

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS
Monday, 1 December, 1980

Time — 10:00 a.m.

CHAIRMAN — Mr. Warren Steen (Crescentwood).

CONSTITUTIONAL REFORM

MR. DAVID BLAKE (Minnedosa): We require a motion to reappoint Warren Steen back to the committee.

MR. ARNOLD BROWN (Rhineland): Mr. Chairman, I would move that Warren Steen replace the Honourable Doug Gourlay.

MR. BLAKE: It's been moved by Arnold Brown . . .

MR. HENRY J. EINARSON (Rock Lake): I'll second it.

MR. BLAKE: Seconded by Mr. Einarson. Are we all in favour of that motion? (Agreed)
Mr. Schroeder.

MR. VIC SCHROEDER (Rossmere): Mr. Chairman, did the Chair receive a resignation from Mr. Parasiuk?

MR. BLAKE: Mr. Gourlay.

MR. CLERK: No; Mr. Parasiuk.

MR. SCHROEDER: I take it that because it hasn't been presented . . .

MR. BLAKE: Could we have a motion reappointing Mr. Parasiuk to the committee?

MR. SCHROEDER: So moved.

MR. BLAKE: Moved by Mr. Schroeder, seconded by Mr. Uskiw. All in agreement? (Agreed)

Now, I suppose the second order of business would be to reappoint Mr. Steen as Chairman when I resign. Would somebody make that motion to reappoint Mr. Steen as chairman? Mr. Brown.

A. MEMBER: Well, you didn't resign yet.

MR. BLAKE: I resigned just now. (Interjection)—It's been moved and seconded. Mr. Steen is your new Chairman, reappointed. Mr. Steen carry on.

MR. CHAIRMAN: To the members of the committee and those that are present, we have a list of three parties that have indicated a desire to make representation before this Standing Committee on Statutory Regulations and Orders. The three persons that I have on the list and then, if there are any others that are in attendance that are not among those three, I would ask that you give your name to Mr. Reeves, the Clerk of the committee. The three are the Four Nations Confederacy, Marion Hodge,

Paul Jackson. Are there any others that are present that wish to make representation?

Mr. Desjardins.

MR. LAURENT L. DESJARDINS (St. Boniface): Mr. Chairman, one of the persons here was expressing the thought that people from Thompson didn't know where these meetings were going to be held so I wonder, if that's the case, we should check the city hall or something, civic office, to see if there is somebody there so . . .

MR. CHAIRMAN: To the best of my knowledge, Mr. Desjardins, an ad did appear in the Winnipeg dailies, most of the weeklies, and in the Thompson paper outlining the dates that we would be here, saying today, and if necessary, tomorrow.

MR. DESJARDINS: Did it say where?

MR. CHAIRMAN: It did say the Legion Hall. I'm sure that a phone call to the city hall inquiring as to whether anybody made any inquiries with them would be very easy to do.

MR. DESJARDINS: It was just one of the ladies that said . . .

MR. CHAIRMAN: May I ask again, are there any other persons other than the three that I mentioned that wish to make representation here today? If not, is there someone present from the Four Nations Confederacy? Is Marion Hodge present? Is Paul Jackson present? Would you please come forward, sir? Yes, please be seated, Mr. Jackson. I was asked at a meeting in Brandon if I would identify members of the committee to persons that were making representations for the benefit of persons such as yourself.

I will go around the table, starting with Mr. Mercier, the Attorney-General; Mr. Desjardins, the Member for St. Boniface; Mr. Sam Uskiw, the Member for Lac du Bonnet; Mr. Brown for Rhineland; Mr. Kovnats, Deputy Speaker and the Member for Radisson; myself, Warren Steen, the Member for Crescentwood; Mr. Blake for Minnedosa; Mr. Einarson for Rock Lake; Mr. Hyde for Portage la Prairie; Mr. Schroeder for Rossmere and Mr. Parasiuk for Transcona. That is the committee of 11. Would you like to address us now?

MR. PAUL JACKSON: Mr. Chairman, members and fellow citizens: My reasons for coming here are solely because of the Charter of Human Rights as well as my complete unacceptance of the 1969 abortion laws. I feel, with many others, that no Charter of Human Rights is acceptable unless it includes the right to life for all Canadians including those conceived but not yet born. It is obvious that if the right to life is not assured any additional rights become meaningless. Several studies that I have read have shown that since the introduction of what I call therapeutic abortion on demand, the abuse of

children has skyrocketed in the two most abortive provinces, Ontario and B.C. Also, in the States, which we like very much to copy, an incident of the Supreme Court ruled that a Massachusetts state law which required a minor girl to get her parents' approval for an abortion was struck down by that Supreme Court, but the funny thing is that same girl has to have a signed consent for her parents to get her ears pierced. Instead, she could go to a judge and he would decide if she was mature enough. The minor has no new freedoms. The parents have simply lost the right to be the minor child's primary source of advice and she has merely exchanged submission to her father and mother for submission to some judge who barely knows her. These are just two examples of human rights that have been lost.

We have and will lose many more rights if we don't see this right-to-life amendment enshrined in the Constitution or a Charter of Human Rights. Anyone with any common sense can look around and see what so-called progressive legislation has done to us and for us. We have taken and called for separation of church and state, stopped teaching in our schools basic Christian principles and said we don't want to violate anyone's faith. Then our government has substituted another religion in our school and education, that of secular humanism, which is the second oldest religion in the world. I think it's time we wake up and realize that all is not relevant and that there are absolutes, right to life for all, born or unborn, so-called normal or so-called deformed, aged, we all have the right to life. Let's get it in our Constitution. Thank you.

MR. CHAIRMAN: Mr. Jackson, would you permit questions from any members of the committee?

MR. JACKSON: Sure.

MR. CHAIRMAN: Are there any members? Mr. Mercier.

HON. GERALD W.J. MERCIER (Osborne): Mr. Jackson, you probably are aware I take it of the proposed Charter of Rights and Section 7

MR. JACKSON: Guarantees the right to life.

MR. MERCIER: Everyone has the right to life. I take it your concern is that you're not sure how the judges would define everyone, whether that includes an unborn child.

MR. JACKSON: Basically, I think that's too general and it's interesting that on the radio program "As it Happens" on CBC with Barbara Frum, the President of the Canadian Bar Association stressed that they would like just generalities, they would like it not so strict and structured so that they could have maneuverability within the Charter of Human Rights. This I feel, of course, with the abortion law the way it is with the '69 business, then that's exactly where we're going to go, and abortion, as I see it, abortion on demand that is happening right now is going to continue.

MR. MERCIER: Mr. Jackson, you referred to a number of cases in the United States where the

Supreme Court has determined freedom of religion, etc. Do I take it from your comments that you are concerned as to how judges would interpret this Charter of Rights?

MR. JACKSON: Basically, we were caught in a predicament. First of all, whatever, if you allow, okay, say Christianity be taught in the schools, then basically every other faith or every other belief is going to want to be in there and before you know it you're out of wack. So what we do is we say, okay, that's it, we can't have this. And that's what they've done in the States because if they allow one they've got to allow everyone, but yet, they teach secular humanism which is humanistic relative thinking, modern thought, whatever you want to call it. What I can see that that has done is just blown things to bits. I mean that's the reason why the country of the United States

MR. MERCIER: This is a difficult question. You may not wish to answer it, Mr. Jackson. Do you feel that the decision of the Supreme Court of the United States on abortion matters and freedom of religion where they have struck down prayers in public schools, posting of Ten Commandments, those types of decisions, do you have any opinion as to whether they are supported by the majority of the population in the United States?

MR. JACKSON: That's very hard to say. I can see that right now there seems to be, with the elections, with the different things that have happened, there has been an awful large swing to the conservative aspect of government and whatever, and within the population there seems to be an outcry that people are wanting to see things happen. The person, himself, I think it's the son of Madeleine Marie O'Hara who is a known and declared atheist in the States, her son just recently became a Christian and he's just thoroughly distraught with himself for the things that he's caused to happen in the school systems in the removal of school prayer and stuff like this. He stated himself that he wished there was something he could do to reverse that because he's seen the damage that it has caused.

MR. MERCIER: Mr. Jackson, the fundamental issue as I see it is not whether or not you are for or against human rights but whether you are going to have an entrenched Charter of Rights in the Constitution to be interpreted by possibly five out of nine Supreme Court judges appointed till age 65, who are going to make the final decision as to what these terms "freedom of religion" means, what does "right to life" mean, or whether the final decisions are going to be left in the hands of the people through their elected representatives and thereby subject to change. If they are left in the hands of the Supreme Court and they make a decision that is not supported, it could only be changed by an amendment to the Constitution which could be a difficult procedure. What is your view, sir, of whether there should then be an entrenched Charter of Rights or should it be left in the hands of the elected representatives?

MR. JACKSON: It's a very sticky question because basically you can see, and I don't agree with ERA at all but you can see that the people that are trying to push ERA in the States, the trouble they are having in trying to amend that to the Constitution. I personally don't feel that I am in a position, speaking you know, in terms of politics or whatever to really fully realize what the scope of having the Supreme Court in Canada or whether just using our elected representatives to represent from the people what should be happening. I don't really think I can answer that properly if the politicians of the time feel that this is the matter, this is the route to go in working out our country's, whatever, difficulties or in making it a better country, well then that's fine. But if they do entrench the Human Rights in the Constitution, then that's the big thing I want to see. Personally I would like to see that everybody be guaranteed the right to life.

MR. MERCIER: Your brief, as you have said, is on one point. Let's say the Charter is entrenched and the Supreme Court makes a decision that the phrase "everyone has the right to life" only applies to born children, not to unborn children, and the politicians can't change the effect of that decision, Parliament can't change the effect of that decision other than by amending the Constitution which would be a difficult procedure. Is that the kind of situation you want to see?

MR. JACKSON: No, if that's the way it's going to end up, just like that, then that's of course wrong. Like, of course there are many people who feel if you have it entrenched, that's fine, but the big thing is if you have it entrenched, make sure that you have got the safety on it and that's why I say that if it's going to be entrenched, I want to see it right there in black and white, not up to some, you know, Supreme Court judge to make the decision on whatever he feels is relative to the times.

MR. MERCIER: Thank you, sir.

MR. CHAIRMAN: Mr. Desjardins.

MR. DESJARDINS: Mr. Jackson, pursuing the questioning of the Attorney-General. The Attorney-General I think has been trying to get you to say that if there was a Bill of Rights you would be worse off because the decision would be made by a judge. But don't you think that if there was a Bill of Rights and if it was spelled out that the right to life of the unborn child that it would be an improvement, especially now when all provinces and the federal government are sponsoring and financing abortion through Medicare, do you think it could be any worse?

MR. JACKSON: I don't know if I fully grasp what you said. I definitely know that the committee sitting here is opposed to what's happening. I am sure we all feel that the federal government is putting down the hammer and dictating to us what's happening and the way it's going to be and that's it. This is the reason why this committee I would imagine is going throughout the province to find out from people how they feel about it so they can go back to the federal

government and say, okay, look, this is what the people of Manitoba say; what are you going to do about it. Is that basically the purpose of the committee?

MR. DESJARDINS: No, I think that probably all the members, and I can't speak for all the members of the committee, are not too happy with some of the actions of the federal government, of the way they did without discussing it with people. But on the question that you brought in which was discussed here so far on the enshrined Bill of Rights, I think that some of us on this committee are in favour of an enshrined Bill of Rights, at least . . .

MR. JACKSON: Aren't?

MR. DESJARDINS: Are. Some of us. I would like to know the reason for this committee. I thought that this committee should have been called beforehand to help Manitoba form a position, but apparently that is not the case.

I would like to ask, on your "right to life", how would you feel, would you include capital punishment on that? What would your reaction be on that?

MR. JACKSON: That's a sticky question again because on the one hand our government has said that there is no death penalty in capital punishment. If we got into the whole thing, my personal feeling is I agree with what Chuck Colson is doing, the fellow that was in Watergate. That person, when he spent time in jail became a Christian and now he's gone back and he's working within the correctional institutions dealing with people on an individual basis and working with them, and his success rate with criminals is just fantastic. Now I don't know how much of that could be put over a wide scope or whatever but that's my feeling. I don't really think anyone has the right to pull the pin on anybody.

MR. DESJARDINS: So in other words, you feel that the right of life includes life in all aspects?

MR. JACKSON: Yes, but that's just putting it down like that, saying that, blank, but there is a lot more to it than just saying that I agree that there should be no capital punishment. Like, I believe there should be better remedial for the people that are like him. It seems that a lot of the criminals are just hardened and they're just continually going bad bad bad all the time and then spend more time in jail, back and forth like this, I don't really think . . . but I think also that taking the death penalty away has definitely caused a lot of people to not care about anything too.

MR. DESJARDINS: Mr. Chairman, I certainly wasn't trying to trap you or to put you on the spot with that question, but in Brandon people were making representation as you have today for the right to life and that person kept repeating it was a God-given right and only God can take that right away. That meant then that she would be against capital punishment and I wanted to know if you went that far.

MR. JACKSON: Basically I am against capital punishment, I believe that through Christian training or whatever and Outreach and that aspect that people can change.

MR. DESJARDINS: There is a chance of reform, yes. Thank you, Mr. Jackson.

MR. CHAIRMAN: Mr. Brown.

MR. BROWN: Mr. Jackson, are you speaking for yourself or are you speaking on behalf of an organization on this?

MR. JACKSON: I am a member of the Manitoba League for Life but I don't speak as a representative. I speak as a representative of concerned Christian people in Thompson and basically that's it.

MR. BROWN: I understood you to say, Mr. Jackson, that you would like to have the "right to life" in black and white in the Charter of Human Rights. Don't you see that there would be some difficulty that could arise when, let's say that if the mother-to-be's life is in danger or if it's a decision that has to be made whether the child is going to live or the mother is going to live, don't you think at that particular time there should be some leeway so that some decision could be made between the doctor and the members of the family as to what action should be taken?

MR. JACKSON: Definitely. Of course then that could also be written in that in the case of the woman's life being in danger then that would be the only case of abortion. See, the thing is with medical science the way it is now it seems that it is very very few times you ever run into an incident where a woman is in danger of her life because of giving birth to a child, very seldom.

MR. BROWN: Thank you, Mr. Jackson.

MR. SAMUEL USKIW (Lac du Bonnet): Mr. Jackson, are you familiar with the current proposal on the Charter of Rights?

MR. JACKSON: Well, it was sent to me, it's a small black and white folder, "The Canadian Constitution" and I read through that. I notice that in the Human Rights aspect of it, like the Attorney-General said, that they had said the "right to life" but I don't believe that that's enough.

MR. USKIW: How do you interpret section 7, and I will read it so that it might refresh your memory. Section 7 suggests, "that everyone has a right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice". How do you interpret that? How do you think a Supreme Court would interpret that?

MR. JACKSON: That's kind of hard for me to say but I think that as far as the end part of it, "justice" is concerned, well of course then that's almost saying that if they wanted to have capital punishment, well then that leaves that open for it. But still there is no guarantee of an unborn child there. You have the guarantee of someone who is

alive, hopefully, and even now there are cases of children that have been born that have been left to die.

MR. USKIW: So your position is that you would prefer a more definitive "right to life" than what is now contained in the proposal, to ensure quite specifically your particular position?

MR. JACKSON: I'll tell you what. The big thing is, sorry I'm using the States so much, but . . .

MR. USKIW: That's all right.

MR. JACKSON: Okay, the basic founding fathers of that country and hopefully the founding fathers of our country were Christians, and supposedly we call ourselves a Christian country, but we have moved very very far from that sphere of influence and the same with the States. Now the Supreme Court in the States dictates to the people of United States the letter of the law, the letter, to the strictest sense of the word, and in wanting not to be biased and wanting to be fair in overall and everything, they end up blowing it. Because I'm sure if the fathers of that country were here now and they saw some of the things that Supreme Court was doing they would throw up their hands in despair and say, where did we go wrong. There is no doubt in my mind.

MR. USKIW: That's the whole point that I am leading up to. The key question here is whether or not you would feel safer if Parliament ensured the right to life by legislation and which could be changed from time to time by parliament, or whether you would prefer to entrench those rights in a Constitution which while it could be changed, could take 50 years to bring an amendment because of a lack of agreement between the provinces, federal government and so on. Which vehicle would you prefer as the one that would better ensure the position that you want?

MR. JACKSON: I don't really think either one can assure for good and all times . . .

MR. USKIW: I agree with you.

MR. JACKSON: . . . whichever one that I feel should be, but I feel that if there is the entrenching of the Human Rights Charter then I want to see it entrenched with the right to life for all born, unborn, aged, whatever, normal, deformed, whatever; and if it is left the way it is then I would like to see the retraction of — I just can't remember the Bill, C-139 or something like that, that was passed in 1969 — towards abortion.

MR. USKIW: So you are not really stating a position whether you would want rights entrenched but you are saying if they are going to be, let's spell them out so clearly that they cannot be left to the discretion of the court. That's what you are saying?

MR. JACKSON: Yes. I guess maybe I was under the wrong impression. I had the impression that these hearings were here in order to find out the feeling of the Manitobans and then relay this to the federal . . . Am I right?

MR. USKIW: Yes.

MR. JACKSON: Okay.

MR. USKIW: One last question. What is your feeling with respect to the entrenchment of language rights, and now I'm talking about English and French in the Canadian Constitution?

MR. JACKSON: I'm in danger of looking like a bigot now. No, I personally believe that dual languages in Canada has done nothing as far as I'm concerned. If anything, it's cost us more money, it's caused nothing but problems in government. I just can't go along with it. Not that I have anything against French people, and if it was Italian or Portugese or whatever, I just think that we should try and work as one country. I don't disagree with the cultural aspect of the French Canadians, but if they want to keep their culture and move within that circle that's great, I have nothing against that, but I don't really feel that the two languages has done anything to benefit Canada.

MR. USKIW: Yes, do you believe that the English minority in Quebec has a right to be taught in English-speaking schools?

MR. JACKSON: Well once if I say that then of course that means . . .

MR. USKIW: Well but that's a very important point.

MR. JACKSON: Yes it is, definitely. Yes I do, but and once again too, I don't disagree with teaching French, if they want to have schools that teach French, but then you're getting into a much broader spectrum. Once you let that go then it goes out here.

MR. USKIW: Let me pursue it further. If you believe that the English minority in Quebec has a right, a legal right or a constitutional right, to have education taught in the English language in the province of Quebec, then doesn't it follow that the French minority in Manitoba should have the same right?

MR. JACKSON: Yes, once again, like I say, I don't disagree with the teaching of French in the schools.

MR. USKIW: But I'm talking about as a right.

MR. JACKSON: I know, as a right. Yes, as a right in the Charter of Human Rights. No, I don't disagree with that.

MR. USKIW: Okay, that's fine. You would agree that they should both be . . .

MR. JACKSON: Yes, the thing that I was . . . I maybe misunderstood you but what I have a problem with is seeing French as a second language and all the complications it has caused. It has caused air traffic problems; it causes business problems and just different things like this and I . . .

MR. USKIW: Are you aware that the main intent of the dual language as proposed is to insure that the two founding nations or the founding peoples of this nation have those rights assured beyond question?

In other words, so that we don't find ourselves back in a position where we were in Manitoba for example. the 1890 legislation which discriminated against the French minority, which was found to be illegal ultra vires a year ago in the Supreme Court of Canada. Now it probably could have been found to be ultra vires 90 years ago if someone had taken it to the Supreme Court, but notwithstanding that for all these years, almost a century, we have been living a lie in Manitoba. So for that reason I put the question, whether you would believe that entrenching it in the constitution is the only way that it can be guaranteed.

MR. JACKSON: As far as language rights, yes.

MR. CHAIRMAN: Mr. Jackson, before you carry on I might point out to you that if persons from the committee are questioning you in areas that you don't wish to answer you have the right to say that you don't wish to answer or to say I'm not familiar with that aspect of it or so on.

MR. JACKSON: Well once again, with the aspect of languages of course I go completely by the media because I have really no way of knowing what things are like in Quebec. I've never been in Quebec. I've been to B.C. and that's it. I'm very unable to know the whole scope of it.

MR. CHAIRMAN: Have you any further, Mr. Uskiw, questions?

MR. USKIW: That's it.

MR. CHAIRMAN: Mr. Parasiuk? Any other members of the committee that wish to ask Mr. Jackson a question? Seeing none, thank you very kindly, sir.

MR. JACKSON: Thank you very much.

MR. CHAIRMAN: Is Marion Hodge present? Is there anyone representing the Four Nations Confederacy present? I have a letter that was addressed to the Clerk, dated November 24th saying that they would be here and 15 copies of their brief would be accompanying them. There's nobody representing the Four Nations Confederacy? Mr. Desjardins questions, are they on the train to Ottawa? I don't know. Are there any other persons that are present this morning that wish to make representation before the committee? Yes, would you come forward and give us your name and tell us if you're representing any group or are you just representing yourself?

MR. BOB MAYER: My name is Bob Mayer, Mr. Chairman, and I don't represent anybody.

MR. CHAIRMAN: Would you please be seated. Carry on, sir.

MR. MAYER: Mr. Chairman, I sometimes wonder whether I'm not wasting both my time and yours in light of what always already appears to be the position of the government on the only area of concern I have and that's the entrenched Bill of Rights.

It would appear that my money and the taxpayers money is already being spent in what appears to be

a very expensive court battle to fight a position which I feel very strongly on, and I feel that the whole question of the entrenched Bill of Rights is something which the people of Manitoba ought to have been able to speak on before the government took its position and put us before the courts.

Now I wish to be very brief on that whole question, and I want to deal with only the two arguments that I have heard that opposed the entrenched Bill of Rights. I feel it is important that we have one, and the only two arguments I've heard opposing the entrenched Bill of Rights is: 1) In a parliamentary system where Parliament is supreme, we have all the rights except those which are expressly removed from us by Parliament, and that somehow an entrenched Bill of Rights would somehow reduce our freedoms.

I think, Mr. Chairman, members of the committee, that is the most fallacious of arguments. I've heard it spread over the media a number of times and I can't understand how people can make that argument and still be listened to. We still, with an entrenched Bill of Rights, still have all the rights and freedoms except those which are expressly removed from us. The only thing an entrenched Bill of Rights does, it says that some rights cannot be removed from us even by Parliament. So we're not reducing the number of rights we have merely by expressing some of them as being inalienable. We are just saying, we still have all those rights except those which Parliament takes away. But certain rights even Parliament can't take away, and I can't understand the argument where people keep suggesting that by entrenching a Bill of Rights we somehow reduce our freedoms.

The second argument that appears to be made against the entrenched Bill of Rights is we can't trust the courts. That, on the face of it, sounds like a reasonably good argument in light of who gets to appoint the judges but let's have a little bit better look at that argument, the arguments appearing to be, "Trust Parliament, not the courts". But that's a confusion of rights and remedies. I think it's fairly clear that Parliament can give us rights and Parliament without an entrenched Bill of Rights can take those away. But if there is no remedy to protect those rights then the right is not worth anything, and people who will argue the question that we should be trusting Parliament have not built in a remedy.

What remedy did the Japanese people have when their rights were trampled all over in World War II? What remedy did the persons in Quebec have when they were arrested on the streets and incarcerated under The War Measures Act? There was no remedy except to go to the courts and eventually they got an acquittal and eventually most of them and all of them in fact were released. So the courts provide a remedy. Parliament presumably provides the rights or fails to take certain rights away and the courts provide a remedy. The problem in the systems where there is a strong Bill of Rights which aren't in force is that those people have no remedy. So people who suggest, who are using the argument, "Trust Parliament, not the courts" are confusing the whole question of rights and remedies.

Those are the only two arguments, gentlemen, that I've heard for failing to entrench a Bill of Rights, and I think both of them are bunk. I think that, I hope, I wish that this committee could convince Mr. Mercier

and his government to withdraw the opposition to a Bill of Rights. I'm ashamed to be a Manitoban, to be standing in front of Canada, in front of the world, and saying that we are opposed to a Bill of Rights. Yet we belong to the United Nations, who wishes everyone to entrench a Bill of Rights. Thank you, gentlemen, I have nothing further to add.

MR. CHAIRMAN: Would you permit questions, sir?

MR. MAYER: Certainly.

MR. CHAIRMAN: Mr. Uskiw.

MR. USKIW: I would like to ask you your opinion on Section 7, which defines legal rights, and which I read out a moment ago to Mr. Jackson. It says everyone has a right to life, liberty and security of the person. What does that mean in your mind?

MR. MAYER: I don't know.

MR. USKIW: Okay, that's my question. Can I follow up then? Now, since that is rather vague in your mind and in mine, do you think that those rights should be spelled out more clearly so that they could be entrenched as you prefer, or do you want to trust the courts to decide what that means?

MR. MAYER: Mr. Uskiw, I would prefer to have the rights spelled out in such a way that the courts could not find a way to confuse it. I don't wish to stand behind, particularly those rights which are presently set out. My concern is with the concept of the rights. If we wish to argue which are inalienable rights and which aren't and how they should be worded, that's fine. My concern is only with the concept.

MR. USKIW: So I gather then that you prefer not to have discretionary power on the part of the Supreme Court in this question.

MR. MAYER: I would prefer to have it very clearly set out. As I say, eventually we may have to go to the courts for our remedy but let's keep it nice and tight.

MR. USKIW: So then you're suggesting, sir, that you don't necessarily support this package of proposals, but you support the principle of a Charter of Rights entrenched?

MR. MAYER: That's correct.

MR. USKIW: Okay. That applies to language rights as well, I take it.

MR. MAYER: That's correct.

MR. USKIW: That's fine.

MR. CHAIRMAN: Mr. Mercier. Would you take the microphone, please.

MR. MERCIER: Mr. Mayer, sir, how would you then word that clause, "everyone has the right to life"?

MR. MAYER: I would have a little problem with wording that clause and I haven't given that specific

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wording, question or very serious thought as to how I would particularly word it because I recognize the two problems I run into. I think that rather than saying, "right to life", what I would do is just strictly ban capital punishment in a very specific way, and in that way hope to avoid the whole question of abortion.

MR. MERCIER: How would you deal with the question of abortion?

MR. MAYER: I would prefer not to get into the discussion of abortion. My view is that it is a matter between a woman and her doctor but I recognize that . . . that isn't a debate I wish to get into at the committee.

MR. MERCIER: What do you think freedom of religion means?

MR. MAYER: I think that's reasonably clear, freedom of religion or possibly freedom from religion.

MR. MERCIER: In the Supreme Court of the United States there was a case where the state of New York had a requirement that the school day begin with the following prayer: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our country". It was held by the Supreme Court that when they outlawed that prayer that it violated freedom of religion.

MR. MAYER: I'm aware of that.

MR. MERCIER: Would you support that kind of a decision?

MR. MAYER: No, I don't like that decision particularly. I think that kind of decision can be protected against again by proper wording, even if one has to specify that certain religious ceremonies can take place or may take place in public schools. I, personally, am not wildly excited about people having prayers in schools but again that's a matter again that I would prefer not particularly to debate with this committee but I think you can run into all kinds of problems, and in this community, Mr. Mercier, that particular prayer could possibly prove offensive to a number of the particular religions and sects that live in this community.

MR. MERCIER: But you would like, I take it from your comments, to see a change in the wording.

MR. MAYER: That wouldn't bother me too much. I'm not wildly excited about that decision of the Supreme Court of the United States, but it's not something I would spend a whole lot of time getting upset about.

MR. MERCIER: There's another case, Mr. Mayer, where the appellant deliberately used a gross obscenity four times at a school board meeting attended by at least 40 children and 25 women. He was convicted under a New Jersey Statute, which provided that any person who uttered loud and offensive or profane or indecent language in any public street or other public place is a disorderly

person. The United States Supreme Court said this was a violation of the appellant's right of free speech.

MR. MAYER: That must have been the Warren court, Mr. Mercier.

MR. MERCIER: Do you agree with that decision?

MR. MAYER: No, I don't. I would think it could be gotten around by defining, and we haven't had that kind of a problem although we have a Bill of Rights that provides for freedom of speech now, and I recognize it only covers federal statutes, but we also have, as you are well aware, the same kind of prohibition in our Criminal Code under Section 171 and that hasn't proved to be a conflict.

MR. MERCIER: But we don't have an entrenched Charter of Rights at the present time.

MR. MAYER: We do have a Bill of Rights that purports to be superior to the Criminal Code.

MR. MERCIER: You would be aware, Mr. Mayer, I think it's only in two cases the existing Bill of Rights has been held to be applicable to existing federal legislation.

MR. MAYER: I am aware of two; I believe there are more, but I think there are only two that went to Supreme Court.

MR. MERCIER: Mr. Mayer, you talked about remedies. Now we've talked about two or three cases in the Supreme Court of United States as examples of what could happen and we don't know what would happen, how the judges would interpret these sections. What is the remedy for the residents of this country if the Supreme Court of Canada started to make decisions like this which run contrary to the feelings and the beliefs of the majority of the population?

MR. MAYER: Mr. Mercier, I don't know what the remedy is for what you would in some cases, even I, view as too liberal an interpretation of rights. I find that much less concerning however than to have the provincial or federal government have the ability to remove my rights altogether. I find the liberal interpretation much the lesser of two evils.

MR. MERCIER: So you would agree the only remedy in those situations would be to amend the Constitution.

MR. MAYER: Yes, or as Franklin Roosevelt did, change the court.

MR. MERCIER: You would agree that, as a student of politics I think, Mr. Mayer, or perhaps a professor of politics, some higher degree of learning, that in presidential elections for years and years and years it seems to be in a platform of every candidate that one of the things they are going to do when they become president is change the philosophy of the Supreme Court judges.

MR. MAYER: Yes, I've heard that.

MR. MERCIER: Because in their view the people they are appealing to aren't happy with the decisions that have been made by the Supreme Court. Would you not agree, sir, that if politicians or governments passed laws taking away your rights and other peoples rights that you weren't happy with and other people were happy with that you have a remedy every four or so years in defeating that government?

MR. MAYER: I would hate to spend four years in jail waiting for that opportunity, Mr. Mercier, because that is the kind of thing we are talking about when we remove civil rights. That is what we did to the Japanese and that is what we did to the Quebecois. I can't understand that your argument.

MR. MERCIER: Would you agree, Mr. Mayer, that the same thing happened to the Japanese Canadians in the United States where they have an entrenched Charter of Rights?

MR. MAYER: Yes, sir, I would agree. I do not believe it was as severe in many cases and I do believe that a remedy was provided. That is something that we in Canada, to our eternal shame, have not done.

MR. MERCIER: You did say that virtually the same thing happened to them in the United States.

MR. MAYER: I said I believe it was less severe and I do believe a remedy was subsequently provided.

MR. MERCIER: Are you satisfied, Mr. Mayer, with the deadlines the federal government has set for dealing with their proposal?

MR. MAYER: No.

MR. MERCIER: Have you examined the provisions of the Constitutional Amendment which would provide for patriation for an amending formula?

MR. MAYER: I have perused it, I haven't examined it.

MR. MERCIER: Are you happy with the idea of referendum by the federal government?

MR. MAYER: As a matter of principle, I don't like referendums but after watching the bickering of the provincial Premiers at that federal conference, I don't know what else you are going to do, I honestly don't. As long as the Premiers of the provinces wish to trade my rights and the rights of the rest of Canadians for a bigger barrel of oil or for a higher cost of a barrel of oil, then I would prefer the referendum because I think the people of Canada would be a little bit more responsible.

MR. MERCIER: Were you not aware, sir, that the provinces supported an amending formula referred to as a Vancouver Consensus rather than the Victoria Charter?

MR. MAYER: No, I wasn't aware of it.

MR. MERCIER: Thank you, Mr. Mayer.

MR. CHAIRMAN: Mr. Schroeder.

MR. SCHROEDER: Other than Great Britain, do you know of any country other than Canada or Great Britain who do not have a Charter of Rights, an entrenched Bill of Rights on this planet?

MR. MAYER: No, I don't but there may be some, but I am not aware of it.

MR. SCHROEDER: So when we hear about some of the deficiencies in Bills of Rights, what we are hearing about is the first Bill of Rights, one of the first Constitutions which was created several hundred years ago in the United States and it may well be that other Bills of Rights have been somewhat more refined and are more appropriate to their times.

MR. MAYER: It may well be that or it may be that a Bill of Rights works better in a parliamentary system than it does in a republican system. That may be an answer because I certainly haven't heard those kind of decisions coming out of Sweden nor have I heard, of course, the Prime Minister ever campaigning to change judges because he doesn't have the power to do it all by himself. So I would tend to suggest that the Bill of Rights may work even better in a parliamentary system than it does in the republican system.

MR. SCHROEDER: We've heard recently about the case of Sandra Lovelace, an Indian woman who married a white man, who is now either separated or divorced; I am not sure of that, but she's at the United Nations for a remedy, her right to be an Indian person. We do not, as you are well aware, have any remedy for that particular case in Canada. Do you have any comments on that case and the relevance of an entrenched Bill of Rights to that type of case?

MR. MAYER: You're supposed to be my friend. You're asking me harder questions than Mr. Mercier. I'm afraid I haven't got an answer for that one.

MR. SCHROEDER: Would not a Bill of Rights, in fact, be a vehicle which should provide a remedy and which would allow an individual her rights within our country rather than having to go to the United Nations?

MR. MAYER: I would hope so.

MR. SCHROEDER: Is it not something of an embarrassment to you as a Canadian to have a Canadian citizen being required to go to Geneva for her rights rather than to Winnipeg or to your local Supreme Court or Court of Queen's Bench?

MR. MAYER: Yes, that is an embarrassment and I would hope that a Bill of Rights would protect against that kind of necessity.

MR. SCHROEDER: The Attorney-General referred to the American treatment of the Japanese and of course referred to the remedy of the electorate and, Mr. Mayer, as a result of our treatment of our Japanese people during the Second World War, was there any remedy taken by the electorate after the

Second World War, that is the defeat of the Mackenzie King Government?

MR. MAYER: It didn't appear that we got around to that until 1957 if I recall correctly. That's a long time to spend in jail too or to be dispossessed.

MR. SCHROEDER: And the Quebec crisis, was there ever any punishment meted out by the electorate for that breach against the human rights of Quebecers.

MR. MAYER: If I recall correctly they looked after the Liberals in the province but seemed to continue to vote for them federally.

MR. SCHROEDER: The padlock laws in Quebec, did they result in the immediate anger of the electorate so that people could be entitled to practice their religion in freedom?

MR. MAYER: That was Duplessis, wasn't it? It goes beyond my memory but I don't recall any immediate action or any electoral remedy being taken.

MR. SCHROEDER: Can you recall any case in Canadian history in fact, where the electorate has, as a result of a breach of the rights of a minority, a minority generally despised or disliked by the majority, do you know of any case in Canadian history where that type of activity by government has resulted in the defeat of that government?

MR. SCHROEDER: Not of the government. I know of individual candidates having gone down for doing it, but not the government.

MR. SCHROEDER: Thank you.

MR. CHAIRMAN: Mr. Parasiuk.

MR. WILSON PARASIUK (Transcona): Mr. Mayer, I was very intrigued by your notion of remedies. You introduced a concept of remedies that hasn't been introduced before the hearings that I have been part of to date. Right now, if in fact there is a dispute between the Parliament of Canada and the Legislatures of the province as to whether something is unconstitutional or not, there is a remedy; they go to the Supreme Court.

MR. MAYER: Yes.

MR. PARASIUK: So Legislatures to date and Parliaments to date have in fact accepted that the Supreme Court can act as a remedy.

MR. MAYER: My understanding, Mr. Mercier is before the Manitoba Court of Appeal now on that very issue.

MR. PARASIUK: And then if they go from the Court of Appeal they will then go to the Supreme Court.

MR. MAYER: Presumably.

MR. PARASIUK: That means that they will be prepared, according to the type of judicial system that we have right now, a parliamentary system,

judicial system, to accept that the final arbiter in this matter will in fact be the Supreme Court.

MR. MAYER: I presume that they plan to abide by the decision of Supreme Court.

MR. PARASIUK: And that's with respect to determining whether actions by Parliament or the Legislature with respect to powers between the two are unconstitutional. Now what we're hearing from certain people is that if citizens feel that actions by the Parliament or actions by the Legislature with respect to their rights are unconstitutional, they will have no recourse to a remedy.

MR. MAYER: They suggest we should trust Parliament, the very people who are imposing the injustice upon the citizens.

MR. PARASIUK: So if they have a fight with Ottawa, they have recourse to a remedy that is using the Supreme Court, but if an individual has a fight with Parliament, feels that taking away these rights is unconstitutional, they have no recourse to a remedy.

MR. MAYER: That is my understanding of the provincial government's position.

MR. PARASIUK: Thank you on that. You have studied politics a bit. Do you think John Diefenbaker was a republican?

MR. MAYER: He denied it every time he turned around.

MR. PARASIUK: That's right. Yet we are being told by certain politicians in Canada right now that if you in fact favour an entrenched Bill of Rights, which is something that John Diefenbaker wanted when he brought in his Bill of Rights, he felt that ultimately it should be entrenched, that if anybody favours a Bill of Rights entrenched in the Constitution, that somehow they are leading us down the slippery slope to republicanism.

MR. MAYER: That's bunk.

MR. PARASIUK: Finally, with respect to freedom of religion. When you had the padlock law that said that people who practice a certain religion, as Jehovah's Witnesses in Quebec, when the Parliament decided that was not proper and they introduced the padlock law that allowed the state to come and put a padlock on their place of worship, was that freedom of religion?

MR. MAYER: You don't have to ask me that, Mr. Parasiuk.

MR. PARASIUK: I'm asking that in connection with the questions that were raised by Mr. Mercier with respect to freedom of religion and with respect to your statement of remedies. Now if in fact we had freedom of religion entrenched in a Bill of Rights and the state in any province came along and padlocked the place of worship, be it one of the branches of the Christian churches or a church that wasn't necessarily Christian, that an individual would then have recourse to remedy, that is using supposedly

the objective non-partisan secular judicial system to seek remedy to that entrenchment of their right to freedom of religion. If we had a Bill of Rights . . .

MR. MAYER: That is why I am here, Mr. Parasiuk.

MR. CHAIRMAN: Mr. Brown.

MR. ARNOLD BROWN (Rhineland): Thank you, Mr. Chairman, I have two short questions. My first question to Mr. Mayer is, do you think that the Bill of Rights should be implemented in Canada by Canadians or implemented by the British Parliament?

MR. MAYER: I think it should be done by Canadians. If I can just expand on that however, I happen to think that the Parliament of Canada is made up of Canadians and it is my understanding that is where the Bill is being debated.

MR. BROWN: Under a restricted period of time though.

MR. MAYER: It's unfortunate. I don't agree with the restricted period of time, I think I already mentioned that.

MR. BROWN: My second question has to do with freedom of religion. This used to be a relatively simple thing to have in your Bill of Rights, but things have unfortunately become more complicated in the last number of years, and I'm thinking particularly of an episode like Jonestown where 900 people were asked to commit suicide and they did, by their leader. Who do you think would best be able to deal in a situation such as that if we had an entrenched Bill of Rights which would possibly require an amendment before we could deal with it or should this be dealt with by legislators who could act on it fairly quickly?

MR. MAYER: I don't know how Jonestown has anything to do with the question of Bill of Rights. My understanding they did in Guyana, which isn't known for its liberal policy or rights legislation. I don't know what one does with a fanatic who wishes to kill himself. We've already removed it from the Criminal Code and suggest that it's okay to do it to yourself these days. I don't think there is an answer, legislatively, judicially or any other way to a fanatic who wishes to do himself in.

MR. BROWN: Let's say that an episode like this and it can happen, it could happen in Canada and so on, who do you think would be able to deal with it best, the legislators or the judiciary under an entrenched Bill of Rights?

MR. MAYER: Well, sir, since you don't know that something like that's going to happen in advance, nobody can deal with it, because after it's done what do you deal with, the bodies? There's no way to deal with that kind of situation unless you know in advance.

MR. CHAIRMAN: Mr. Brown, you should've come up last night and rehearsed that one . . . Mr. Desjardins.

MR. DESJARDINS: Mr. Chairman, you were asked twice if you agreed with the time limit and quite forcefully you said, "no". Now, I'd like to ask you a question. Do you think the action of the provincial government is any better? While we're engaging in listening to these briefs, the Premier of this province says that it doesn't matter how many people say that they're for the Bill of Rights or against the action of the provincial government that he has to show leadership. Do you think that's any better. At least the federal government might have a time limit but it has a committee which is restrictive mind you, but I understand that they are rewriting some of the things that they've done. Do you think that the position of the province is more admirable than this . . . ?

MR. MAYER: I think I commented on that at the beginning, Mr. Desjardins, by saying I was probably wasting my time coming here. I think the province has a real glass house problem when it starts throwing stones at the federal government just for that very reason. I understand that we are in court. I understand there's an 87-page defense been filed by the federal government. While we're sitting here talking about it the province is litigating it.

MR. DESJARDINS: You also stated that you were today, your main purpose was only to speak in its favour of the principle of the Bill of Rights, that you didn't want to argue any of these bills.

MR. MAYER: I don't wish to be seen to be carrying the can for Trudeau or for anybody else for that matter.

MR. DESJARDINS: That's fine, but I think we all agree or would you agree, I mean to say that there is no perfect solution, that you're going to have problems whatever you do. But just to show after the statement of Mr. Mercier of the court in the States that decided to remove the prayers, do you feel that it was any better, there was more safeguarding? Right here in Manitoba where people teaching even in private schools were told to remove their habits and take the cross from the wall. Do you think that's any better? I'm not asking if you are in favour of that but are those rights, if they were rights, are they guaranteed any better under this form of government?

MR. MAYER: Clearly they are not.

MR. DESJARDINS: Thank you.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Mayer, would you not agree that the issue that is being argued in the Manitoba Court of Appeal this week is the question of whether or not the federal government can proceed unilaterally with its proposals or whether it requires the consent of the provinces to its proposals?

MR. MAYER: I don't know how you commence the action, whether it was by statement of claim or by originating notice. I haven't seen a documentation but the only thing I can rely on is what I read in the press. It seems to me, Mr. Mercier, you have been quoted a number of times as saying that the Bill of

Rights can't be imposed on us by Parliament. You expressly stated you opposed the entrenchment of a Bill of Rights as did your Premier.

MR. MERCIER: Mr. Mayer, you have referred to the court action. I just want to clarify, perhaps for your information, the issue to be decided in the courts is whether or not the federal government can proceed unilaterally without the . . .

MR. MAYER: I see, then I stand corrected. Are you telling me then, Mr. Mercier, that you are prepared to be convinced and is the Premier prepared to withdraw his objection to an entrenched Bill of Rights? If you are, I feel much better.

MR. MERCIER: Well, I'd like to seek out your opinion, Mr. Mayer. We did have a representation from Mr. Green, and Mr. Green . . .

MR. MAYER: Just a minute, I take it you're not going to answer my question.

MR. MERCIER: Mr. Green took the position that his party should not support an entrenched Charter . . .

A MEMBER: Who is his party?

MR. MERCIER: . . . his independent New Democratic Party. I don't know how many members there are. Mr. Green took the position that in his view there should not be an entrenched Charter because a Supreme Court could interfere with socio economic decisions which are best made by elected representatives. In taking that position, he referred to decisions of the Supreme Court in the United States of past years where they struck down the minimum wage laws and minimum hours per week legislation and union requirement to take out memberships in unions. These were all decisions in approximately the 1930s and earlier when Mr. Roosevelt brought in a lot of what was called "new deal" legislation. Do you have any concerns from that aspect of a possibility of a Supreme Court interfering with socio economic decisions of Legislatures or Parliament and overruling the elected people in that area?

MR. MAYER: That's always a danger, Mr. Mercier, and it happened right here in Canada. You don't have to go to the Supreme Court to find that. Our Supreme Court struck down many of the Social Credit's economic policies. That isn't something that is peculiar to an entrenched Bill of Rights. I think there is the whole question of division of powers. I think Mr. Green, and Mr. Green and I have been known to differ in the past, is barking up the wrong tree.

MR. CHAIRMAN: Mr. Blake.

MR. BLAKE: I just have one question, Mr. Chairman. Apart from, in all the hearings I think, the case of the internment of the Japanese people when Canada was at war, do you feel that with an entrenched Bill of Rights, in whatever countries, say the countries of Europe at a time of war, do you think their rights would have been protected any better if they had an entrenched Charter of Rights in the European countries?

MR. MAYER: I don't know, Mr. Blake, to tell you the honest truth and I'm prepared to admit that only vigilance by the people can actually protect the people. I recognize that it's always a possibility that somebody can violate the Bill of Rights but fortunately, if a Bill of Rights is entrenched, there is a remedy there. If there is a remedy, then at least there is some chance and there is some way to get at the problem. Unless there is an entrenched Bill of Rights, there is no remedy. I'm not suggesting that in every case the remedy would be sufficient; I'm not suggesting that in every case we could prevent a breach of those rights.

MR. BLAKE: I think we agree right or wrong in time of war, the majority of governments do things that they feel is in the best interest for the protection of all of the people.

MR. MAYER: Yes, hopefully, we won't run into that situation.

MR. BLAKE: We don't either. Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Schroeder.

MR. SCHROEDER: Mr. Mayer, Mr. Mercier referred to wage laws, hours of work laws, union laws in the United States that were challenged by the Supreme Court or were struck down, do you know of any one of those laws that was struck down on the basis of the Bill of Rights rather than on the basis of division of powers?

MR. MAYER: No, I don't.

MR. SCHROEDER: That is what, in fact, was happening in those cases was an argument as to jurisdiction between the federal government and the people who advocated that the state, the local states, had the powers to in fact enforce those particular laws.

MR. MAYER: I'm not totally familiar with those particular cases in the States. I'm much more familiar with the same kind of thing happening right here in Canada where we don't at this point have a Bill of Rights. It happened to Saskatchewan; it happened to Alberta, because they got into a fight with the federal government.

MR. SCHROEDER: I would suggest, Mr. Mayer, that it's also happened in the province of Manitoba just within the last several years. There was a case in our Court of Queen's Bench in which portions of The Clean Environment Act were struck down and people who would have been required to make restitution for a gasoline spill were told that they didn't have to because in fact the province didn't have the jurisdiction to pass the particular law that it had passed. So would you not agree that in any case where you don't have a unitary government and you begin to argue about division of powers that you can have all kinds of interesting cases that could make for arguments for and against all kinds of different propositions including Bills of Right?

MR. MAYER: Yes, Mr. Schroeder, and I really wish that these kind of arguments between governments wouldn't continually be brought before this Commission as some reason for entrenching the Bill of Rights. The Bill of Rights protects me as an individual as I understand it against government, and if the governments wish to argue among themselves, then we, the taxpayers, will continue to pay for it and presumably the Supreme Court will continue to work it out.

MR. SCHROEDER: Thank you.

MR. CHAIRMAN: Any further questions to Mr. Mayer? Seeing none, thank you kindly, sir.

MR. MAYER: Thank you, Mr. Chairman.

MR. CHAIRMAN: Is Marion Hodge present yet? Anyone here representing the Four Nations Confederacy? Are there any other persons that are present that wish to make representation this morning before the committee? I'll ask again, is there anyone else present that wishes to make representation? Is there anyone in the room that knows of somebody in Thompson that is not present that did want to make representation? Seeing and hearing none . . .

MR. MERCIER: I would suggest under the circumstances that perhaps someone from the Clerk's Office remain here until 12:30 and that we return at 2:00 or 2:30, whenever we are supposed to . . .

MR. CHAIRMAN: Two o'clock.

MR. MERCIER: . . . come back to see if anyone is present then or turns up in the meanwhile.

MR. CHAIRMAN: All right. The committee will recess until 2 o'clock and we will be back to hear any further representations at that time.