

• (1435)

Hon. Raymond J. Perrault (Leader of the Government): Honourable senators, the Garrison diversion project, with the implications for Canada in all that projected development, is of great concern to all Canadians wherever they live. I can understand the senator's concern because of his residence in Manitoba. We are disturbed to learn that the U.S. Senate Appropriations Committee is considering additional appropriations of \$9.7 million for the Garrison diversion project. This is especially disquieting to all of us, regardless of party, as this proposal is apparently being added on as an unrelated emergency bill and may, therefore, be carried without the careful consideration that this important bilateral issue deserves.

While we understand that this additional appropriation is to be used to fund work not directly affecting Canada, there is reason to worry that such new funding, being proposed for a project that has yet to be altered in any way to take Canadian and International Joint Commission concerns into account, may ultimately result in actions damaging to Canada, and especially to one of the great provinces of Canada.

I have been informed by the Secretary of State for External Affairs that he has instructed our ambassador in Washington to express formally Canada's deep concern at this development. He has informed me that our concern will be made known today both to the U.S. Administration and to all members of Congress.

[Translation]

The Hon. the Speaker: Pursuant to an Order of the Senate made earlier this day, we are now going to suspend the Question Period and call Order No. 7 on the Orders of the Day.

[English]

LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO STUDY CERTAIN ASPECTS OF THE CONSTITUTION

On the Order:

Resuming the debate on the motion of the Honourable Senator Lamontagne, P.C., seconded by the Honourable Senator Frith:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to consider and report upon constitutional provisions regarding individual and collective rights and upon the future role and composition of the Canadian Senate and alternative constitutional arrangements compatible with true federalism;

That the membership of the committee be increased to thirty members and that Rule 67(1)(j) be suspended in relation to membership of the committee;

That the committee be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary for the purposes of its examination and consideration of such legislation and other matters as may be referred to it; and

That the committee have power to sit during adjournments of the Senate; and

On the motion in amendment thereto of the Honourable Senator Flynn, P.C., seconded by the Honourable Senator Tremblay, that the first paragraph of the motion be amended by striking out all of the words after the word "upon" in the second line and substituting the following therefor:—

"the matter of constitutional reform with special attention being given to the question of the division of powers between the federal and provincial governments and to constitutional provisions regarding individual and collective rights".—(Honourable Senator Murray).

Hon. Lowell Murray: Honourable senators, my intervention will be reasonably brief, so that the amendment can come to a vote soon.

Events have overtaken both the motion moved on May 29 by Senator Lamontagne and the amendment moved by the Leader of the Opposition on June 4. Since that time the first ministers met on June 9, and from that meeting we have a document entitled *Priorities for a New Canadian Constitution*. It is a list of proposed items for review, not in any order of priority, as some of the provinces have taken pains to point out, but, nevertheless, a list of items for review that has been agreed to as a basis for discussion between now and September 8.

We also have a work schedule. Ministers and officials will negotiate during the summer months and report back, it is hoped, with agreement on some of the items, to a first ministers conference on September 8.

It is my contention that the amendment moved by the Leader of the Opposition is better suited than the original motion to the priorities and to the work program which emerged from the June 9 meeting of first ministers.

The amendment of the Leader of the Opposition would give our committee a mandate to pay special attention to the division of powers and to constitutional provisions regarding individual and collective rights. The list of 12 priority items to be dealt with by the first ministers includes a charter of rights, including language rights. As Senator Tremblay pointed out the other day, it includes six specific items dealing with the distribution of powers.

• (1440)

Senator Lamontagne's original motion mentions individual and collective rights and the future role and composition of the Senate and, in the words of his motion,

alternative constitutional arrangements compatible with true federalism—

In his intervention on June 12, Senator Lamontagne defined the alternative constitutional arrangements he has in mind. He would, as I understand him, institutionalize the federal-provincial conference and vest in that institution the kind of powers suggested for a federal council by the Pepin-Robarts Commission and by Mr. Ryan's beige paper, among others. I must say

I find persuasive the argument that has been advanced from this side of the chamber that before we consider the need or otherwise for such a federal council, in the words of Senator Lamontagne, "to enable provincial governments to control the exercise of federal powers in their areas of jurisdiction," we should try to settle in our own minds what kind of power should be located at which level of government, and what kind of Constitution we will be working with.

Somebody pointed out yesterday, too, that to consider the federal council first would seem to imply that there is to be little or no change in the existing division of powers. I can do no better at this point than recall, in support of Senator Flynn's amendment and his approach, the words of the Prime Minister himself at a press conference in this city on May 29. The Right Honourable the Prime Minister, in replying to a question about the kind of confederal body contemplated in Bill C-60 in a previous Parliament and by the Government of British Columbia, among others, said:

I think the reform of the Upper House must be and should be tied to the question of regional versus national powers.

Later, the Prime Minister said:

I say the whole question of the Upper House has to be solved at the same time as the question of division of powers. We are prepared to see the provinces come en masse and sit on Parliament Hill if we are left with very, very substantial powers like, indeed, the government in Bonn is left. But if we are going to continue to be deprived of powers so that the provinces can exercise these powers in their own right, and to boot we are to be told that the powers that are left with us can only be exercised under the watchful eye of Big Brother the provinces, we say no deal.

The Prime Minister continued:

I think the question of jurisdictions and the question of the Upper House should be faced together, with perhaps also the question of the Supreme Court, which will be in large part the arbiter of the exercise of that divided sovereignty.

When the Prime Minister talks about the Upper House, he is talking about the kind of confederal chamber or federal council suggested by Bill C-60 or by the Pepin-Robarts Commission or by the British Columbia government.

I hope that, whatever may be said about my own arguments, the testimony I have brought to bear from the Right Honourable the Prime Minister will prove to be irresistible to honourable senators opposite in rallying them to the support of Senator Flynn's amendment.

In summary, I think that the process agreed to on June 9 by the first ministers will be better served by giving our committee the kind of broad mandate contemplated in Senator Flynn's amendment. The committee should not work in a vacuum. Federal-provincial consultations will be going forward until July 6, and from July 7 to July 25 federal and provincial ministers and officials will be meeting for the first round of

[Senator Murray.]

negotiations. These will be held behind closed doors but if previous federal-provincial conferences are any indication, the public will have a pretty good idea of what is going on. In any case there will be a public report to the first ministers on September 8. So given the latitude to tailor its work, I think our committee may be able to assist the process that the federal and provincial governments are now committed to for this summer and fall.

Honourable senators, that process will probably be very well advanced before the Senate as a whole has another opportunity to discuss constitutional matters. Therefore, I want to express my concern as to what the intentions of the federal government are. Earlier in this session I expressed my disagreement with the bleak picture painted in the Speech from the Throne, and by the Prime Minister in his own speech, of a country which supposedly was everywhere torn by regional ambitions and conflicts. In recent months the Prime Minister has sometimes returned to this theme, but on some occasions he has offered a more positive interpretation of what is happening in the country. I refer particularly to his statement on the night of the Quebec referendum, and to his letter to the provincial premiers inviting them to attend the June 9 meeting, as well as to his individual letter to Premier Lévesque about that meeting, emphasizing the positive spirit and the will to change that exists in all the provinces. Indeed, he said in one of those letters—I believe it was the letter to Premier Lévesque—that this provided us with an historic occasion which we ought not to miss. It is in that context that I find so inexplicable subsequent statements by the Prime Minister himself and other members of the government and the Liberal Party, which in my view serve only to create needless controversy and arouse suspicion as we embark on this new constitutional process.

Honourable senators will be aware that speculation is rife in the country, and with some basis, as to scenarios for unilateral action by Ottawa. We have had trial balloons, sent up by the chairman of the Quebec Liberal caucus, concerning a national referendum. There have been more veiled allusions by the Prime Minister himself and by other ministers about possible unilateral action, the whole effect of which seems to be to focus the attention of the provinces and others on the consequences of failure rather than on the benefits of success. If it were only a question of tactics one would be content to wait and see what results are produced, but my concern is that federal Liberals and in particular those from Quebec are so enthusiastic about the results of the referendum campaign in that province that they are eager to try it on across the country. I am not alone in that apprehension. One only has to read what has been said by some of the premiers; one has only to read what has been said by some of the respected commentators across the country including in the last few days editorials by the editor-in-chief of *Le Devoir*—who was the only member of the editorial staff of that paper to support the "No" position in the referendum campaign—and by the editor of *La Presse*. I am not alone in my apprehension that unilateral action is being considered, perhaps by way of an end-run in

some kind of cross-country referendum. I would like to say, with complete sincerity and with all the conviction I can command, to those who may be tempted by that course: forget it. A referendum, putting questions about the patriation of the Constitution or an amending formula or a charter of rights, including linguistic rights, would not resolve federal-provincial differences on those matters; it would simply cement those differences.

● (1450)

Imagine what would happen if a referendum of that kind were to pass with a majority of the Canadian voters in favour of it, but with entire regions or entire provinces voting against it. It would leave a legacy of division and bitterness and, I believe, intensify whatever separatist feelings may be incipient in any part of the country. If the referendum were to fail and the majority of voters in Canada voted against it, but if some provinces or regions voted in favour, it would set back the cause of constitutional reform by a generation and perhaps lead to the breakup of the country.

I do not believe, and it is a personal opinion, that a national referendum in this country is even an appropriate way to ratify an agreement on constitutional changes reached by the federal and provincial governments. I think each government should be left to take whatever steps it feels necessary to develop a consensus in its own legislature and amongst the public generally, in support of any such agreement.

The kind of national referendum or unilateral action that has been talked about is an end run around the provincial governments. We have to face the fact that this country is a federation, but not because the Fathers of Confederation had some doctrinaire commitment to federalism. On the contrary, Sir John A. Macdonald, at least, always felt that a unitary state would have been better, and perhaps his successors in the office of Prime Minister have often felt the same way. But the country is a federation because it was the only practical way to bring the colonies together to form what they called the "new nationality," and it is a federation because it is the only way to make Canada work today.

When it comes to constitution-making, negotiation is the only way to proceed. To contemplate an end run by way of a referendum or some unilateral action, in my judgment, would risk the existence of the country at one toss of the dice and might tear the country apart. There is a positive attitude, as the Prime Minister in his better moments notes, with most of the governments concerned. We have to put all our faith, whether we like it or not, in that process, and in those governments, in the process that is now launched. I firmly believe that if we support Senator Flynn's amendment this chamber and our committee can materially assist that process in the weeks ahead.

Hon. Senators: Hear, hear.

Hon. Ann Elizabeth Bell: Honourable senators, before we are asked to vote on the amendment, I should like to make one point of clarification. If we look at the British North America Act, section 92(10)(c), we can see what would happen either

by the route of the amendment to the proposal, or of the main motion. Section 92(10)(c) states:

Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

I should like to emphasize "... declared by the Parliament of Canada." What concerns me is that in our previous discussions on the main motion and on the amendment, we dealt with government, the executive, but there seems to be insufficient emphasis put on Parliament. Some of us feel that Parliament, the House of Commons and the Senate, may as well stay at home, not just in regard to the important amendments that are being proposed to our Constitution, but in other regards.

Let us for a moment contemplate how the declaratory power of section 92 would work if we followed the rules and honoured them rather than breached them. For example, the Province of British Columbia needs the revenue that it will receive from the export of natural gas. Say the federal government approached the Province of British Columbia and said it was going to tax natural gas, as the Province of British Columbia increased its exports and its price. If the federal government proposes this in the House of Commons over the unwillingness of the Province of British Columbia, and if the members agree with the federal government and pass this proposal, then under the B.N.A. Act the matter will come to the Senate for our approval. We, in the usual course of events, would probably send this bill to one of our committees such as the Standing Senate Committee on Banking, Trade and Commerce. It is to be hoped that our committee would hear representations from witnesses representing the federal government, the Department of Energy, Mines and Resources, the Ministry of State for Economic Development, and the Province of British Columbia.

My point is that we in the Senate presumably have a mandate to have the regional concerns of Canada ventilated. If a provincial government says we should do it in some particular way, and if we are convinced it is the best way to benefit the whole of Canada, we must have the courage of our convictions, adopt the provincial proposal and defeat the federal government's proposal.

We should keep that in mind while looking at the main motion of Senator Lamontagne and the amendment that Senator Flynn has proposed. I believe that we would fall down in our duty if we did not look at these proposals coldly, determine the rules under which we play, and decide whether they are more appropriate than some of the exotic proposals that are coming before us now.

● (1500)

The Hon. the Speaker: It is moved by the Honourable Senator Lamontagne, P.C., seconded by the Honourable Senator Frith, that the Standing Senate Committee on Legal and Constitutional Affairs be authorized to consider and report upon constitutional provisions—

Hon. Senators: Dispense.

The Hon. the Speaker: In amendment, it is moved by the Honourable Senator Flynn, P.C., seconded by the Honourable Senator Tremblay, that the first paragraph of the motion be amended by—

Hon. Senators: Dispense.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Will those honourable senators in favour of the motion in amendment please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators who are against the motion in amendment please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion the "nays" have it.

And more than two honourable senators having risen:

The Hon. the Speaker: Please call in the senators.

The question was resolved in the negative on the following division:

YEAS

THE HONOURABLE SENATORS

Asselin	Fournier (<i>Madawaska-Restigouche</i>)
Balfour	Macquarrie
Beaubien	Marshall
Bielish	Muir
Charbonneau	Murray
Choquette	Nurgitz
Deschatelets	Phillips
Donahoe	Roblin
Doody	Sherwood
Flynn	Tremblay—20.

NAYS

THE HONOURABLE SENATORS

Adams	Denis
Anderson	Fournier (<i>Restigouche-Gloucester</i>)
Argue	Frith
Barrow	Giguère
Bird	Godfrey
Bosa	Goldenberg
Cameron	Haidasz
Connolly	Inman
Cook	Lafond
Cottreau	

[The Hon. the Speaker.]

THE HONOURABLE SENATORS

Lamontagne	Perrault
Langlois	Petten
Lapointe	Riel
Molgat	Riley
Neiman	Robichaud
Norrie	Rousseau
Olson	Stanbury—33.

The Hon. the Speaker: I declare the motion in amendment lost.

Do honourable senators wish me to read the main motion?

Hon. Senators: Dispense.

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

Some Hon. Senators: Agreed.

Senator Flynn: On division.

Motion agreed to, on division.

SAFE CONTAINERS CONVENTION BILL

THIRD READING

Hon. William J. Petten moved the third reading of Bill C-21, to implement the International Convention for Safe Containers.

Motion agreed to and bill read third time and passed.

• (1510)

PRIVATE BILL

PYRAMID COMMUNICATIONS LIMITED—SECOND READING—DEBATE ADJOURNED

Hon. Lionel Choquette moved the second reading of Bill S-8, to revive Pyramid Communications Limited.

He said: Honourable senators, in 1978 the charter of the company, called Pyramid Communications Limited, was cancelled. The purpose of this act is to revive the company. The company's charter, which it obtained in 1925, was cancelled due to an oversight on the part of the officers of the company and the company now prays that an act be passed reviving the cancelled charter.

The history of the company, and the facts leading to the cancellation of its charter, are, briefly, as follows. Pyramid Communications Limited, having its principal place of business in the City of Toronto, in the Province of Ontario, was incorporated under the name of Sanitary Age Limited on December 11, 1925, by letters patent issued under the Companies Act, chapter 79 of the Revised Statutes of Canada, 1906, for the purposes and objects set out in the said letters patent.

By supplementary letters patent dated February 12, 1932, the company's name was changed to Age Publications Limited. Subsequently it made another change in its name by supplementary letters patent dated August 8, 1963. On the occasion the company's name was changed to Pyramid Publi-