

## THE SENATE

Tuesday, December 2, 1980

The Senate met at 8 p.m., the Speaker in the Chair.  
Prayers.

### REGULATIONS AND OTHER STATUTORY INSTRUMENTS

#### STANDING JOINT COMMITTEE—CHANGE IN COMMONS MEMBERSHIP

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons to acquaint the Senate of a change in the list of members appointed to serve on the Standing Joint Committee on Regulations and other Statutory Instruments.

(For text of message, see today's *Minutes of the Proceedings of the Senate*.)

### THE CONSTITUTION

#### SPECIAL JOINT COMMITTEE—CHANGE IN COMMONS MEMBERSHIP

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons to acquaint the Senate of changes in the list of members appointed to serve on the Special Joint Committee on the Constitution of Canada.

(For text of message, see today's *Minutes of the Proceedings of the Senate*.)

### PRIVATE BILLS

#### MONTILAC LTD. AND SOCAM LTD.—COMMONS MESSAGE

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons returning Bill S-13, to revive Montilac Ltd. and Socam Ltd., and acquainting the Senate that they had passed the bill without amendment.

#### TREMUS INDUSTRIES LIMITED—COMMONS MESSAGE

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons returning Bill S-14, to revive Tremus Industries Limited, and acquainting the Senate that they had passed the bill without amendment.

### THE CONSTITUTION

#### SPECIAL JOINT COMMITTEE—COMMONS MESSAGE

**The Hon. the Speaker:** Honourable senators, a message has been received from the House of Commons in the following words:

Tuesday, December 2, 1980

Ordered,—That the Order of Reference creating the Special Joint Committee on the Constitution of Canada be amended by deleting the words "December 9, 1980" and substituting therefor the words "February 6, 1981"; and

That a Message be sent to the Senate to acquaint Their Honours thereof and to invite them to join with this House in the aforementioned action.

Attest:

C. B. Koester

*The Clerk of the House of Commons.*

#### SPECIAL JOINT COMMITTEE—ORDER OF REFERENCE AMENDED

**Hon. Royce Frith (Deputy Leader of the Government):** Honourable senators, I move, seconded by the Honourable Senator Roblin, with leave of the Senate and notwithstanding rule 45(1)(e):

That the Senate join with the House of Commons in amending the Order of Reference creating the Special Joint Committee on the Constitution of Canada by deleting the words "December 9, 1980" and substituting therefor the words "February 6, 1981"; and

That a message be sent to the House of Commons to acquaint that house accordingly.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

• (2003)

**Hon. Duff Roblin (Deputy Leader of the Opposition):** Honourable senators, it seems that the mover does not wish to speak in introduction of this motion, but I should like to make some comments about it. I am not at all critical of the mover's silence, because the motion is self-explanatory and does not require further explanation. However, it might be useful for the house to know that at this afternoon's meeting of the Special Joint Committee on the Constitution a resolution was carried to the effect that when this motion becomes the approved statement of both houses of Parliament, the timing in respect of the presentation of briefs and the receipt of applications from interested parties to appear as witnesses will be reconsidered.

As honourable senators are aware, the deadlines have now passed and people cannot at this point submit new briefs or ask to appear as witnesses. It is, I think, useful for honourable senators to know that consideration will be given to extending those deadlines. The matter has been referred to the steering

committee for the purpose of giving consideration to such extensions.

I am also glad to say that it was made quite clear—and again the steering committee will be looking into this—that we do expect to receive more briefs and to have other witnesses come forward. Contrary to the previous decision of the committee, it now appears that there is a possibility that private citizens will be able to present briefs in addition to those representing organizations. This could be a valuable change in the plan of operation as it would, no doubt, permit expert witnesses to be called to testify.

In light of the terms of reference, which instruct the special joint committee to consider the suitability of the government's action in this respect, it is quite obvious that questions of legitimacy and constitutional propriety, and, indeed, of the effect of court applications, are proper subjects to be discussed. Certainly, in my opinion, they are proper subjects to be discussed by this committee.

The committee, I submit, will not be able to fulfill its mandate unless it has an opportunity to do these things. So, I am cautiously optimistic that the committee's previous decision not to hear expert witnesses will now be reconsidered. That is certainly my hope.

It is for those reasons that I have some interest in seconding this motion. I am also interested in the fact that the date of February 6 was the date originally proposed by some opposition members of the committee as being the proper date to which to extend the committee's hearings. Whether we will be able to complete our business by February 6 is still, to my mind, an open question, but we will have a much better chance to do so than under the unrealistic deadline of December 9.

While I am on my feet, I wish to refer to an interchange which took place last Tuesday between myself and the Leader of the Government in the Senate with respect to the status of the Senate in these proceedings. I pointed out to the government leader that the matter had been referred to the house leaders by the committee and that it appeared at that time that that did not include the house leaders in the Senate. I asked the Leader of the Government in the Senate about that, and in reply to me, as reported at page 1305 of *Debates of the Senate* of Tuesday, November 25, he said:

With respect to Senate participation in the process of that final determination, there will be substantial Senate involvement.

Perhaps the government leader could report to the Senate exactly what that involvement consisted of.

He went on further to say:

However, now that he has suggested—

And I think he was talking about me at the time.

—that he thinks there is merit in house leaders discussing this matter, and has said so publicly and in his usual eloquent way, with the support of the Honourable Senator Asselin who spoke on it today, I will be more than

delighted to meet with the Leader of the Opposition in the Senate to discuss this matter.

I should like to know whether such discussions took place between these two leaders.

It seems to me that if we let the matter of a joint committee's procedure with respect to reporting back to the two houses go without remark when the Senate has been overlooked, at least to some degree, we would not be serving the interests of the public in the matter. So, I would ask the government leader to tell us what the "substantial Senate involvement" was in the final determination, and I would also ask him whether there was any consultation with the Leader of the Opposition, as his statement indicated there would be.

**Hon. Raymond J. Perrault (Leader of the Government):** Let me say, first of all, that I know that all honourable senators welcome the decision taken by the members of the Special Joint Committee on the Constitution to recommend that the hearings of the committee be extended until February 6—

**Senator Roblin:** They did not do that; they recommended that they not be extended.

• (2010)

**Senator Perrault:** But the decision to extend the hearings was taken in the other place.

**Senator Roblin:** Not by the joint committee.

**Senator Perrault:** I can assure honourable senators that the decision in the other place to extend the time in the ultimate, had the support of the government supporters on the joint committee.

**Senator Roblin:** That is not the way they voted.

**Senator Perrault:** Secondly, I want to assure every member in this chamber that the views set forth by honourable senators during the course of debate and Question Period here were brought to the attention of the government. I reported to the government the general consensus of senators that the joint committee reporting date be extended. I stated that in my opinion my recommendation represented the view of both the supporters of the government in this house and representatives of the official opposition. As I inferred in a reply given me last week, consideration was being given then by the government to the possibility of an extension of committee hearings. I was very much involved in the discussions which took place in cabinet, and in discussions with certain members representing the government in those committee deliberations. I know that honourable senators welcome the fact that a positive decision has now been taken in the other place.

I regret that the Leader of the Opposition and I were not able to get together for a discussion during that period of time, but the ultimate result, I believe, has more than met the expectation of the honourable Leader of the Opposition and his deputy.

**Hon. Jacques Flynn (Leader of the Opposition):** Not exactly. If I recall correctly, the motion we made when we were

discussing the resolution was to invite the committee to report no later than March 1, but that was defeated.

**Senator Perrault:** Honourable senators, I can only say that the distinguished leader of the Conservative Party—

**Senator Flynn:** You have come half way.

**Senator Perrault:**—seconded the motion in the other place, which rather suggests to me that there was a substantial amount of support for the date of February 6 on the part of the Conservative Party.

**Senator Flynn:** I am not opposing it.

**Hon. Richard A. Donahoe:** Honourable senators, I intend to support the motion before us, which I consider an excellent one. I do not believe there is any thinking person in Canada who thought that there was anything proper or realistic about the original deadline that was set for the report of this committee. It must have been obvious, and was obvious, from the very beginning that December 9 would give no real opportunity for those persons who wished to do so to make their views heard and thus play some part in the shaping of our Constitution.

Accordingly, from the very beginning, we on this side said that the date should be extended. As my leader has just said, we moved in this house that it be extended to March 1. Subsequently, in the other house there was a motion, and I believe the date selected there was February 6. February 6 is now the date for the presentation of the report of the special joint committee.

I rise because I would not want it thought that because we once moved that the reporting date be extended to March 1, while in the other house there was a motion moved to extend it to February 6, we necessarily thought that was the beginning and end of the matter, or that we agreed that by advancing the report date to February 6 we were, in fact, giving adequate opportunity to the Canadian people to make themselves heard in this process of constitutional amendment. At the time we moved that the date be March 1, and members of the other house moved that it be February 6, there was a list of persons who had indicated their desire to be heard, but since those motions were made that list has grown considerably longer. Instead of there being relatively few people saying they had views which they wanted to put before the committee, there are now hundreds of such persons and groups of persons. At that time we were of the opinion that it would be possible to bring before the committee all those persons, learned in the law and skilled in constitutional matters, who would have opinions on the propriety and desirability of what was being done, and that those views would be put before the committee in order that it might have the benefit of that distilled wisdom. As it turned out, they have been deprived of that opportunity, and even now, with the extended date, they have no assurance that that opportunity will be granted to them.

• (2015)

I rise at this time merely to say that nobody should interpret the agreement today on February 6 as meaning that those who

[Senator Flynn.]

agreed to that date are necessarily saying that that settles the matter once and for all, and that there might never arise in the future conditions which indicate that there is no necessity for extending it further. I do not believe anybody should have that opinion, since it may very well be that as February 6 approaches it will still be possible to demonstrate that that date is too early. I understand, in some of the speeches made in the House of Commons before the vote was taken on the extension, that the caveat was voiced that this was, in fact, the attitude of those who were prepared to support the extension to February 6.

I want to be sure that there is no misunderstanding about what we on this side of the house feel with respect to this. While I support the motion, because I think it is desirable, I reserve the right to insist later that it may be appropriate to extend the date still further.

**Hon. G. I. Smith:** Honourable senators, I am not going to take up very much of your time—

**Hon. Senators:** Oh, oh.

**Senator Smith:** Do not be so encouraging, or I might find it useful to help you appreciate more the fact that at some other time I might take less of your time.

I rise to say that I concur with the view of the Honourable Senator Donahoe to the effect that we may find—and I think it very likely that we will find—that February 6 is not a tenable date, and I do not want to be bound by silence tonight to the view that I subscribe to this as being the final date. It is obvious to anybody who knows what is going on in that committee, and the requests to be heard that have poured in, that the committee would have to perform marvels of accomplishment of hard work, day and night, to give adequate response to all those requests before February 6.

**Hon. David Walker:** Honourable senators, I have said from the beginning, and I repeat, that the best you will do in respect of this matter is patriate the Constitution, and, if you are lucky, you may get a formula. That, however, is all you will get, and that will go through the British houses of Parliament. This extension of time just means more waste of time, if one can judge by the complete lack of progress to date. It is like the confusion of Babel over and over again.

**Hon. Louis-J. Robichaud:** Honourable senators, I have listened to the arguments on this question so far, and as a Canadian I appreciate the extension of the time, within which the conclusions of this committee are to be reported, from December 9 to February 6. I think that is great, but an understanding of why there might be a further extension is beyond me.

**Senator Flynn:** Agreed.

**Senator Robichaud:** I can understand Mr. X and his wife, or perhaps Mr. Flynn and Mrs. F, making an application to appear before the committee, but that could be kept going indefinitely. There is absolutely no question about that. Our friends on the opposite side realize that.

Last night I watched a program on television called *Front Page Challenge*. Everybody knows that program. One of the interviewees was Premier Angus MacLean. He was chastised by the panel, in the persons of Pierre Berton, Betty Kennedy, Gordon Sinclair and Paul Hellyer, of all people. Paul Hellyer said, "The action you are taking is just atrocious," or something to that effect. They ridiculed the action of Premier MacLean in challenging in court the action taken at the moment by the government on what is not even law. I think it is ridiculous.

● (2020)

In my view, it is a good move to extend the time to February 6, but there has to be a deadline somewhere. Everybody who has a voice can be heard between now and February 6; everybody who represents a group of people can be heard between now and February 6. I repeat that I welcome this move, but any extension of this new date would be in effect saying that we have been working on this for 53 years—

**Some Hon. Senators:** Oh, no.

**Senator Robichaud:** Well, you may say 60 years, you may say 30 years, or you may say from 1960—anybody can select his own date, but the fact remains that we have to have a deadline, and the government of the day, with the consent of honourable senators serving on the committee, agreed that it should be extended to February 6. As I have said, I welcome this, but I do not think the date should be extended beyond February 6.

**Senator Donahoe:** Will the honourable senator permit a question? Is it not true that in the course of the program about which he spoke, when Pierre Berton charged Premier MacLean that the premiers had been unable to reach unanimity, he received the answer, "We had the unanimity of ten premiers, and the only one who would not agree was the Prime Minister of Canada." And did he not say, in effect, that everybody was out of step except Johnny, so everybody had to change step in order to get in line with the views of the federal government. Is that not what was said on that program?

**Senator Robichaud:** Honourable senators, yes. That is what was actually said on television, but it was not true. I do not want to get into a debate right now, but it is true that he said that, but what he said was not true.

**Senator Asselin:** How come you know that?

**Hon. Royce Frith (Deputy Leader of the Government):** Honourable senators, I do not really want to stop this interesting review of last night's TV program—I am sorry; I did not realize Senator Smith was on his feet.

**Senator Smith:** Honourable senators, I want to know if my old friend and colleague from New Brunswick, Senator Robichaud, would allow me to ask a question. Is he advocating that we should accept the view that government by television is the way in which we should run the affairs of this country to the extent that we have the power to do so.

**Senator Robichaud:** No. I say, in answer to that silly question, that it is not my view that government should be controlled by television.

**Senator Smith:** You gave me a silly answer.

**Senator Frith:** Honourable senators, as mover of the motion, I point out that I do not have the advantage that Senator Roblin has of being a member of the committee, but I thank him for his report indicating that there are a number of things—

**Hon. Henry D. Hicks:** Are you closing the debate? I wanted to speak to the motion.

**Senator Frith:** I am sorry.

**Senator Hicks:** Honourable senators, there is a motion before the house. Usually I find myself in agreement with my friend, Senator Robichaud, the former Premier of New Brunswick, but this time I don't. I want it clearly understood that if I support this motion, which I intend to do, I am in no way saying that I would not entertain a motion at some future date for a further extension of the work of this committee.

● (2025)

I think it is impossible at this time to determine that we will have properly heard the people of Canada, who are legitimately interested in this important matter, by any specific date. I felt from the beginning that it was unrealistic to have a target of December 9. It seems to me that February 6 may be reasonable. I certainly hope it will be and that the work can be done by then. If it cannot, I would not want my support of this motion now to be taken as an indication that I would not entertain a motion for a further extension of the date if that seemed necessary.

**Senator Frith:** To continue briefly, honourable senators, I want first to thank Senator Roblin, a member of the committee, for giving us some perspective of the increased opportunities for study this extension will afford.

Secondly, I want to thank Senator Roblin for his implied support for the proposition that the government always keeps an open mind and pays very close attention to suggestions made by the opposition, as it has in this case, by accepting, specifically, the date proposed by the opposition.

Thirdly, I want to thank Senator Smith and Senator Donahoe for drawing to our notice that if we had been paying any attention to the procedures and activities of this committee, we would not be under any illusion that, when the Conservative Party supports this extension to February 6, we will hear no more from them on the point. We are under no such illusion.

**Senator Flynn:** You forgot to thank Senator Robichaud.

**Senator Frith:** I thought I would leave that to you. I thanked him for the TV review.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.  
Motion agreed to.

## DOCUMENTS TABLED

**Hon. Raymond J. Perrault (Leader of the Government)** tabled:

Report of the Agricultural Products Board for the fiscal year ended March 31, 1980, pursuant to section 7 of the *Agricultural Products Board Act*, Chapter A-5, R.S.C., 1970.

Report of the Agricultural Stabilization Board for the fiscal year ended March 31, 1980, pursuant to section 14 of the *Agricultural Stabilization Act*, Chapter A-9, R.S.C., 1970.

Report on the administration of Allowances for Blind Persons in Canada for the fiscal year ended March 31, 1979, pursuant to section 12 of the *Blind Persons Act*, Chapter B-7, R.S.C., 1970.

Report on the administration of Allowances for Disabled Persons in Canada for the fiscal year ended March 31, 1979, pursuant to section 12 of the *Disabled Persons Act*, Chapter D-6, R.S.C., 1970.

Report of the Minister of Finance respecting Olympic coins for the period ending September 30, 1980, pursuant to sections 17(1) and 17(3) of the *Olympic (1976) Act*, Chapter 68, Statutes of Canada, 1974-75-76.

Statement showing Classification of Loans in Canadian Currency of the Chartered Banks of Canada as at September 30, 1980, pursuant to section 119(1) of the *Bank Act*, Chapter B-1, R.S.C., 1970.

Report on operations under the *Regional Development Incentives Act* for the month of September 1980, pursuant to section 16 of the said Act, Chapter R-3, R.S.C., 1970.

Report of operations under the *Export and Import Permits Act* for the year ended December 31, 1979, pursuant to section 27 of the said Act, Chapter E-17, R.S.C., 1970.

Report of the Commission to Review Salaries of Members of Parliament and Senators (Dr. Cliff McIsaac, Chairman), appointed in accordance with the terms of Order in Council P.C. 1980-1274, dated May 9, 1980.

He said: Of course, honourable senators, members of Parliament serve in either of two categories—members of the House of Commons and members of the Senate. I apologize for the incorrect wording in that tabling.

• (2090)

## TRANSPORT AND COMMUNICATIONS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

**Hon. Royce Frith (Deputy Leader of the Government):** Honourable senators, I move, with leave of the Senate and notwithstanding rule 45(1)(a):

That the Standing Senate Committee on Transport and Communications have power to sit while the Senate is

sitting tomorrow, Wednesday, 3rd December, 1980, and that rule 76(4) be suspended in relation thereto.

By way of explanation I should like to say that the committee, under the chairmanship of Senator Smith, has moved very quickly on the reference by the Senate to look into the question of the closing of express offices and other related matters. The committee expects to have before it tomorrow the President of Canadian National Railways. Because of some time exigencies relating to the president's schedule, as I am given to understand by Senator Smith, it would be preferable for the committee to commence its sitting at 3 o'clock instead of, as originally intended, when the Senate rises.

I think the chairman of the committee should be congratulated for the expeditious way in which his committee has put this reference into effect, and therefore, I suggest that we agree to the committee's having this special right to sit tomorrow, even though it means it will be sitting at the same time as the Special Joint Committee on the Constitution.

**Hon. G. I. Smith:** Honourable senators, I wish to thank the Deputy Leader of the Government for his remarks and his support in this situation.

Perhaps I should say one or two further words. I felt, from the mood of the Senate, that it was desirable to start hearings on this reference as soon as that could reasonably be done. After some negotiation with the President of the CNR we were able to reach agreement that he would come tomorrow afternoon if we could free him by about 5 o'clock. In order to do that it seemed to me that two hours would be the minimum time, from 3 o'clock to 5 o'clock, in which to accommodate the wishes of senators who might want to ask questions of him. Therefore, with the consent of those members of the committee who were present at the time, I agreed to make this request of the Deputy Leader of the Government.

I hope it will be possible to have a good attendance, particularly more than a quorum, at that committee meeting tomorrow afternoon at 3 o'clock, assuming the Senate agrees to this motion, so that it will be clear, not that we have the bare minimum requirement of attendance in order to carry on business, but that we have a demonstration of the fact that members of the Senate are indeed keenly interested in this problem.

**Hon. Daniel Riley:** I should like to put a question to the chairman of the committee. Although, as the chairman says, Dr. Bandeen has other commitments at 5 o'clock, I take it that does not preclude his officials from remaining in case there are further questions by members of the committee. I think we discussed this at the last committee meeting.

**Senator Smith:** I am glad Senator Riley has mentioned that, because I should have included it in my brief comment. I am assured that Dr. Bandeen will be accompanied by the President of Canadian National Express, who has not the same time commitments as Dr. Bandeen and should, therefore, be available to the committee for a longer period, should the committee so desire.