

multicultural and aboriginal rights. There is a body of opinion that states that because women's rights are not mentioned, the doctrine of exclusion operates to exclude them from protection by the Charter.

There are those people who now say that the Charter takes precedence over any amendments to the Constitution, including the Canada clause. I do not believe that women's rights are in jeopardy by virtue of Meech Lake or that they can be overridden by the "distinct society" clause. The rights that are protected, being multicultural and aboriginal rights, are cultural rights. Women's rights are individual rights, and I do not think that the operation of the non-derogation clause has any effect whatsoever on women's rights. In my judgment, they are preserved.

Then we come to a very controversial section of the agreement, which is the spending power. One should point out that it applies only to shared-cost programs in areas of exclusive provincial jurisdiction. If a province opts out, in order to receive compensation those programs must be compatible with national objectives. Opting out is nothing new in Canadian constitutional history. In the case of medicare, I believe every province opted out, received compensation and established its own programs, based on national standards. Also, shared-cost programs have always been delivered by the provinces, and the federal government even today cannot compel the provinces to join in a shared-cost program.

What this clause in the Meech Lake agreement does is to give to the federal government, for the first time, the constitutional power to enter into shared-cost agreements with the provinces. The federal government sets the objectives. Those objectives have to be approved by Parliament, and I believe that if there were an elective Senate this is where it could play a very central role.

Then we have the clauses regarding immigration. I must say that they bother me to a considerable extent because this is the only area of Meech Lake where there is a reduction in the power of the federal government. It states that the federal government will enter into an agreement with Quebec which will guarantee Quebec its proportionate share of immigrants coming into Canada plus 5 per cent. Also, the federal government will opt out of reception and integration services and compensate Quebec for the cost. This agreement will be constitutionalized.

Senator Murray says that it is not a firm undertaking. He says it is only a "best efforts" agreement. Apparently there is a provision for agreements with other provinces, and all agreements cannot be repugnant to national standards and are subject to the Charter of Rights. But given that that agreement with Quebec and the other provinces is a "best efforts" agreement, I would have thought that having an elective Senate which is involved in the approval of that agreement would be very worthwhile.

Then we come to the clauses relating to the Supreme Court. The agreement states that the government will appoint members of the Supreme Court from lists provided by the provinces

[Senator Everett.]

and three of the members of the Supreme Court shall be appointed from lists provided by Quebec. I have no problem with that. Since the Supreme Court determines the constitutional differences between the federal government and the provinces, it should not be the creature of one level of government. In fact, its composition should be shared between the provinces and the federal government.

Some people have been critical of the fact that there is no deadlock-breaking mechanism, but experience in the United States between the President and the United States Senate, where there is no deadlock-breaking mechanism, indicates that you can successfully make appointments to a Supreme Court without such a mechanism. As for the three-judge guarantee to Quebec, since 1875, when the Supreme Court was inaugurated, there has been a requirement that one-third of the judges be trained in the civil law. Since 1949 there have been three judges from Quebec.

Finally, we come to the question of unanimous consent. This relates to changes in national institutions. The controversial areas relate to the Senate and the establishment of new provinces. Apart from those areas and a few other areas that are noncontroversial, all other constitutional amendments require the support of seven provinces with 50 per cent of the population. If I am talking about the Senate being an elective body, I can put that aside for now, because I am not sure that if you changed the requirement for Senate reform from unanimous to seven out of ten with 50 per cent you would significantly change the outcome of it under ordinary circumstances. The reason for that is that Ontario and Quebec have the least to gain from Senate reform and are most likely to oppose it, and they could be successful under either of the formulae.

Then we come to the question of the new provinces, which relates to the question of the inclusion of the Yukon and the Northwest Territories. I have no problem with that requiring unanimous consent. I think I am correct in saying that only 75,000 people live in that area, which is a vast resource and requires great support from the rest of Canada in financial terms. It is not something that we should lightly turn into provincial jurisdiction. We should be sure that when we are doing it we are doing the right thing. The unanimous provision in the case of the entry of new provinces, then, makes some considerable sense, as far as I am concerned.

● (1450)

We now come to the question of how Meech Lake was brought about. I listened to Premier Wells of Newfoundland the other day in Winnipeg. He was saying that ten men in a back room brought about the accord and he thought that that was not good enough for Canada. But he went on to say that he is the Premier of Newfoundland, that he represents the people of Newfoundland and a few thousand more Canadians who had written to him asking him to represent them. I say to Premier Wells that there are many ways of doing this, but the fact of the matter is that the ten men who were in that room are as he describes himself: they represented the people of Canada. Under our system of government the premiers have every right to negotiate a constitutional amendment, which is