It gave him power to summon "General Assemblys of the Freeholders and Planters," and authorized him to make laws "with the advice and consent of our said Council and Assembly"—which clearly is a delegation of the right to the governor, with the advice and consent of the elected assembly, to make laws regarding Nova Scotia.

It appears, however, that Cornwallis—to use a word we heard this afternoon—was somewhat of a laggard in summoning the General Assembly. In Britain, the Lords Commissioners for Trade and Plantations apparently sought a legal opinion on whether the governor and his council, without an assembly, had the right or the power to make laws. They received an opinion dated April 29, 1755, that the Governor in Council "alone are not authorized by his Majesty to make Laws till there can be an Assembly." Another quote from that opinion is:

> His Majesty has ordered the Government of the Infant Colony to be pursuant to his Commission and Instructions—

That, as I have already indicated more than once, included the summoning of an assembly of the free citizens of the province.

There was some correspondence from Governor Lawrence, a successor to Cornwallis, about the difficulties of summoning an assembly, but the Lords Commissioners in England did not think very much of that explanation, and by letter dated March 25, 1756, said the situation could not be "acquiesced in" any longer, and, in effect, told Lawrence to get on with whatever was required to summon an assembly and get it to work with himself and the council "to enact such Laws as must be absolutely essential in the Administration of Civil Government."

Lawrence continued to drag his feet, and the Lords Commissioners did not like that very much. They wrote him a rather sharp letter dated February 7, 1758, in which they referred to a letter from Lawrence about calling the Assembly, and said:

> —having so often and so fully repeated to you our sense and opinion of the Propriety and Necessity of this measure taking place, it only now remains for Us to direct its being carried into immediate execution, that His Majesty's Subjects . . . may no longer be deprived of that privilege which was promised to them by His Majesty, when the Settlement of this Colony was first undertaken, and was one of the Conditions upon which they accepted the Proposals then made.

The Assembly was duly called and consisted of 22 elected members. It first met on October 2, 1758. In December of that year Governor Lawrence reported to the Lords Commissioners in England that the Assembly had met "and passed a number of laws, a list of which are enclosed."

For the correspondence relating to the preceding paragraphs, I would refer honourable senators to the publication called *Constitutional Documents of Canada*, pages 6 to 18, which can be obtained from the Parliamentary Library.

[Senator Smith.]

Honourable senators, I say that the foregoing is more than ample evidence of specific delegation by the Crown to Nova Scotia of the right to make laws for the administration of civil government, and of the necessity to include a general assembly in the law-making process. The kinds of laws that were so made, and not disallowed by the Crown, demonstrate that the delegation was intended to include the right to make laws relating to offshore matters. The "Governor, Council and Assembly" of Nova Scotia did not hesitate to make laws dealing with offshore matters. As early as 1770 they enacted "An Act for the Benefit of the Fishery on the Coasts of this Province," which is found in chapter X of the *Perpetual Statutes of Nova Scotia, 1767 to 1771*.

Over the 109 years, from the first meeting of the Assembly in 1758 until Confederation in 1867, they passed many laws applying offshore. A convenient source to find at least some of those laws is the last consolidation of Nova Scotia statutes made before Confederation. This is referred to as the Third Series of consolidated statutes made in 1864.

To take two examples, chapters 16 and 94 thereof deal with the problem of smuggling as well as fishing. They are frequently referred to in constitutional discussions as the "hovering acts," because they forbade hovering off the shores of Nova Scotia. They had their origin as far back as 1836. Similar statutes were enacted in Prince Edward Island in 1843, in New Brunswick in 1853, and in Newfoundland in 1893.

Chapter 16, which I have just mentioned, is entitled "Of the Prevention of Smuggling," and among other things authorized officers of the revenue of the colony to go "on board any vessel being within one league"—that is a much shorter distance than some of the distances I have been mentioning—"and stay on board while she remains in port or within such distance". In certain circumstances they could "search and examine her cargo".

Chapter 94 is very much the same thing, except that it has to do with the coast and deep sea fisheries. But there is a section in that statute forbidding hovering and allowing search and examination of cargo and bringing the vessel into port.

Those and similar pre-Confederation statutes show beyond dispute that the Legislature of Nova Scotia, with the consent of the Governor and the Council, was accustomed to legislate in respect of offshore waters.

There is a New Brunswick case referred to as *R. vs. Burt,* (1932) 5 Maritime Provinces Reports, at page 112. That case appears to illustrate and confirm delegation of the power to legislate, although it must be admitted that in the *British Columbia Reference* case the Supreme Court of Canada said that the *Burt* case did not involve a delegation of the power to legislate over the territorial sea because the place of seizure was actually within the boundaries of New Brunswick. But that, of course, was not the ground on which the Supreme Court of New Brunswick rested its decision.

The Appellate Division of the Supreme Court of New Brunswick was dealing with a matter under the Intoxicating Liquor Control Act of that province, and the seizure of a