A balanced assessment of the reference procedure must acknowledge its utility as a means of securing an answer to a constitutional question—the reference procedure has been used mainly in constitutional cases.

And this is one:

This is because it enables a government to obtain an early and (for practical purposes) authoritative ruling on the constitutionality of a legislative programme. Sometimes questions of law are referred in advance of the drafting of legislation; sometimes draft legislation is referred before it is enacted.

I have another quote, but I want to indicate here that I would not have favoured going to the Supreme Court of Canada with an idea or with a question. I do not think that that would have been appropriate. I think we have a job to do here in the House of Commons, to make our minds up about the form in which the legislation should be presented.

I disagree with the Minister of Justice who indicated at a press conference yesterday that a reference would be undesirable in this case but gave no reasons why it would be undesirable. I have the transcript of what he said in the House yesterday. He said, as reported at page 5594 of *Hansard:*

We feel it is important that the legislation go forward with the imprimatur of Parliament on it. We believe that there was a request for leadership from the public.

I concede that, but for the reasons I have indicated I think a great deal of public good will be achieved by referring the legislation before we proceed with a difficult debate and before we get into the hot arguments on one side and the other that we know will be coming.

I want to refer to another authority on references, Barry Strayer, now on the bench, and his book on the Constitution. At page 281 he said:

The disruptive effect of continuing uncertainty, and the probability of much longer delays before the issues would otherwise have reached the Supreme Court by ordinary appeal, made the reference device a valuable means of clarifying the situation.

Remember that in the Daigle case we were dealing with a pregnant woman who was urging the Supreme Court of Canada to come back from summer holidays to hear her case early because of the urgency of the situation. I predict that this is the sort of circumstance the minister will visit on the country if he refuses to have the constitutionality of the bill established at this point.

The authority continues at page 281:

A There will also be situations where speedy determination is more of a necessity than a convenience.

And he goes on:

A reference may also provide relief where a private citizen would not find it convenient to take a constitutional case to the higher courts.

If a statute is held invalid, numerous citizens will be relieved from compliance with legislation which it was not practical for them to contest individually.

That is the case we are dealing with here. I want to urge the government to reconsider its refusal to have the constitutionality of this legislation tested and, if valid, approved at this point.

From the point of view of the support of the legislation I understand the cabinet supports this legislation. I suggest that endorsement by the Supreme Court of Canada will add stature and will add legitimacy which will assist and facilitate moving the legislation forward and getting it enacted.

I have difficulties with the constitutionality of the legislation for two important reasons: first, the constraint which the legislation contains on women's right; second, the failure of the legislation to recognize the interests of the foetus.

The Minister of Justice indicates that in his opinion the rights of women are fully protected in this legislation. I want to suggest to him that the way this legislation would work is to have two phases for an abortion. In phase one there will need to be a legal determination about the necessity or justification for the abortion. In phase two the abortion will be performed. It will normally be the case. The legislation contemplates that phase one and phase two are presided over by the same person, the doctor. There is no doubt that there are two phases and getting through phase one is a condition that a woman has to be subjected to, outside determination, before she is entitled to move into phase two and have her abortion. We know the Supreme Court of Canada was convinced in the conclusions that it reached, and from the evidence that it believed in its decision, that that determination was not easily obtainable in all parts of our country. It was a lot like having to find a therapeutic abortion committee. In some parts of the country there was not one.