• (1510)

Senator Murray: Will the Minister of State for the Canadian Wheat Board be taking part in the debate, in any event?

Senator Argue: Honourable senators, I anticipate doing so.

AGRICULTURE

NEW BRUNSWICK—LIVESTOCK INDUSTRY—ADJUSTMENT PROGRAMS

Hon. Hazen Argue (Minister of State for the Canadian Wheat Board): Honourable senators, I have a delayed answer to a question asked by Senator Sherwood on November 1. The question was:

> What new adjustment programs is the government about to put into effect concerning the livestock industry in New Brunswick?

The answer that has been supplied to me by the Department of Agriculture is as follows. The government is currently having discussions with the provinces, including New Brunswick, for a new series of economic and regional development agreements (ERDAs) under which we expect a sectoral program for agriculture in the New Brunswick agreement. It is likely that the New Brunswick livestock industry will be included under that agreement.

UNEMPLOYMENT INSURANCE

1984 PREMIUM

Hon. Duff Roblin (Acting Leader of the Opposition): Honourable senators, I am a little disappointed that no reply has been made to a question I previously put to the Honourable Senator Austin regarding unemployment insurance. The news has now been reported in the newspapers. In the interests of timely disclosure to this house, I regret that Senator Austin is not here to give us the information. It certainly could give rise to further questions that might be asked. I must now wait until Heaven knows when before we get back to that subject.

Hon. H. A. Olson (Leader of the Government): Honourable senators, I appreciate Senator Roblin's point in that perhaps it ought to be put on the record. I will give him an undertaking, however, to communicate what I might call his consternation—

Senator Roblin: Not consternation, but dismay.

Senator Olson: I will communicate to Senator Austin Senator Roblin's dismay. Perhaps a reply could be given to Senator Roblin through his office, although I realize that that is not as satisfactory as having the reply given on the floor of this chamber.

CONSTITUTION ACT, 1982

ABORIGINAL RIGHTS—AMENDMENT PROCLAMATION—CONSIDERATION OF REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE ON SUBJECT MATTER—DEBATE CONCLUDED

The Senate resumed from Thursday, October 27, 1983, consideration of the Report of the Standing Senate Committee on Legal and Constitutional Affairs on the subject matter of the Constitution Amendment Proclamation, 1983, which was tabled on Thursday, October 13, 1983.

Hon. Joan Neiman: Honourable senators—

The Hon. the Acting Speaker: I draw the attention of honourable senators to the fact that, if the Honourable Senator Neiman speaks now, her speech will have the effect of closing the debate on the consideration of this report.

Senator Neiman: Honourable senators, Senator Tremblay made a number of interesting observations during the course of his intervention on this matter last week. I should like to take a few minutes to reply to some of them.

As was pointed out by Senator Tremblay, there are two categories of amendments in the proposed amendment to the Constitution which the Standing Senate Committee on Legal and Constitutional Affairs has been studying and which is the subject of this report. Senator Tremblay drew our attention, in particular, to what might be termed the technical aspects of the proposed amendments. He pointed out that there are certain apparent anomalies, if you will, in the wording of some of the sections.

I should like to draw the attention of honourable senators, first of all, to those comments with respect to section 54, Part IV, of the Constitution Act of 1982. Senator Tremblay has indicated that, in fact, Part IV and section 37—which is all that is contained in Part IV of the act—were repealed by operation of section 54 of the Constitution Act, 1982, as of April 18, 1983. We discussed this matter earlier. Apparently, the form of the present proposed amendment is such that the old Part IV is being left as part of the Constitution and we are inserting a new Part IV.1.

I talked this over with the Deputy Minister of Justice because it seemed to be an unusual procedure. He advised me, however, that it is not uncommon. Rather than delete sections of the act which are now repealed or are intended to be repealed at some future date, his officials made the decision that the section should remain as part of the record for future reference. He pointed out to me that this is not an uncommon practice because it leaves an historical record, and, further, that it was done respecting sections 42 and 43 of the Constitution Act, 1867.

It seemed to me—and, perhaps, to Senator Tremblay—that it is a rather awkward way to make an amendment and that when we send out copies of the Constitution for public display, it appears rather odd to see, included within the Constitution, sections which are in fact repealed followed by other sections which are the current, viable sections of the Constitution. That was, however, the decision which was made at that time. It is

entirely possible that, when future amendments are made, the officials will decide to remove those sections. I merely indicate the present reasoning behind this procedure.

Senator Tremblay then referred to the fact that certain words have been deleted from the new sections of Part IV.1. In particular, the words "including the identification and definition of the rights of those peoples to be included in the Constitution of Canada" have now been deleted. This is one of the very matters to which our committee addressed a good deal of its efforts during all of its hearings. We felt—as I think our subsequent comments here in this chamber have emphasized—that the committee, as a whole, believes that the identification and definition of the rights of these peoples must be established at the earliest time, before negotiations can be proceeded with in any meaningful or successful way.

● (1520)

Senator Tremblay asked why the change was necessary. We cannot give an answer to that except to say that it was obvious to us that all parties to the negotiations—that is, the government officials and the representatives of the various native groups—seemed content that those words should be omitted so that they could deal with them at a later time. I do not think that allays the uneasiness or concerns that we have, but, as it appears satisfactory to those people who are going to be negotiating, I think we must simply rest our case with the observations that we have made.

The other interesting point raised by Senator Tremblay dealt with the question of when the resolution may be proclaimed, if adopted, as it undoubtedly will be today. Senator Tremblay is quite correct in noting that the resolution cannot take effect before June 1, 1984. This is covered by section 39(1) which states:

> A proclamation shall not be issued under subsection 38(1) before the expiration of one year from the adoption of the resolution initiating the amendment procedure thereunder, unless the legislative assembly of each province has previously adopted a resolution of assent or dissent.

When our report was presented, we noted that five provinces, at that point, had adopted the resolution. It had also then, of course, been adopted in the other place. I have been advised that, since the commencement of our discussions in this chamber, the Province of Ontario, after a three-day debate, unanimously adopted the resolution on October 18. I am also advised that the Province of British Columbia, amid all the other business that that legislature has been involved in, debated this resolution for one day and adopted it on October 21. If this chamber adopts the resolution today, as I hope and expect it will, it means that the requirements under the Constitution Act, 1982 will be fulfilled insofar as the number of provinces is concerned.

However, as Senator Tremblay has pointed out, it can only be proclaimed after the expiration of one year. Since the Province of Nova Scotia initiated the resolution and passed it on May 31, 1983, we must wait till May 31, 1984 before proclamation.

After discussions with the Department of Justice, my understanding is that the meaning of the section is that it will automatically be adopted on June 1, 1984, whether or not the Province of Quebec takes any action with respect to it. If all ten provinces register their assent or dissent before that date, then it could be proclaimed before that time. That is the only clarification I would make with respect to that particular point which Senator Tremblay raised.

I would now turn to the subject of the first ministers' conference as required in the amendment we are considering. It was pointed out that, if a conference of first ministers is held prior to the date on which the proposed amendment to the Constitution is adopted, it will not be a conference authorized or required by the Constitution, and I think that is quite true. The amendment cannot take effect until next June 1, so, if a meeting is held prior to that date, it will not be a constitutional conference within the meaning of this amendment. However, I do not think that that is of particular concern because I am sure the native groups would be glad to have a conference before then as a forerunner to the formal constitutional conference.

The only requirement then is that there must be one conference before the appropriate date in 1985. However, they could, perhaps, have any number of preliminary conferences before that time. They will still be entitled to two constitutional conferences as required by this amendment.

Honourable senators, I believe that these are the only points on which I wish to make special comment. I would conclude by suggesting to you that we endorse the suggestions and observations made by Senator Tremblay in his concluding remarks concerning the role the Senate should play in future amendments to the Constitution. His suggestion that our committee should convene a special meeting to look into the procedures is something I take seriously. I believe this could be done very well by our committee. We shall certainly proceed with his suggestion.

The Hon. the Acting Speaker: As no other honourable senator wishes to participate, this report is considered debated.

CONSTITUTION ACT, 1982

ABORIGINAL RIGHTS—AMENDMENT PROCLAMATION ADOPTED

On the Order:

> Resuming the debate on the motion of the Honourable Senator Frith, seconded by the Honourable Senator Petten:
>
> That:
>
> Whereas the *Constitution Act 1982* provides that an amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by resolutions of the Senate and House of

Commons and resolutions of the legislative assemblies as provided for in section 38 thereof;,

And Whereas the Constitution of Canada, reflecting the country and Canadian society, continues to develop and strengthen the rights and freedoms that it guarantees;

And Whereas, after a gradual transition of Canada from colonial status to the status of an independent and sovereign state, Canadians have, as of April 17, 1982, full authority to amend their Constitution in Canada;

And Whereas historically and equitably it is fitting that the early exercise of that full authority should relate to the rights and freedoms of the first inhabitants of Canada, the aboriginal peoples;

Now Therefore the Senate of Canada resolves that His Excellency the Governor General be authorized to issue a proclamation under the Great Seal of Canada amending the Constitution of Canada as follows:

PROCLAMATION AMENDING THE CONSTITUTION OF CANADA

1. Paragraph 25(b) of the *Constitution Act 1982* is repealed and the following substituted therefor:

"(b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired."

2. Section 35 of the *Constitution Act, 1982* is amended by adding thereto the following subsections:

"(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons".

3. The said Act is further amended by adding thereto, immediately after section 35 thereof, the following section:

"35.1 The government of Canada and the provincial governments are committed to the principle that, before any amendment is made to Class 24 of section 91 of the *Constitution Act, 1867*, to section 25 of this Act or to this Part,

(a) a constitutional conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Minister of Canada and the first ministers of the provinces, will be convened by the Prime Minister of Canada; and

(b) the Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in the discussions on that item."

4. The said Act is further amended by adding thereto, immediately after section 37 thereof, the following Part:

"PART IV.1 CONSTITUTIONAL CONFERENCES

37.1 (1) In addition to the conference convened in March 1983, at least two constitutional conferences composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada, the first within three years after April 17, 1982 and the second within five years after that date.

(2) Each conference convened under subsection (1) shall have included in its agenda constitutional matters that directly affect the aboriginal peoples of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on those matters.

(3) The Prime Minister of Canada shall invite elected representatives of the governments of the Yukon Territory and the Northwest Territories to participate in the discussions on any item on the agenda of a conference convened under subsection (1) that, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories.

(4) Nothing in this section shall be construed so as to derogate from subsection 35(1)."

5. The said Act is further amended by adding thereto, immediately after section 54 thereof, the following section:

"54.1 Part IV.1 and this section are repealed on April 18, 1987."

6. The said Act is further amended by adding thereto the following section:

"61. A reference to the *Constitution Acts 1867 to 1982* shall be deemed to include a reference to the *Constitution Amendment Proclamation, 1983*."

7. This Proclamation may be cited as the *Constitution Amendment Proclamation 1983*.—(*Honourable Senator Frith*).

Hon. H. A. Olson (Leader of the Government): Honourable senators, it is not my intention to speak at length on this motion of Senator Frith. I simply want to express my appreciation and, indeed, my congratulations, not only to the chairman of the committee but also to the members of that committee, who made a very useful contribution to the process that is involved in the matter referred to the committee.

As Senator Neiman pointed out in the course of her comments, we are now at a stage where eight of the ten legislatures have adopted this resolution, as well as the House of Commons. I believe it is also true, as has been pointed out, that when the Senate adopts this motion, it will be proclaimed one year later.

● (1530)

Hon. Duff Roblin (Acting Leader of the Opposition): Senator Neiman has already explained that.

Senator Olson: I have to acknowledge that at one point I was not listening to the debate. However, I do not think that I can add anything more to what Senator Neiman has said, and I hope that honourable senators will approve the motion today.

[*Translation*]

Hon. Arthur Tremblay: I do not intend to engage in a debate, because actually it already has taken place on the substance of the issue. Referring to Senator Neiman's remarks, I would simply say I am glad that the suggestion I made the other day, that the process or evolution of constitutional amendments, now that we are in the post-patriation phase, is a matter to be studied thoroughly, in order to establish for the future procedures that are reliable and all-encompassing. In any case, we will be perfectly conscious of that and will be sufficiently aware of the nature of what is implied to avoid any surprise. Senator Neiman suggested that while the native peoples did expect a constitutional conference to be held in March, the fact that it will not be such a conference may not be a serious problem. Having met subsequently a few natives who are involved in the work done by the association representatives, this has been a disappointment to them. They say so in private, because they thought everything would be over by December. This goes to show the importance of looking at each such operation, because every time we will be breaking new ground as far as procedure is concerned. The Senate indeed is there to undertake such studies. Of course, the procedure will not necessarily be the same each and every time. I am glad that Senator Neiman has seriously considered this suggestion that the Committee on Legal and Constitutional Affairs take the initiative in holding a few meetings as needs be. We will be hearing Department of Justice officials, and witnesses from outside, and will look at the various possible ways for introducing future constitutional amendments. To conclude, it has already been indicated that we are going to agree to the resolution.

Motion agreed to.

The Senate adjourned until Monday, November 14, 1983, at 8 pm.