

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS
Tuesday, 10 March, 1981

Time — 10:00 a.m.

CHAIRMAN — Warren Steen (Crescentwood)

MR. CHAIRMAN: Committee come to order please. Members of the Committee will recall that at our last meeting, Thursday of last week, it was suggested by Mr. Desjardins that we at that time have the Committee rise and reconvene this morning and in the meantime members of the Committee could have a look at Hansard of last Thursday morning.

Mr. Mercier was speaking to the Committee at the time that Mr. Desjardins suggested that perhaps we recess over the weekend. Mr. Mercier, have you any further comments to make?

Before I recognize Mr. Mercier, I might say that Mr. Desjardins and Mr. Schroeder and also Mr. Blake had indicated at the last meeting that they wished to speak as well, so I do have the list from last week.

Mr. Mercier.

Mr. Desjardins on a point of order.

MR. LAURENT L. DESJARDINS (St. Boniface): I'm anxious to speak I hope, before the Minister or somebody brings in the resolution. There was a good forum for many of the people that came in front of us and it seems to me that we'll have a chance and I don't deny that the government has a mandate and a right to bring in their position, and they should do so, but I think it would be a sham. I think it would not be too honest if we brought in a resolution based on the findings of this Committee. I think the recapitulation of what happened is pretty good.

The resolution is strictly the government's resolution and I don't deny they have the right to do it and no doubt this will be done in the House, but I think it should come from the House, not based on what the Committee has done, because in fact the Minister admitted himself that there might be a few more that are in favour of an enshrined Bill of Rights. The position is so varied on that, that I would much sooner we could keep this in a co-operative way and bring in the report without any recommendation. I think this would be the best because it's obvious that it's not our position, that it's the Conservative position and it's a preformed position, the same position that the government had before we heard the Committee.

So I would suggest that instead of having a big battle at this stage that we send this report without any recommendation, that wouldn't be very long. They have a copy — and Hansard is there — of the meetings we had and then the government would have to bring in a resolution anyway and I imagine they will, this is only a recommendation. So this way I think we could be unanimous, all the members of this Committee, without any recommendation, then the government, if they wish, will bring a recommendation and we'll debate that in the House where it should be. It's the government's position and they have a right to do so.

I don't think it would be quite honest to bring a recommendation based on what we heard because it isn't that at all. If so, well then I would suggest that then we bring in the position of both parties, the recommendation and the position that was read in the record by Mr. Schroeder, but I would much prefer that we send this without recommendation. It's been done before. It's often done, especially a Committee like that and it's not going to stop anything. It's not going to deny anything. In fact, it will probably save time and arguments in this Committee, which we'll have to start all over again in the House.

That's why I was hoping I could speak first before recommendations because it's always difficult when the motion is made and they bring in a recommendation. I don't think any party would want to back down on that, normally they don't, then we'd be forced to have a big argument here and start the same thing in the House again. Thank you.

MR. CHAIRMAN: Mr. Mercier, do you wish to respond to Mr. Desjardins' comments?

MR. MERCIER: Mr. Chairman, having read the remarks of Mr. Schroeder in Hansard which was produced for us, I think there is probably unanimity on Recommendations 2, 3 and 4 in the draft report. The second which was, "That the Federal Government abandon its attempt to amend the Constitution unilaterally", and 3 and 4; and probably with respect to number 1, I would think the members of the Opposition would support part of that resolution, the first part, "The Manitoba Legislative Assembly confirm its commitment to the united government to Canada's Federal parliamentary and monarchical system of government". Then probably the area of differences in the balance of that sentence, "And to our traditional constitutional methods of maintaining and enhancing the basic rights of all our citizens", because I think Mr. Schroeder indicated support, although perhaps not unanimous support within his caucus, for the entrenchment of a Charter of Rights. I'd be interested to know whether that analysis is correct, Mr. Chairman.

MR. CHAIRMAN: Mr. Schroeder, do you wish to speak?

MR. VIC SCHROEDER (Rossmere): Yes, Mr. Chairman, if we could, I certainly would prefer to go along with the recommendations of the Member for St. Boniface in terms of specifics.

First of all the recommendation made by the government is sort of a complete recommendation, although there are four parts to it. As far as I'm aware, it's either a take-it-or-leave-it position and we have to say that we would prefer to leave it as opposed to taking it on the whole.

While there are some portions of it with which we might agree, there are other portions that we think are superfluous. I know of no delegation that was arguing against our federal system, our parliamentary

system, our monarchical system, so those are the types of recommendations that I don't think are really terribly relevant, but we're not opposed to them if we want to spend some time flag-waving, I suppose.

As the Attorney-General has pointed out, the other part of the first paragraph is one that certainly we would have difficulty supporting, because it indicates that there is no other ways and further ways in which we can maintain and enhance our basic rights.

The paragraph that I would probably find the most disconcerting is paragraph 3. If we went along with Paragraph 3, as a have-not province, do you realize that we would have this Constitution in Canada without equalization? I think that's one of the most important things, other than the Charter of Rights, that this new Constitutional package provides to us and, as a have-not province, I have to say that I'm surprised that nowhere in the government's portion of this proposal is that issue of equalization mentioned. When this document gets back here without that principle enshrined, if it ever does, I am concerned that it will never be enshrined. I am concerned that, for instance, the Premier of B.C., who has been making noises about that one may continue on with it. I would like to see it in the package before it gets here. If the provinces and the Federal Government agree at this time then surely, from Manitoba's perspective, that is an absolute fundamental that we must have in the Constitution before we bring it back and take the chance here that it somehow gets slipped into the dust bin.

Now in terms of No. 4, "All further proposals for amendment to be set aside until the Constitution has been patriated with an agreed amending formula", again, I have the same reservations as with respect to 3. In addition to that I would find it puzzling that we would have to say that. Surely if we can agree, if we agree that there is to be another conference, another federal-provincial conference, which we do, we certainly don't like the unilateral action of the Federal Government any more than you do, but if we agree that there should be further discussions — and the Attorney-General has indicated that he feels that they are very near an agreement on that Alberta formula. He indicated in his remarks just on Thursday that they were going to meet again on Friday and he said that they would consider further refinements to that particular formula and maybe we've perfected that formula which might be one area of working on it. But even if we had perfected that formula, surely once we have something to take back from Britain, there's no logical reason why it has to be only an amending formula; we can bring back equalization; we should be able to bring back the Charter of Rights.

So I would hope that maybe for today, rather than going through this and arguing everything out for a couple of hours, if we could simply agree to accept the synopsis of the Attorney-General and then we can argue this out in the Legislature.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, on the question of equalization, we, as a government and as a province, have been supportive of that principle. I think every government in Canada has been, with the possible exception of the Province of British Columbia, which

have expressed concern over entrenching that principle. They have done it because of a concern, not really over the principle of equalization, but the method of equalization and I have sometimes taken the view that the kind of wording that's being discussed might limit the methods by which a Federal Government might, in the future, bring about equalization.

Mr. Chairman, there's no question that as soon as this report gets into the House there will, concurrently or very shortly thereafter, be a resolution brought in by the Premier that will deal with a number of these issues. I would think, at that time, I think the Opposition House Leader and I will have to determine if there's a possibility of debating perhaps the report of the Committee and the resolution together, that's something I think we'll have to look at and see how that can be . . .

MR. SIDNEY GREEN (Inkster): Mr. Chairman, on a point of order.

MR. CHAIRMAN: On a point of order Mr. Green.

MR. GREEN: I would think that if there is a move that the report of the Committee be received, that is not a debatable motion. If there is a motion that the report of the Committee be received and approved of, that is a debatable motion, so you may want to discuss whether that is the way in which it is brought in. I mean, you may want to discuss what's the other, but there is a way of debating a Committee report and that is by asking the House to approve of the report.

MR. DESJARDINS: That's my point. What we could do, we can have a battle here; we could bring in a recommendation that it be received, that's not debatable, you need another motion anyway and even if you receive and concur with, it's only a recommendation, you would still have to have a resolution. So my point is a resolution not based on this, because you know we're all honest enough to agree that our position and the position of the government is not necessarily based on that, it's based on the things that we want in there.

So I would think that if we just have a report without recommendation and then there is no doubt that it's been committed in the Throne Speech that the Premier or the Minister will bring in a resolution and then there will be full debate on that. I don't want for a minute that you get the wrong impression that I'm trying to curtail the debate, but I don't think there would be anything gained by going at it about three times in a row. It would just prolong the session; there will be the same repetition and everything will be said, everything could be said in the recommendation; there could even be an amendment or sub-amendment. We might be able to go two or three speeches on the same thing, so I would think it would gain nothing.

It would be just through numbers that you would force this thing through, a recommendation that you would not be too comfortable in saying that's a recommendation of the Committee on what we heard. The presentation to the Committee, plus your recap which is quite good; nothing is perfect but we have no objection to that at all. It could be accepted and it could be valuable, whatever was said, that

could be referred to in the speech on the official motion of the government.

MR. MERCIER: Mr. Chairman, what I would suggest, and I concur with Mr. Desjardin's concern about duplicating the debate here and in the House, the House is the best forum for the debate to occur. At the same time these are extremely important issues. I would suggest that we simply have a vote on each one of the recommendations. The vote can be recorded and the report can then go to the Assembly and the full debate can take place there.

MR. DESJARDINS: Mr. Chairman, in effect, then the Minister is not agreeing with me. He's suggesting that we vote on this and we could make some amendments but in principle it's a package that we buy. Now there are a lot of things but I certainly wouldn't have any trouble in saying that we want to confirm a united Canada. I would much sooner see a resolution with no strings attached, no other points, just saying that we're against separatism and whatever our problems are we're going to solve them without threats of dividing this country.

Now, the other things, there are "ifs" and "buts". What I would like to see is the Federal Government — and we probably all have different ideas — the Federal Government call the provinces, okay, we're going to get another try but put a time limit, which is not popular, but put a time limit on that. I think it's the only way; it will be with us forever. If the provinces, with the Federal, can't get down to a compromise, you know it's okay to say the government is not ready to compromise, there doesn't seem to be any compromise for the provinces either. So if they can get along, maybe give enough time, a limit on it, a year or something like that, and if not, well then the understanding that the Federal Government, with the members of all parties in the House, will bring in an amending formula. I think this would be the best, you know, practically like a jury, you lock the door and throw away the key until they come out with something. We've tried this for so many years, so I think that we would lose something if we start voting on one, two, three and four and bring amendments.

The government will have its day, there is no doubt about it, they will bring a resolution and the same thing could be said out there because I don't think it would be honest for this committee to say these are the recommendations based on what we heard. I think there's been some compromise but, all in all, you had a pre-determined — the government more than the Opposition because after all the government has the mandate to govern — I think it has a fixed position. If we had heard and if there was something, if I could see in there something and say, well, okay, we came into this, we were against the Bill of Rights but even the people that were against an enshrined Bill of Rights, 90 percent of them when asked said that they would include linguistic rights and we'll go along with that. I could see a shift in the position, something that was done after listening to the Committee but that's not even the case.

It's not anything very difficult that I suggest, that we just accept the report without a recommendation. That's been done many times, especially when it's obvious that we will not agree this time. Then we will debate in the House where there'll be a lot of

occasion and all the members will be there. Then the government I think would feel, I would anyway if I was the government, feel much more comfortable and say okay this is our resolution. But to bring a resolution and try to hide behind a committee and say here, after listening this is what we recommend. We'll certainly fight that because we don't think that's right. I'm not suggesting that we should have our position either. This position that we had and the position of government is valuable and that could be brought in during the debate or even if the government brought the same resolution, not a recommendation, as a resolution I could understand that. I think it would be wrong to be bring it at this time; it's just using your numbers to ram something through which is not factual as far as I'm concerned.

MR. CHAIRMAN: From our last meeting I had a list of persons who at that time wished to speak and, as you all know, committee rose and I said that I would keep that list. Mr. Parasiuk, Mr. Blake were on that list. Do either of you wish to speak at this time before I recognize Mr. Graham?

Mr. Parasiuk.

MR. PARASIUK: Generally I concur with what the Member for St. Boniface has said on this. The difficulty with looking at the report and adopting it as such is that, in my estimation, there are certain things that have been excluded in the report, and I think that the synopsis was a sincere attempt to, in a sense, capture, synthesize that which was put forward to the committee but there were some things left out. Just about everyone who addressed the particular subject of the committee itself said that the committee had met far too late in the process, that in fact the government had fixed a very hard position, it had gone to court and then it had called the committee to ask for briefs and presentations from the general public on questions of Constitutional Reform. So there was concern that in a sense the horse was out of the barn already and that's not reflected here. Most people who addressed the topic of court action felt that, although they didn't like the unilateral action, they felt that the provinces had gone the wrong route in going to court rather than putting forward any counterproposals of a positive nature.

Now I see that the premiers are trying to establish some counter-proposals possibly of a positive nature, but today as well Quebec has gone to court with Manitoba backing the Quebec position. So I don't know what the Premiers are trying to put forward as a positive set of proposals for these Constitutional negotiations when we in fact talk about some type of positive proposals being looked at again at the federal-provincial level. I think a critical question in this respect of positive proposals, with respect to Constitutional Reform, rather than just dwelling on the negative because I don't think any of us really want to dwell on the negative aspects of this. I think we want to dwell on what is possible and where we can try and achieve consensus. I use the term consensus because that is diametrically different and opposed to the notion of unanimity. The whole question of unanimity versus consensus is bagged when people say agreed formula or there will be agreement.

The whole problem is that there hasn't been agreement for a long long time. We have to say what

we mean by agreement. Is it unanimity? We don't think that it is unanimity. I don't know what the position of the government of Manitoba is. Are they looking for unanimously agreed to amending formula and does that mean in order to get unanimity you're going to allow opting out, which leads to a patchwork confederation? Again, those questions are begged in these recommendations, so rather than try and include all those questions which I think are fundamental to a discussion of this, let's do it in the House and let's just table the reports.

We can raise these particular questions, debate them and raise amendments if we wish to raise amendments with respect to things like unanimity, with respect to things like consensus, with respect to things like whether in fact it's in good faith to ask the Federal Government to hold back its move, sit down with the provinces. If it's in good faith to do that while at the same time court cases are being proceeded with, maybe the court cases should be suspended for now because the court cases themselves must be costing the people of Canada a tremendous pile of money and maybe we can avoid that. So I think there are a number of questions that are begged that I think possibly can't be easily introduced in this particular report so I suggest that we table the report and debate this in the House.

MR. CHAIRMAN: Mr. Blake, did you wish to speak at this time?

MR. DAVID BLAKE (Minnedosa): Yes, I don't to belabour the discussions that are going on, Mr. Chairman, but I wanted to say in the previous meeting that I think this Committee has to bring in a report. It matters not that much whether we ask it to be accepted or approved by the House or whether we just merely bring the report in.

I think the draft form of it has captured the general feeling of the briefs that we heard. I think Mr. Schroeder's presentation was a presentation that probably would have been better made to the hearings rather than to this Committee, it wasn't really a report on the hearings as such even though there was many positions in it that were taken by various groups in the Committee.

I think as a Committee we're bound to bring in a report. Just what form it's brought into the House, flexible enough on, but we've got to bring in a report and I think the report as it was brought in by the Attorney-General pretty well captures in capsule form, the feelings of the presentations presented to the Committee.

MR. CHAIRMAN: Mr. Green.

MR. GREEN: Mr. Chairman, I'm not a member of the Committee but I do have some observations that I would like to make. First of all with regard to the report, if the report is an attempt to tell the House what people said at the Committee, then it can be a narrative. I can tell you, Mr. Chairman, that I as a member of a Committee with views on a particular subject, would not so report. I would report that after hearing people, this is what I think should be done. If you're going to say what you think should be done as a result of hearing people, then committees will merely be arenas whereby one group tries to get other people to say what they want to hear and then

add the numbers and say more people spoke this way than spoke the other way, which is ridiculous. That's not what a committee report should do, Mr. Chairman, and if it is a narrative then it should so state and that there are no views of the committee being forwarded. But frankly that is not my view of the legislative procedure and if it became the legislative procedure it would become a mob procedure.

If the legislative procedure was that on the automobile insurance report, then there would be no automobile insurance in the Province of Manitoba because there was 108 briefs against it and maybe three briefs for it on the report. That doesn't to my mind, mean that the people of Manitoba were against it, it means that there were 128 people prepared to come and present briefs that way which was all one brief, as I said at the time, in accordian form.

So ultimately the legislative process gives due attention to what is being said but it becomes the legislator who has to put a position and if the committee is intending to put a position, then it should put the opinion of the majority of the committee which is quite normal. If I was a member of a government, that's what I would do and I've never said otherwise in opposition. So that's up to the responsibility of the members of the committee.

There is, Mr. Chairman, one point that has been made which I believe has to be put into perspective. The suggestion is that there has been 50 years of attempting to come to an agreement and that there has been no agreement. For the last 10 of those years in any event there has never been an attempt to agree simply to an amending formula. The provinces have always said that they want an amending formula with a tied-to division of powers, and the Federal Government has always said it wants an amending formula tied-to a Charter of Rights, essentially language rights. So the suggestion that there have been 50 years of attempts which could not be resolved, is false.

If the provinces and the Federal Government agreed that they would sit down to consider simple patriation with an amending formula and there was no agreement then I, for one, would say now that I would accept the Federal Government going to Britain and asking for a patriation of the Constitution with the existing formula for amendment.

Mr. Lyon happens to think the existing formula for amendment is unanimity. I happen to think that the existing formula for amendment is a request of the Federal Government and I'm not really worried about that although people say it is unilateral amendment by the Federal Government because the next Federal Government would be able to do the same thing, and that has been the case in Canada since 1867.

If the Federal Government proposed that there be an amendment to the Constitution on the existing formula and it asked for two-thirds and the next Federal Government had a right to change that, that would not bother me in the least, Mr. Chairman, because that is the democratic process. But if the Federal Government tried to make an amending formula which called for two-thirds and said it couldn't be changed, then it needs the consent of the provinces, but if it doesn't need the consent of the provinces, it at least needs something. There has

been no attempt by the Federal Government to obtain an amending formula aside from a Charter or Rights or an amendment to the Constitution and that's what has held. The Federal Government can't suggest that they've tried for 50 years and they haven't been able to get a formula because the entrenchment of rights as now exists has never even been discussed in this country. There has never been a discussion of entrenching in the Constitution to the people of this country, such things as freedom of expression at the federal level which covers provincial legislation, freedom of conscience at the federal level which covers provincial legislation.

All of those other areas such as aboriginal rights, whatever they are, rights as they affect the handicapped, rights as they affect other people, those things, Mr. Chairman, have never been put to the public of this country. Never.

With regard to equalization, Mr. Chairman, it is interesting that with 100 years of working with our existing Constitution, we have a very good equalization formula in this country. The Federal Government and the provinces say they now want to entrench it. At that stage the courts will say whether the Federal Government is equalizing or is not equalizing and say what equalization means and what it does not mean. But for 100 years we've been able to, through the democratic process, provide for rational equalization in this country and now it's suggested that it go elsewhere.

Well, I want to make what I believe the position to be clear, Mr. Chairman. Nobody in Canada is opposed to patriating the Constitution. I have not heard a single voice raised against it. The Province of Manitoba, and it's something of which I am proud, although the professors were very annoyed with me when I said it, which is usually the character of the academics, is that we say that we will agree today to simple patriation of the Constitution; that what can now be done in Westminster can be done in Ottawa. Let Mr. Lyon argue as to whether you need unanimity or not; that argument is taking place in any event and we could not avoid it. Two of the highest court judges in the Province of Manitoba say you need unanimity to change the existing Constitution; three say you don't. That kind of judicial decision I guess we have to live with; to make more and more judicial decisions is wrong. I suppose if five judges said you need unanimity to change the Constitution and the Supreme Court said you need unanimity to change the Constitution, that Mr. Trudeau would say that, consistent with his view, that the judges should say that you should accept that. But at that point Mr. Trudeau says, never. The policy of this country is not going to go to the judges; Parliament is going to be supreme.

When we talked about the entrenchment of a Bill of Rights he says Parliament is not going to be supreme, the judges are going to be supreme. Mr. Chairman, I would think that Mr. Trudeau wants to have his cake and eat it too. He wants more than that, Mr. Chairman, he wants to now make laws since he says that all of you people here, and all of the people who sit beside him and across from him in the House of Commons, that 50 yards from Parliament Hill they're a bunch of nobodys and therefore shouldn't be entrusted with the laws of this country. He says, I'm not going to be here next time

and I'm not going to leave the future of Canada in the hands of a bunch of nobodys, therefore, I'm going to pass a law which no future nobodys can undo.

There is no previous example of arrogance that can meet the standard that has been set by this man who is now telling you that he is going to preserve the rights of Canadians.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, it might be helpful, and it was to me, to read Beauchesne's Page 202 on preparation of committee reports which says: "Is the opinion of the committee as a committee not that of the individual members which is required by the House; and failing unanimity the conclusions agreed to by the majority are the conclusions of the committee. Therefore no signatures may be attached to the report for the purpose of showing any difference of opinion in the committee or the absence thereof; nor may the report be accompanied by any counterstatement, memorandum of dissent or protest from any dissenting or non-consenting member or members; nor may a draft report which has been submitted to the committee, but is not being entertained by it, be printed as an appendix to the report. If a member disagrees with certain paragraphs in the report, or with the entire report, he can record his disapproval by dividing the committee against those paragraphs to which he objects or against the entire report as the circumstances of the case require, or he can put on record his observation and conclusions as opposed to those of the majority by proposing an alternative draft report".

Mr. Chairman, I sympathize with Mr. Desjardin's concern that we don't duplicate the debate here and in the House but I think it's incumbent upon us, as a committee, to make a report with recommendations and I therefore move, Mr. Chairman, that the committee adopt the draft report as I submitted it to the committee.

MR. CHAIRMAN: Mr. Schroeder, then Mr. Desjardins.

MR. SCHROEDER: Yes, thank you, Mr. Chairman. I would have to speak against that motion. I believe that the recommendations are recommendations as previously indicated that I would find some difficulty living with. There have been some comments made with respect to previous positions and the fact that in the last 50 years no discussion has taken place at the federal level which would change the constitution and provide specific entrenched rights, which would as well cover the provincial legislation. I'd refer the Chairman to Appendix B of the Canadian Constitutional Charter of the Constitutional Conference which was held at Victoria, British Columbia, which is in Canada, on June 14th to 16th of 1971.

Article 1 — It is hereby recognized and declared that in Canada every person has the following fundamental freedoms: Freedom of thought, conscience and religion, freedom of opinion and expression and freedom of peaceful assembly and of association and all laws shall be construed and applied so as not to abrogate or abridge any such freedom.

Article 2 — No law of the Parliament of Canada or the Legislatures of the provinces shall abrogate or abridge any of the fundamental freedoms here in recognize and declare. It is simply incorrect to say that it has never been discussed before.

Further, Mr. Chairman, at that time, and only a matter of about a week later, the Legislative Assembly of Manitoba, Hansard June 28, 1971, Oral Question period, question by Mr. Sidney Spivak, Leader of the Opposition. Mr. Speaker, my question is for the First Minister. I wonder whether he can indicate whether the Government of Manitoba has indicated to the Government of Canada its acceptance or non-acceptance of the Charter of Victoria.

The Honourable Edward Schreyer, Premier: Mr. Speaker, I have this morning sent a communication to the Government of Canada indicating that the Government of Manitoba will agree to recommend the proposed Charter to the Legislative Assembly for ratification in the event that proves to be a practical exercise indicating also that if there is to be any renegotiation of all or any part of the proposed Charter that Manitoba will want to consider de nouveau certain sections.

Now, Mr. Chairman, there is no question that ten years ago the government of this province approved of a Canadian Constitutional Charter which had the articles which I had previously referred to. Further, that government was prepared to recommend that charter to the Legislature of Manitoba. It is a historical fact that the reason that did not happen is that Quebec, after the Conference of June 14th to 16th of 1971, changed its mind. Had it not changed its mind the position of the Government of Manitoba was perfectly clear, and the Cabinet of Manitoba I might say. Further, Mr. Chairman, there is no indication from the opposition that they opposed it at the time. So when it is said that there was never any discussion at the federal level which covers legislation on freedom of thought and that type of thing which would cover the Legislatures, that simply is incorrect.

Now with respect to the matter of the amending formula and taking this Constitution back to Canada with just an amending formula, I submit that the statements I previously made still stand and are sound but the suggestion that the Constitution be patriated with an amending formula which would be that Ottawa receive those powers which currently reside at Westminster and if, in fact, that gives them the power to unilaterally change the Constitution well I would have to say that I would most strenuously oppose that. If that happens to be the law then certainly no Federal Government has considered in 100-and-some years that that in fact is the law; no Federal Government has ever used that type of an amending formula based on just a unilateral approach other than this particular current government and as we have already said we are opposing the unilateral action of the Federal Government, that is, we agree with the government that unilateralism by the Federal Government is something that is totally inconsistent with the existence of a federation. That is the action of a unitary state.

It's the action of a state that has no real federation; an action of a state where the provinces

are nobodies; an action of the state where the provinces become mere creatures of the Federal Government; mere appendages that can be changed in any way, at any time, by the Federal Government in any way it sees fit. If this particular Federal Government would ever have the right or the power or believe itself to have that kind of power and if we would ever legitimize that power by saying, go ahead and do it, we would never get an amending formula because they would have all of the marbles. They would have all of the marbles in dealing with Alberta and dealing with Manitoba and dealing with Newfoundland, and we simply could not accept that type of, even a temporary amending formula.

MR. CHAIRMAN: Mr. Desjardins, then Mr. Green.

MR. DESJARDINS: Mr. Chairman, first of all I want to make sure — you can correct me if I'm wrong — we have a motion that was duly made accepting the report as given to us by the Attorney-General including the recommendation and accepting that as the report that we send to the Committee. Well, I think it's better like this, that the motion is not on point by point, because I say it's a package. I certainly don't intend to support it; I intend to vote against it at this time anyway; not to prolong this and to repeat things that'll be said or to start things that'll be said in the House. I don't intend to give my reason why, I'll do that in the House. At this time, if there is a discussion I certainly don't say that I won't take part.

MR. GREEN: Yes, Mr. Chairman, I said that in the past 50 years there has never been a discussion on a proposal for simple patriation without a Charter of Rights and with a new amending formula or without an amending formula. That is correct. That has never been a matter which the Federal Government has been unable to get through the provinces. That occurred in 1931 and that's why there was no patriation at that time.

I also said that never has the Canadian people been presented with a proposal whereby a Charter of Rights affecting provincial jurisdiction and entrenched so that the courts would decide, has been discussed with the Canadian people. That is correct. Mr. Schroeder has read, what the province said that it would be prepared to consider and submit to the Legislature if practical in '72. I can tell the honourable members that if that was submitted to the Manitoba Legislature in 1972, there would have been the same debate then as there is now and I would have taken exactly the same position and those people who are in the Cabinet of the Province of Manitoba know it.

MR. CHAIRMAN: Mr. Mercier has a motion before the Committee. Mr. Schroeder do you wish to speak to the motion?

MR. SCHROEDER: Yes, I'd just like to make an amendment to the motion. The amendment is that the report presented by myself last Thursday be added to the report.

MR. CHAIRMAN: Mr. Mercier, do you wish to comment on the amendment?

MR. MERCIER: Well, Mr. Chairman, I think on the basis of Beauchesne, Page 202 which I just read, the motion is out of order.

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MR. CHAIRMAN: All right, then the motion is out of order.

A COUNTED VOTE WAS TAKEN on Mr. Mercier's Motion, the result being as follows:

YEAS, 6; NAYS, 4.

MR. SPEAKER: I declare the Motion carried.
Committee rise.