

when Senator Barrow was deputy chairman of the Standing Committee on Internal Economy, Budgets and Administration and chairman of the Budgets Subcommittee, he told us:

What happens is that the committees go to the Senate first for authority to travel. Once they have that authority, then they come to Internal Economy—

This is what Senator Barrow and others thought was the real back door.

They then come to the Internal Economy Committee and say: "This is our budget; we already have the authority from the Senate. They told us we could travel, so don't you give us any argument about the costs."

Honourable senators, that is why we have attempted to come up with a system whereby the committee brings in the costs before they ask the Senate for authority to travel. Now some honourable senators are saying that is the back door. In my opinion, the other system was the back door. I sat on committees where chairmen of committees said: "Don't give me any argument about costs. The Senate has told us we can travel and this is what it will cost."

Hon. Allan J. MacEachen (Leader of the Opposition): After all, it is only three. I think they have been very honest.

Motion agreed to and report adopted.

ADJOURNMENT

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(g), I move:

That when the Senate adjourns today, it do stand adjourned until Tuesday, 23rd January, 1990, at two o'clock in the afternoon.

The Hon. the Speaker *pro tempore*: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Motion agreed to.

QUESTION PERIOD

THE SENATE

CONSTITUTIONALITY OF ELECTION IN ALBERTA TO FILL
VACANCY—REASONING BEHIND LEGAL OPINION—
CORRESPONDENCE WITH GOVERNMENT OF ALBERTA

Hon. Joyce Fairbairn: Honourable senators, yesterday we had a useful exchange on the question of the constitutionality of the election or selection process to fill the Senate vacancy in Alberta. At that time the Leader of the Government in the Senate undertook to return today with answers on two or three of the questions that were raised at that time.

[Senator Frith.]

First of all, I should like to ask the honourable leader if he is in a position to paraphrase or summarize for us the reasoning behind the advice from the law officers of the Crown that the Alberta Senatorial Selection Act was ultra vires the Legislature of Alberta.

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, I can do so in two sentences, and these are the main points of the legal opinion of the Department of Justice on Alberta's Senatorial Selection Act.

First, nothing in the Constitution provides a basis for Alberta to legislate respecting the Senate.

Second, in particular, altering the method of selecting senators would require a constitutional amendment pursuant to section 42 of the Constitution Act, 1982.

I may say that these points were included in my correspondence with members of the government of Alberta.

Senator Fairbairn: I thank the Leader of the Government in the Senate for that information. I am wondering whether he could indicate to us the date on which he sent the letters to Premier Getty and to, I believe he indicated, Mr. James Horsman, the Minister of Intergovernmental Affairs in Alberta. I would also ask if it is possible for the Leader of the Government to table that correspondence.

Senator Murray: With regard to the latter part of the question, I have not really had time to consider whether I can, or should, table the correspondence. I will have to ask the Senate for its indulgence on that matter for another little while.

I have a chronology here and a word of explanation is in order. On February 17 last Bill 1, the Senatorial Selection Act, was tabled in the Alberta Legislative Assembly. That bill was overtaken—

Senator Frith: What date was that again, I am sorry?

Senator Murray: February 17, 1989. That bill was overtaken by a dissolution of the Alberta legislature on February 20 and the holding of a provincial election on March 20.

The Government of Alberta had indicated that it was its intention to bring back that bill once the new legislature was convened. Therefore, on May 19 I wrote to the Honourable James Horsman to let him know that our legal advisers were of the opinion that Bill 1 had been ultra vires the Alberta Legislature.

On June 26 Bill 11 was introduced into the new legislature, and on June 30 I again wrote to Mr. Horsman, advising that Bill 11 would still be ultra vires the Alberta Legislature.

On August 15 Bill 11 received first reading in the legislature. On August 23 I wrote to Premier Getty and to Mr. Horsman. In my letters I suggested that before the vote was called Alberta might consider referring the legislation to the Alberta Court of Appeal, or that the two governments might consider, together, a possible Supreme Court reference.

Senator Fairbairn: I thank the Leader of the Government for that answer.