

Ways and Means

made between Canadian Marconi and Mr. Terence Whitfield.

It should be borne in mind, Mr. Chairman, that in the Whitfield case the Supreme Court was dealing with a particular clause in a particular contract; and while the court held that the clause in question was valid and not contrary to public policy its judgment does not purport to deal generally with the matter of discrimination in employment contracts.

The position of the government on the question of human rights, including the question of discrimination, is well known. We feel that such matters should be dealt with in a constitutional Bill of Rights that would have equal effect whether the matter arose within federal or provincial jurisdiction. In the Whitfield case, the contract was made in Montreal on November 3, 1960, and was to be performed within the province of Quebec.

• (5:00 p.m.)

I hope I shall not be taken as suggesting that parliament is not competent or is powerless to legislate in such a way as to prevent discrimination against a special group or segment of our population in respect of which it has special jurisdiction, in this case Indians and Eskimos, by virtue of head 24 of section 91 of the British North America Act. However, it is important in the view of the government that this problem of discrimination be dealt with on a general, rather than a limited, basis and this can be accomplished only if the problem is dealt with by the respective provincial legislatures in the context of the general law. In our view, the only adequate answer is a constitutional bill of rights, and hon. members will recall that this was the position taken by the government at the recent federal-provincial conference.

With reference to the question posed by the right hon. member for Prince Albert, I would regretfully point out there is really no precedent for the suggestion that the government might ask the Supreme Court of Canada to re-hear the appeal of Whitfield *v.* Canadian Marconi before the full court. The only legal course open to the government would be to refer the matter to the Supreme Court by way of a reference under section 55 of the Supreme Court Act. This of course could be done, but it would appear pointless because the Supreme Court, as well as the courts below, has finally determined the legal status of this contract between Whitfield and Canadian Marconi. It could not be assumed—indeed it would be imprudent to assume—that

the Supreme Court would decide, on a reference, that the judgment which it had previously rendered was incorrect.

I understand there is no basis for the suggestion that the government can ask a court, including the Supreme Court, to re-hear a case between private litigants. One of the private litigants might make this request but in our view the government would not be justified in intervening in private litigation of this kind.

As to the problem of a contract made in one province but to be performed in another, it may be well to point out that parliament does not automatically have jurisdiction with regard to such contracts. For example, a contract made in Ontario to be performed in Quebec, cannot require a party to it to do something which is in conflict with, or illegal under, Quebec law. This problem is very much broader than the problem of discrimination but it does not give rise to any new or peculiar head of federal jurisdiction. In any event, this is not relevant to the Whitfield case in which the contract complained of was made in the province in which it was to be performed.

Resolution reported and concurred in.

[*Translation*]

WAYS AND MEANS**INTERIM SUPPLY**

Hon. L. T. Pennell (for the President of the Treasury Board) moved that the house go into committee of ways and means.

Motion agreed to and the house went into committee, Mr. Tardif in the chair.

Mr. Pennell moved:

Resolved, that towards making good the supply granted to Her Majesty for the public service for the fiscal year ending March 31, 1969, the sum of \$1,118,202,797.17 be granted out of the Consolidated Revenue Fund of Canada.

Motion agreed to.

Resolution reported and concurred in.

[*English*]

Mr. Pennell thereupon moved for leave to introduce Bill No. C-212 for granting to Her Majesty certain sums of money for the public service for the financial year ending 31st March, 1969.

Mr. Knowles: Since the Solicitor General did not do so at the resolution stage, would he mind giving us now the usual undertaking that the passing of this bill will not interfere