the committee will no doubt want to look at further and with care.

Mr. R. Gordon L. Fairweather (Fundy-Royal): Mr. Speaker, this bill affords us an opportunity to take a look at the Supreme Court of Canada, reflect about it a little and say that it is a healthy thing that lately there has been more public scrutiny of the decisions of the court, of the way the court is formed, and of how it conducts its business. I think this reflects on the quality of the appointment particularly that of the present Chief Justice, for now there is an openness about commenting on the court, its decisions and so on, that cannot help but be healthy for the whole judicial process.

I was intrigued, as I suppose many hon. members were, that the government introduced the bill in the Senate. Here I am going to point out that I find it easier to say Senate than to keep repeating the euphemism "the other place." I have listened enough to that in all my 13 years here. I think the Senate is the Senate, and the House of Commons is the House of Commons. I propose to call the Senate the Senate, unless I am taken away in chains!

The Senate has had an opportunity to debate the bill. The report it produced is very useful because it gathers together in one place the report of the special committee of the Canadian Bar Association and of the Council of the Canadian Bar. It had the advantage of hearing Counsel for the Canadian Bar Association, and Professor Lederman. Therefore the House of Commons has the advantage of having that information before our debate takes place. For example, it means that one of the law officers of the Crown was able to tell the Senate committee in clear language the main purpose of the bill, which Mr. T. B. Smith, Director, Constitutional Administrative and International Law Section, Department of Justice, described as follows:

> ... the essence of this bill is really to implement a report of a special committee of the Canadian Bar Association that was submitted to the Minister of Justice about a year and a half ago. That special committee was constituted, as you know, at the request of the Minister of Justice by the Canadian Bar Association. The essential recommendation the Canadian Bar Association made was that henceforth all appeals to the Supreme Court ought to be by way of leave. This recommendation was made to deal with the problem that was at the root of the minister's request, namely, the work load of the court ... henceforth cases ought to come to the court by leave of the court.

This is a progressive and healthy change. I must say that my own research did not go far enough. I did not know that appeals had been abolished as a right so long ago in the United States and Britain. I am glad the minister reminded us of this.

There are those who believe that once a constitutional decision has been arrived at by the Supreme Court of Canada, that ends the matter. I think it is realistic to remember that that does not happen. It is important to the government and to parliament to have the views of the Supreme Court of Canada on constitutional matters. It is almost trite to say that. However, there still remain abiding political decisions which the governments of our country and of the provinces have to take as a result of decisions of the Supreme Court.

There are people with tidy minds—I suppose you could classify them as having such—who like to think that once a judicial decision is made, that ends the matter. Often it does not end the matter, but really begins the political discussion. I just want to enter the caveat that we will continue to have what I call constructive tension, in a federal system, between the government of Canada and the provinces.

● (1540)

A special joint committee of the Senate and the House of Commons on the constitution of Canada, which reported in 1972, had a fair amount to say about the Supreme Court and, in the context of second reading of this bill it might be well to remind ourselves of what that committee said. Recommendation No. 44 reads as follows:

> The existence, independence and structure of the Supreme Court of Canada should be provided for in the Constitution.

May I remind hon. members that in 1972 as in 1872 and, presumably, in the year 2072 we were and we shall be waiting for a patriated constitution amendable in Canada to save us the embarrassment of going on our knees to the parliament of the United Kingdom for any changes. Recommendations Nos. 45 and 46 are as follows:

> Consultations with the Provinces on appointments to the Supreme Court of Canada must take place. We generally support the methods of consultation proposed in the Victoria Charter, but the Provinces should also be allowed to make nominations to the nominating councils which would be set up under the Victoria proposals if the Attorney-General of Canada and the Attorney General of a province fail to agree on an appointee.
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> The Provinces should be given the right to withdraw appeals in matters of strictly provincial law from the Supreme Court of Canada and to vest final decision on such matters in their own highest courts, thus leaving to the Supreme Court of Canada jurisdiction over matters of Federal law and of constitutional law, including the Bill of Rights. The issue of whether a matter was one of strictly provincial law would be subject to determination by the Supreme Court of Canada.

That was two years ago, and presumably we can look forward to a period of renewed activity as far as discussions on the constitution are concerned. There has been some settling down in Canada. Elections have been held in several provinces, and the government of Canada has a new mandate. This would seem to me to be an opportune time to renew a process which has become perennial in Canada—failing to agree on a constitution.

I mentioned earlier that perhaps it is very healthy that there should be discussion surrounding the court. While the joint committee was meeting there was a good deal of comment about the court in magazines and journals, and a most interesting book has been written on the subject by Professor Weiler, chairman of the Labour Relations Board of British Columbia and a professor of law at Osgoode. This book is called "The Last Resort," and being a careful person I must say I do not agree with everything Professor Weiler says, but it is interesting that there should be a book on the subject of the court. As a matter of fact the author recommended some of the changes to be embodied in this legislation before the Canadian Bar had an opportunity to report to the minister.

The Senate committee reminds us that the funding necessary to cover the cost of these studies, and this report, was provided by the Donner Foundation of Toronto. This is a good opportunity to say to the trustees of that foundation that those of us who are interested in law reform cannot help but notice that assistance related to a great number of aspects of this subject has been