should have a Bill of Rights because watching all the American television programs or their news programs, as well, that I'm pretty happy with the way their Bill of Rights works in their particular society. I'm not, but I think that we could do with the right to counsel and our courts would have to decide what was a reasonable time and whether statements could be taken before people were advised of the rights to counsel if those statements were voluntary. We have a much different tradition than they do in the United States even though we spring from the same root.

MR. MERCIER: Mr. Walsh, do you think there would be any other fundamental changes in cases in a criminal justice field as the result of the entrenchment of the legal rights, or do you think we'd simply have to wait to see how the litigation . . .?

MR. WALSH: I think we'd have to wait and see.

MR. MERCIER: Do you agree then that there would be obviously a great degree of uncertainty as to how the provisions would be interpreted?

MR. WALSH: I think that the enactment of a Bill of Rights will prompt litigation. I think that all new legislation does that. I think that particularly a Bill of Rights in a Constitution will do that. I think that we shouldn't be afraid of that; I think that while it may put certain strains on the court system for a while, I think that certain issues will become clarified over time and then situations will stabilize. But I think that in an open society which is what it's all about, an open society where people are free to speak their mind, free to say what they like, free to publish newspapers, free to take positions, free to assemble, that you are going to get that kind of activity within the courts. So long as the courts exist and people feel free to go to the courts, you are going to have a mushrooming. Thank goodness, it happens in the courts. The difficulty is where people feel frustrated going in front of boards and so forth which are not secure in tenure and which don't carry on beyond the life of any particular political party in power that people feel frustrated and angry that somehow they aren't having their issues resolved on a non-partisan basis. So,if the court load increases, I suppose as a lawyer my work will increase but it's something that, unlike Sid Green, I'm not looking forward to with dread.

MR. MERCIER: In this open society, Mr. Walsh, under an entrenched Charter, what is the recourse of the individual citizen against decisions that are simply not acceptable by the Supreme Court?

MR. WALSH: I don't understand how that would differ now, except that the citizen would have this additional approach which he doesn't have now. I mean sooner or later litigation, discussion, deliberation has to come to an end either by a vote in the Legislature or by a decision of a court. There is nothing that frustrates the public more than, you read in the paper that a fellow is convicted and then he's out on bail and he's in the Court of Appeal and then he's out on bail, then he's in the Supreme Court of Canada, and before 1948, he used to be in the

Privy Council or whatever. Surely in every kind of situation debate, discussion, litigation comes to an end and people have to live with the result. The point that we're making is that we want to create a new forum for people who feel that their basic liberties, their basic rights, have been infringed. The same forum that they have, if somebody goes through a red light and runs into their car, and they have a dispute about that or somebody breaches their contract. So if there is a breach of contract, an individual can go all the way up to the Supreme Court of Canada. If there is a tort committed, such as assault or trespass, an individual can go all the way up to the Supreme Court of Canada, but if my freedom of speech is attacked, I have no recourse. What I am saying to you is I can't get recourse on an individual basis from the Legislature. I want to be able to go to the court where that's the forum for individual recourse and since the court is the forum for individual recourse, I want to be able to go there when my fundamental rights are attacked. That's the nub, that's the essence of our position.

MR. DEPUTY CHAIRMAN: Before we proceed, the hour is now 12:30. I would suggest that there is a possibility that there could be some questions for Miss Oliver. If there are, I would hope that maybe we would give the opportunity to Miss Oliver to answer them and she won't be here this afternoon. Are there any questions of Miss Oliver? Otherwise, we will adjourn and ask Mr. Walsh to reappear at 2 o'clock.

MR. WALSH: I'll be in court this afternoon, Mr. Chairman.

MR. DEPUTY CHAIRMAN: With the permission of the committee —(Interjection)— I'm most aware of the situation, but there are rules and regulations. But we can set our own rules and regulations.

Mr. Uskiw.

MR. USKIW: Mr. Chairman, why can't we agree that those that want to leave, put their questions now, and the others that want to continue with questions, stay on to hear the complete submission, so these people can go back without having to reappear?

MR. DEPUTY CHAIRMAN: Mr. Arnold Brown.

MR. BROWN: Mr. Chairman, some of us have a commitment at 12:30, so we'll have to leave but we have no objection to anybody who wants to stay out here to ask questions.

MR. DEPUTY CHAIRMAN: Fair enough. Mr. Schroeder.

MR. SCHROEDER: Thank you, Mr. Chairman. I just have . . .

MR. DEPUTY CHAIRMAN: I think that before we proceed we will set a time limit rather than be able to proceed forever, so I think we'll set a time limit of 15 minutes in case it takes that long. Mr. Schroeder.

MR. SCHROEDER: That's fine, Mr. Chairman, I just have several questions. I agree in general with the thrust of your presentation. I would ask what the position of your group is with respect to Section 1 of the Charter of Rights. It may be that you have referred to it in your brief.

MR. WALSH: It's mentioned in our brief that we are not happy with the qualification, that the reasonable limits in a free and democratic society, that's good conversation. That's good parlour talk but that upsets me greatly as legalese. It seems to me that the English language is such that great liberties can be taken with it to convey a mood and an impression. That's fine if you're writing a novel, but I've been taught as a lawyer that unless you're writing a novel, you want to word your document in such a way that not one person of goodwill might misinterpret it, but that four people of bad will can't misinterpret it. And that in this particular paragraph the leeway or the ambit for misinterpretation is so great that we hope that the redraft will strengthen the first paragraph. I think that's almost a conventional wisdom now amongst people who are in support of the constitutional Bill of Rights that no one is happy with the first paragraph.

MR. SCHROEDER: I note that the Canadian Bar Association agrees with your position. In fact, they go further and state that they feel that this section should be omitted from the resolution entirely. They also refer to the Victoria Charter and of course, in the Victoria Charter which the provinces and federal government consented to in 1971, there was a Charter of Human Rights to which all 10 provinces and the federal government assented at that time. The Bar Association indicates that Section 1 of that particular entrenched Charter of Rights was milder and that it wasn't quite as offensive as this particular one. Do you have any comments on that?

MR. WALSH: Both the 1971 and 1978 versions were stronger in the sense of giving confidence to those of us who are afraid that the first paragraph is a whittling paragraph and designed in part to accommodate those people who didn't want a Bill of Rights, so that they could have paragraph one pointed out to them and say, well, you didn't want a Bill of Rights. Well, for those who wanted it, we've got this Bill and for those who didn't want it, we have paragraph one. That's been a concern of those proponents. You're right, the 1971 and the 1978 versions that were forthcoming from the government are much preferable to this particular paragraph.

MR. SCHROEDER: Just one more question dealing with Section 8 of the Charter of Human Rights which indicates that no person is to be searched unless it is in accordance with law. I don't have the exact phraseology before me but it seems to me that particular section leaves a lot to be desired and we should be changing that to wording which would state that no person should be searched unreasonably, because any law can still be passed and the argument could then be given by the searching official that it is being done in accordance with law.

MR. WALSH: That's the point is that paragraph eight which reads, "everyone has the right not to be subject to search or seizure except on grounds and in accordance with procedures established by law", really doesn't even give the Bill of Rights primacy. It says that if you pass a law that's okay, but you can't do it without passing a law, and one assumes that if the search or seizure without a Bill of Rights and

without a law took place that the individual would still have a redress because if the law enforcement authority who took it upon himself to search or seize other than as permitted by law, you would have actions in trespass, assault and the like. So it seems to me that paragraph eight addresses the subject and then virtually eliminates the protection.

MR. CHAIRMAN: Mr. Parasiuk.

MR. PARASIUK: You have introduced a notion that the court is the forum for individual recourse or individual remedy. If you think that someone will break a contract, can you go to court even though the act hasn't been committed yet?

MR. WALSH: There's a doctrine known as anticipatory breach. It's a difficult proposition as you can imagine and the act would have to be pretty dramatic for you to anticipate the breach of a contract. But yes, there's the possibility in contract law of obtaining redress for anticipatory breach, particularly when the defendant has let you know in no uncertain terms that even though the time time has not yet come for the fulfillment of his obligation, he's not going to do it. I wonder how that would apply to rights. One would like to think that while you could potentially obtain some kind of injunctive or prerogative relief to maintain your rights, that kind of relief would be jealously guarded and given out by the courts as they now give out injunctive and prerogative relief only on the basis where you can show (a) a clear right and a clear danger that isn't otherwise capable of remedy. So the answer to your first question is yes, and anticipating your second one, I hope that's the answer.

MR. PARASIUK: Well the second one is that I notice that the supposed parliamentary supremacists have run off to court even though the resolution which is before Parliament hasn't been passed yet. It's certainly open to amendment, is certainly . . . I don't know what the final resolution will say.

MR. WALSH: That's what Mr. Robinette told the Court of Appeal in his argument, saying that it's a little presumptuous of the Court of Appeal even to be hearing argument when the matter is still only a bill before the Legislature. But I think historically it's been valid for governments to submit pieces of legislation to the courts as tests and it's been done in the past. I'm not enough of a constitutional expert to know whether it's been done at the bill stage as opposed to the Act stage, the Act being left unproclaimed. You would know better than I do.

MR. PARASIUK: I think on that what's happened is that the government that is going to pass the Act has often referred to the court for an opinion before it passes the Act rather than being challenged after it's passed the Act. The government in Ottawa at this stage felt confident enough of their position not to refer it to the courts so it's been challenged in the courts by a government and a set of governments that don't seem to believe in the court as acting as a final arbitrator. So we find ourselves in a rather perplexing position here as members of this committee trying to deal with the situation where certain people who aren't here any more argue for the supremacy of Parliament, but use the court as a first resort before an Act even is taken and I was wondering whether, in fact, other people could do that and I guess people can do that with respect to normal contracts, but they certainly couldn't do that with respect to some of their fundamental rights being infringed as yet.

MR. WALSH: It seems to me though it's a classic approach in a situation where you're challenging jurisdiction to go to the court and I don't think necessarily any government can be overly faulted because I think this whole discussion is taking place in a political sense and that the institutions are being used more for their political impact as opposed to the kind of remedy that any particular level of government would like to obtain. I mean, one can go right back to the root of the problem and ask why the government is going to Britain to get that which it can't get in Canada. I mean the whole problem is a political one so it's hard to be . . . unless you're on the NDP side of the debate which means that you're sort of on the clean side of both the federal and provincial positions and all equally critical of both.

MR. PARASIUK: We always are on that position with respect to most social issues. We find that we usually are in that position with respect to most issues.

MR. WALSH: Opposition . . .

MR. PARASIUK: No, the clean side.

MR. WALSH: Well it's usually the opposition side without wanting to give you any more advantage than you can get by the empty chairs opposite.

MR. DEPUTY CHAIRMAN: Are there any further questions? Thank you Mr. Walsh, Mr. Arnold, Miss Oliver. Committee will reassemble at 2:00 o'clock this afternoon and the first one on the list will be Winnipeg Chamber of Commerce.

Committee rise.