Because of the wording of clause 35 of Bill C-69, he did not rule out the possibility of legal proceedings against decisions he may have to make in this regard.

In light of this testimony, the committee feels that some issues remain obscure, specifically: 1) the legislative process that led to the debate on Bill C-69; 2) the intention of the government expressed in the House of Commons and the Senate in May, June and July of this year; 3) the repeal of earlier statutes by Bill C-69; 4) the nature of the validity of action taken under the previous legislation and the scope of section 43 of the Interpretation Act; and 5) the possible effect of Bill C-69 on section 51 of the Constitution Act, 1867.

These are very important issues, which certainly deserve further clarification, and committee members said as much at our meeting on Tuesday.

For instance, there was a discussion on the various aspects of the Interpretation Act. Professor Baines, who accompanied Minister Gray, understandably asked for more time to think about her answers to certain questions, as did Ms Dawson, a senior official from the Department of Justice.

The committee is therefore well advised to continue its work.

Honourable senators, that is why the committee recommends that these issues be examined in depth and that the Standing Committee on Legal and Constitutional Affairs hold further hearings.

[*English*]

Senator Carstairs: Honourable senators, I rise to speak to this report because I think the committee did not do justice to the message from the House of Commons in this report. I think, quite frankly, that we are trying to further obfuscate the issue of Bill C-69.

I wish to spend a few moments on the history of what has happened. The question before the committee yesterday was really on whether Bill C-69 was a legal act and whether, therefore, we should be voting on it. The testimony given was clear and absolute: Bill C-69 is a legal entity in Parliament at the present time. Of that there was no question. No witnesses said that Bill C-69 was not a legal entity and was not part of this parliamentary procedure.

In order to understand the full debate, it is necessary to know the history. Approximately one year ago, this chamber passed Bill C-18, which suspended until June 22, 1995 the Electoral Boundaries Redistribution Act on the statute book as E-3. There was only one purpose to Bill C-18: It suspended the EBRA in order to allow the development of a new process of redistribution. That new bill is Bill C-69.

As to the legal status of Bill C-18, it is clear that it has none. When the Honourable Herb Gray appeared before us, he said it is spent. When Professor Baines of Queen's University was asked, she said it was not operational. She went on to say that it is, however, still on the statute books, and will remain there until it is repealed, which is one of the things that Bill C-69 provides for. No witness argued that Bill C-18 had any force and effect. Nor, as I said earlier, did any witness argue that Bill C-69 was dead. To the contrary, both the minister and the legal expert argued that it was very much alive.

Throughout our hearings, Senator Lynch-Staunton legitimately drew the attention of members to the intention of Bill C-18. He quoted a number of individuals, none of whom argued that the government would not be able to introduce a further piece of legislation, which is what Bill C-69 is. They simply argued, and rightly so, that if Bill C-69 was not passed by June 22, 1995, the earlier process, the EBRA known as E-3, would be in force and effect and would remain so until it was repealed. That is exactly what Bill C-69 does.

The Chief Electoral Officer, Mr. Kingsley, appeared before us and argued very vehemently that that which we were about to present to him was the worst possible scenario because, with the EBRA presently in force and effect, and Bill C-69 presently being debated in the Senate, he would have two electoral processes in place at the same time.

• (1550)

That became particularly dangerous on or about November 20 when the maps from the present EBRA were distributed and made official and declared. Meanwhile, Bill C-69 was still being debated. What we have at the present moment is a committee report which, in my opinion, will allow the Chief Electoral Officer's nightmare to continue.

Honourable senators, we have heard much about an act that was passed in 1963, which established, for the first time, an independent process for the development of electoral boundaries in Canada. However, it has been an evolutionary process. There have been changes to that act, as there have been suspensions each time there has been a census in this country. The last changes, having been put into effect in 1987, resulted from a suspension when the Conservatives formed the government of this country. There were amendments to the EBRA as a result. However, at no time has there been a full review of the act. It is that review of the act that brings about Bill C-69.

Honourable senators, the questions raised in the Senate committee and in this report based on section 43 of the Interpretation Act and section 51 of the Constitution do not in fact deal with Bill C-69 because, if Bill C-69 were passed, it would not conflict with either section 43 of the Interpretation Act or section 51 of the Constitution. It is specious.

Section 51 of the Constitution requires that after a census, taken every 10 years, the process would be triggered to bring about and institute new electoral boundaries. For example, the census in 1971 established a process. That process was begun. However, it had not finished in time for the 1972 election, so the process continued. It had not finished for the 1974 election, so the process continued. It was not finished until the 1979 election. No one questioned that section 51 had been violated because it was clearly recognized that a process was in place and was proceeding.