HOUSE OF COMMONS

Third Session—Twenty-fourth Parliament
1960

SPECIAL COMMITTEE

ON

HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Chairman: Norman L. Spencer, Esq.
Vice-Chairman: Noel Dorion, Esq.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 10

WEDNESDAY, JULY 27, 1960

Bill C-79: An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms

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WITNESS:

The Honourable E. D. Fulton, Minister of Justice.

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
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SPECIAL COMMITTEE

ON

HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Chairman: Norman L. Spencer, Esq.

Vice-Chairman: Noel Dorion, Esq.

and Messrs.

Aiken,
Argue,
Badanai,
Batten,
Browne (*Vancouver-Kingsway*),
Deschatelets,
Jung,
Martin (*Essex East*),
Rapp,
Stefanson,
Stewart,
Weichel,
Winkler.

J. E. O'Connor,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

WEDNESDAY, July 27, 1960.
(19)

The Special Committee on Human Rights and Fundamental Freedoms met at 9.37 this day. The Chairman, Mr. N. L. Spencer, presided.

Members present: Messrs. Aiken, Argue, Badanai, Batten, Browne (*Vancouver-Kingsway*), Deschatelets, Jung, Martin (*Essex East*), Rapp, Spencer, Stefanson, Stewart, Weichel and Winkler.—14

In attendance: The Honourable E. D. Fulton, Minister of Justice, assisted by the following *from the Department of Justice:* Mr. E. A. Driedger, Deputy Minister; Mr. D. H. W. Henry, Director, Advisory Section; and Mr. H. A. McIntosh, Legislation Section.

Following a discussion of procedure and future business of the Committee the Minister was again asked to comment on the provisions and effect of Clause 4 of the Bill.

At 10.58 a.m. the Committee adjourned to meet again at 2.30 p.m. this day.

AFTERNOON SITTING

(20)

The Committee reconvened at 2.34 p.m. The Chairman, Mr. N. L. Spencer, presided.

Members present: Messrs. Aiken, Argue, Badanai, Batten, Browne (*Vancouver-Kingsway*), Deschatelets, Jung, Martin (*Essex East*), Rapp, Spencer, Stefanson, Stewart, Weichel and Winkler.—14

In attendance: The same as at the morning sitting.

The Chairman read a report from the Subcommittee as follows:

WEDNESDAY, July 27, 1960.

The Subcommittee on Agenda and Procedure met at 11.50 a.m. this day. The following Members were present: Messrs. Badanai, Browne (*Vancouver-Kingsway*), Spencer and Stewart.

Your Subcommittee recommends as follows:

1. That the Committee accede to the request of Mr. Martin (*Essex East*), that no meeting be scheduled for this evening and, having regard therefor, recommends the scheduling of meetings on Thursday, July 28th at 9.30 a.m., 2.00 p.m. and at 8.00 p.m. if necessary, in order to conclude the deliberations of the Committee.
2. That letters received from Professor Edward McWhinney of the University of Toronto, and presently in Heidelberg, Germany; Mr. F. A. Brewin, Q.C. of Toronto; Mr. J.-Auguste Pépin of Ottawa; Orillia Chamber of Commerce; Windsor Chamber of Commerce; and Associated Investors of Canada Ltd. be filed with the Committee and copies distributed to Members.

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On the motion of Mr. Stewart, seconded by Mr. Rapp, said report was adopted unanimously.

The Committee proceeded to the further questioning of Mr. Fulton concerning Clauses 5 and 6, and discussed the drafting of a Preamble to the Bill.

Agreed,—That officers of the Department of Justice review suggested drafts provided by Members of the Committee and present at the Committee's next meeting a Draft Preamble embodying these views.

Mr. Badanai read a suggested wording for a Preamble.

The Chairman instructed that a draft Preamble prepared by Mr. Winkler be taken as read and printed in the record of this day's proceedings.

Mr. Martin (*Essex East*) read into the record wording for a suggested Preamble.

The Chairman called for consideration Clause 1 of the Bill. Following discussion Clause 1 was allowed to stand.

On Clause 2—Moved by Mr. Batten, seconded by Mr. Deschatelets, "That lines 5 to 7 inclusive be deleted and the following substituted therefor:

> These human rights and fundamental freedoms shall continue to exist in Canada.

The amendment was resolved in the negative, YEAS: 4; NAYS: 6.

Moved by Mr. Aiken, seconded by Mr. Stewart, "That in line 6 the word "always" be deleted.

The motion was resolved in the affirmative, YEAS: 8; NAYS: 1.

On Clause 2—Paragraph (*a*)—Moved by Mr. Deschatelets, seconded by Mr. Martin (*Essex East*), "That the words 'by due process of law' be deleted from lines 10 and 11 and the words 'in accordance with law' be substituted therefor."

The motion was resolved in the negative, YEAS: 4; NAYS: 9.

On Clause 2—Paragraph (*b*)—Moved by Mr. Martin (*Essex East*), seconded by Mr. Deschatelets, "That the following words be added after the word "law" in line 12, "and to life, liberty, security of the person, and enjoyment of property".

The motion was resolved in the negative, YEAS: 4; NAYS: 7.

Moved by Mr. Badanai, seconded by Mr. Batten, "That the following be added as paragraph (*c*):

> The right of the individual to the protection of the law against arbitrary interference with privacy, family, home or correspondence and against attacks upon his honour and reputation

and that the remaining paragraphs be relettered accordingly".

The motion was resolved in the negative, YEAS: 4; NAYS 7.

On motion of Mr. Stefanson, seconded by Mr. Batten,

Resolved,—That the number of copies in English of the Minutes of Proceedings and Evidence authorized to be printed be increased from 750 to 1,000.

At 5.45 p.m. the Committee adjourned to meet again at 9.30 a.m., Thursday, July 28, 1960.

J. E. O'Connor,
Clerk of the Committee.

EVIDENCE

WEDNESDAY, July 27, 1960.

The CHAIRMAN: Gentlemen, please come to order.

Mr. MARTIN (*Essex East*): Mr. Chairman, do we have a quorum now? I see there is only one Conservative member here, so I wonder if we have a quorum, apart from yourself.

The CHAIRMAN: We did have one.

Mr. MARTIN (*Essex East*): The Minister of Justice, I suppose, and you, both are—do we have a quorum now?

The CHAIRMAN: Yes.

Mr. MARTIN (*Essex East*): Mr. Chairman, events seem to be moving with some rapidity and importance in so far as our deliberations are concerned. I know we are all anxious to see a bill of rights that will be as total in its embrace as possible.

Yesterday morning Mr. Argue had proposed that we adjourn our sittings until the present conference between the federal and the provincial governments had terminated its sessions.

In view of the initiative taken by the provincial premiers who had expressed: (*a*) the desirability of seeing our constitution amended under procedures in Canada and (*b*) that they were anxious to have a bill of rights embodying the powers of both the federal and the provincial governments, and to have the same embodied in the constitution, the committee, however, did not accede to what I thought was a constructive proposal. But since that time we have now had an announcement by the Prime Minister of Canada of the greatest significance, an announcement, I am sure, that all of us in this committee will welcome.

The purport of that announcement was that the government proposed, in view of the initiative taken by Premier Lesage and some others, to call a constitutional conference at which time there could also be discussed, as Mr. Lesage pointed out yesterday in the conference, a bill of rights and embodying it in the constitution, thus having a bill in consequence which would affect the totality of human rights and freedoms in Canada.

Now, that confronts us with what course shall we propose to adopt in this committee. I recognize at once that the course is one which will have to be determined by the government; and as the Conservative members of this committee have a greater locus standi with the government than those of us in the opposition parties in this committee, we will have to look for some direction in this matter from that quarter. But I feel now that we must have some direction.

What is the intention? I hope it will not be argued, as you suggested yesterday, that this is a matter which does not concern this committee. I hope it will not be suggested by you or by anyone else that the terms of reference given by parliament to this committee provide for a consideration by the committee of this bill and of nothing else.

If that were to be the reaction, I think it would be an unfortunate one; it would be unconstructive. But I do derive some hope from your observations yesterday that the fact that some witnesses had suggested that this bill, or that

a bill of rights should be embodied in the constitution provided ground for our considering that as one of the means by which there could be provided the mechanism for a satisfactory bill of rights.

Technically, it may be argued that this is not a matter for the committee, but we can get over that technicality quite easily.

What we want to see in Canada, I take it, all of us, is the most comprehensive bill of rights possible. The Prime Minister favours such a bill. The Prime Minister as head of the government favours a constitutional amendment. He now has the opportunity of getting it, as a result of the course taken yesterday and the day before in the conference between the heads of the governments at the two senior levels of government.

So the situation now is, I am sure, in the minds of all of us in this committee, since that is our objective and our desire: where do we go now? We should receive some direction from this committee. I hope our objective must surely be to have the most comprehensive bill of rights, now that the provinces have expressed their willingness to participate, and I hope that we in this committee will take no action which will make it impossible to act upon the first break-through in our constitutional history.

Mr. RAPP: Mr. Lesage also stated—

The CHAIRMAN: Excuse me, Mr. Rapp. Mr. Martin, you indicated in your statement that this is a matter for the government to decide.

I think I would like to ask the Minister of Justice at this point whether he has any comment to make in regard to your suggestion.

Mr. MARTIN (*Essex East*): I suppose the fair thing to do would be to ask other members of the committee if they agree with the point of view expressed.

Mr. ARGUE: I am quite agreeable to hear from the Minister. I put forward our position yesterday, and I repeat it in one sentence, especially when the Prime Minister and the premiers have agreed to a constitutional conference this fall.

I think it would be a great mistake for parliament to rush through this bill in the dying days of the session. It is an inadequate bill, and it would make it impossible for us to have a constitutional amendment. So I am quite prepared to hear from the minister as to the government's position.

Mr. DESCHATELETS: May I say a few words?

The CHAIRMAN: I think we should first hear from the minister at this point, Mr. Deschatelets, because I have already indicated what my view is in regard to its relevancy, as has been said by Mr. Martin, I believe it is a decision for the government.

We have the responsible minister with us this morning, who is familiar with the bill, and he may wish to make some comments. I do not know whether he will or not.

Mr. MARTIN (*Essex East*): May I suggest one thing: if a member of the committee wishes to speak, he ought to be allowed to do so. Of course, the minister has to make a statement, but I think it would be more appropriate after the members of the committee have expressed themselves, and Mr. Deschatelets wishes to say something.

The CHAIRMAN: Well, is it going to be repetition?

Mr. MARTIN (*Essex East*): If it is repetition, that is democracy. What is wrong with it? Let us not start off like we did yesterday, please.

Mr. DESCHATELETS: I intend to say only a few words. I would like to say that our course of action will have to be examined in the light of what happened yesterday at the federal-provincial conference, and also in the light of certain events which have taken place in the province of Quebec, and in the province of Ontario a few days ago. I shall refer here to a particular matter.

I am going to cite that matter in a very brief way, just to show the reason why our bill of rights should be more comprehensive and more complete. A few days ago, not very far from here, a French-speaking witness was denied the right to testify in French, and the right to have an interpreter.

If you will remember, Mr. Chairman, we have also suggested that this bill of rights should include the right to have an intepreter. This regrettable event which took place not very far from here a few days ago shows the urgency of the need for having a more comprehensive bill of rights, with the help and cooperation of the provinces.

I refer to the newspaper *La Presse*, which was reporting on the case of Samure vs. the Attorney General of the Province of Quebec.

Mr. MARTIN (*Essex East*): That is the name of the old case.

Mr. DESCHATELETS: Yes, where Judge Lizotte decided that in his opinion religion was in the category of civil rights, which are reserved to the legislature by the constitution.

Here again, with these two cases which have happened only a few days ago, it shows, I think, the need for a more comprehensive bill of rights, and with the cooperation of the provinces, I think that we should now modify our course of action.

At the end of my remarks, will you permit me to cite again this statement by the Prime Minister in the House of Commons at page 5648 of *Hansard*, July 1, 1960, where he said:

> They say, if you want to make this effective it has to cover the provinces too. Anyone advocating that must realize the fact that there is no chance of securing the consent of all the provinces.

We have said repeatedly, time and again, that the provinces should be consulted, and that they have not been consulted. Yesterday what took place in another room in this building has confirmed what we had already thought and said; that the provinces were ready to cooperate in respect of a national bill of rights through an amendment to the constitution.

The CHAIRMAN: Mr. Fulton, would you care to comment in this regard?

Hon. E. D. FULTON (*Minister of Justice*): Yes, Mr. Chairman.

I think perhaps it is desirable that the position of the government be stated so that the committee will have it before it in the deliberations which it wishes to carry on.

Mr. MARTIN (*Essex East*): Yes.

Mr. FULTON: May I point out to you first that the Prime Minister suggested at the conference yesterday that consideration be given first to the convening of a dominion-provincial conference, probably of the attorneys general, to discuss the possibility of devising a way to amend the B.N.A. act in Canada, and amending all portions of it in Canada. He indicated his readiness to call such a conference this fall, at the first convenient opportunity. He suggested then, that after consideration had been given to that, and progress made on that point, and a way devised to amend the Canadian constitution in Canada, then there might be a further conference convened to discuss a comprehensive bill of rights which might form the first such Canadian constitutional amendment.

Both his suggestions were received with general expression of support, although there were some reservations.

I think your deliberations should be conducted in the light of what the suggestion actually is. The suggestion is first for a conference to be convened to consider and devise, if possible, a method of amending the constitution in Canada. Then, having succeeded in that, a conference convened to consider

the subsequent question in respect to a comprehensive bill of rights, with the hope that that should be the first such Canadian amendment.

Under these circumstances, it seemed to the government, and I report it to you, that there is no reason why we should hesitate in or delay the further consideration of this federal bill of rights, and that its enactment as a federal statute in no way prejudices the position of the provinces, and in no way inhibits either conference, which the Prime Minister has suggested, and as I have outlined. Indeed, there is every reason why we should proceed now in the light of some of the reservations expressed by the provinces.

It was reported in the papers, I think yesterday—I do not have that report before me—that Premier Frost, while not taking a firm position, did raise some question as to whether a bill of rights was necessary for Ontario.

Mr. MARTIN (*Essex East*): That was reported on Monday.

Mr. FULTON: So you have that fact to bear in mind and consider. Certainly the government has borne it in mind in deciding its position.

Although Mr. Frost did, yesterday, indicate immediately his readiness to attend conferences to discuss the overall question of devising a method to amend the constitution here in Canada, Premiers Bennett and Manning are reported as having reserved their position with respect to either conference.

I have the *Gazette* of today before me, and I find on the first page it is reported:

> All provincial chiefs except Social Credit premiers Manning of Alberta and Bennett of British Columbia expressed support for Premier Lesage's suggestion and a second one by the Quebec premier for discussion to find a way to amend the constitution in Canada.
>
> Premier Manning said his government has not given consideration to either suggestion by Premier Lesage. Premier Bennett said he will reserve comment.

So there is some uncertainty as to whether such a conference would be convened—such a general conference, in the first place. There is some reason to anticipate that there would be real difficulty in getting agreement of all the provinces on a comprehensive bill of rights even if we are successful, as I hope we would be, in devising a method to amend the constitution of Canada.

Under those circumstances, it is the view of the government, which I am authorized to place before this committee, that this parliament should proceed at this session with the consideration and completion of the federal bill of rights in order that human rights and fundamental freedoms in the federal field will be covered and protected as quickly as possible and, that being done, without prejudice to all provinces, it would then be the hope of this government, that such a constitutional conference could be convened, and that that would be successful; and after that, then, the first Canadian amendment would be a comprehensive bill of rights.

There are such imponderables still facing us with respect to both these subsequent questions; namely, a constitutional conference; a bill of rights conference, and that it would be undesirable to postpone action in our field within our responsibility at this time.

Mr. ARGUE: Mr. Chairman, I wonder if I may make a brief comment in respect of the position taken by the government.

I do not think there is any question, in the mind of anyone in this committee at any rate, that a constitutional amendment is the preferable way of proceeding. The question is whether or not there is a real chance for a constitutional amendment.

In the House of Commons when the debate was on we moved a motion having to do with consultation with the provinces. This government has not taken any initiative whatsoever to discuss it or consult with the provinces

on the question of a constitutional amendment. All that has happened is that after Mr. Lesage made his position clear, and made a very constructive effort, the government has been smoked out, and has now said that it is prepared to discuss this question at a constitutional conference which will be held later this year. The Minister of Justice has quoted, from the press, statements attributed to certain premiers, not one of which shows any opposition to a constitutional amendment, and some of which did not commit themselves. Others raised some questions, but there is no opposition. I would think the government would have been better advised to have canvassed the provinces in respect of these conferences to see whether or not a constitutional amendment is possible. If the provinces turned that suggestion down, then I think the federal government would be on exceedingly strong ground in proceeding with the kind of bill of rights we have now before us, but I would like to tell the minister what I am afraid will happen if the government pushes this inadequate bill through the House of Commons and then holds a constitutional conference. I feel that the position of the provinces will be to wait and see. They will say: we have a bill of rights on the statute books, let us give it some time; let us see what happens in the courts. In that event, the chance of having a constitutional amendment will have been missed, and the Canadian nation will have to wait for some years before the possibility of a bill of rights embodied in the constitution presents itself once again. I hope I am mistaken; but if I am not, then this government will have to accept the responsibility for not having taken the course which would lead to a constitutional amendment, but has taken a course which in fact has helped impede the possibility of a constitutional amendment.

I think the government is making a very great mistake and is in great error, and I would hope that even at this late date the government would decide to postpone consideration of this measure until after the constitutional conference, which we all welcome.

Mr. FULTON: Mr. Chairman, may I just add one thing which I intended to add, and omitted, before Mr. Argue spoke. That is, that in reaching this decision it was in our minds—in the minds of the government—that although Premier Lesage had made his suggestion, and other provinces had echoed it, and although there was general approval for the Prime Minister's suggestion of a constitutional conference later this fall, followed by a conference to discuss the bill of rights, not one premier here, in any of that discussion, put forward the suggestion, so far as I am aware, that we should defer action on the bill of rights, which they know is presently before parliament. There was not one suggestion that there would be any misunderstanding, or any desire on their part for us to defer action—no such suggestion was made in the course of this discussion.

Mr. ARGUE: I can understand the provinces not wishing to direct the federal government what to do; but I think the minister's statement now would have been much stronger if the government had consulted with the provinces and asked them about this question. But the government is taking the position that unless the provinces make objection to this bill, they are not going to follow the more preferable course.

The position of the Saskatchewan government is perfectly clear. I do not think it is necessary that the Premier repeat it on every possible occasion. The Saskatchewan government feels this is not the way to deal with a bill of rights. They have stated their position on a prior occasion, and as far as I know there has been no change. They think the government is in error in embarking upon this kind of course, rather than trying to get agreement from the provinces for a constitutional amendment.

The CHAIRMAN: I am going to give Mr. Martin an opportunity of making a comment in regard to this; but may I reiterate that this discussion has indicated quite clearly that this issue that has now been raised is a matter of government policy and, in my opinion, this committee is without power whatsoever to deal with it.

I think the discussion that has taken place thus far may serve to clear the air. But I do hope, inasmuch as we have had the minister here on two occasions, and most of the time has been taken up on the discussion of this issue and we have not been proceeding with the bill, that this morning we can limit this discussion and at least make some progress in dealing with the bill before us.

Mr. MARTIN (*Essex East*): Well, Mr. Chairman—

Mr. BROWNE (*Vancouver-Kingsway*): Mr. Chairman, before Mr. Martin begins, I want to take the strongest objection to this course.

Mr. ARGUE: Mr. Chairman, how can he speak? You gave the floor to Mr. Martin.

Mr. BROWNE (*Vancouver-Kingsway*): I am speaking on a point of order.

Mr. ARGUE: Oh!

Mr. BROWNE (*Vancouver-Kingsway*): This matter was raised long ago in the committee, and I refer the committee to page 16 of the proceedings, where this matter was dealt with very fully by the chairman. Notwithstanding the position which was set out, which showed quite clearly that it was beyond the terms of reference of this committee to go on and deal with this constitutional amendment, in order that everybody should be heard and their views expressed thoroughly we spent considerable time in this committee in going over and over this ground, while it is quite beyond our power to do anything about it.

It seems to me that we have gone on again this morning. We have had the opinion of the government, which is unchanged. We can refer to the motion moved in the house on second reading, which was defeated at that time, on the principle of the bill. Inasmuch as it is beyond the powers of the committee to raise a matter again that was defeated in the house, there is no reason whatsoever for any more discussion taking place, and I would ask for a firm ruling from the chairman that this be declared out of order at the present time. Or, failing that, I would make the motion that we now proceed to the clause by clause discussion of the bill, as we have been instructed to do by the terms of reference of this committee.

Mr. MARTIN (*Essex East*): Mr. Chairman, I would like to speak to that motion.

The CHAIRMAN: Mr. Browne, would you agree to Mr. Martin making a short statement, and then I will deal with the point?

Mr. BROWNE (*Vancouver-Kingsway*): I have never yet heard him make a short statement.

Mr. MARTIN (*Essex East*): I would not want my intervention to preclude any other hon. member expressing himself on a matter that the Minister of Justice and you, Mr. Chairman, have recognized as being very important. We are not going to solve problems such as this by schoolboy tactics which prevent other members speaking.

The CHAIRMAN: Mr. Martin, I do not think you should make references like that in the committee. I think we can conduct our deliberations here without casting reflections on members. I do not think that is right.

Mr. ARGUE: The word "schoolboy" is scarcely unparliamentary.

The CHAIRMAN: That is a matter of opinion.

Mr. MARTIN (*Essex East*): In a matter such as this, if anyone should suggest it is not a matter of important discussion, then I just do not understand the attitude. I appreciate what the minister has said, and I thank him very much. As far as I am concerned, if after we have discussed this matter—and I think we are entitled to discuss it—he feels that the government should go on with the present bill, I do not think there can be anything done except for us to do that, and we will endeavour to make it the best possible bill, from our point of view, in the circumstances.

But it is important, as the chairman suggested, that the air be cleared; and it is important that we understand exactly what the situation is now.

When the Prime Minister made his announcement yesterday—and I have carefully read what he said, and what others said—it is clear at the outset that he only referred to a conference for the purpose of having domiciled in Canada the power to amend the constitution, whereupon the Premier of Quebec suggested that at such a conference the question of a bill of rights might be discussed. It was after support of this point of view by Mr. Douglas that the Prime Minister of Canada acknowledged that that could take place.

Mr. Frost yesterday supported that position, although it is true that on Monday he said there was no difficulty in the province of Ontario; there was no violation of human rights and fundamental freedoms. I think his language clearly established that he was not too enthusiastic about a bill of rights in any respect; but yesterday he did change his position.

I do feel that the point Mr. Argue has mentioned is of great importance, and, of course, if the government decides on this course, we have no other course, as I say, open to us but to try and bring forward the best possible bill—and that will be the endeavour, I am sure, of all of us. But the fact is that the government, in spite of its desire, as stated by the Prime Minister, to have a bill embodied in the constitution, has not taken any initiative whatsoever to consult the provinces. That is, I think, regrettable, and I cannot understand, in the face of the initiative taken by the provinces with regard to taking the necessary steps to bring about a cooperative arrangement, why the government does not seize on that. That is a responsibility of the government, and it will not be the responsibility of any member of this committee.

I simply invite the Minister of Justice to consider this. Assuming we go on—as I presume now we will—to consider this bill and to make it the best possible bill that we can devise, within the limitations provided for under section 91 of the British North America Act; having in mind what Mr. Dorion said; having in mind what many witnesses said, that this is a bill that does invade provincial rights, even though I recognize at once that the minister does not agree with that—

Mr. ARGUE: I do not think it invades provincial rights.

Mr. MARTIN (*Essex East*): Yes, it does—and the witnesses say that. This is a very serious point. The Minister of Justice, in fairness to him, does not agree with that. Mr. Dorion does.

Mr. ARGUE: I do not agree with it, either.

Mr. MARTIN (*Essex East*): I recognize your high legal attainments.

Mr. ARGUE: I am sorry, Paul; I have been doing well, without any help from you.

Mr. MARTIN (*Essex East*): Yes, you have been doing very well. But the point I am making now is that we must not do anything that will block or close the door on a comprehensive bill of rights based upon cooperation with the provinces, and covering powers under section 92, as well as section 91, of the British North America Act—and I hope that the minister has considered that.

For instance, we heard over the radio this morning that in a current case the counsel in that case was anxious that this bill should be passed so that he might provide a defence for that case based upon the bill of rights presently before the committee. Are we not going to have a situation result where there will be all sorts of confusion, all sorts of litigation, and all sorts of uncertainty? These are the dangers that will flow from this, and I can only hope the minister has considered all that; and if he has, and says so, then it seems to me our task will be to do what he suggests, and that is to go ahead. But, I do not think we should proceed without knowing, and bearing in mind, all of these considerations.

The CHAIRMAN: Gentlemen, I am going to ask the minister if he would care to make any further comment, and at the conclusion of his statement, I am going to ask the committee if it will support me in calling for questioning on clause 4 of the bill.

Mr. FULTON: Mr. Chairman, in response to Mr. Martin's invitation, I can only repeat what I said before; we did consider very carefully this whole question and when we came, for the reasons I gave, to the conclusion that we should proceed with the bill of rights in the federal field alone, we directed our own attention and instructed the draftsmen to direct their attention to producing a statute which would not constitute an invasion of provincial rights. I, as well as my officials, have studied carefully the opinions expressed by the witnesses who have appeared here. I have indicated that, in my view, the fears are exaggerated, and I also have indicated that we will consider carefully all suggestions of a concrete form that may be made in order to make it clear, or clearer, if that can be done, that this bill is confined to the federal field of jurisdiction alone.

If you will remember, we had a discussion in connection with making that clear in the preamble, or by a possible amendment to clause 2. Those matters are still before the committee, and they are before the committee, I hope, in the light of my indication that we will be glad to cooperate with the committee in any concrete suggestion that can be devised which we believe would have the result of making that clearer, although we think it is clear in the bill as it now stands.

The CHAIRMAN: Now gentlemen, when we adjourned on Monday, the minister was being questioned on clause 4 of the bill, and I am not sure whether or not we concluded our question on that clause.

Mr. MARTIN (*Essex East*): No, we did not. We were dealing with clause 3, and then we were going to go on to clause 4.

The CHAIRMAN: No, we were on clause 4.

Mr. FULTON: I have been asked a number of questions about this matter of the national human rights commission.

Mr. MARTIN (*Essex East*): Yes, Mr. Badanai's proposal.

Mr. FULTON: And matters such as that. I have dealt with quite a number of questions on clause 4.

Mr. BROWNE (*Vancouver-Kingsway*): In connection with clause 4, where it is set out that the minister shall peruse the legislation in order to ascertain whether any of the provisions are inconsistent with the purposes of this bill, would the minister feel it is an obligation on his part to report to the House of Commons if there is an inconsistency in the bill, or what action would he feel obligated to take, having ascertained an inconsistency? Would he file it away and forget about it?

Mr. FULTON: I think I indicated on a previous occasion that I regarded it as an obligation on the minister to report to the House of Commons. I said

we had not any firm or fixed views as to whether that report should be made orally—at the time, perhaps, that second reading was moved, or whether it should be done by a written report filed as soon as possible after the bill had been given first reading. Of course, we do not see private members' bills until they are given first reading. However, as I said, I regard it as an obligation to report to the house, whether it be a written or oral report, and the exact manner and time it should be done are matters on which we have not any firm views.

Mr. BROWNE (*Vancouver-Kingsway*): Do you feel, perhaps, that a future minister, who may not be of the same view, would be obligated by this wording to report, or whether it should not say "to ascertain, and to report to the House of Commons"?

Mr. FULTON: My thought there is that the method would be worked out in the regulations. As you know, clause 4 says:

> The Minister of Justice shall, in accordance with such regulations as may be prescribed by the Governor in Council, examine every proposed regulation submitted in draft form to the Clerk of the Privy Council pursuant to the Regulations Act and every bill introduced in the House of Commons, in order to ascertain whether any of the provisions thereof are inconsistent—

and so on. I think the procedure would be worked out in the regulations. It must be worked out in the regulations, which would cover not only the procedures for examination, but also the procedures for reporting to the house. That regulation would be tabled and brought to the knowledge of the house, and no subsequent minister could change the regulation without that becoming known, and an opportunity for discussion given.

Mr. BADANAI: Are we discussing clause 4?

The CHAIRMAN: Yes.

Mr. BADANAI: I would like to move an amendment to this clause, by adding thereto:

(*a*) The Minister of Justice shall report any inconsistency to a standing committee on Human Rights and Fundamental Freedoms.

(*b*) All petitions to the House of Commons under Standing Order 70 which purport to be based on the Canadian Bill of Rights shall be classified and condensed by the standing committee on Human Rights and Fundamental Freedoms in such a form and manner as shall appear to it best suited to convey to the house all requisite information respecting their contents. The committee shall have power to report the same from time to time to the house, to report its opinions and observations thereon to the house.

The committee may make no recommendation, or recommend that the petition

(*a*) be rejected;

(*b*) be referred to the government for
  (i) consideration
  (ii) favourable consideration
  (iii) most favourable consideration

(*c*) be granted in whole or in part

Or the committee may recommend that the petitioner(s) take action in the courts.

Will you second that motion, Mr. Deschatelets?

Mr. DESCHATELETS: I will second the motion.

The CHAIRMAN: It has been seconded by Mr. Deschatelets.

Would you mind sending that up to the table?

Mr. MARTIN (*Essex East*): Mr. Chairman, on a question of procedure; although this is a very important amendment, I did not know we were going to deal with amendments right at this time, or put them now. I thought we were having a general discussion at this time. We have quite a number of amendments we wish to have considered.

The CHAIRMAN: I think you are quite right, Mr. Martin.

At the inception, Mr. Badanai, I think we decided we would go over the bill clause by clause and question the minister without making any attempt to pass any of the clauses, which would mean, of course, not dealing with any amendments. If it is agreeable to you, Mr. Badanai, would you let that motion stand over until later on, when we come to the consideration of clause 4, after having passed the previous clauses, or having dealt with them.

Mr. MARTIN (*Essex East*): I think, possibly, I have been somewhat responsible for this. What I meant, Mr. Badanai, is that perhaps you had some questions to put to the minister in connection with the proposals you made.

Mr. BADANAI: Well, I questioned him in that connection at a previous meeting.

The CHAIRMAN: You are quite free to ask any questions to found the object of your anticipated amendment.

Mr. BADANAI: I have no further questions on clause 4.

Mr. FULTON: I do not want to depart from the committee's decision but, since the matter has been placed on the record, and certainly will be one for me to consider, I would like to make the preliminary comment that it does seem to me that the amendment contains a difficulty. This is dealing with rules and procedure of the House of Commons, and I am not certain that a statute apart from the House of Commons Act, is the proper way to do that. I would think there would be supplementary action that the house itself would consider taking by way of an amendment to the rules. However, I make that only as a preliminary comment at this stage.

I would like to come back to a point I made earlier, that it seems to me it is desirable, in the end, to let us have some experience on this. I have indicated in the clearest manner possible my view, which is the government's view, of what would be the responsibilities of the Minister of Justice under this section and how he should discharge those responsibilities. We will have to work out procedures. There will be heavy responsibilities, especially in the field of regulations. I feel the best way of dealing with that is to let us accumulate some experience. We cannot be working in secret on what we are doing. I think the sounder way of proceeding is to let us proceed by way of accumulating experience, and if it is found there is a necessity or the desirability of statutory amendment or enactment we could deal with the problem at that time.

The CHAIRMAN: Shall we go on, gentlemen, now to clause 5?

Mr. MARTIN (*Essex East*): I have some questions on clause 4.

Mr. BATTEN: Just one question, please.

After the minister has ascertained whether or not a given bill is a contravention of the bill of rights, what happens from there on?

Mr. FULTON: As I have indicated previously, if it is a government bill he reports that matter to his colleagues in cabinet, and it is for cabinet then to make its decision. If it is a private member's bill the minister would not

see the bill until it was given first reading in the house, and it would be his responsibility to give that to his officers to examine that bill at once. The minister's report would be made, in the first instance, to the House of Commons.

Mr. BATTEN: I want to go back to the discussion we had the other day. It seems to me there is a weakness in this section of the bill of rights if the government, particularly, were permitted to bring in a bill which is clearly a contravention of the bill of rights. I agree, if a private member wants to bring in a bill and that contravenes it, that is his responsibility.

Mr. FULTON: Yes.

Mr. BATTEN: I think that he should be told it does contravene the bill of rights. But the minister having ascertained there is a contravention, I would think that the bill of rights would be made stronger and would have greater effect if the proposed bill to be brought in to the House of Commons were not brought in until it was revised in such a way that it would be in agreement with the bill of rights.

Mr. FULTON: That would be the responsibility of the minister and of the government, to say, after having received the report of the Minister of Justice, as to whether or not the bill is in accord with the bill of rights. If at that time, the time the cabinet receives the minister's report, it feels that notwithstanding the indication that this bill is contrary to the bill of rights, nevertheless it should be proceeded with, because the interest to be served is so important that it warrants proceeding with it, then cabinet could only do that, as I see it, by inserting a clause which is contemplated in clause 3 of this bill, or the words: "notwithstanding the bill of rights the Senate and House of Commons enacts as follows:". That would then make it clear this bill is being submitted to parliament for its approval, notwithstanding the bill of rights. The whole issue would be out in the open for parliament to assess.

Mr. BATTEN: Agreed; but that does not add any strength or "teeth" to the bill of rights if, concerning every act you are going to bring in which contravenes the bill of rights, you are going to get over the hurdle by using the word "notwithstanding".

Mr. FULTON: You cannot get over the hurdle unless parliament agrees it is appropriate to legislate in this way, notwithstanding the bill of rights. But the strength of the two provisions, 3 and 4, taken together, is that parliament cannot be left in the dark and no one can try to deceive or mislead parliament. It will be out in the open and clear for all the country to understand that what parliament is being asked to do it is being asked to do notwithstanding the bill of rights.

My understanding of the constitutional principle involved here, however, is that no parliament can bind a subsequent parliament. Therefore, we did not want to pretend that our bill of rights would prevent a subsequent parliament from overriding it if it decided to do so. But what our bill of rights does do is to ensure that no subsequent parliament can override the bill of rights without that fact being clearly in its mind and out in the open, as it were, so that it cannot be done inadvertently or by concealment, either from parliament or the country.

Mr. BATTEN: I think, Mr. Chairman, that this section of the bill, clause 4, could be strengthened somewhat because I do not think that giving the minister the authority to ascertain whether or not there is any contravention between the bill of rights and any proposed bill in the House of Commons is sufficient. I am not a lawyer and, maybe, I do not see the thing in the same way as the minister does. In the meantime, I do not know how this

could be strengthened in proper words; but it does seem to me to be a little bit weak. The minister ascertains there is some contravention and then stops there, according to this clause.

Mr. FULTON: I do not know what power you could give the minister beyond this power which implies, as I say, the obligation of reporting his information. I do not see what power you could give him beyond that, unless you make him a dictator and sole arbiter of what there should and should not be in all bills introduced.

Mr. BATTEN: I think the section could be strengthened if he were instructed—

Mr. FULTON: The principle upon which we have founded this section is to impose an obligation on the Minister of Justice to examine specifically the question of whether or not statutes or regulations are contrary to the bill of rights, which implies the obligation to report his opinion to parliament or the other appropriate authority, and then leave to parliament to decide what action it should take in light of that information. Otherwise you make the minister a dictator and put him in a position, for instance, of saying that a private member could not introduce a bill. I do not think parliament would or should accept that.

Mr. BATTEN: But do you think that, having ascertained whether or not there is any contravention, this section should also instruct the minister to report to parliament? I know that is implied, but it is not written down. To me all this section does is to ask the minister to ascertain whether or not there is any contravention; and there, according to this section, his duty is finished.

Mr. FULTON: Well, you see, your suggestion—that there be an insertion in the clause, a provision requiring the minister to report to the House of Commons—does not, as I see it, cover the question of regulations, which is a very important field. It would cover the question of statutes because there the House of Commons can immediately question the minister. But in the case of regulations, all regulations which the minister is obliged by this bill to examine, are also tabled in the House of Commons, under the provisions of the Regulations Act, which also contains provisions for members—

Mr. MARTIN: In draft form?

Mr. FULTON: Not in draft form, but after they are finally passed. The Regulations Act contains provisions for members to raise a debate on these regulations, if they object to them. After that time, if any members felt the regulations, notwithstanding the scrutiny previously given by the Minister of Justice, did contravene the bill of rights, then they could raise it in debate, and the Minister of Justice could then be questioned in the House of Commons as to what his opinion is on these regulations with respect to this question of whether or not they contravene the bill of rights. So there are procedures now for covering the whole field, but it is difficult to reduce them into the compass of one clause in the bill of rights. This clause, however, is drawn bearing in mind the machinery which now exists in respect of the regulations.

Mr. DESCHATELETS: Mr. Minister, along the lines raised by my friend Mr. Batten, there is, at page 112 of the proceedings, a suggestion by the Canadian bar association on this particular point. I quote:

> This section might be more useful if it were to require the Minister of Justice to report to parliament those bills and regulations which might be considered to abridge the enumerated rights and freedoms.

Are the explanations the minister already has given applicable to this, or would he care to comment on this suggestion.

Mr. FULTON: I think my comments already cover the points made in that passage. I have indicated that in my view there is implicit in the clause the

obligation to report to parliament. I have indicated that the manner, both of examination and report, would be worked out and covered in the regulations which themselves would be tabled and thus known to parliament, so that the procedures would be known to parliament.

Mr. DESCHATELETS: On this point also at page 29, of the evidence, Professor Scott had a suggestion to make. I quote:

> I would like to see, in the Department of Justice, a special division on human rights, or a special section in the department itself; that is to say, personnel employed by the department for the specific purpose of keeping an observant eye on not only the legislation coming through parliament and the regulations issued under that legislation, but indeed on the future goings-on in the country to see whether they could not initiate procedures that might improve the general observance of human rights in Canada.

Would the minister say a few words on this.

Mr. FULTON: The Department of Justice has certain responsibilities now, as you know, in respect of the drafting of government bills and in respect of the drafting of any regulations and the further supervision of all regulations. This imposes upon us in any event the obligation of ensuring that they are in conformity with the existing statutes and existing constitutional provisions. In addition, now, we will have the function of ensuring they all are in conformity with the bill of rights. To that extent it is not a change in our function; it is an extension of the basic application of our function. It may be that as this function develops, and as we have experience with it, that we will find we need to enlarge the personnel of the department. I think that is a distinct possibility, but we do not know at the moment how much of an enlargement of our physical responsibilities there will be, although as I say it indicates the particular application of what we must do. If we find we do need more personnel, the necessary measures can be put in hand. It might be that the extra personnel could be formed into the beginning of the sort of body Professor Scott has in mind, but we are not in a position at the moment to tell this committee or the house how many extra people we would need or whether we would need any extra people. I do not think it would be wise at the moment to commit ourselves to the establishment of a special bureau. As you know, once you provide for something like this you have to staff it and it grows. We have had strong views, and others have expressed strong views, about the tendency towards increase in the civil service. So I do not think we want to commit ourselves at this time to a special bureau, but it may become necessary.

Mr. AIKEN: I would like to repeat what I previously said. I would not like to see a large committee of any kind set up on this section such as was suggested by several witnesses. The only thing I would like to say about this section is—and it concerns the word "ascertain"—I think we should put forward as strong a bill as possible, and I wonder if there is not some additional word that might make the responsibility of the Minister of Justice just a little more definite. True enough, one minister may accept his responsibilities and another may not. I think we are establishing a bill of rights, I hope, for a long time, certainly until there is an amendment to the constitution. I would like to think that in the provinces, if this were adopted, perhaps the attorneys general would have the same responsibility. There again, if their responsibility was only to ascertain, if these words were used, they might not take their duties too seriously, and the regulations might not provide the same type of responsibility that there is now. I have a feeling somewhat of unease about this particular clause and the particular wording. I feel we would be lax in

our duties if we did not try to make something a little more definite in respect of the responsibilities of the Minister of Justice in connection with any bills or regulations which he feels are contrary to the provisions of the bill of rights or on which he is requested to report by the house, or on which he is requested to give an opinion. It may be that this is sufficiently strong, but I wonder if the minister would consider again, before we pass this clause whether there might be some improvement in the wording.

Mr. FULTON: Mr. Aiken, I appreciate your concern because it is my view and the view of the government that where you can be specific you should be specific. I can assure you, however, that it is very difficult to be specific about this matter in a statute. Take, for instance, the field of regulations. We supervise them now and scrutinize them in draft form in our department, and if we find any inconsistency with other statutes—and from now on with the bill of rights —we take it up with the authorities sponsoring the regulations. It would be my very firm expectation that if we showed any inconsistency with the bill of rights in any regulation that that inconsistency would have to be removed before the regulation had the approval of the governor in council. So when the regulation comes out any potential infraction has been removed, at least in our view.

If you put in a provision to the effect that the Minister of Justice shall report all infractions of the bill of rights in regulations, that is a self-defeating requirement, because there would be no such infraction in the regulation itself. Well then, would we have to be reporting discrepancies or inconsistencies that were in draft form? That would seem to be requesting us to give ourselves a pat on the back by saying that we have had the inconsistencies, have taken them out, and the regulation is now consistent. It is very difficult and I think somewhat dangerous to put specific requirements on this matter in statutory form; but we appreciate what you have said and will have a look at it to see if we can strengthen it, perhaps not by changing the word "ascertain", but by some elaboration of the obligation to report. We will have a look at it and see if we can put it in in such a way that it makes statutory sense, but we would not care to guarantee that.

Mr. AIKEN: There is the possibility of giving an opinion upon request in the house.

Mr. FULTON: Yes.

Mr. AIKEN: If a situation arose it would obligate the Minister of Justice to say: "I looked into this and we are satisfied that it does not contravene the bill of rights, or that it does"; but this is just a suggestion.

Mr. BATTEN: I think the word "ascertain" here is a good one. I do not know whether I would or would not suggest that the word "ascertain" be changed; but I think something else should be added to it; and whether or not the word "insure" is a good word, is a question. It is a pretty strong word. But if we are going to continue with the word "ascertain", I think some additions to this clause might remove some of the fears which we have for it.

Mr. FULTON: We will have a look at the suggestions and comments made and see if we can devise anything that could improve the Statutory wording that we already have.

Mr. MARTIN (*Essex East*): I share the concern of Mr. Batten and Mr. Aiken on this subject, that one of the weaknesses of the bill throughout is that it has no sanctions whatsoever. Here is an opportunity to have sanctions. Admittedly, it is not easy, but I would suggest that it is possible.

I believe the suggestion put forward by Mr. Badanai, that it is possible for some complexities to arise in so far as the orders of the house are concerned, is one which should be carefully looked at by the law officers of the crown, and possibly it could be modified in some detail.

But I think it is a very desirable suggestion. I hope that, when the minister says he will examine this clause, he will examine that proposal, because it has been possible to embark on this proposal in Great Britain, in Denmark, and in New Zealand. It should not be any less possible for us.

I recognize that there are difficulties in this, particularly in so far as draft regulations are concerned. I do not think there is any difficulty in regard to regulations; but in so far as draft regulations go, there would be, in so far as they are intended ultimately to empower the governor in council; and I do recognize the difficulty. But what I have to say will not apply to those regulations in draft form.

In any event I would presume that the regulations in final form, before reaching the Governor in Council, are at least theoretically examined by the minister. I do not mean by the minister personally, but by his officers in one form or another.

But if those regulations are tabled in the House of Commons pursuant to the requirements under our procedures, surely the Minister of Justice—again I do not mean the minister personally—but the Minister of Justice should examine them to see whether or not before those orders are tabled there are any inconsistencies in them vis a vis those in the bill of rights.

Mr. FULTON: May I just indicate that I agree with you so far as you have gone.

Mr. MARTIN (*Essex East*): Yes. But I think that clause 4 is really a meaningless clause. It does not change what is now the fact. The minister has indicated in what he has said with regard to regulations that this is now the practice. It must be implicit in the authority given to the Minister of Justice that he would examine every proposed regulation submitted in draft form to the clerk of the privy council, pursuant to the Regulations Act. It must be assumed that that is an obligation which he now has.

With regard to bills, I can see a dilemma. The minister does not want, nor do we, to be placed in a position, vis a vis, his colleagues where he would seem to have a sort of veto power over them in respect of legislation which is suggested by the legislative committee, if that body still exists in council. That body did exist when we were there. We used to have a committee of four or five members, under the Minister of Justice, who examined all legislation prior to discussion in the cabinet as a whole. While I recognize the difficulty, I do feel that there should be an obligation on the part of the Minister of Justice, not to veto, but to point out in cabinet, or in whatever instrument there is, that a particular bill proposed by a particular minister, is contrary to the bill of rights. I would think that anything short of that would be incomprehensible, and I would think that that now is the practice, and has always been the practice.

Mr. FULTON: You are quite right.

Mr. MARTIN (*Essex East*): I think the Minister of Justice would suggest to his colleagues that a specific bill could not be put forward in its present form. It would be a matter for the cabinet to decide. The Minister of Justice would not decide over his colleagues. It would be a matter for the cabinet to decide whether or not a specific bill should be put forward, because it violates, up to now, the judicial principles of justice, and if this bill is passed, the bill of rights. I would think it is clear that once a government bill has gone to the House of Commons, or to parliament, one would not expect the Minister of Justice then to get up and say that the bill presented, let us say by the Minister of National Revenue, is contrary to the principles of the bill of human rights: no one would suggest that. I would presume that any

parliament. But when it comes to a question of scrutinizing these things before they reach parliament, then you are in difficulties, especially with regard to regulations.

Mr. DESCHATELETS: I had in mind that a committee of this kind might study and examine complaints arising out of this bill. Your department will surely receive many complaints from all parts of the country. Some of them will not be justified; maybe some will be justified; and a committee of this kind might be very useful, I think, in making recommendations to you.

Mr. FULTON: I would not, for a moment, dispute your point there. I am not sure, and there have been suggestions made, that this is a field which might be reviewed by the committee to assist Mr. Speaker on the rules—but perhaps there should be a method by which parliament could effect an over-all scrutiny of what is laid before it or tabled in parliament. If this is a matter which the House of Commons feels they should act upon, then the government would not have the right or desire, as I see it, to make any objections; and that is for parliament to decide.

The CHAIRMAN: Gentlemen, is it agreeable to adjourn now until 2.30 this afternoon, subject to the house at that time being engaged on the estimates? Otherwise—

Mr. MARTIN (*Essex East*): What estimates?

Mr. FULTON: That is the Northern Affairs and National Resources estimates, I think.

Mr. MARTIN (*Essex East*): I think we want to cooperate with the chairman, as we have. I want clearly to establish this, though, that there are two departments in which I have an interest, and in which I will have to take the active part; and I would hope that when those matters are up that that will be taken into account. I am not interested in Northern Affairs.

Tonight it will be impossible for the members of our party to meet. It would be impossible for our group to meet because we are honouring those new hopes in other places who are visiting in Ottawa.

The CHAIRMAN: That being agreed, we will meet at 2.30. The clerk does not know exactly the room, and we will try to get notices to you; but I think it will be one of the Senate rooms.

May I have a meeting of the steering committee immediately after the questions on orders of the day are completed?

Mr. FULTON: So that I shall not be in any uncertainty or appear disrespectful to the committee, I take it that the committee will meet at 2.30 subject to the combines legislation being concluded in the house at that time?

Mr. MARTIN (*Essex East*): Your filibuster is over now?

Mr. FULTON: Is yours?

AFTERNOON SESSION

WEDNESDAY, July 27, 1960.

2.30 p.m.

The CHAIRMAN: Gentlemen, we have a quorum. The minister is on his way down. But before we continue with our questioning of the minister I would like to present a report of the subcommittee on agenda and procedure which met this morning. The report reads as follows:

> The subcommittee on agenda and procedure met at 11:40 a.m. this day. The following members were present: Messrs. Badanai, Browne (*Vancouver-Kingsway*), Spencer and Stewart.

Your subcommittee recommends as follows:

1. That the committee accede to the request of Mr. Martin (*Essex East*), that no meeting be scheduled for this evening and, having regard therefor recommend the scheduling of meetings on Thursday. July 28 at 9:30 a.m., 2:00 p.m. and at 8:00 p.m. if necessary, in order to conclude the deliberations of the committee.
2. That letters received from Professor Edward McWhinney of the university of Toronto, and presently in Heidelberg, Germany; Mr. F. A. Brewin, Q.C. of Toronto; Mr. J. Auguste Pepin of Ottawa; Orillia Chamber of Commerce; Windsor Chamber of Commerce; and Associated Investors of Canada Ltd. be filed with the committee and copies distributed to members.

Mr. STEWART: I move the adoption of this report.

Mr. RAPP: I second the motion.

Motion agreed to.

Mr. MARTIN (*Essex East*): Subject of course to the exigencies of the house.

The CHAIRMAN: I think Mr. Martin has raised the possibility of the labour department estimates being reached tomorrow. It is possible that they may not, but if they do arise and we are engaged at the time in a serious discussion of clauses, when Mr. Martin has to absent himself, I am sure, the committee will try to accommodate themselves to the situation and perhaps take a short recess.

Mr. RAPP: On division.

The CHAIRMAN: At the time we adjourned I believe we may have concluded consideration of clause 4. If so, I suggest that the questioning now proceed on clause 5.

Mr. STEWART: Might I ask the minister if there is any particular reason why clause 5—as he himself has mentioned—is placed in part II rather than in part 1.

Mr. FULTON: Yes. As I indicated before, we thought it was desirable to have a bill of rights and a declaration of fundamental freedoms and liberties for all Canada, and one which might be copied or was suitable for framing or hanging on the walls of schools, for example, or church halls, assembly halls, and similar places; and we felt that such a bill of rights should be as simple and uncomplicated as it is possible to make it.

So the statute, in so far as we could do it, is an uncluttered declaration of those rights, with the addition only of a statement of how they are to be inforced and protected. That is clause 3; and perhaps something about the responsibility of the executive to ensure the healthy observance of the spirit of the bill of rights.

So we felt that clauses 1, 2, 3, and 4 should themselves constitute the Canadian bill of rights and that the more purely legalistic provisions such as the saving provision, and the impact of the War Measures Act, which we contemplate, should, while part of the act, be placed in a separate part, and not form a part of the Canadian bill of rights. So we adopted the two divisions, of having parts I and II with clauses 5 and 6 in part II.

Mr. MARTIN (*Essex East*): May I suggest that when we come to deal with clause 3, when dealing with the matter, clause by clause, in so far as the possibility of amendments are concerned, and of the comments which the minister has just made, those things can be done, and I have an idea as to how we can do them; but what I think is a desirable objective—and this is not for propaganda; I am sure the minister would not have that in mind—but for the purpose of the psychological effect of the bill, we would want the bill of rights

to be in such form that it would create an impression, for example, on the minds of school children. So I shall have something to propose.

I did not quite understand the minister when he mentioned something about the executive.

Mr. FULTON: I explained before that the framework of the bill is a statute which covers the three branches of government, the legislative being covered in clause 2, the judicial, being covered in clause 3, and the executive, being covered in clause 4.

Mr. MARTIN (*Essex East*): Was there not some suggestion made about putting something at the bottom of the bill itself?

Mr. FULTON: You do not mean "The bill was passed by the Diefenbaker government?" No, we do not have that in mind.

The CHAIRMAN: That is a good suggestion.

Mr. BROWNE (*Vancouver-Kingsway*): There has been some concern about where the jurisdiction of this bill went, and there was a suggestion in the earlier clauses that if there was need to clarify the matter in any way—and I am not saying that there is but that if that were to be considered, clause 5 might be a convenient place to put that in, to show that it applied to those things within the jurisdiction of the parliament of Canada. If it was felt there was a need to clarify that position, it would seem to be a suitable place to have it inserted.

Mr. FULTON: I think that is an interesting and valuable suggestion, perhaps taken in conjunction with the suggestion that there might also be a short phrase in the preamble. This would be in the act itself, and it might be a very useful way to make it clear to the courts what the intention of the legislature is.

Mr. MARTIN (*Essex East*): If it were put in the preamble, that would take care of it.

Mr. FULTON: There is room for difference of opinion there.

Mr. MARTIN (*Essex East*): I think the courts would have to look at the preamble.

Mr. FULTON: I think the rule is that, notwithstanding what is in the preamble, if the courts feel that the section has a definite effect, a definite legal effect, then they cannot avoid or refuse to give effect to the interpretation of the simple language of something in the preamble. But as I say, there is room for difference of opinion, and we could consider the two together.

Mr. BROWNE (*Vancouver-Kingsway*): I am not sure that everybody will have a difference of opinion as to what should be in the preamble, but it would seem to me that those words would not add anything to the poetic value of the preamble, and that a better place to have them would be just where they are here in the bill.

Mr. FULTON: I think that is right.

Mr. MARTIN (*Essex East*): There are some very good preambles which are in the embryonic stage.

The CHAIRMAN: Then, gentlemen, may we direct our questioning to clause 6?

Mr. BROWNE (*Vancouver-Kingsway*): I think I asked earlier a question of the minister on this point: I had said that clause 6 provides that when the proclamation is made for the War Measures Act to come into operation, provision for it—

Mr. DESCHATELETS: I am sorry to interrupt, but I have a question on clause 5. There are two terms in clause 5, "abrogate" and "abridge". I wonder if the term "limit" should not be added. Abrogate or abridge do not have the same sense as "limit."

Mr. FULTON: We have used the words "abrogate" or "abridge" throughout the act. They are used, for example, in clause 3, where it reads "abrogate, abridge or infringe or to authorize the abrogation, abridgement or infringement".

If you are wondering why we did not put "infringe" in here, I suggest that in this case the word is not applicable.

Mr. DESCHATELETS: Is the minister satisfied that with those two terms, abrogate or abridge, we are covering the whole field of existing rights, apart from those under the section?

Mr. FULTON: I have not looked at the Oxford dictionary or any other dictionary at the moment, but "abrogate" surely means to wipe out, while "abridge" to put a limitation upon, or to shorten. So I think that we have covered the field pretty thoroughly.

Mr. MARTIN (*Essex East*): It seems to me that Mr. Dorion had something to say on this point.

The CHAIRMAN: Should we not refer to the French version to see how it is expressed therein?

Mr. MARTIN (*Essex East*): I think Mr. Dorion had something to say, but he is not here today.

Mr. DESCHATELETS: We might go on in the meantime, Mr. Chairman.

Mr. BROWNE (*Vancouver-Kingsway*): I had started to raise a point, Mr. Chairman, with respect to clause 6, where there is a provision made by proclamation, whereby the War Measures Act would be brought before parliament within 15 days after opening of the next session if it was not sitting at the time. I do not know how long the government might ask to have that measure enacted for. I was just wondering, assuming that the members of parliament felt that the emergency had passed, if the measure had been put into effect for one year, or two years, whether some limit should be placed on the amount of time for which it could be passed at one time, such as a year, or perhaps some provision could be made so that the question could be raised again, the emergency having passed.

Mr. FULTON: Mr. Browne, I think I see your point. Your point is that clause 6, as it is drafted here, gives the members of parliament the absolute right to bring the matter up for debate only if they had put down a notice of motion expressing that desire within ten days after the proclamation is laid on the table.

Mr. BROWNE (*Vancouver-Kingsway*): Yes.

Mr. FULTON: Your question is, that this covers the commencement of the alleged state of emergency, but what would happen if the government continued such a proclamation in effect for some time after the emergency might be considered to have passed?

Mr. BROWNE (*Vancouver-Kingsway*): That is right.

Mr. FULTON: In this respect I am advised that it would be open to the courts to entertain an argument that at that point the exercise of the emergency powers was not warranted on the grounds that the emergency no longer existed. That would be one protection. It might be suggested that is still not sufficient, and that members of parliament should have the right to debate it. Of course, subject to the ordinary rules of debate, any member can put down a notice of motion at any time. The difference between that kind of notice of motion, after the ten days had passed, and the motion made under the provisions of this act, within the ten days, is that the act itself here provides that such notice of motion will be brought on for debate within four days, and that any other motion would only have the rights of debate afforded by the ordinary rules of the House. I do not know that we could do much better than that because, if you went much further

than that you would then have the situation where perhaps such a motion could be brought up once a month, or once a week, or at any time any member felt it necessary, whether the purpose be for obstruction, or for valid reasons. So we have felt that the proper thing to do is give the members of parliament the right to have the validity of the proclamation tested by debate immediately the proclamation is made, or immediately parliament assembles after the proclamation is made. We did not think it was sound to carry that special provision forward so as to give members of parliament the right to challenge, in a special way, the existence of an emergency at any time after the proclamation was made, and after the right of initial challenge had expired.

Mr. BROWNE (*Vancouver-Kingsway*): In raising that point I appreciated the difficulty as to a member raising this at any time, so that it might be perpetual; but it did seem to me that when a certain matter was first proclaimed as a general emergency, in the heat of that emergency parliament might be willing to extend the provision for perhaps two or three years, assuming that it would be required for that length of time; and I was just wondering whether a member should be able to bring this up, not every week, or month, but perhaps every year.

Mr. FULTON: The War Measures Act never has been brought into effect by proclamation for a fixed period of duration. The proclamation merely states that there is a state of war, invasion or insurrection. I think it would be a little dangerous, and certainly an unusual innovation, for a government by this proclamation, to attach a length of time during which they felt that the emergency would exist, or after it felt it had ceased to exist; because who is to say how long it will exist?

Mr. BROWNE (*Vancouver-Kingsway*): That is why I suggest perhaps it should be made possible for members of parliament to deal with the matter after the provision had been in effect for a year, for instance, and it was felt that the emergency had then passsed. I felt that there should be a provision allowing a member of parliament to raise the question perhaps a year later. I am not suggesting it should be allowed to be raised at any time, but after it had continued to be in existence for a considerable period of time and it was perhaps felt that it should be debated again to determine whether the emergency had passed.

Mr. FULTON: How are you to determine how many members are necessary before this debate can be raised? Are you going to have the question as to whether a war exists debated at every session? If there is a war, it seems to me that the government should be given the power to carry on, or to carry out the measures necessary for successful prosecution of the war, and that if the question of the existence of the war is to be challenged at almost any time the members wish to challenge it, it will be a problem.

The CHAIRMAN: I was wondering, Mr. Minister, if that situation could not be met by simply eliminating the words "within 10 days", because when the proclamation is laid before parliament it is quite feasible, or quite possible that no question would be raised about the fact that an emergency exists, and there would be no need, or no desire to have a debate in respect of it within that period of 10 days. The desire to do so might arise six months later, or nine months later. Mr. Browne's point might be met by simply eliminating those words "within 10 days"?

Mr. FULTON: If you did that, of course, then the effect would be that it could be debated not only shortly after the proclamation, or alternatively, shortly after parliament met, but at any time thereafter. This would happen if you cut out that limitation.

I would like to point out that from the point of view of an administration, the urgency of taking out the War Measures Act is, it is true, not as great as the urgency for bringing it into effect; but on the other hand, parliament could always debate it in any event, or discuss it in debate on the throne speech, on the estimates of the Department of National Defence, for instance, on supply motions, and by attacking the regulations tabled in the House of Commons under the War Measures Act as an encroachment of the provisions of the Regulations Act, and by various other methods. What we have thought important to ensure is that parliament should have the right to challenge the declaration of emergency itself in order that parliament should have the right to raise the question of whether it is not a false emergency brought in or created for the purpose of enabling the government to get around the bill of rights.

Mr. MARTIN (*Essex East*): Have you given any consideration to the suggestion that Professor Cohen made—this follows what you have just said—that we ought to devise—I am not putting this forward as a view that I support; I am not putting it forward as a view I am in disagreement with; I am just putting it forward now for clarification—namely, that parliament should be, during the period following the declaration of war until its termination, in continuous session so that the rights of parliament, which you have just recognized as being capable of being forced through by one procedure or another, might be met?

Mr. FULTON: Yes, we have considered that, and I would think there are probably about as many opinions that could be expressed as there are possibilities that arise under the circumstances that might be envisaged.

If you had an atomic war, an international war, in the first place you might have your facilities for holding a session of parliament destroyed, wiped out, by the atomic attack. We have felt, in drafting this, that with any government that is still in existence, having any sort of national, organized effort at all, it should not be beyond the capabilities of the government to arrange for holding session of parliament within a year. There, of course, the government is under the constitutional obligation to hold a session of parliament in a year.

But whether you could get parliament in continuous session is an open question. The temporary facilities might, again, be wiped out in the course of the war.

So we have felt that because of the imponderables of the situation it would be unwise, in legislation, to impose upon the government the obligation of calling parliament and providing the facilities whereby parliament could be kept in continuous session.

Mr. MARTIN (*Essex East*): The argument you have just put forward does not, it seems to me, really address itself to this point, any more than it covers some of the concerns that Mr. Browne has just mentioned. The suggestion, as I understood it, was so that parliament would always have the opportunity that you have acknowledge should belong to parliament; there should not be any gap during which it would not be possible for parliament to exercise its right of discussion in order to preserve these human rights and fundamental freedoms.

We had one experience of entering a war where parliament had adjourned; it was prorogued immediately before, on the same day, or the day before—I forget which—and a new parliament was summoned. It would be possible to revise that technique. You could have the address from His Excellency at the end, one day or an hour before, and you could have the opening of a new parliament, with the address by His Excellency following that. As a matter of fact, in the British parliament that frequently happens.

Mr. FULTON: I think we are confusing two terms here—to keep parliament in continuous sittings, or sitting continuously, and to keep parliament in continuous session. You cannot—I think you will agree with me—provide for the summoning of a new parliament the day after the old parliament is dissolved, because a new parliament means a parliament just recently elected. I think we have to be careful of our terms here. In order to elect a new parliament, you have to dissolve the old one, and you have to have a period of election.

Mr. MARTIN (*Essex East*): As far as the election is concerned, I agree.

Mr. FULTON: What we are really discussing is the keeping of parliament in continuous session, in a formal sense. That could be done. Let us take a parliament that has just been elected and has its first session. If you have a state of war, that session, instead of being prorogued, could be adjourned. You are quite right. So technically parliament is still in session. All that needs to be done is have the members recalled, and then it continues sitting.

Then the session could be adjourned, I agree, until 364 days after that session began. Then that session could be formally prorogued and the new session commenced the day after.

That could be done. But I felt that what Professor Cohen was getting at was the suggestion that parliament be kept continuously sitting, which is the point of view I was discussing when I referred to the possible physical difficulties in arranging facilities for a continuous sitting. If you merely mean parliament be kept in a continuous session, in the technical sense that I have just recently referred to, I can see no obstacle to that, during the life of a parliament.

Mr. MARTIN (*Essex East*): I really think that is what he meant.

Mr. FULTON: I think that probably it is, on reflection. I had put the other interpretation on it, that he had in mind continuous sitting.

The CHAIRMAN: I think that did occur on two occasions about 1952.

Mr. FULTON: It has occurred since I have been a member, I know; and I think Mr. Martin is quite right, it occurred during the war, 1940-1941, and—although I am not sure—at the time of the Korean emergency, or some time around there. Instead of being prorogued at the normal time, it was adjourned and then prorogued the day before the next session began again the next year.

Mr. Martin, may I ask for time to ponder that thought?

Mr. MARTIN (*Essex East*): Yes. I just mention it, because we are not dealing with any amendments at this stage and I just put forward the idea to get your comments on it.

Mr. FULTON: I appreciate the opportunity of this discussion, because it has certainly clarified my thinking. I know that in directing my thoughts to it until now, I had directed them to the idea of keeping parliament continuously assembled and sitting, which I had foreseen as a very difficult thing to arrange.

I think the other is much easier, and I would like an opportunity to think it over and see if it is appropriate to put in the bill of rights.

Mr. MARTIN (*Essex East*): I have one more question on this clause. Have you given consideration to the suggestions made by the Leader of the Opposition?

Mr. FULTON: With regard to the amendments to the War Measures Act?

Mr. MARTIN (*Essex East*): Yes.

Mr. FULTON: Yes; and, indeed, the other suggestions that have been made. I would suggest, though, that that is a question of the amendment of the War Measures Act itself. You will remember that Professor Lower—and, I think, Professor Cohen—had observations to make in that connection,

the effect of which was that, quite regardless of the bill of rights, the War Measures Act should have a good scrutiny and probably an amendment.

For the time being, therefore, it seems to me that the soundest approach is to enact this one amendment, which we have included in the bill of rights, which safeguards the right of parliament to question a declaration of emergency itself, and then to embark upon what the Prime Minister has indicated he would like to see done, namely, a general revision of the War Measures Act itself, at which time consideration would be given to views raised by the Leader of the Opposition and all other questions that may arise.

Mr. MARTIN (*Essex East*): We can deal with that when we come to it at a later stage, because I have some suggestions to offer.

The CHAIRMAN: Are there any more questions on clause 6?

Mr. MARTIN (*Essex East*): Perhaps Mr. Chairman, I should just put one more question.

Have you given consideration to the suggestion that clause 6 should not be in this form, and that there should be a simple statement in the section providing something along this line: this act shall not in any way affect the War Measures Act.

Mr. FULTON: What was the last part of your sentence?

Mr. MARTIN (*Essex East*): Just a brief section saying: this section shall not affect the operation of the War Measures Act,—so as to give the bill of rights itself as pure a form as possible.

Mr. FULTON: Well, if that was all you did, you would not be able to put in the provision we have—that parliament shall have the right to review and debate the very declaration of an emergency under which the War Measures Act is invoked.

Mr. MARTIN (*Essex East*): I agree. I just wanted to have your comments.

Mr. WEICHEL: Mr. Minister, could you give us a little explanation on No. 4?

Mr. FULTON: Subsection 4?

Mr. WEICHEL: Yes.

Mr. FULTON: Well, perhaps, I had better read it, so my remarks will be in context:

> If both houses of parliament resolve that the proclamation be revoked, it shall cease to have effect, and sections 3, 4 and 5—

and that is of the War Measures Act itself:

> —shall cease to be in force until those sections are again brought into force by further proclamation but without prejudice to the previous operation of those sections or anything duly done or suffered thereunder or any offence committed or any penalty or forfeiture or punishment incurred.

And, going through that stage by stage, if parliament should decide that the invocation of the War Measures Act was unjustified and that there is no real emergency on the basis of which emergency powers should be relied upon and the bill of rights set aside, then parliament would so decide by resolution. That immediately would have the effect that the proclamation under which the War Measures Act was invoked was of no effect, and from that date forward the War Measures Act would cease to be in effect—or, rather, sections 3, 4 and 5 of the War Measures Act would cease to be in effect. Those are the sections under which the government is given the emergency powers. But you have then reserved the right to the government to reconsider its position and to preserve its right to another proclamation bringing the War Measures Act into effect, if there should be a genuine emergency. If parliament had then

decided the emergency on which the government had purported to rely was not a genuine emergency, I imagine the government would regard itself as having been defeated, because of this far-reaching reversal of government decision—and that would take care of any further action by that particular government. But, we did want to make it clear that such a resolution by parliament does not deprive any government of the further right to invoke emergency powers under the War Measures Act. It would have to do it by the solemn decision to issue another proclamation when it felt itself justified in doing so.

That brings you to the result that those sections of the War Measures Act shall cease to be in force, but without prejudice to the previous operation of those sections. That is to take care of those situations in which a proclamation had been issued by a government, possibly in good faith. They really felt there was an emergency, even although parliament might have subsequently decided, in accordance with the rights given to it, that there was no such emergency. You would then have had in the interim a situation under which things were being done by virtue of the powers vested in the government officials who were acting under instructions, and had no alternative but to do that, and would be acting in accordance with and taking measures under special powers so conferred upon them. In the absence of those powers and that authority, it could well be held that those officials, acting beyond the scope of their authority might be personally liable for their actions. Therefore, it was necessary to protect what was done in good faith while the proclamation was in effect because, if you did not protect that, you would have chaos resulting, and a wide variety and an unforseeable number of situations and complicated claims made against people who had acted in good faith while the proclamation was in effect. That is why the words:

> . . . without prejudice to the previous operation of those sections or anything duly done or suffered thereunder. . . .

and so on, have been included.

Mr. WEICHEL: Then, sections 3, 4 and 5 refer to the War Measures Act?

Mr. FULTON: Yes, which are mentioned in subsection 1 of this section, as you will see.

The CHAIRMAN: Are there any further questions on clause 6?

Mr. JUNG: Mr. Chairman, I am not clear on subsection 5. Am I to take the interpretation, in reading subsection 5, that the War Measures Act will override a bill of rights?

Mr. FULTON: Well, it will so long as it is in force under a proclamation issued, and not revoked by parliament.

Mr. JUNG: I wanted to make sure that that was the intent.

Mr. MARTIN (*Essex East*): Do I understand you are saying, Mr. Minister, that the War Measures Act will revoke the bill of rights?

Mr. FULTON: Not revoke—override it, while it is in force.

Mr. MARTIN (*Essex East*): I would have hoped that we could so revise the War Measures Act that it will not in any way affect the bill of rights.

Mr. FULTON: It will not revoke it; but if the War Measures Act is operative, giving the government emergency powers, it seems to me impossible to provide that it does not, during that period, override the bill of rights.

Mr. MARTIN (*Essex East*): I wonder if you have carefully considered that. I cannot envisage that. Certainly, I have some views about what we should do about the War Measures Act in so far as section 6 is concerned, and I would hope, with those corrections, it would be possible to provide that the War Measures Act would not affect the bill of rights and that it would not,

in any way, as a result, interfere with the official operation of the War Measures Act.

Mr. FULTON: That, it seems to me, is going to be entirely determined upon the emergency powers that a revised War Measures Act may contain. If a revised act contains in it no powers under which the government could act contrary to the provisions or spirit of the bill of rights, there will not be a conflict. But the War Measures Act, as on the statute books, gives the governor in council power to do things which are contrary to the bill of rights. That is why we think it essential to put into these provisions the right of parliament to review the proclamation on which the War Measures Act is brought into effect. If the War Measures Act now or in future, did not contain things contrary to the bill of rights, then, from that point of view, parliament would have no cause for concern whether the act was in force or not. I do not think anyone has suggested yet, whether it be the present War Measures Act, or a revised War Measures Act, that such a statute should not contain provisions giving the government some emergency powers; and the very existence of that situation surely connotes, by necessary inference, that the government has power to do things which a bill of rights, in all its implications, would not contain. I do not thing anyone has suggested that you can have a War Measures Act or an emergency act which does not, in at least some degree, transgress the spirit of a bill of rights.

Mr. WINKLER: I would be very surprised if an intelligent man like Mr. Martin would have any other views than those expressed by you in the first place.

Mr. MARTIN (*Essex East*): What I meant to say is, subject to sections 2, 3, 4, 5, 6 and 7 of the War Measures Act, nothing in the War Measures Act should abrogate any of the provisions of the bill of rights?

Mr. FULTON: Well, I think that, of course, leaves sections 8 and 9 of the present War Measures Act, so that I really am not able to grasp the implications of what you have in mind.

Mr. MARTIN (*Essex East*): Perhaps we ought to wait until we get to the actual amendments of the section. In the meantime, perhaps you could give consideration to that, because I do recognize it is a very important one. I submit, at any rate, subject to those sections, that the bill of rights should not be regarded as abridging, infringing or abrogating any of the rights or freedoms recognized by the bill of rights.

Mr. FULTON: Sections 3, 4 and 5 are the sections which confer the powers.

Mr. MARTIN (*Essex East*): Subject to those.

Mr. FULTON: Section 6 is the limitation on the duration of the War Measures Act. Section 7 is procedure, Section 8 relates to forfeiture of vessels, or goods, et cetera, moved or dealt with contrary to any order. Section 9 provides for rules of court. So if you take out sections 3, 4 and 5, let alone sections 6 and 7, you have pulled all of the "teeth" from the War Measures Act and you have not any emergency powers.

Mr. MARTIN (*Essex East*): Under sections 2 to 7?

Mr. FULTON: Under sections 3, 4 and 5.

Mr. MARTIN (*Essex East*): I would say, subject to all those sections.

Mr. FULTON: What you mean is that those sections, while in force, can be taken to override the bill of rights—but only while in force?

Mr. MARTIN (*Essex East*): Yes.

Mr. FULTON: We had—

Mr. MARTIN (*Essex East*): I forgot to mention the subsections to which the bill of rights would be subject.

Mr. FULTON: I do not think sections 8 and 9 could operate as overriding the bill of rights.

Mr. MARTIN (*Essex East*): I do not think so either. We can consider that in detail; but I want to put it under consideration now.

The CHAIRMAN: Now, gentlemen, can we turn our thoughts to the question of a preamble?

Mr. MARTIN (*Essex East*): I wonder, on the preamble, if I could make a suggestion? I know we have all been working on a preamble. It is not the easiest task. I was wondering if we could not leave the preamble until after we have examined all the sections, because it may be that out of this discussion we might find some things that we either want to exclude or include in a preamble. I know now—from what the minister said this morning, and I think that he is right, though I am not positive—that I want to modify something in my preamble. I am making the suggestion now that we should leave that and go ahead with the sections, and then come back to it and see whether or not we have got everything we want included in the preamble. We should have the whole act before us, I think, before we deal with the preamble, to make sure we are not putting in the preamble something we do not want to.

The CHAIRMAN: The only thing that occurred to me, having regard to the discussions that have taken place before the committee, is that it might well be that some of the members will feel that, for instance, section 2 should be amended if there is to be no preamble.

Mr. MARTIN (*Essex East*): Yes.

The CHAIRMAN: But if there is to be a preamble, then section 2 would be considered to be satisfactory. So I am inclined to think that some decision ought to be made now as to whether or not we can agree upon a preamble. That is just a suggestion.

Mr. MARTIN (*Essex East*): I think that a preamble is really something that we are not going to be able to work out here, around this table. It seems to me, that the suggestion of the minister, that a committee be appointed to consider various suggestions, was a wise one. Then you would not only consider those suggestions but, perhaps, also do some formulating. Then we could have before the committee oral discussion on the sections. I think we would save a good deal of time.

If we devise a preamble now, in the light of not having had the detailed discussion on the sections, we may find we have agreed on a preamble that does not fit in with some of the conclusions that we have arrived at with regard to the various sections. I think that is very important.

I think we could assume, for instance, the possibility in the preamble—to meet the objection I had to clause 2 and Mr. Dorion had—of working in some words clearly to establish that section 2 refers to matters only within the competence of the federal parliament. I think you would find that would be—

Mr. STEWART: Was the point not to decide whether we are going to have a preamble?

Mr. FULTON: Not to fix the terms of it now.

Mr. STEWART: We have not decided yet whether we are going to have a preamble.

Mr. MARTIN (*Essex East*): That is right.

The CHAIRMAN: I think if we are going to have a committee to work on the matter of a preamble, we should make that decision now.

Mr. MARTIN (*Essex East*): I agree.

The CHAIRMAN: And perhaps even have that committee begin deliberations right now. The main committee would then stand over until they could report later this afternoon or first thing in the morning.

Mr. BATTEN: It is my opinion, in a procedure of this nature, that where you are trying to get some of your thoughts down in actual words everybody knows it is not a very easy thing to do.

I think the sound thing to do is to have this committee draw up some kind of preamble, and then when the committee sits on it, they will have something to discuss, something which they can get their teeth into.

Mr. FULTON: I have an alternative suggestion to the ones already made, if it is of any help to you. If you thought it was a more practical way of proceeding, you could ask all those who have preambles to make their suggestions, or file them, as you wish. Then, my department could take them and try to amalgamate them and come back with a suggested preamble. That might be easier than having a group of members sit down around a table.

Mr. STEWART: That is perfectly satisfactory to me.

Mr. MARTIN (*Essex East*): That is agreeable to me, expressing my view, subject only to the right of any member, at any time, to offer a contribution to this committee.

Mr. FULTON: Yes.

Mr. MARTIN (*Essex East*): Or to the office of the crown?

Mr. FULTON: Yes.

Mr. MARTIN (*Essex East*): I think that is a good suggestion.

Mr. FULTON: I think it might save the time of the committee, instead of having them form into a sub-committee. I know that Mr. Martin will appreciate what I say when I say that he knows some of the difficulties of men sitting down and trying to draft something—people who hold strong, divergent views trying to propose acceptable compromises. Our department would try to do that job for you, holding the balance between the various points of view that have been suggested.

The CHAIRMAN: And have it brought back to the committee?

Mr. FULTON: Yes, and have it brought back to the committee. Anyone can suggest amendments to it, or further alteration.

Mr. BATTEN: I would agree to that.

The CHAIRMAN: I think that is unanimously agreed, then?

Agreed.

Mr. FULTON: We will go to work on that whenever the suggestions are made available to us.

The CHAIRMAN: I think the officers of the department should get at it right away. I believe there are five which have been filed and distributed.

Mr. MARTIN (*Essex East*): I think that the minister would want to have some of his officials here, not that he is not capable because I think he is. I think some of us would want to have them here. I do not think they should meet right this afternoon.

Mr. FULTON: No.

The CHAIRMAN: I would suggest that the members who have preambles ready turn them in by the time we adjourn today, let them work on them, and then they will be reported back subject to the right of any member to offer other additions.

Is that agreed?

Agreed.

Mr. FULTON: Might I suggest, Mr. Chairman, in amplification of that, that if any member has a preamble with him he might like to have it placed on the record as being his contribution. Would it be agreeable that they be read out

now so that they will be on the record and after the 6 o'clock adjournment my officials can go through everything that has been produced.

The CHAIRMAN: Would you like to read yours, Mr. Badanai?

Mr. BADANAI: It is very short:

> In recognition that the Canadian people believe in the dignity of man and are composed of many races and religious beliefs, the parliament of Canada hereby declare and re-affirm the people's fundamental liberty to work and to worship his God to the satisfaction of his conscience and Her Majesty, the Queen, with the advice and consent of the Senate and the House of Commons of Canada enact as follows:

The CHAIRMAN: Thank you, Mr. Badanai.

I think it is most commendable that so many members have taken the time to work out a preamble. It is not an easy matter.

Mr. FULTON: So that we may know that we have everything the members wish us to have may I mention the ones of which we have notice. I am not selecting these in any order. They are in the order they have been handed to me: Mr. Aiken, Mr. Dorion, Mr. Drysdale, Mr. Martini, Professor Cohen, the one Mr. Badanai has just read, and Mr. Stewart. Those are all those of which we have notice so far; and Mr. Martin has one.

Mr. WINKLER: I too have one. Would you wish it now?

The CHAIRMAN: It would be just as well to put it in at this point.

Mr. FULTON: So long as Mr. Driedger has it before 6 o'clock.

Mr. WINKLER: Yes. I will make sure it is in by 6 o'clock.

Mr. BATTEN: Could it be put on the record at this point and taken as read?

The CHAIRMAN: Could we agree that Mr. Winkler's suggested preamble be taken now as read and appear in the proceedings of the committee at this point?

Mr. WINKLER: I would appreciate that.

The CHAIRMAN: And that it be delivered to the officials of the Department of Justice.

Mr. WINKLER:

> Canadians being a proud and vigilant people, of many lands, desire the maintenance and preservation, against government, of their spiritual and democratic Institutions, their traditional respect for the rule of law, their love of freedom and cultural ties. Recognising their responsibilities one to another, and internationally through the United Nations charter regarding the sovereignty of the individual in his relationship to the state as the highest aim of Canadian nationhood and of fundamental rights and freedom request Her Majesty by and with the consent of etc.

Mr. MARTIN (*Essex East*): May I ask the minister a question. In respect of the preamble is it essential, for purposes of drafting and acceptance of the draft, that there be a "whereas" clause in it?

Mr. FULTON: I would say it is the customary form, but we are writing a bill of rights and I think whatever we decide as being more appropriate should be the form.

Mr. MARTIN (*Essex East*): I thought it might be a requirement.

Mr. FULTON: I do not think I would care to lay that down as a requirement.

The CHAIRMAN: I think we are getting away from the "whereas" style.

Mr. MARTIN (*Essex East*): So do I, but—

Mr. FULTON: It has an appeal on the basis that it is the traditional form and one that people understand. But I only say it has an appeal and if one can bring one in with more appeal without the whereas we would certainly consider it.

Mr. MARTIN (*Essex East*): I have a suggested preamble here I would like to put in:

> Before God the Canadian people, united for the common pursuit of their well-being, composed of persons of various races and religions from many nations; intent on preserving (the heritages of the past), especially that of the dignity of the individual in his rights and freedoms which have been secured through the institution of parliament and the law, desire to reaffirm their faith in these human rights and fundamental freedoms.
>
> Having joined with other nations and their peoples in the universal declaration of human rights, the people of Canada hereby rededicate themselves to the principles of that charter in their human, social, political, economic and legal terms, particularly those concerning the sanctity and inviolability of the family as the fundamental unit of society, the right of the individual to participate in government and to earn a living for himself and his family.
>
> The Canadian people, therefore, believe that it is meet and proper that, for the better understanding of all, the parliament of Canada declare before man and God, on behalf of the nation, those human rights, fundamental freedoms, and objects of national purpose that are within its competence so to do.
>
> Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, therefore enacts:
>
> *The Canadian bill of rights.*

The CHAIRMAN: Thank you, Mr. Martin.

Does that preamble pre-suppose the elimination of clause 1 of the bill?

Mr. MARTIN (*Essex East*): No. As a matter of fact I was going to suggest that clause 1 be at the end of part I. It would have to be at the end of part I. The reason is to make it as attractive a document as possible. I know the practice is to see it at the beginning, but I thought in this particular situation it would add to the attractiveness by taking out something that is purely procedural.

Mr. STEWART: You would put one as four?

The CHAIRMAN: To keep the discussion in order, I shall now call clause 1. I think this would be the appropriate time to discuss it.

On clause 1—Short title.

Mr. MARTIN (*Essex East*): I would suggest that having in mind what the minister said about the desirability of a short form, that to put almost in the middle of the act the title, the short title, is to put in something which is not of substance; it is more by way of nomenclature, and it seems to me that it would be more fitting in form if it came at the end.

The former practice always was to put it at the end, although the draftsmen always put it at the top.

Mr. FULTON: Well, that could be done, and we would simply renumber 2, 3, and 4, as 1, 2, and 3, and put 1 in as 4.

I agree that the words "this part may be cited as" could be described as pretty dull legal terminology. But when you read the whole, that is, they may be cited as the Canadian bill of rights, they are not really difficult to understand.

I wonder if there is not some desirability to have that at the beginning of the bill of rights, so when you put it on the wall the impression is that this is the Canadian bill of rights, because it appears right at the beginning?

Mr. MARTIN (*Essex East*): In the preamble which I put forward I did that, but my preamble would have to be modified if my suggestion were to be accepted, obviously. But this suggestion came to me after I had drawn the preamble. There is no insistance about this.

Mr. BROWNE (*Vancouver-Kingsway*): Might I suggest that the point be considered in the light of the preamble, and if an acceptable preamble is brought forward, we might consider it, and if the clauses need to be renumbered, it would not change the content of any of the clauses. Either way we might discuss them now, and then if they have to be renumbered, it would be only a minor change.

Mr. MARTIN (*Essex East*): My suggestion would be more effective in the preamble than the way I have proposed it; but if it is not accepted, we might give consideration to putting it this way. I agree with Mr. Browne.

Mr. FULTON: The difficulty or the point of criticism, if I may put it that way, is that if you have your title in the preamble, and say that this is the Canadian bill of rights, then it applies to both parts I and II. But, as I explained before, we did not want to have part II as part of the Canadian bill of rights. That is why we resorted to the device of having a part I and a part II, and having the title in part I, because the preamble is presumably the preamble to a whole statute. It cannot just be a preamble to part of it.

I do not think there is any obstacle from the position of drafting procedure to our putting it in as clause 4, if you like.

Mr. MARTIN (*Essex East*): Will you give it consideration?

Mr. FULTON: Certainly, we will.

The CHAIRMAN: I was just wondering how we can finalize it.

Mr. MARTIN (*Essex East*): Do not finalize clause 1.

The CHAIRMAN: Is it agreeable then to the committee that clause 1 stand over for subsequent consideration?

Agreed.

Then I shall now call clause 2.

On clause 2—Recognition and declaration of rights and freedoms.

Mr. BATTEN: On clause 2, there has been some considerable discussion here concerning the words in the first three lines, lines 5 to 7. A number of us have been concerned about the meaning of the word "always".

You will remember on page 25 of the evidence given by Professor Scott, that he referred to this as a legislative lie, because he contended that these freedoms about which we are talking have not always existed in Canada.

Then again if you will look at page 376, at the evidence given by Professor Cohen, you will see that he referred to it in a similar manner, but he also expressed a different or alternative view.

I, too, would think, Mr. Chairman, that if, the minister has it in mind that the first part of this bill is to be considered a Canadian bill of rights—

Mr. RAPP: What page is that?

Mr. BATTEN: I am referring to clause 2 of the bill of rights. You said what page? It is page 376 of the evidence.

Mr. RAPP: Thank you.

Mr. BATTEN: I would think that is the evidence given by Professor Cohen. If this first part is going to form what is known as the Canadian bill of rights, I hope it would be made available to all Canadians, particularly our

younger people, and that every centre in this country would have a copy of it.

I would think that the historic statements made in the beginning of this bill would be something that nobody would be in a position to criticize. Again, due to the fact that we may have a preamble to this bill, it might be better if we were to change the first three lines altogether, lines 5 to 7.

I would therefore propose, Mr. Chairman, seconded by Mr. Deschatelets, that clause 2 be amended as follows: that lines 5 to 7 inclusive be deleted, and the following substituted therefore:

> These human rights and fundamental freedoms shall continue to exist in Canada.

Mr. FULTON: We have given a lot of thought to this and it was our view that there should be one change made in lines 5 to 7, namely, the deletion of the word "always" in line 6.

In coming to that conclusion I did not get the view of those who say that simply because rights and freedoms might have occasionally been abridged by executive action here, there, or elsewhere, that they would for that reason, cease to exist. In my view, those rights and freedoms have existed in Canada, notwithstanding that they may occasionally have been abridged.

I think one should distinguish, and properly distinguish, between abridgement, improper abridgement, and a continuing existence. Abridgement merely means that somebody arbitrarily has refused to recognize them, or to have given them effect. It does not mean that in the body politic they have ceased to exist.

For that reason I think it is important for us to make it clear that we are not saying that they come into existence only by the enactment of this bill. I am, however, prepared to recognize that they have always existed.

"Always" means uninterrupted, or it could be said to go that far. But I would think we should recognize that they have existed previously, and our view was that the only change which should be made was that the word "always" should be eliminated so it would read:

> It is hereby recognized and declared that in Canada there have existed and shall continue to exist the following human rights and freedoms, . . .

Now, the advantage of that, as the amendment suggested, is that "we recognize and declare" the existence of these rights. After listening to the discussion and to the view that there is advantage in declaring, I agree with Mr. Batten in part that the word "always" should be eliminated, but I do not think the amendment should go as far as he has suggested.

Mr. MARTIN (*Essex East*): Mr. Chairman, may I suggest to the Minister something that I think is important in respect of what Mr. Batten has proposed. This does not in any way take issue with the statement of the minister that this clause has legal effect. The purpose of this is to state that proposition, with which we concur, in a form that will, it seems to us, have greater appeal. The minister, I think, has very happily suggested that he was anxious to see the first part of the preamble arranged so as to place it within the visible perception of those who might be confronted with it, and it seems to me we want to do that in a manner that will be as striking as possible without in any way delineating its legal effect. If you say "it is hereby recognized" and so on—

Mr. FULTON: It says "it is hereby recognized and declared".

Mr. MARTIN (*Essex East*): Yes, "it is hereby recognized and declared" is legal jargon. We have to have legal language, of course, and we have got to state our position in a form that is legally effective. The proposal made by

Mr. Batten does that, but it does it in language that is simple and understandable, and I think which has appeal. The proposal is that it read: "these human rights and fundamental freedoms shall continue to exist in Canada", whereas you say here, "it is hereby recognized and declared". Children will not know what that means, but they will know what it means when you say: "these human rights and fundamental freedoms shall continue to exist in Canada".

Mr. FULTON: I would think it would not take a very great mental age to recognize plain words such as "it is hereby recognized and declared".

Mr. MARTIN (*Essex East*): I suggest you try this on your boy,—and I understand his I.Q. is very high. You might find that he has some apprehension.

Mr. FULTON: Well, you are very complimentary, Mr. Martin, but you put me in an impossible situation because I only have three daughters.

Mr. MARTIN (*Essex East*): Well they have a very bright mother too.

Mr. DESCHATELETS: Mr. Martin had the future in mind.

Mr. FULTON: I would suggest that while simplicity of language is desirable, and we have agreed on that, we should have, not a poetic, but a fairly forceful declaration which is also desirable. I do not want to try to catch anybody out on words, but I do recall the suggestion that the words being used should be in poetic and striking language. I do not think we can do this with poetic language; but I think we might make an effort to reach striking language so long as it does not become complicated and incomprehensible. I do suggest and recognize the view of others, nevertheless it is my view that the form "it is hereby recognized and declared that in Canada there have existed and shall continue to exist the following human rights and fundamental freedoms" is not overly complicated, and somehow has a more ringing sound than the words "these human rights and fundamental freedoms shall continue to exist in Canada". I think that can be criticized on the grounds that they are rather pedestrian.

Mr. BATTEN: Mr. Chairman, if there was not going to be a preamble to this bill, and the bill were to start off just with the words "it is hereby recognized and declared", I think that I would go along with the minister; but I think if you look at these words when following a preamble, then the meaning becomes clear, because they would just be the first words of this bill. If the bill remains as it is now I think there would be meaning to what the minister has said; but in having a preamble which describes what you are doing, then the words as I have suggested on clause 2 would fit in very nicely.

Mr. BROWNE (*Vancouver-Kingsway*): I would just like to say that we do not know what the preamble is going to say, or if we will find one that will be acceptable to everybody. We have not yet come to a decision in this regard. My personal opinion in respect to the form of the wording is favourable to the wording as it is now. I personally like the word "always" as it appears now. I certainly agree with what the minister has said in connection with the word "always", and that because some of these rights were abridged from time to time does not mean that they ceased to exist altogether. I believe that the word "always" does not have accuracy looking at it from that point of view.

Mr. MARTIN (*Essex East*): It is not historically accurate.

Mr. BROWNE (*Vancouver-Kingsway*): I do not agree that it is not historically accurate.

Mr. MARTIN (*Essex East*): You look up some of the cases, and see.

Mr. STEWART: Does this amendment not limit, or have a tendency to limit the extent of clause 2?

Mr. MARTIN (*Essex East*): In what way, Mr. Stewart?

Mr. STEWART: To say that these human rights and fundamental freedoms shall continue,—would that mean that those are the only ones, as they are set out?

Mr. MARTIN (*Essex East*): Those are the only ones that have been set out. We are just dealing with the words that appear here:

> It is hereby recognized and declared that in Canada there have always existed and shall continue to exist the following human rights and fundamental freedoms, namely,—the right of the individual to life, liberty, security of the person, and enjoyment of property,—

Just the same as it is there now.

Mr. STEWART: But when you make a positive declaration that these human rights and fundamental freedoms shall continue to exist—I know you have a saving factor in clause 5—in my opinion it does limit it to some extent, but does not limit it to the extent which your suggested amendment would.

Mr. FULTON: I think to have a limitation here is something to which one might object with equal if not greater force. Whilst it is true that we are contemplating a preamble,—and I make no argument about the possibility of not having one,—I still say that your amendment takes no account of the past, and gives no recognition to it. That, I suggest is a limitation which is even more objectionable than the limitation along the lines Mr. Stewart has suggested. The statute as drafted does at least look to our past, and does give it that added statement that in the past we had these human rights and fundamental freedoms, and we shall continue to have them.

The CHAIRMAN: Are there any further statements, gentlemen?

Mr. BROWNE (*Vancouver-Kingsway*): Put the question.

The CHAIRMAN: Do you wish me to read the amendment?

Mr. STEWART: I have it here.

The CHAIRMAN: The question is on the amendment: moved by Mr. Batten and seconded by Mr. Deschatelets, that clause 2 be amended as follows: that lines 5 to 7 inclusive be deleted and the following substituted therefor: these human rights and fundamental freedoms shall continue to exist in Canada.

All those in favour of the motion? Those opposed?

I declare the motion lost, 4 to 6.

Mr. FULTON: Mr. Chairman, I have indicated that the government would be prepared, in the light of the discussions which have taken place in this committee, and in view of the fact that we have endeavoured to get the nearest common expression of the committee that we could, to strike out the word "always". I have no strong views on it, for the reasons that I have indicated here. I have no views as to whether it should be struck out and replaced by something else, such as "heretofore" or "hitherto", or merely struck out and left out. Therefore, I do not want to influence the committee in that regard. But if there is a motion to delete it, I should indicate to you now that it is quite acceptable to the government.

Mr. AIKEN: Mr. Chairman, I originally suggested that the word "heretofore" be substituted. On consideration, I think probably the word suggested by the minister, or someone in the committee, "hitherto", might be grammatically more correct.

I would move that the word "always" in the second line be—

Mr. FULTON: It is line 6.

Mr. AIKEN:—in line 6 on the first page of the bill, be deleted, and the word "hitherto" be substituted.

The CHAIRMAN: May I make a suggestion, that this matter be dealt with as two motions—because I am inclined to think that we may have unanimity on the elimination of the word "always."

Mr. MARTIN (*Essex East*): Yes.

The CHAIRMAN: And then you may make a second motion, to add the word "hitherto", and we may deal with that as a separate motion. Would that be agreeable to you, Mr. Aiken.

Mr. AIKEN: Yes, Mr. Chairman, if I can find a seconder to the motion.

Mr. STEWART: I second it.

The CHAIRMAN: As I understand it, you are moving, Mr. Aiken, that the word "always" be struck out in line 6?

Mr. AIKEN: Yes.

The CHAIRMAN: And that motion is seconded by Mr. Stewart. Is there any discussion on this point gentlemen? All in favour? Contrary? The vote was eight in favour, and one opposed.

Motion agreed to.

Mr. DESCHATELETS: Is there any other motion in relation to this clause, Mr. Chairman?

Mr. MARTIN (*Essex East*): Lines 5, 6 and 7.

The CHAIRMAN: We have only dealt with lines 5, 6 and 7. I will entertain another motion, as I persuaded Mr. Aiken to revise his motion to the simple elimination of the word "always".

Mr. AIKEN: Mr. Chairman, I think the elimination of the word "always" would meet the situation, perhaps, and I would not choose to make a second motion.

The CHAIRMAN: Very well.

Mr. DESCHATELETS: On clause 2, Mr. Chairman, many witnesses have taken strong objection, in clause 2(*a*), to the term "by due process of law."

I refer you to page 26 of the minutes of proceedings and evidence, to a statement by Professor Scott, who had this to say:

> I think the last thing I referred to was the phrase "due process of law" in clause 2, paragraph (*a*), and I pointed out it would have more than one meaning. Since the protection of the declaration of property is a matter mostly decided, although not exclusively, by provincial law, and since we know, under the Canadian constitution, that a person can be deprived by a province of his property in any manner the province decides to adopt, including outright confiscation, it would seem to me that the phrase "due process of law" there can only mean "according to law";—

And I refer you also, Mr. Chairman, to page 110 of the evidence, where the representative of the Canadian bar association had this to say:

> Section 2(*a*) of the bill includes a "due process of law" clause which has created uncertainty.

Many other witnesses, Mr. Chairman, also took exception to this phrase. I think that it could be easily improved by a new term, and it is with this intention that I move, seconded by Mr. Paul Martin, that paragraph (*a*) of clause 2 be amended as follows: that the words "by due process of law" be deleted from lines 10 and 11, and the words "in accordance with law" be substituted therefor.

Mr. FULTON: Mr. Chairman, we have considered this very carefully, especially in the light of the evidence given by Professor Scott—and I think one or two others; but I think it was he who made the main attack upon the words "due process of law."

They were also considered very carefully in the course of the drafting and reconsideration of the bill between 1958 and now. It did occur to us that it might be suggested that we use the words "by law" or "in accordance with law," as Mr. Deschatelets has now moved.

I think that the words "by law" or "in accordance with law" would have much the same effect in this case.

The CHAIRMAN: Or even "according to law," as has been suggested?

Mr. FULTON: Or even "according to law." But we felt it was desirable to import the words "due process" here, for what we considered to be a valid reason; that is, that if you say "except in accordance with law" or "except by law", or any of those phrases, it is surely open to suggestion that all that is necessary is for parliament to enact another law, and away goes your protection, because if parliament did enact such another law, then the deprivation of the rights would be by law. Or if parliament enacted a law giving an administrative officer the right to take away somebody's rights, that deprivation would be by law.

But the words "due process" have, we think, inescapably a different connotation. It is true that we cannot say that our courts would follow all the American jurisprudence; but our courts could not fail to take account of the fact that these words are in the American constitution, that they have been given judicial interpretation; and I state as a reasonable certainty that our courts, in considering how they should interpret the words "due process of law" would look to see how the Americans had interpreted them, and by what process of reasoning and judicial deduction they had come to give them their present application.

Our courts might not accept the full implication of that reasoning, but they would be guided by it. It is important, therefore, we think, to have these words in our statute, because of what the American courts have developed as an interpretation out of the "due process of law" clause.

I put some of this on the record before, as part of a paper which we had prepared when we were considering this matter in my department. "The authorities indicate that the "due process" clause in the United States constitution is intended to perpetuate old and well-established principles of right and justice, and judicial interpretation of the expression has gone far beyond the literal meaning of "due procedure", and has given it a more expanded meaning.

In applying the "due process" clause to substantive rights, the courts in the United States have interpreted the provision to mean that the government is without right to deprive a person of life, liberty or property by an act that has no reasonable relation to any proper governmental purpose, or which is so far beyond the necessity of the case as to be an arbitrary excercise of governmental power. The "due process" clause is intended to protect against arbitrariness." I cannot think of a better expression to import into our bill of rights, having in mind that one of its fundamental purposes is to protect the citizen against arbitrary excercise or interpretation of powers by administrative officers or members of the government themselves, and it was for that specific reason we came to the conclusion it is better to say "by due process of law" here than any of the other phrases that have been suggested.

Mr. DESCHATELETS: May I say that I have just read over the commencement of Professor Cohen's statement on this phrase, and he pointed out that, as far as we are concerned in Canada, we have not used these terms very often in our system of law. Since we are dealing here with the very important matter of the bill of rights, I wonder if it is a good thing to open the door to some uncertainties which were pointed out by Professor Scott. This is the intent of the amendment which I have presented—to avoid any uncertainties, in trying

to replace the words with "in accordance with law", which we use very often, instead of "due process of law".

The CHAIRMAN: Are you referring to Professor Scott or to Professor Cohen?

Mr. DESCHATELETS: Well, Professor Cohen has no particular objection to these words, but he outlined we are not using very often in our Canadian system of law, this phrase. Then I referred back to Professor Scott, who states definitely that, in his opinion, this phrase opens the door to uncertainties. That is the argument.

Mr. STEWART: I take it, Mr. Chairman—and according to the minister—that the "due process" clause, as interpreted in the United States, is broader than appears in the old statute of Edward—the law of the land. Is that right?

Mr. FULTON: I think it is a little broader, yes.

Mr. STEWART: It deals with procedure.

Mr. FULTON: It embraces procedure as well as substance—procedural law as well as substantive law, yes.

The CHAIRMAN: I think that is the point Professor Cohen made.

Mr. STEWART: Yes.

The CHAIRMAN: Would you like to comment on this, Mr. Martin?

Mr. MARTIN (*Essex East*): Well, I have listened to what the minister said, and I must say he has put forward an argument on this subject which I have heard for the first time. It may have been put forward before and missed my attention, or perhaps I was not here. However, I do not think it is a valid point. He says that if you were to put in "in accordance with law", "according to law" or "by law" you would run the risk of some subsequent act by the legislature which might abridge or reduce in some way the enjoyment of this right. All I can say is that I cannot conceive that parliament would resort to this method of abridging a right here guaranteed; but, if it does, parliament has supreme and sovereign power—and even then I think that it would be open to an interpretation other than the one the minister has made.

Mr. Deschatelets, who has proposed this amendment, has as his witnesses Professor Scott and Professor Cohen, and to that should be added, of course, Mr. Mundell, who last Saturday spent some very considerable time on this. Mr. Mundell is a man who has not only academic and professional experience, but has had great administrative experience as a colleague of Mr. Driedger and his colleagues in the Department of Justice—and a rather distinguished service. Mr. Mundell was rather insistent that the use of "due process" here was open to much uncertainty because we would rely, apart from the statute of Edward II, largely on American decisions.

Now, although I have not read these American decisions recently—and at one time I knew them pretty well—they (a), as Mr. Deschatelets reminds you, are not binding—although I recognize at once they have a persuasive effect and our courts are entitled to look at those decisions in the absence of decisions of our own courts—certainly courts of at least coordinating jurisdiction. Now, the decisions in the United States are not uniform. "Due process" in the United States means a number of things,—I was going to say "many things",—but it means a number of things.

I tried to put my finger on an article I remember seeing in the *Canadian Bar Review* on this subject a number of years ago, and I remember quite well the distinction being made between "due process" as interpreted by the supreme courts in the state of Michigan and the state of New York, involving a decision of Mr. Justice Cordoza. The only case that I know of in the Supreme Court of Canada, where "due process" is referred to *in extenso* is a case involving the interpretation of, I think, section 66 of the Bankruptcy Act. I forget the

case, but it is about 15 years ago, and it was referred to in the *Canadian Bar Review*. I will try to get it in order to show it to the minister afterwards. In that article there is a very careful review of these differences of "due process", as understood in the United States, and there are some cases in Canada in which the judges have specifically said they do not refer to the concept of "due process" because of these variations in meaning. And I think it was former Chief Justice Rinfret who said that on that account he would prefer to say "in accordance with law", and the phrase "in accordance with law" comes from his own language.

Now, the minister has acknowledged all this. He has acknowledged these different shadings of meaning, and our courts will not be called upon to begin from the beginning a whole jurisprudence in Canada as to what we mean by "due process". There cannot be any such difficulty if we use the phrase "in accordance with law" or "by law".

There is another difficulty upon which you have not touched, and that is the point made by Bora Laskin, in his article, and particularly by Mr. Mundell last Saturday, that "due process" not only means different things in law, but also in the political science concept.

Do we mean here "due process according to law" or do we mean "due process according to natural justice" which is quite a different thing? And, when you take into account human rights, the determination of these rights often will be as vitally affected by consideration of natural justice as they will be by consideration of "due process according to law".

The Canadian bar association has submitted its views on the subject, and I think that they ought to be given careful note. While I do not recall whether Mr. McInnes mentioned it, there was a division in the bar association on the use of this phrase.

To put my argument in its strongest, minimum form, I would say a substantial number of the members of the Canadian bar—and they are, after all, the ones who are going to assist the courts in the interpretation of the statute—would prefer "according to law", about which there can be no doubt on the meaning whatsoever.

I do not know there is any more I can usefully add in support of Mr. Deschatelets' motion, and I do urge the Minister of Justice to accept it.

Mr. FULTON: May I reply, in part, to what is being said? I think I should make it clear that I take an entirely different view of what Professor Cohen said from the interpretation placed on it by Mr. Martin. I shall be referring the committee to relevant passages of Professor Cohen's evidence.

Mr. MARTIN (*Essex East*): I did not refer to Professor Cohen.

Mr. FULTON: Mr. Deschatelets, I am sorry.

To go back for a moment to the fundamental difficulty I see in confining ourselves to the expression "due process of law," or "by law", or "in accordance with law". It seems to me that if you said that a person has the right not to be deprived thereof, except in accordance with the law, it would be argued before the courts, in justification of any action arbitrarily or otherwise depriving somebody of his rights, that all the courts should look at is, "Is there a law which might be said to authorize what was done?" Because it says he may be deprived, it would be said that he may be deprived of it if you have a law which seems to indicate he may be deprived of it. We think the courts would then be urged to look only at the question of whether there was a law somewhere upon which this could be based. And if there was that law the courts should be satisfied and should not look at the question of whether the power of the administrator was exercised arbitrarily or not; because they have not been directed to look at the question of whether it was done by due process of alw, or whether it was done by law, or in accordance with the law.

So we think that the protection given by "due process of law" is wider than the protection given by the words "by law" or "in accord with law".

Mr. Martin pointed out that Professor Laskin—and I dare say others—have raised the question of what due process of law means. They have asked: does it mean, due process according to law or according to natural justice? It seems to me, with respect, that to ask this question is simply the same as to ask, "What do you mean by law?" Do you mean written law, or natural justice? There is no difference between the two questions. If you are going to have conflict or difficulty on the part of the courts in interpreting what "law" means, then they will have difficulty interpreting what "due process of law" means. The existence of the particular question, as framed, is not going to complicate the task of the courts, because they have always to interpret what the law means.

May I refer to the evidence of Professor Cohen, which was very interesting on this point, and upon which I questioned him.

I questioned him particularly on his views as to what would be the attitude of our Canadian courts, as to whether they would look at the American experience or not. I think I should read the record at some length.

Professor Cohen said at page 377:

> I wish to point out there are two implications from American experience to the phrase "due process of law", because the words "due process of law" have both a substantive implication and a procedural implication.

That is exactly the same view as expressed in the paper prepared by my department, from which I have read.

He went on:

> That is, when you say you cannot deprive someone of his life, liberty or property, except by due process of law, you mean there must be a rule of law of deprivation, or you must mean that the process by which he is deprived must itself fit some decent standard; he must have a hearing, a proper hearing, proper notice given to him. Therefore, that phrase is both substantive in implication, and procedural in implication. The Americans have done a great deal of work in this field. They are the experts here. There is an immense body of case law, and a large amount of literature on "due process of law", because of the fifth and fourteenth amendments.

I want to read the whole of it, and realize this sentence is going to be seized upon by those who take the opposite point of view; but I think, when read in context, with his later answers, that it is capable of interpretation in accord with my view.

He went on to say:

> I do not care if you leave it in, or use the words "according to the laws of the land", or any other phrase that has the same significance.
>
> Clause (*b*) deals with the problem of discrimination, and a quick reading of that clause may think you have got—

Then I questioned him:

> Before you leave clause (*a*) may I ask you a question: is it your view, or would you give us an opinion on whether the courts in Canada, when they come to interpret this due process clause and apply it to issues which may be before them, will be tempted to take as illustrative and guide rules the jurisprudence as worked out in the United States?

To which Professor Cohen replied:

> That is a very interesting question which I am glad you have raised.

He referred briefly to the difference in degree of authority given to American decisions, as between the Privy Council, on the one hand, and Canadian authorities on the other. Having compared the two, he went on:

> But whether or not the Supreme Court of Canada would be as narrow, I would doubt it—

By "narrow" he means, as narrow as the Privy Council indicated it would be in giving effect to Supreme Court decisions.

> I think we are living in a far more flexible generation now; and I think that the Supreme Court shows a scope, a breadth of view which would make it interested in what the similar language has resulted in in the United States; and we probably might find something in the nature of a penetration into our system of their constitutional laws and ideas.
>
> If you ask me whether this would be good or bad for our public law and our system, I would say that the story of the due process in the United States is one which suggests great benefit in the protection of the individual.

He did point out there had been a development in the interpretation of the United States and, in the initial stages, after the enactment of the amendment, it had received a rather narrow interpretation. But he ended up by saying:

> But I do not think that—
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> —a narrow interpretation—
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> —will apply here. It is in a quite different historical context.
>
> So my net answer then is that probably our courts would look at it, and if they took a look at the recent doctrine, it would do us no harm to be aware of it.

Well, I suppose one might say you can take your choice of authorities. I do not intend to imply that because here is one authority in my favour, he is necessarily the final word on the matter; but I do think it is interesting that certainly this expert in the field has expressed himself unequivocally. When you analyse his evidence, the effect of it would appear to be that no harm and great good will probably come from the American doctrine of "due process of law". It is an expression wider in scope and coverage, in the American field, than it might well be by using the words from our own or English tradition.

That is why, in this case, we have felt it appropriate for the purpose of our bill of rights—in seeking to protect citizens against the arbitrary exercise of administrative authority—to support these words.

Mr. MARTIN (*Essex East*): I think what Professor Cohen said is to give us a sort of umbrella explanation of the situation. I submit that our courts undoubtedly will have to look at the American decisions. There is no other jurisprudence for them to look at. They do it continually on other matters. But we have sought in this country to develop our jurisprudence primarily on the basis of our own decisions and on decisions of Her Majesty's courts in the United Kingdom and the Commonwealth. We have been able to preserve, particularly in Great Britain, a measure of liberty, in standards of liberty and protection of human rights, that has not been exceeded in the United States

or in any other country. I cannot believe at this stage that we will not be putting into the hands of the Supreme Court of Canada, in particular, an instrument that for some time perhaps unintentionally will cause some abuse,—as indeed Professor Cohen mentioned happened when the "due process" clause was introduced in the United States.

Mr. FULTON: He said that in his view some of our judges now tended to be—and I think he applied this mostly to the lower courts—too executive-minded. He did here modify the apparent part of his criticism by saying that a judge does have to bear in mind the problems of administrative convenience; but he said he thought he could establish in many areas a danger that judges would be too executive-minded. If his fears be well grounded I think it might not hurt at all to direct the attention of our courts to the full implication of "due process of law". I am certain our courts will not be incapable of giving it a proper Canadian interpretation. They will not take the American jurisprudence holus-bolus and apply it in areas and under circumstances where it is obviously of their own application, but they will look at the American jurisprudence to see under what circumstances or reasoning it was applied, and I am sure they will give it a Canadian application.

Mr. DESCHATELETS: In order to complete Professor Cohen's statement may I read one more sentence at page 378 where he says:

> But shortly after its passage in 1870 or 1871, when the fourteenth amendment was passed, it was abused, and the fifth amendment when it was passed, was abused, in that they left it to be used to protect, to a very large extent, the rising corporate structure in the United States from the effects of such federal and state regulatory measures. But I do not think that will apply here. It is in a quite different historical context.

Mr. FULTON: May I remind you that I summarized the earliest part of that paragraph and read the last sentence. I was not at all selective in what I took from Professor Cohen's evidence.

Mr. WINKLER: Notwithstanding this, and the jurisprudence which exists in the United States, surely it will be judged in Canada as having been set up for the Canadian citizen, and will be used for the highest degree of decency in dealing with Canadian problems.

Mr. MARTIN (*Essex East*): Do you not think that our courts will be the same if we use the phrase "according to law".

Mr. FULTON: Is it not a fact that the American courts in their earlier interpretation of the "due process" phrase actually did interpret it to mean simply "in accordance with law", and that all you have to show is that there is a law somewhere which authorizes this, and then there is no power of review. It was not until they came to the more general interpretation that they extended the "due process" clause to mean, in effect, prosecution for arbitrariness, and that it gives the courts the right to review decisions, even though properly authorized by law, to make sure there was nothing arbitrary and unfair about them. So now the "due process" clause has a wider meaning. It is that wider meaning of the phrase "in accordance with law" that we want to import into our bill of rights.

Mr. BROWNE (*Vancouver-Kingsway*): May I bring to the attention of the committee a statement by John H. Ferguson, professor of political science at Pennsylvania State college and Dean E. McHenry, professor of political science of the university of California, Los Angeles, on page 152 of a book The

American Federal Government, under the heading Due Process of Law. It states as follows:

> The fifth amendment forbids Congress to deprive any person of "life, liberty, or property, without due process of law," and the fourteenth amendment imposes the same limitation upon the states. This is one of the most important, as well as controversial, of all guaranties. The protection extends both to natural persons, i.e., ordinary human beings, and to artificial persons such as corporations.
>
> Procedural due Process. Procedural due process means that in dealing with people governments must proceed according to "settled usages and modes of procedure." The standards are fairly definite. The constitution specifically mentions certain steps that must not be omitted, and others have crystallized from experience dating back to the days of Magna Charta. Among other things, proper procedure requires that (1) government, or subordinate agency, have jurisdiction over the person or object with which it seeks to interfere; (2) the legislation or order be properly enacted or prepared and published; (3) crimes must be clearly defined; (4) those accused must be properly apprehended and notified of the nature of the accusation and the time and place of the hearing; (5) opportunity must be given for the accused to prepare and present his defence; and (6) the tribunal before which the trial or hearing is to be conducted must be so constituted as to ensure an honest and impartial decision.

Mr. FULTON: Those are not bad things to have in a bill of rights.

Mr. BROWNE (*Vancouver-Kingsway*): It seemed to me to discuss that phrase "due process of law" and to offer some very adequate protection.

Mr. DESCHATELETS: I understand Mr. Browne has just cited from American jurisprudence. Is that right?

Mr. BROWNE (*Vancouver-Kingsway*): Two professors of political science in universities in the United States.

Mr. DESCHATELETS: I do not dispute anything said there, but the main objection we have is that this phrase "due process of law" is unusual in our Canadian system of law, and we think it will open the door to different interpretations. This is the basis of our motion and our objection to these terms. That is why we would like to close all possible doors on any interpretation and would like to have a bill of rights as solid juridically as it is possible to have it.

Mr. FULTON: Mr. Deschatelets, may I suggest to you again that it is precisely in that frame of mind that we approached the problem of drafting in this particular context and decided to recommend the use of the phrase "due process of law", because it seemed to me that if you are talking about what phrase may be least open to doubt, the doubt lies with the phrase "in accordance with law", rather than with the phrase "by due process of law". The expression "due process of law" has received a broader interpretation and development in the United States, to which our courts may look for guidance although not accepting as absolute authority; whereas there is very little guidance in respect of the bare phrase "in accordance with law". I think the question would be asked: does "in accordance with law" mean "due process of law", or does it mean, if we use the phrase "due process of law", that we have the guidance which it has received elsewhere.

The CHAIRMAN: It seems to me that the addition of the word "process" connotes procedure. I think that these rights should not be denied unless the proper procedure has been taken, such as the giving of notice and all of the

things which are involved procedurally. I am inclined to think that "due process" has a broader meaning. That means, of course, that these rights will not be readily denied to an accused person.

Mr. MARTIN (*Essex East*): All I can say is that that is your interpretation as an Anglo or common law lawyer, and I understand it. But unfortunately the history of the adjudication of due process has not been that.

The English judges, who have a long history behind them, and a pretty solid one, have preferred not to use that phrase, but to rely upon the strength of the law which connotes both procedural protections as well as substantitive ones.

I do not know if any more can be said. I hope the minister will recognize the validity of some of our amendments.

Mr. RAPP: Question?

Mr. FULTON: We have agreed to accept the principle of a preamble.

Mr. MARTIN (*Essex East*): Very good.

The CHAIRMAN: Of course, it is not a phrase which has just been used in American statutes. It has origin in English statutes. Coke's Institutes were published in 1603, which is a long way back.

Mr. STEWART: Question?

The CHAIRMAN: Are you ready for the question, gentlemen? The question is on an amendment moved by Mr. Deschatelets and seconded by Mr. Martin, that the words "by due process of law" be deleted from lines 10 and 11, and that the words "in accordance with law" be substituted therefor. All those in favour of this amendment?

The CLERK OF THE COMMITTEE: Four.

The CHAIRMAN: Contrary?

The CLERK OF THE COMMITTEE: Nine.

The CHAIRMAN: I declare the motion lost.

Mr. MARTIN (*Essex East*): The law has been made by long and tiresome effort.

The CHAIRMAN: Now we are on clause 2 subclause (*b*).

Mr. MARTIN (*Essex East*): I have a suggestion here. I am not satisfied with the phrase "protection of the law", and I am reinforced in my argument now by a statement of the minister in answer to the amendment moved by Mr. Deschatelets in respect to the previous subclause.

The minister objected and said that they had carefully considered "due process" in relation to the suggested phrase "by law", and he thought that in the future it would be possible for parliament to abridge this by enacting a new law, which would be contrary to the strength involved in the phrase "due process".

For that and for other reasons, I move, seconded by Mr. Deschatelets, that subclause (*b*) of clause 2 be amended and that the following words be added after the word "law" in line 12:

> To life, liberty, security of person, and enjoyment of property

So that the whole would read:

> The right of the individual to protection of the law to life, liberty, security of person, and enjoyment of property.

The amendment as drawn now is simply an anti-discrimination clause in which there is no proposed protection.

We, by this particular amendment, would strengthen what is intended, and not only should the right of the individual to protection of the law be

accorded without discrimination, but it would be done, because of these additional words, in a manner which strengthens the situation.

The other day I mentioned some cases which have existed; one which has existed in my own community, of a negro citizen, a respected negro citizen—who had not been able to obtain a C.M.H.C. loan from a lending institution, because of his colour.

As the Minister of Public Works acknowledged, there were six such cases in Canada within the last while.

That is the situation which none of us would want to see developed. And while the Minister of Public Works did say that there was a clause put in the authorization and guarantee of loans by the federal government, this would strengthen it very considerably.

I think these words do add very great substance to the amendment, and I propose them.

Mr. Deschatelets said that when I read the entire clause 1 did not read "without discrimination". So, in order that there will be no misunderstanding, the clause as amended should read, and I repeat:

> The right of the individual to protection of the law to life, liberty, security of person, and enjoyment of property without discrimination by reason of race, national origin, colour, religion or sex.

Thank you.

Mr. FULTON: You pose a difficult problem here, because I recognize that a person taking a position against this amendment may well be said to be opposed to an anti-discrimination clause, or to an anti-discriminatory addition to a clause.

However, in taking a position against your amendment I have several grounds, on which to rely. I rely first upon the ground that we already have put an anti-discriminatory provision in the bill of rights. So I am seeking to establish the basis of objection or criticism. If we did not have an anti-discriminatory provision in our bill of rights, we would be open to the attack that we were opposed to non-discrimination. But we do have one.

Therefore I oppose what I consider to be an improper extension of it, because it is an improper extension on a number of grounds: first of all, I say that it points us directly towards matters which are within provincial jurisdiction, and that I think it would be very doubtful, lest in its inclusion it would operate beyond the purview of federal jurisdiction, by drawing it into the realm of the infringement of provincial rights. I say this with due recognition of the fact that Mr. Deschatelets is the seconder of that motion. Nevertheless, I hold that view.

I would oppose it on another ground; namely, that its effect is to confer rights again, and to confer them in such a sense that a person could not be deprived of them even by due process of law, or even in accordance with the law. In other words, you could not put a person in jail, even after a proper trial, if your amendment stood by itself, because the clause as amended would read as follows, if your amendment were accepted: "the right of the individual to protection of the law; the right to life, liberty, security of the person and enjoyment of property without discrimination by reason of race, national origin, colour, religion or sex."

So, you have in effect reconferred this. You are reenacting subclause (*a*) with respect to the conferring or declaration of the rights, but you have not reenacted that portion of subclause (*a*) which says he has the right not to be deprived thereof except by due process of law. Therefore, without that clarification, having reenacted it and reconferred it, would go so far, in my view, that you could not even put a person in jail after a proper trial. I think that is the fatal criticism of the amendment.

Frankly, I must direct your attention to the American bill of rights, where the anti-discriminatory feature is based on the principle that it is the protection of the law that we are concerned with when we speak of non-discrimination. I have urged this point before,—that this is the proper basis on which to approach a bill of rights. The first thing you do is to define the right and say that it is attached to all individuals, and they have the right not to be deprived thereof except by due process of law. Having established the rights in that way, you then give these individuals the power to protect their rights by saying that they shall be entitled to equal protection of the law, without discrimination by reason of race, colour, religion, national origin, or sex; and that, I am convinced, is as far as you can go,—and certainly as far as you should go in a federal bill of rights.

The two provisions in the American bill of rights in respect of the non-discriminatory feature are articles 5 and 14. Article 5 refers to federal law. Perhaps I had better read the whole of it so that I will not be accused of being selective.

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Those last words are almost equivalent to our subclause (*a*).

Now, when you come to the further extension of the anti-discriminatory feature, in the United States bill of rights, you come to article 14. I will not read the whole of it, but section 1,—and this provision is the operative provision in this respect,—is as follows:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

So that you see in those two provisions you have the equivalent of our (*a*) and (*b*) in so far, in our case, as they are within federal competence. We do not attempt to legislate with regard to provincial powers, but we say that the great right here in the field of non-discrimination, just as they have said in the United States, is the right to the protection of the law without discrimination by reason of race, national origin, colour, religion or sex.

So, on the basis of the precedent of the American bill of rights, which does have the authority to intrude into provincial legislation, which we do not have, even with that authority, we think it is based on the protection of the individual, and the right of the individual to the protection of the law without discrimination.

We have done just that, so I regret that I am not able to accept your amendment.

Mr. MARTIN (*Essex East*): May I seek, in reply, to try to convince you that there is merit in this. I accept what you say about (*a*). (*b*) is another subclause altogether. (*b*) is different from (*a*). (*b*) is the anti-discrimination clause. The principle of anti-discrimination is not dealt with in (*a*) at all. If there is objection, as you say, to the inclusion in the amendment of the phrase "enjoyment of property" on the ground that that is an invasion in respect

of section 92 of the British North America Act, I would remind you that the same argument applies equally to the words "enjoyment of property" in (*a*). We have already, I am assuming, safeguarded that position, in so far as (*b*) and (*a*) are concerned, by our willingness, either in the preamble or in a sub-clause of clause 2—I prefer the preamble—to clearly establish that what we are dealing with in clause 2, or in the act, are matters that clearly only come within the competence of the federal parliament. That takes care, I should think, of any suggestion that we are here invading provincial powers.

You mentioned Mr. Deschatelets in this connection, and I appreciate that there would be special reason for doing so; but I think that we are all anxious not to invade powers that are not within our competence in any way, and I believe what I have just said amply deals with that particular objection.

You said further, that if you were to accept the amendment, which I still hope you will, that we would find ourselves in a position where an individual who had committed a crime could not properly be punished; could not be incarcerated, which was your suggestion. I do not think that can stand, because the right of the individual will be governed by the law, and will have the protection of the law. If the law says that an idividual who has committed a crime should be incarcerated for a stated period, that would still be possible, because the right of that individual to life, liberty, security of the person and enjoyment of property without discrimination by reason of race, national origin, colour, religion or sex, is governed by what the law is. By the phrase "protection of the law" he is not only given protection, according to the law, but he will be dealt with, in any matter involving the violation of the law, according to the law. He cannot get any more protection than the law will afford him. If the law does not give him any protection in respect of his having committed a crime, he will not be able to get it. That, I think, should carefully dispose of the third argument that you made.

Then it seemed to me that, if you were at all justified in the arguments that you adduced in connection with (*a*), not accepting the amendment "in accordance with law" because of some possible future act by parliament, then by the use of the same argument you ought to accept this amendment, because the phrase "protection of the law" is capable of amendment in the future, just as well as the phrase "in accordance with law" in (*a*) is capable of amendment.

The amendment does this, it seems to me: not only does it give the right to the individual of protection of the law, but it says that that protection is not only with regard to discrimination on the grounds of race, national origin, colour, religion or sex; but it is tied in with that person's life; it is tied in with that person's freedom; it is tied in with that person's security and with the enjoyment of property, within the competence of parliament.

I cannot see, for the life of me, why that does not strengthen the clause, why it does not strengthen the position of the individual. It does not in any way interfere with the exigencies of the administration of justice, and it makes this clause much stronger as an anti-discrimination clause.

What you have said about the American bill of rights does not really touch the point one way or the other, I do not think. The fact that they have not dealt with it in this way does not mean this is not the way in which it should be dealt with. This is a further strengthening of the situation, and it is an amendment that is afforded, not for the purpose of just putting forward an amendment, but it is based upon consultation with people who have had very, very considerable experience in the administration of your own department. I am not referring to existing officers, naturally.

We feel very strongly that the anti-discrimination clause will be very considerably strengthened and that it will meet occurring situations, because

this is the clause about which there is more complaint than any other. There are more violations of human rights because of discrimination than anything else.

Mr. Deschatelets mentioned yesterday the reluctance to allow a witness to testify in her own language. I have mentioned the cases of the negroes who have been discriminated against. You are not going to remove those discriminations by the clause as it now stands, because the law now does not afford the anti-discrimination that will be afforded by this amendment. There is no existing law that says that a man cannot be denied a C.M.H.C. loan because of colour. This clause now, as amended, will prevent that: It will make it obligatory on the federal authority to take steps—although I acknowledge that those steps were being taken—to protect that individual.

But some such situation will arise again. If you read the discussion as reported in the *New York Times* yesterday morning on the civil rights debate in the United States, you will have seen where one of the senators from the mid-west was arguing against the abridgement of civil rights in the United States, and he pointed out the necessity, not only of anti-discrimination measures, but a measure in regard to—and he uses the very phrase—enjoyment of property.

I hope that you will see the force of this amendment, because I think it is one of the most important ones that we could put forward.

Mr. AIKEN: Mr. Chairman, I wonder if we could have this amendment? I, for one, am not sure exactly what it is.

The CHAIRMAN: Mr. Aiken, it is simply to add, in line 12, after the word "law", these words—and you can perhaps write them in:

—and to life, liberty, security of the person and enjoyment of property—

Mr. AIKEN: Thank you.

The CHAIRMAN: Nothing is struck out; it is just an addition to the clause.

Mr. MARTIN (*Essex East*): Yes.

Mr. FULTON: Mr. Martin, I have been considering what you have said, and reconsidering what I said. I recognize the force of your feelings, the depth of your feelings, and your desire to see this added. But I am afraid that nothing you have said convinces me that you have not gone much further than you realized you were going in your amendment, and it would have an effect that I am sure you would not want it to have, if you realized its implications.

I am not going to repeat my argument about the possible invasion of provincial rights.

Mr. DESCHATELETS: This is not possible.

Mr. FULTON: I am not going to repeat that. For the sake of this discussion, you may be right when you say that if enjoyment of property in (*a*) is safe, on the grounds we have discussed, then enjoyment of property in (*b*) would be safe.

For the purpose of this discussion I will accept that argument, because I do not want the additional arguments to be cluttered up by misunderstandings between us. My main objection to your amendment is that it would have the effect, by the change it would make in paragraph (*b*), of re-enacting all the rights that were conferred or declared to exist and attach to the individual by paragraph (*a*).

But the great difference, and to me the fatal difference, is that whereas those rights specified in paragraph (*a*) were specified with the limitation that they are not absolute, in that they can be removed by due process of law, there is no such limitation in paragraph (*b*), and you have therefore re-enacted paragraph (*a*) without the limitation of the "due process" clause.

Therefore, you will have conferred all these rights in such a way that, as I have said, even a person convicted of a crime could not properly be incarcerated. Let me read the section as it would be if your amendment carried.

It would read—and I will read it in context with the opening words of clause 2:

> It is hereby recognized and declared that in Canada there have always existed and shall continue to exist the following human rights and fundamental freedoms, namely,
>
> the right of the individual to protection of the law, and to life, liberty, security of the person and enjoyment of property without discrimination by reason of race, national origin, colour, religion or sex.

So that you have re-enacted every right that was enacted in paragraph (*a*); but you have left out the limitation that says that he enjoys these rights only subject to the liability to have them taken away from him by due process of law.

It is for that reason I am convinced that the American bill of rights, in the sections which I read to you, adopted the very approach, when it came to the question of non-discrimination before the law, that we have adopted in our bill of rights, because the framers recognized that if you did not follow the form that we have followed, they would have enacted or conferred rights without limitation.

It is not because I say the American bill of rights is sacrosanct that I cited it to you; I only cited it to you as an example of the practical difficulties of the problem I have now outlined, and the recognition that you could not deal with this question of equality before the law, and non-discrimination, exception the basis of the approach that we have in our bill of rights.

I do not think any parliament, realizing what it was doing, would ever go so far as to declare that the right of the individual to life, liberty, security of the person and enjoyment of property is enjoyed absolutely and without the liability to be deprived thereof by due process of law. It is on that ground that I think there is a fundamental objection to your amendment.

Mr. DESCHATELETS: Mr. Chairman, there is no use carrying on this discussion any further: the mover and the minister made their positions very clear. But, with due respect to the minister, I think he has missed the point completely. The motion is in line with the full protection of the individual against discrimination—and it does not go further than that.

Now, the minister made certain implications in his opening remarks, after the motion was made. I wish to say I had no hesitation whatsoever in seconding this motion, because we have been told repeatedly that we are dealing here with matters within the federal competence, and all these discussions we have had, and the motions that we are making, are perfectly in line with the preamble we have submitted, where it is stated very clearly that we are dealing here with matters within the federal jurisdiction.

Mr. FULTON: Well, Mr. Deschatelets, I have indicated, at least for the purpose of this discussion, that I accept that point of view.

Mr. WINKLER: Question.

The CHAIRMAN: The question, gentlemen, is on this amendment: moved by Mr. Martin and seconded by Mr. Deschatelets, that the following words be added after the word "law" in line 12.

> ....and to life, liberty, security of the person and enjoyment of property.

All those in favour, please signify? Those opposed? Four to seven. I declare the amendment lost.

Mr. MARTIN (*Essex East*): Well, we have gained ground.

Mr. BADANAI: Mr. Chairman, I wish to offer an amendment to follow paragraph (*b*).

The CHAIRMAN: Is this going to be part of paragraph (*b*)?

Mr. MARTIN (*Essex East*): No; to follow paragraph (*b*).

Mr. BADANAI: Yes, to follow paragraph (*b*).

This amendment forms a part of the declaration of human rights of the United Nations, and I hope for that reason the Minister of Justice will give this more favourable consideration than he has so far to the previous amendments.

The CHAIRMAN: You are going to try your luck now, Mr. Badanai.

Mr. BADANAI: Now, the effect of this amenddment is to prevent, for instance, a police officer invading the privacy of a home, or being arrested on a flimsy pretext, which happens sometimes.

The amendment which I propose to move, seconded by Mr. Batten is that paragraph (*b*) be followed with the following paragraph, to be designated.

> The right of the individual to the protection of the law against arbitrary interference with privacy, family, home, or correspondence, and against attacks upon his honour and reputation.

and that the remaining paragraph be re-lettered accordingly.

In moving this amendment, Mr. Chairman, I feel I am on sound ground—on firmer ground than those previously moved.

Mr. FULTON: Is there a specific paragraph in the United Nations declaration you had in mind?

Mr. MARTIN (*Essex East*): Yes, and it reads as follows:

> No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, nor to attacks upon his honour and reputation.

The CHAIRMAN: Do you know what the number is?

Mr. MARTIN (*Essex East*): There is no number.

Mr. FULTON: Is it from the Universal Declaration of Human Rights?

Mr. MARTIN (*Essex East*): Yes, is is embodied in that, but I am reading from a document entitled Liberalism; its Meaning and History.

Mr. FULTON: That is why it is confused and unnumbered. I am sorry, Mr. Badanai; will you proceed.

Mr. BADANAI: I did not intend to make a long speech, because the amendment speaks for itself and, as you are aware, we are not here to try to obstruct the passage of your bill, but trying to improve it. With the addition of this amendment, I think the bill certainly will be a better bill than it is at present. No one has indicated that the bill is perfect. Everyone has found some faults with it, and we are trying to make it a real good bill. I submit this is a good amendment.

Mr. FULTON: Well, if I reject another amendment, the committee is going to say it needs the protection of the law against the arbitrary attitude of the minister, but I am sure the committee would be joking if it said that. I hope not to indicate an attitude in opposition, unless I have valid grounds, which I hope will commend itself to the committee.

My preliminary comment on this amendment is that it does state those things which are desirable and right in a democracy—in a country which is governed and administered in accordance with democratic principles; but I suggest to you that those things there set forth are covered in the present bill, and particularly they are covered by the use of the words "by due process of law". If we had removed or amended those words, I think you might have a better case for the inclusion of your amendment than you have at the present time. If your amendment seeks to insert a paragraph declaring that there exists in Canada "the right of the individual to the protection of the law" well, we have already put that in paragraph (*b*)—"the right of the individual to the protection of the law". You go on, "against arbitrary interference with

privacy, family, home, or correspondence". Therefore, what you are seeking to cover is protection against arbitrary interference.

Well, we have already said that those rights which the individual enjoys under paragraph (*a*), he enjoys with the additional right not to be deprived thereof except by due process of law. So, we have protected the individual against arbitrary interference with or deprivation of his rights, because he has the right not to be deprived thereof except by due process of law. Therefore, he is protected against arbitrary interference. What is it against which he is protected under our laws? He is protected against arbitrary interference with privacy. I suggest to you this is embraced in the words "life, liberty, security of the person". That certainly covers "privacy". In connection with "family", I would say that is covered in the collection of words "life, security of the person, and enjoyment of property". You have your home, and you have the right to the enjoyment of your home without any liability to be deprived thereof, except by due process. It seems to me you are protected against arbitrary interference of your privacy and home. You are asking to be protected against arbitrary interference with correspondence. Correspondence is property, and since he has the right to property and the right not to be deprived of the enjoyment thereof, he already is protected against arbitrary interference with his correspondence. You go on "against attacks upon the honour and reputation of the individual". It would seem to me that that objective is already served by the fact that he is entitled to all his rights under the protection of the law. He has, under sub-clause (*b*):

—the right of the individual to protection of the law—

So that the law protects him against attacks on his honour and reputation, and he cannot be deprived of the protection the law gives him. Of course, that includes in there his right to the security of the person, as added protection against attacks on his honour and reputation.

I submit to you that all your amendment does is to restate, in a different form, what is already covered in a combination of paragraphs (*a*) and (*b*) and especially what is already protected by inclusion in paragraph (*a*) of the words:

—and the right not to be deprived thereof except by due process of law;

I do not want to be arbitrary, and if you can convince me by discussion there is any fallacy in my reasoning or there is, in fact, something that is included in your suggested amendment that is not covered in our bill, I would be the first to admit we should act so as to include it.

Mr. BADANAI: The present wording, if I may submit it, is by inference. There is protection by inference, by the statement "by due process of law" but it does not spell out the fundamental freedom that we want to put into this bill. That is the point.

Mr. MARTIN (*Essex East*): I would submit, in support of Mr. Badanai's motion, that our efforts here represent a collective effort to try to improve this bill, to make it as strong as possible.

I appreciate the general observations of the minister, in which he has sought to relate Mr. Badanai's articulations in the general language of paragraph (*a*), but you must remember what we are dealing with here: we are dealing with a bill of rights. We must remember the declaration of human rights of the United Nations provoked a discussion that lasted almost ten years. For ten full years—

Mr. BROWNE (*Vancouver-Kingsway*): I hope we can do better than that!

Mr. MARTIN (*Essex East*): —the human rights commission sat continuously almost considering every declaration as contained in the declaration which, as

the minister reminded us on Friday, had been adopted as a declaration by Canada.

The minister will recall that when we dealt with section 3 (*b*)—the protection providing for no torture, cruel, inhuman or degrading treatment or punishment—he reminded us of the dilemma into which he had been plunged by our accepting the declaration of human rights, and he found it difficult to abbreviate, abrogate or remove any of the terms in that subsection, because that would be regarded by certain countries—notably the Soviet Union—as a watering down on our part of our acceptance of the declaration.

Now, it is true the minister did say that he was giving consideration to the observations, notably those made, I think, by Mr. Browne—

Mr. FULTON: And by you.

Mr. MARTIN (*Essex East*): Yes, but I mention Mr. Browne because it was the only point of friendly contact between Mr. Browne and myself on the committee. I merely mention it because it is a highlight in our discussions. If that argument was applicable—and I think it is—I think it ought to be covered in the language involving the amendment Mr. Badanai has put forward. But we must remember what we are dealing with: we are dealing with a bill of rights. Any effort to delineate those rights, in a manner that will not be open to protection merely by inference, as Mr. Badanai has suggested, is certainly noteworthy and will have more appeal because these rights to the protection of the law against arbitrary interference with privacy will be argued by legislators, judges and others as not being included in the phrase

—the right of the individual to life, liberty, security of the person—

When we talk about "liberty" people have a connotation that is not suggested when we talk about "privacy". When we talk about the family, there is nothing in paragraph (*a*) that deals with the family. The family is not an individual but a group, and the basis of our society. Paragraph (*a*) simply refers to the right of the individual.

Mr. FULTON: Is the family not made up of individuals?

Mr. MARTIN (*Essex East*): Yes, but the family is also—as Gierke said—a unit. It is more than the individuals who go to make it the foundation of the society we have in this country. If you want to protect that, it seems to me we have to introduce the family concept.

If there is anything that our age suggests it is the desirability of privacy. Privacy is not a necessary connotation of liberty; it is the other side of the coin. It is not covered by a reference to the generalization in the phrase:

—life, liberty, security of the person—

The home is not covered. The home is a sanctuary to which Canadians attach the greatest importance. The home and family are not protected in many countries of the world. They are recognized, accepted and protected in Canada, but they are not in other countries.

Having in mind the turbulent times in which we live, the man is a brave person who can say that the developments in our time are not made easier because of an abridgement of liberty by ourselves. But the home, the family, privacy, those are important concepts that are not touched at all in the phrase:

—life, liberty, security of the person.

Correspondence will not be regarded by everyone as being covered by the phrase "property". It is property, but when we talk of property we do not talk of property in the sense of something so personal. We have—not frequently, fortunately,—had violations of this. We often find use of the letter of an individual by a stranger. That, fortunately, does not happen in our parliament. It did happen in parliament once, on an occasion when Sir Robert Borden took

a very courageous attitude against one of his own members who had used a letter which was the property of another individual. I do not say that correspondence is of the category of family, home or privacy; but they are fundamental rights of Canadians, and we have a right to have them protected by the law if we are going to have a bill of rights.

We could look at some of the provincial decisions under the various liquor acts. I appreciate, of course, this is not germane, in one sense, to this argument, because I am clearly touching on something outside our jurisdiction.

Since the minister looks at me in such a friendly manner, I can say we have had in Canada, under federal statutes, under federal administration, interventions in the home that have been proven and contested in the courts, and not always with great success. There is nothing in paragraph (*a*) that deals with question of one's honour and one's reputation. These are surely separate rights, just as sacred as liberty itself. If it was possible for the declaration of human rights to formulate a solemn declaration against any violation of these things, surely we ought to do that in this bill of rights.

I think that this amendment put forward by Mr. Badanai is important for many reasons, and especially important because it introduces for the first time in our discussions the desirability of protecting the family and the home as essential institutions in this Canadian society of ours. I know this does not apply to Canada at the present time and does not apply to any Commonwealth country, certainly the old colonies—I believe I can say that about Ceylon, India and Pakistan. I do not know enough about the other additions to the Commonwealth. However, while it does not apply, who is going to say, in the light of modern conditions that it could not apply to Canada in the future. Look at the situation which existed under Hitler and Mussolini. I do not say that a mere declaration of this kind would stop that, if they are bent on it; but it will certainly act as a declaration of Canadian intent which clearly divides us from any country which would segregate or discriminate against anyone in terms of home, family and sometimes life. We know the situation in South Africa. Will anyone deny there that a clause such as the one in (*a*), guaranteeing the right of the individual to life, liberty and security, would be of any value to South Africans or Indians in that country. But this particular amendment would have a very important peripherastic effect.

I suggest to the minister that while he might argue in a political science group as he did about the implication and inferential consequences of life, liberty and security, he does not address himself to the basic concept Mr. Badanai had in mind. When this matter was discussed in our group, it was Mr. Badanai's own idea. He spoke of the importance of the family in the home and privacy and these things, and he convinced us that this was an amendment that ought to be incorporated in this bill. Even if it did have some of the inferential effects, which I deny—even if it did, it is so basic in our society that it ought to be put in there for all men to see and for all men to find in that the confirmation of what everyone of us around this table recognizes as a fundamental basis of the Canadian society. I hope this amendment will be accepted.

May I remind the minister of an observation by Mr. Justice Holmes who said it is possible for a scoundrel—and I am not suggesting the minister is a scoundrel—to find refuge behind the word "liberty". You will not find that in this particular amendment.

Mr. FULTON: It is possible for a scoundrel to find refuge behind the word "honour". I suppose there are all sorts of words behind which scoundrels can find refuge.

Mr. WINKLER: I would observe, in the light of what Mr. Martin has said and remembering the past and so on—I appreciate that it was in war time—

that great sincerity he lets go with today was not very apparent when the government of that day dealt with Canadian-born Japanese. I am glad to see he has had this change of mind. I think this is good—sound.

Mr. MARTIN (*Essex East*): All I want to say to Mr. Winkler is that I do not like the Japanese thing any more than my hon. friend does. I was a member of a government, and when you are a member of a government you accept things collectively. I do not think the Japanese situation is one which warrants our regarding it as a precedent. It is, in my judgment, a sorry chapter; but since my hon. friend mentioned it I would remind him that the Minister of Justice was one of those in support of that position.

Mr. FULTON: No, no. You have gone a bit too far.

Mr. MARTIN (*Essex East*): They did it because they were sincerely concerned about the situation, coming from British Columbia. I think it was a regressive step and I hope we will never take it again. This is one way in which we could overcome that.

Mr. FULTON: You have gone too far when you mentioned that I supported it; but I will not introduce this quarrel here.

I think an additional comment which could be made against your amendment, Mr. Badanai, is this: while, as you say, it is true, that this is based on tradition in the universal declaration of rights, I think we have to bear in mind that that declaration is a declaration which seeks with great particularity to cover almost every conceivable area of human rights and freedoms. One of the reasons why they have to particularize these is because they do not have the due process clause in it. They do not have a due process of law clause in it, because they were trying to draft a declaration applicable to all sorts of countries, including countries unlike ours, which do not have our standards of legality and understanding of what due process of law means. Therefore, because this is a declaration of rights applicable to other countries, as well as countries in the Commonwealth and some in the civil law tradition, it was necessary to have a bill of rights with the greatest particularities. So you find there are a number of articles throughout the universal declaration of rights which are designed to be protective against arbitrary exercise of power. There is article 9: no one shall be subject to arbitrary detention or exile. Article 12 is the one you have reference to in your amendment. There is article 15: no one shall be arbitrarily deprived of his nationality. This is not a confirmative right; this is a series of particulars against the exercise of arbitrary powers. Then there is article 17, and so on. All of them are protections against the arbitrary exercise of power, made necessary to be specified in particular, because they do not have the due process of law clause. If one is to follow the precedent in this bill of rights then one should argue, it seems to me, that we should insert in our bill of rights provisions against the likelihood of slavery, provisions protecting the right to marry, provisions asserting the right to equal access to the public service, provisions asserting freedom from compulsion of association, provisions asserting the right to take part in government, provisions asserting the right to rest and leisure, and the right freely to participate in various activities, all of which are spelled out in the universal declaration of rights —a declaration applicable to countries whose system of law and constitution are entirely alien to our own, and a declaration in which it is necessary to have that particularity. In ours, however, it is not necessary. Our approach has been one of brevity, for reasons on which I think fundamentally we are agreed, provided that we also can be reasonably agreed that we have not left out any of the fundamental rights and freedoms which we should insert.

I come back to my point of view that things which are included in here—privacy, family, home, correspondence, and so on are covered in the great freedoms which we have declared and established in law, namely, the right to

life, liberty, security of the person, and enjoyment of property; also the right not to be subject to arbitrary interference with those freedoms, and to be protected by the right not to be deprived thereof except through due process of law.

It is that right which gives the individual protection against attacks upon his honour or reputation. He can go to the courts and assert his rights and demand compensation from anyone who seeks to deprive him of his honour and reputation; and he can go to the courts and protest against any deprivation against several privacies, such as his family, his home, or his correspondence, whether it be arbitrary or not.

He can go to the courts and protest against such interference, unless it is done on the basis of due process of law.

So if I were to agree to accept this amendment, I would be subscribing to a principle that we should have a bill of rights in particular, along the lines of the universal declaration, and not one along the lines that we have tried to draft.

It is not because the things you have specified are undesirable, but because what is done here would run contrary to the principle of our framework; and if we accept these, then we must accept any particular thing which anyone lifts out of the declaration of human rights.

I say that we should only accept it if it could be shown that it is not already included in the bill of rights.

Mr. AIKEN: Mr. Chairman, when shall we adjourn?

The CHAIRMAN: Once we have disposed of this, I think we should adjourn.

Mr. AIKEN: This is from a comment that Dr. Forsey made, and with which the Canadian labour congress agreed, that the declaration of human rights in the United Nations charter applies to many countries in different stages of political development. When specifically asked, Dr. Forsey stated that he felt the particularization in this bill was sufficient for the purpose.

Mr. FULTON: Would you prefer to use the word "generalization"?

Mr. AIKEN: Yes, I should have said generalization.

Mr. MARTIN (*Essex East*): May I ask Mr. Aiken, a sincere and devoted member, if he accepts everything that Dr. Forsey said?

Mr. AIKEN: Dr. Forsey agreed with me on this particular point. Therefore I am quoting him.

Mr. WINKLER: May we have the question now?

Mr. MARTIN (*Essex East*): Man always resorts to those authorities which meet his own desires.

Mr. AIKEN: That is quite correct.

Mr. BROWNE (*Vancouver-Kingsway*): In addition to what the minister has stated, we have in clause 3 protection against arbitrary acts of parliament. It could obviously have applied, but it woud not now apply either in respect to acts previously passed or any future acts. So it says there shall be nothing in an act of parliament which will deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations.

I think that that too is an added provision, in addition to the ones which are in paragraph (*b*) of clause 2.

Mr. WINKLER: May we have the question?

The CHAIRMAN: The question is this: moved by Mr. Badanai and seconded by Mr. Batten that clause 2 be amended as follows: that the following paragraph (c) be added after the present paragraph (b).:

> The right of the individual to the protection of the law against arbitrary interference with privacy, family, home or correspondence, and against attacks upon his honour and reputation;

and that the remaining paragraphs be relettered accordingly.

All those in favour will please signify. There are four in favour. All those opposed? There are seven opposed. I declare the motion lost.

Gentlemen, just before we adjourn, the clerk has brought to my attention that there is a rather unusual demand for English copies of the proceedings and evidence of this committee. I would suggest, if someone would care to move it, that a motion be made that the number of copies in English of the minutes of proceedings and evidence authorized to be printed be increased from 750 to 1000.

Mr. STEFANSON: I will so move.

Mr. BATTEN: I will second that.

The CHAIRMAN: It has been moved by Mr. Stefanson and seconded by Mr. Batten.

Mr. DESCHATELETS: Is there any shortage of the French version?

The CHAIRMAN: That has not as yet been reported, Mr. Deschatelets.

All those in favour?

Motion agreed to.

The CHAIRMAN: Gentlemen, we will stand adjourned until 9.30 tomorrow morning.

HOUSE OF COMMONS

Third Session—Thirty-fourth Parliament

1960

SPECIAL COMMITTEE

ON

HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Chairman: Norman L. Spencer, Esq.
Vice-Chairman: Noël Dorion, Esq.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 11

THURSDAY, JULY 28, 1960

Bill C-79: An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms

WITNESS:

The Honourable E. D. Fulton, Minister of Justice.

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