

to which I have referred before by Professor Beverley Baines on women and the law and the constitution.

● (2120)

I was quite amazed when I asked one of the vice-presidents of the Advisory Council on the Status of Women, Madam Lucie Pépin, whether she, the president, or any members of the council had been asked by the minister if they were satisfied with the protection of the equality of women, and she said that they had not been consulted at all. This struck me as extraordinary considering that the Baines paper came out in August and the council was preparing for this conference and preparing a lot of papers with some very sharp criticisms of the government proposals as being totally inadequate, particularly with regard to the before-the-law clause, but on many other clauses as well.

I wonder why the minister did not consult with the advisory council. Perhaps it is more important now to know whether he has since read with some care their briefs and the briefs of others including the one I just mentioned by the National Association of Women and the Law? If the minister does see the strength of their arguments, will he pursue them with his colleagues in cabinet? In fact, it would be excellent if the minister himself would pursue the necessary amendments to the constitutional proposals because, as the human rights commissioner has said, they are gravely flawed, before the committee. Might he perhaps do that?

Mr. Axworthy: Mr. Chairman, the resolution containing the charter of rights is presently being considered by a committee of this House. As I said earlier today, as a member of this House I look forward with interest to its deliberations and recommendations. The reason for the committee is, as the hon. member suggests, to receive representations from a wide variety of groups and organizations and to use its best judgment to extract what they think is proper, effective, useful and helpful from those representations. Obviously, it will not accept all of them because in many cases the recommendations are contradictory.

Miss Jewett: No, they are all the same.

Mr. Knowles: The women are united.

Mr. Axworthy: One reason why this committee of Parliament was established is to bring the judgment of our peers to bear upon that issue. The inclusion of the non-discriminatory rights in the charter was a major step forward for women in this country on the ground that it entrenches their rights. This has never occurred before and the history of our court cases and our jurisprudence shows that we have suffered from the lack of a clear, fundamental law which establishes basic rights against which other rights passed by statutes of this Parliament or by legislative assemblies would have to be judged.

The difficulty encountered in past court cases in which conflicting statutes are involved—for example, the Unemployment Insurance Act versus the Canadian Bill of Rights—is that the courts have clearly stated—and I would cite for the

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member's interest the judgment of Chief Justice Bora Laskin in *Curr versus The Queen*—that where there are two statutes passed by the same House the courts cannot judge which is of more merit, simply because they have both been passed by the same House with the same authority and the same mandate. In many of the cases which have worked against women's rights, it has been on these grounds. It was not because of a superior law or a fundamental law. The hon. member is disputing with the Chief Justice of the Supreme Court.

Miss Jewett: That is not a case concerning women. You have the wrong case.

Mr. Axworthy: I presume the hon. member can pit her knowledge against that of the chief justice, and that is her business.

Miss Jewett: You have the wrong case, Lloyd.

Mr. Axworthy: Mr. Chairman, I do not have the wrong case. I have looked at this matter very carefully.

Miss Jewett: No, you haven't.

Mr. Axworthy: I know the hon. member is a fount of most wisdom in this country, but I think she recognizes that there are legitimate differences on the viewpoint and its interpretation.

Miss Jewett: Just facts.

Mr. Axworthy: Regardless, Mr. Chairman—

Mr. Knowles: Can't you two professors get along better than this?

Mr. Axworthy: Mr. Chairman, I am not attempting to argue, I am attempting to explain, and I thought that the hon. member wanted an explanation. That was one of the major problems in our courts of law. There was not a fundamental law which gave clear signals to the courts upon which they could make decisions. It is on those grounds that many of the cases were decided against the expansion of rights. The entrenchment of a charter takes a major step forward in providing that clear and abiding signal. That was not something that was analysed in the Baines paper, and while it was a brilliant paper in some respects, it ignored some facts in law.

In the second case, I would point out to the hon. member that the entrenchment of rights in the constitution would have the immediate effect of requiring the legislative assemblies and Parliament to go back and re-evaluate the various laws which are available to determine in what ways they contradict or run against the charter. So, without going to court at all, there is an immediate cleansing of the act, a certain catharsis of the law in terms of eliminating discriminatory clauses. This was discussed in cabinet and this is why the three-year time lag was imposed, so that this Parliament and the legislatures could review the laws in their statute books to determine what would have to be changed in accordance with the requirements to