

submitting that question to the Supreme Court of Canada would be worthwhile?

I agree with you on everything but a few of the details concerning the Senate. I agree that the time has arrived and that we have to do something.

Senator Everett: Honourable senators, there is a clear constitutional authority for a reference by one of the sovereign governments of Canada of the issue to the Supreme Court. The Supreme Court will give its interpretation under that reference. At the present time there is a time problem with that, if we have a June 23 deadline for Meech Lake. However, that should not preclude a reference to the court.

The conclusion that I came to was that the court could not really make a decision that was other than its view of the clause at the time, in isolation from any actual occurrence that had taken place. Jurisprudence is not built in a day; it is a series of decisions based on various happenings out of which principles arise.

There is a legal maxim that a court not speaking on the issue at hand is speaking in *obiter dictum*. That does not bind nor does it have precedence in law. So that in a sense there would be some vague direction, but the court might be somewhat reluctant to be more than vague under the circumstances.

Senator Flynn: Indeed!

Senator Everett: It would have no specific circumstances to deal with. It would be cautious about binding itself into the future. Courts tend to bind themselves if there is something specific to deal with. They say, "It is decided this way because of this." That creates a principle that lawyers use in the next case to say, "The courts decided this." But courts are reluctant to make judgments that may carry down the road if they are not based on specific instances. They become even more reluctant to do it when they are dealing with a constitutional document that, by its very nature, has to be flexible; to grow and change with the times.

While having started with the idea that the reference was the answer, I came to the conclusion that it really would not prove a great deal and the court would be vague about what it said—as we have seen in other constitutional cases of this nature. Courts tend to be quite vague because they do not want to bind themselves. In the end we would be more frustrated by their decisions than we would be enlightened.

● (1520)

Senator Thériault: Honourable senators, I do not want to prolong the discussion or take up the time of the Senate, but I must tell my friend that he has not convinced me of his position. I think his first position might be closer to the fact, because I do not think the people of Canada or the people who are concerned with what, in my humble opinion, is a near crisis in our country are concerned right now about the long-range effect of what the court may decide or what it may base its decision upon. The court will decide, based on precedent in law and the influences of the times.

Recently the Supreme Court ruled on the Quebec Appeal Court decision on the sign issue. It stated its position and then

it said, "But you can do this." However, the end result is that Premier Bourassa has passed Bill 178. I agree completely with Senator Everett that Bill 178 is probably the major cause of the problem. Certainly the passing of Bill 178 caused a terrible problem in New Brunswick. People do not understand. I am a francophone and I have family living in Montreal and I understand the situation. Politics and constitutions involve perceptions, and the perception as a result of Bill 178 has been terrible. In any event, it is passé.

However, I am convinced—and nothing that Senator Everett has said to this point has changed my mind—that it would help if the Supreme Court of Canada were to rule on the matter. They understand. The justices of the Supreme Court are pretty darned smart and intelligent, and they are pretty good Canadians or they would not be there. So I think the Government of Canada should ask for a ruling. Premier Bourassa said yesterday that there are 100 crucial days left. If the Supreme Court of Canada was to say, "From where we sit this is what we think about the meaning of the 'distinct society' clause now", it would help break the impasse, which I hope will be broken before the June 23 deadline.

Hon. Jacques Flynn: Honourable senators, on this point, perhaps Senator Everett could tell us whether he thinks that, for instance, we could ask the Supreme Court to interpret the meaning of Section 1 of the Constitution Act, 1982 and of the Charter of Rights and Freedoms. I am quite sure he would not get an answer. Senator Everett has said that the Supreme Court is there to answer a specific question, but not a broad question like the one Senator Thériault has raised. It is fine for Senator Thériault to worry about that question, but he should have worried about it in 1982 when we adopted the Charter of Rights and Freedoms, because some of the things that have come out of the interpretation of the Charter were not expected at all.

Senator Thériault: Honourable senators, Senator Flynn wants to refight the debate of 1981. I was concerned with some aspects raised during the debate in 1981, but not about the Charter of Rights, or even about what Senator Everett has said about the "notwithstanding" clause. I was concerned about the "notwithstanding" clause, it is true. I am prepared to support the Meech Lake Accord now as well, but that does not mean that I buy the whole package or that it is perfect. Senator Flynn took a political, partisan stand in 1981. However, I do not want to do that and I am not doing that.

Senator Flynn: I did?

Senator Thériault: Yes, you did.

Senator Flynn: I did?

Senator Thériault: Senator Flynn opposed anything that Prime Minister Trudeau ever suggested.

Senator Flynn: I like that!

Senator Thériault: I am prepared to support Meech Lake with all its imperfections. It is not only I who have suggested this approach—and I am not a lawyer nor a constitutional expert—but many other Canadians as smart and as well-read