

there should be a "notwithstanding" clause, and I have spoken to that effect before.

Senator Murray: In that case, don't worry about the "distinct society" clause!

Senator Everett: However, that does not have anything to do with the situation regarding the "distinct society" clause. They are exclusive; they are entirely different issues, and I do not think that you can answer the question by saying: "If you feel that way about the 'notwithstanding' clause, then forget about the 'distinct society' clause." I for one cannot and I do not think a lot of other people can, either.

Senator Murray: I am sure my friend will agree that the "notwithstanding" clause is a far greater threat to fundamental freedoms in this country and a far more potent weapon in the hands of governments than an interpretive clause which may be invoked by governments and must be weighed in the balance by judges, along with all kinds of other considerations, in reaching their decisions. Simply by invoking the "notwithstanding" clause any province, or indeed the Parliament of Canada, can pass a law which overrides fundamental rights and freedoms under the Charter.

I am sure my point is valid, that those who are concerned about the Charter should be concerned, in the first instance, with modifying or removing the "notwithstanding" clause.

Senator Olson: Why did you not take it out, then?

Senator Everett: Honourable senators, it seems to me that we are dealing with an entirely different situation. The "notwithstanding" clause has to be invoked by a government. It has a timeframe; a time limit. A government takes a political risk in doing that. All that the "notwithstanding" clause says is that, finally, at the end of the day, Parliament is supreme. The people can speak on any issue on which they want to speak. However, there are risks in using the "notwithstanding" clause.

What you are talking about with respect to the "distinct society" clause is an interpretive clause that requires no action on anyone's part. The courts can interpret the meaning of the "distinct society" clause. All I am saying is that if you assure me that the "distinct society" clause does not override the Charter of Rights and Freedoms, then, for greater certainty, why not say it in the parallel accord?

THE SENATE

ELECTION IN ALBERTA TO FILL VACANCY—POSSIBILITY OF COURT TEST ON CONSTITUTIONALITY

Hon. Joyce Fairbairn: I should like to ask a question of the Leader of the Government in the Senate. Prior to the Christmas recess the Leader of the Government in the Senate shared with us some information about the legal advice that the government had received on the Senate selection process in Alberta; it was *ultra vires* the legislature of Alberta. At that time he also told of the communications that he had had with the Government of Alberta, suggesting to them that prior to that election process they might have wished to refer the

matter jointly to the Supreme Court of Canada or to the appropriate level of courts in Alberta.

I wonder if the Leader of the Government could tell us if this question has arisen during his discussions with Mr. Horsman, which occurred most recently, I believe yesterday. Has the question of a test in the courts come up since the Leader of the Government discussed that matter with the Senate?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Not really, honourable senators, and I am speaking from memory now. I did see Mr. Horsman yesterday and there was a reference to their act. He repeated his position that, while we in the federal government have advice from our legal counsel to the effect that the bill is *ultra vires* their legislature, their advice is that it is *intra vires*. We did not pursue the matter further as he had other matters he wished to discuss.

• (1510)

Senator Fairbairn: May I ask the Leader of the Government in the Senate whether he was able to give Mr. Horsman any indication of the timing of the Prime Minister's decision on filling the Alberta vacancy in the Senate? The selection process which chose Mr. Stanley Waters occurred on October 16. There is still considerable interest in Alberta as to what the decision will be. Will Mr. Waters be appointed or not? I do not expect the Leader of the Government to answer that question, but perhaps he could indicate the timing with which Albertans might expect to hear an answer, pro or con.

Senator Murray: Honourable senators, I think I can say without breaking any confidence that Mr. Horsman put the same question to me, but I was not, and am not, in a position to answer it.

THE CONSTITUTION

MEECH LAKE ACCORD—PROCEDURE FOR APPOINTING NEW SENATORS—POSITION OF GOVERNMENT

Hon. Gildas L. Molgat: Honourable senators, I have a number of questions on the Meech Lake Accord. My first question relates to Senator Fairbairn's question. If the Meech Lake Accord is not agreed to by June 23, which I believe is the date the government speaks of, is it the intention of the government to follow the procedure for appointing new senators that is now in effect, under which provinces submit lists, or will the government revert to the previous system, under which the Prime Minister makes the decision himself?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, that is a hypothetical question. In that event, the Prime Minister would be free to consult as he wished and to follow any process that he wished. The fact is that if the Meech Lake Accord does not go through, the political accord that accompanies it—involving, as it does, the interim procedure for Senate appointments—will also die.