It is true that the resolution of the Canadian Bar Association does not provide specifically that this recommendation should be given statutory effect, but I fail to see how it can be made completely binding otherwise than by statute.

As a result of the resolution of the association and the interview given by the president, a body of thought has been developed on the assumption that the Canadian Bar Association recommended not only that the principle of *stare decisis* be established but that it be embodied in this amending bill. Under these circumstances I think this chamber should know that the resolution which the Canadian Bar Association passed was the result of a consideration of the subject by a number of outstanding Canadian lawyers, and the discussion of their report by the association. But that same committee of learned gentlemen had interviewed as early as April of this year the responsible officers of the Department of Justice, and subsequently put in the form of a letter the substance of their recommendations in connection with this very subject matter. If you check the contents of their letter with the contents of the resolution of the Canadian Bar Association, you will see that they agree very closely, except for one statement communicated to the meeting of the Canadian Bar Association to the effect that nothing should appear in the statute with relation to the *stare decisis* rule. That was the majority view of those lawyers.

My reason for emphasizing this fact is that we sometimes hear the opinion expressed that we should make this doctrine effective by Statute so that the Supreme Court of Canada may hereafter follow this principle. In my opinion this would be a bad thing, because, owing to the many situations involved, the only rules we could work out would be a never-ending series of pronouncements. For instance, suppose the Supreme Court of Canada, after becoming the ultimate court of appeal, gave a judgment on a certain subject matter, and that in the next year the same subject matter came up before the Privy Council or the House of Lords, and a different ruling was made, what would be the rule thereafter to bind the Supreme Court? Should it follow its own previous judgment, the judgment of the Privy Council, or the judgment of the House of Lords? How would this affect the courts of appeal in the various provinces? If you had the situation occurring that I have cited, in what direction would the appellate courts in the provinces go? Would they follow the decision of the House of Lords, that of the Privy Council, or that of the Supreme Court? As I say, there would be a never-ending series of rules that would be changed from year to year.

My own opinion is that if we have sufficient confidence in our ability to establish and maintain a court of ultimate appeal in Canada, we should have sufficient confidence in those persons who may from time to time constitute the membership of that court to believe that they will continue to exercise their understanding and wisdom in the administration of Canadian justice.

**Some Hon. Senators:** Hear, hear.

**Hon. Mr. Haig:** Suppose the Supreme Court of Canada made a decision on a certain matter, and in ten years' time a somewhat similar question arose, what would be the binding effect of the former decision of the Supreme Court?

**Hon. Mr. Howard:** That is a tough one.

**Hon. Mr. Hayden:** I want to warn you right now that anything I may have to say will not be binding on the Supreme Court of Canada.

**Some Hon. Senators:** Oh, oh.

**Hon. Mr. Hayden:** I also wish to reserve the right, in the light of future circumstances, to reach a different conclusion. Having thus protected myself, I would say, on the analogy of the Privy Council, that if the Supreme Court of Canada, were to render a judgment on a certain subject matter, and a similar question were to arise at a future date, unless there were certain changed circumstances, the court, exercising reasonable judgment and common sense, would follow its previous decision. However, it is one thing to say it would, and it is another thing to say it must. A court of ultimate appeal must have a certain flexibility so that some consideration may be given to changing circumstances.

Let me illustrate further. When the honourable senator for Inkerman (Hon. Mr. Hugessen) gave his careful and critical analysis of the attitude of the Privy Council, I did not gather that he was criticizing or challenging the judicial integrity of that body. What I understood him to mean was that in the approach to the statute and the interpretation of our constitution there should be some degree of flexibility; that consideration should be given, not to a mere bag of bones, but to custom and changing conditions. As I see it, his only criticism—if you can call it such—was that the people who are best qualified to pass final judgment are those who possess the necessary judicial integrity and who live in Canada and are familiar with Canadian atmosphere. As I understood his speech on that point, it went only that far; and I am in agreement with it.

As to the honourable senator from Vancouver South (Hon. Mr. Farris), I have no quarrel with his energetic exposition of the merits of the Privy Council. I would not think of suggesting that the members of the Privy