



Canada. Parl. Senate.  
Standing Comm.on Natural J  
Resources, 1957/58. 103  
Proceedings. H7  
1957/58  
N3A1

DATE	NAME - NOM

Canada. Parl. Senate. Standing  
Comm.on Natural Resources,  
1957/58.

J

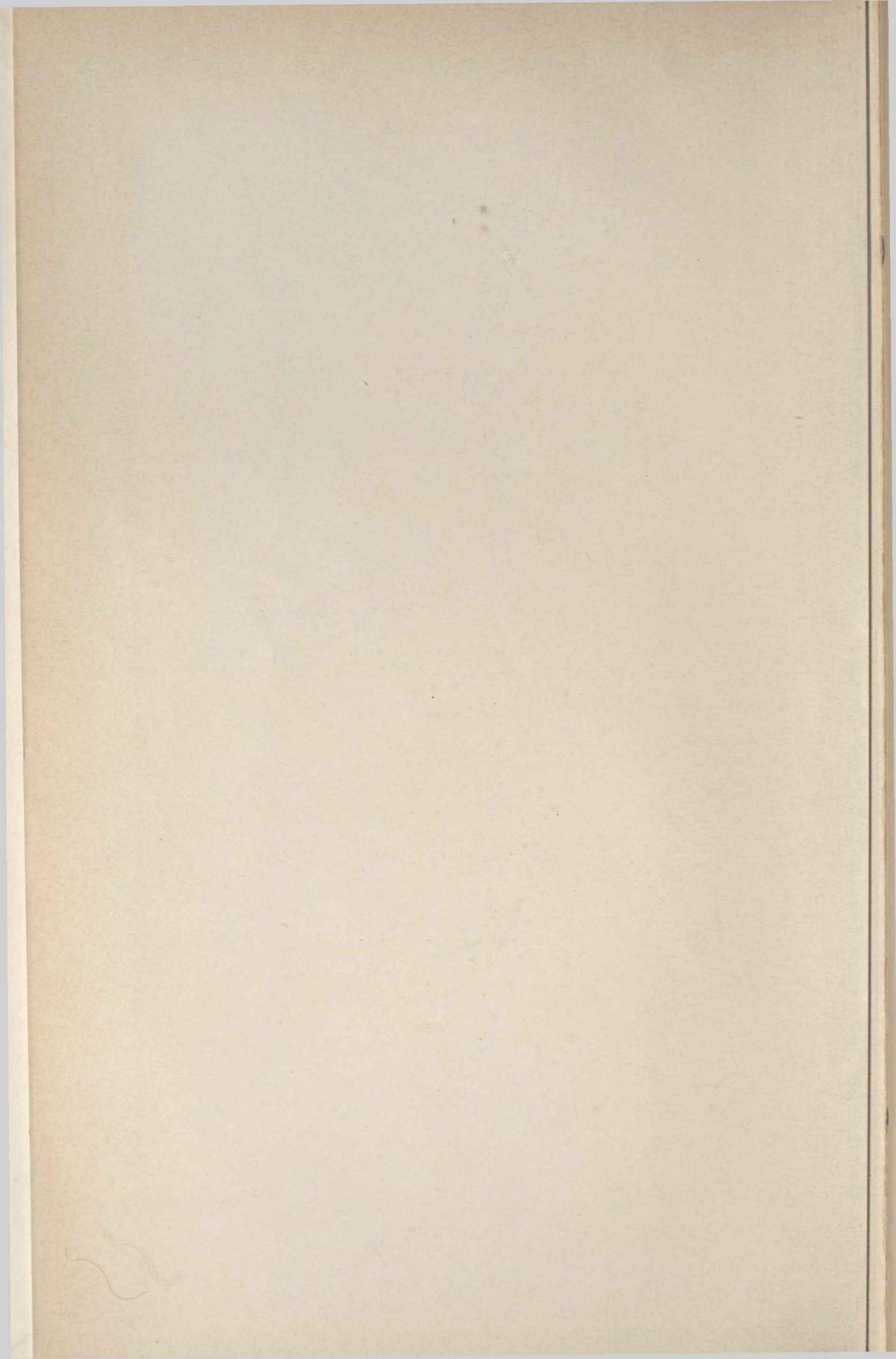
103

H7

1957/58

N3

A1



1957 Second Session

THE SENATE OF CANADA



PROCEEDINGS  
OF THE  
STANDING COMMITTEE  
ON  
**NATURAL RESOURCES**

To whom was referred the Bill (L), intituled: "An Act to amend  
the Territorial Lands Act".

---

The Honourable Cyrille Vaillancourt, Chairman

---

THURSDAY, NOVEMBER 21, 1957

---

WITNESSES

Mr. R. G. Robertson, Deputy Minister, Department of Northern Affairs  
and National Resources.

Mr. F. J. G. Cunningham, Assistant Deputy Minister, Department of  
Northern Affairs and National Resources.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1957

STANDING COMMITTEE

ON

NATURAL RESOURCES

The Honourable Cyrille Vaillancourt, Chairman

The Honourable Senators

Aseltine	Emerson	Methot
Barbour	Farquhar	Nicol
Basha	Fraser	Paterson
Beaubien	*Haig	Pearson
Bois	Hawkins	Petten
Bouffard	Hayden	Power
Burchill	Horner	Raymond
Cameron	Kinley	Stambaugh
Comeau	*Macdonald	Taylor (Norfolk)
Crerar	MacKinnon	Taylor (Westmorland)
Davies	McDonald	Turgeon
Dessureault	McKeen	Vaillancourt
Dupuis	McLean	Wood (37)

40 Members

(Quorum 9)

\*Ex officio member

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate

THURSDAY, October 31, 1957.

“Pursuant to the Order of the Day, the Honourable Senator Haig, P.C., moved, seconded by the Honourable Senator Aseltine, that the Bill (L), intituled: “An Act to amend the Territorial Lands Act”, be now read the second time.

After debate, and—

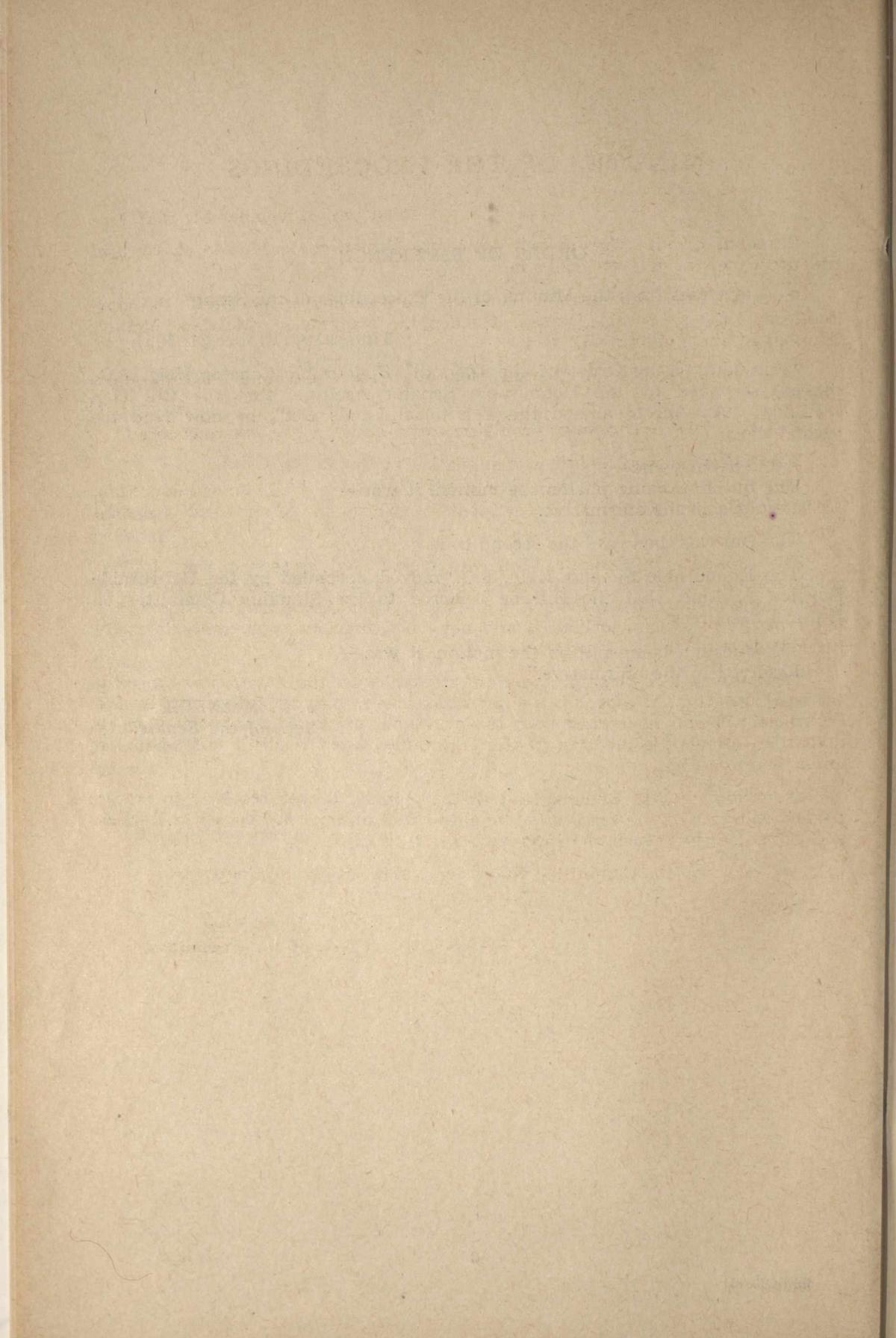
The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Haig, P.C., moved, seconded by the Honourable Senator Aseltine, that the Bill be referred to the Standing Committee on Natural Resources.

The question being put on the motion, it was—  
Resolved in the affirmative.”

J. F. MacNEILL,  
*Clerk of the Senate.*



## MINUTES OF THE PROCEEDINGS

THURSDAY, November 21, 1957.

Pursuant to adjournment and notice the Standing Committee on Natural Resources met this day at 10.30 a.m.

*Present:* The Honourable Senators Vaillancourt, *Chairman*; Barbour, Bouffard, Davies, Basha, Dupuis, Macdonald, MacKinnon, McLean, Methot, Stambaugh and Turgeon—12.

*In attendance:* Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill (L), "An Act to amend the Territorial Lands Act", was considered.

The following were heard in explanation of the Bill:—

Mr. R. G. Robertson, Deputy Minister and Mr. F. J. G. Cunningham, Assistant Deputy Minister, Department of Northern Affairs and National Resources.

The Honourable Senator Vien was heard and suggested that further consideration of the Bill be postponed and that it be given consideration at the forthcoming Dominion Provincial Conference. After discussion, the Committee felt that the provincial officials would not have sufficient opportunity to study the Bill prior to the said conference.

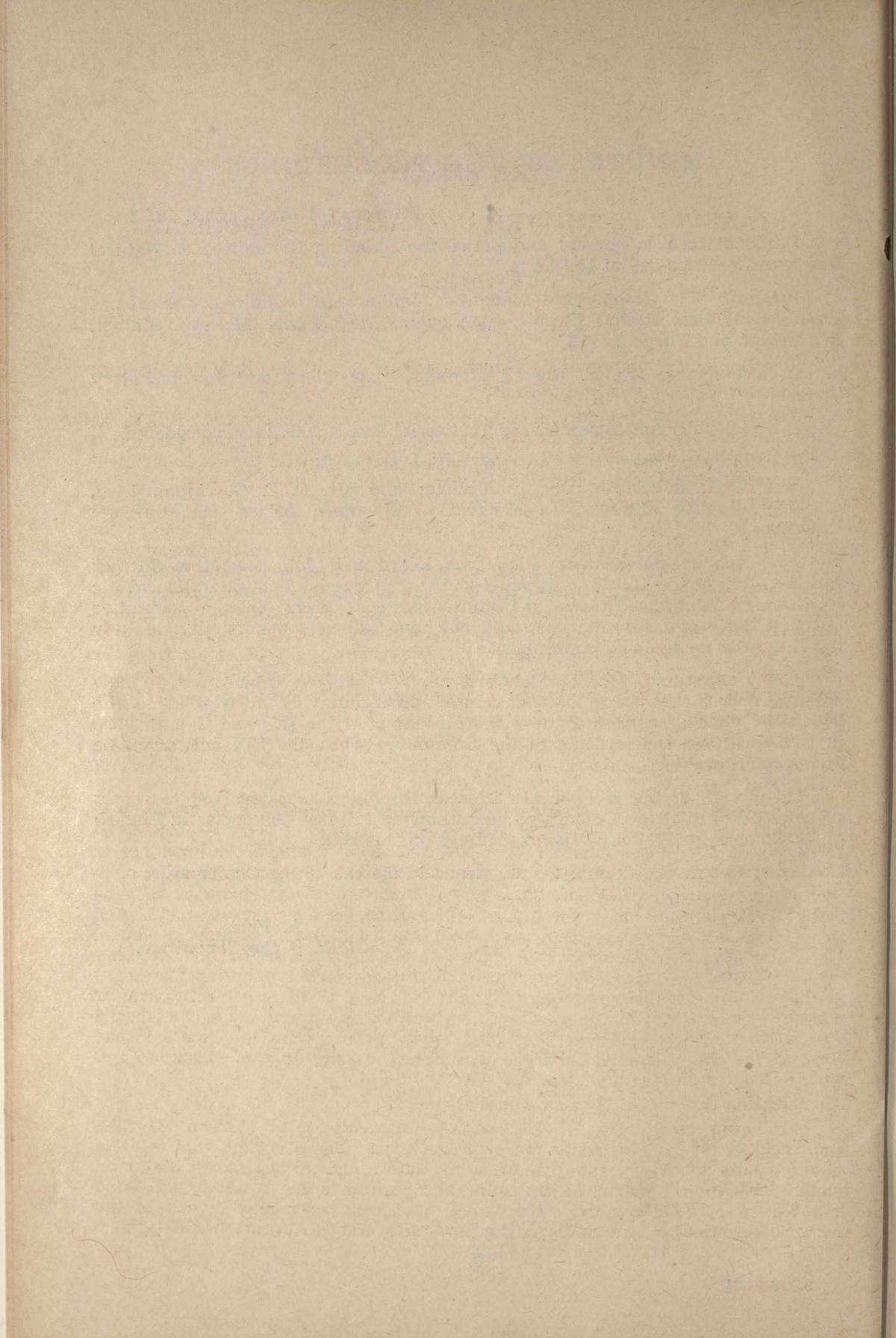
The Honourable Senator Bouffard moved that the Committee do now adjourn and that a copy of the printed proceedings be forwarded to the Provincial Officials concerned with the provisions of the Bill and that they be invited to attend the meeting of the Committee when the Bill will again be under consideration.

On motion of the Honourable Senator Dupuis, it was resolved to report recommending that the Committee be authorized to print 800 copies in English and 200 copies in French of its proceedings on this Bill.

At 11.45 a.m. the Committee adjourned to the call of the Chairman.

Attest.

A. Fortier,  
*Clerk of the Committee.*



# THE SENATE

## STANDING COMMITTEE ON NATURAL RESOURCES

### EVIDENCE

OTTAWA, Thursday, November 21, 1957.

The Standing Committee on Natural Resources met this day at 10.30 a.m. Senator Vaillancourt in the Chair.

The CHAIRMAN: Honourable senators, we are here to consider Bill L, an Act to amend the Territorial Lands Act, which is a very short bill. Perhaps it would be better to call Mr. R. G. Robertson, Deputy Minister of the Department of Northern Affairs and Natural Resources, to explain the bill.

Senator MACDONALD: Mr. Chairman, before Mr. Robertson gives his evidence, I would like to recall to the committee that when the bill was up for second reading in the house it was impossible to get an explanation of it; it was said at that time that a full explanation would be given in the committee. Some honourable senators raised the question of whether or not the rights of the provinces were involved in this legislation. The Leader of the Government said at that time that if the provinces objected they could be heard in committee. First I would like to know if there has been any objection from the provinces. If not, has anyone been in touch with the provinces with respect to this bill and do the provinces know anything about it?

The CHAIRMAN: What do you think about that?

Senator BOUFFARD: Has the Chairman or anybody in the committee advised the provinces that this bill was to be discussed here? Did the department do it?

Mr. ROBERTSON: Mr. Chairman, if I might say something on the matter, I think the question as to provincial interest arises out of what is perhaps an obscurity as to the intent of the bill. The bill is not intended to affect nor in fact does it affect provincial land in any way, nor does it change or attempt to change and in fact it could not change any land from being provincial to being federal. The sole intent of the bill is to ensure that the Territorial Lands Act, as a purely administrative framework, will apply not simply to federal land in the Yukon and Northwest Territories, which is now the case, but also to other land in Canada which is not now provincial and which is federal. The point is that in Canada, the territory of Canada, the land is all either provincial or federal. The control of the provinces in most cases, unless there is a special provision otherwise, only goes to the low-water mark on the coasts. Now, beyond the low-water mark there is submerged land that is Canadian soil but it is not a part of any province.

Senator BOUFFARD: Where would that be?

Mr. ROBERTSON: On all the coasts. For instance, in Hudson Bay the provinces go to the low water mark on the coast. There is land that is often covered only to a very small depth with water. On certain coasts that land shows indications now of having mineral resources and we have received a number of applications from companies who wish to record claims to the mineral resources in the land. As the Territorial Lands Act now stands—

Senator MACDONALD: What land is that again?

Mr. ROBERTSON: Land under Hudson Bay.

Senator MACDONALD: And the land beyond the low water mark, we will agree for argument's sake at the present time, belongs to the—

Mr. ROBERTSON: To the Crown in the right of Canada.

Senator MACDONALD: Is there a province adjoining it?

Mr. ROBERTSON: The provinces, according to the advice of the law officers of the Crown, extend to the low water line. They do not go beyond that.

Senator MACDONALD: And on Hudson Bay is it the province of Quebec that owns the land above the low water mark?

Mr. ROBERTSON: On the Quebec side it will be Quebec, and on the Ontario side it will be the province of Ontario. In other words, it will be the province of Quebec off the Quebec shore, the province of Ontario off the Ontario shore, and the province of Manitoba off the Manitoba shore. Each province owns the land as far as the low water line but beyond that the land is vested in the Crown in the right of Canada.

Senator BOUFFARD: Are you certain about that?

Mr. ROBERTSON: All I can say is that this is the advice of the law officers of the Crown.

Senator BOUFFARD: That is federal advice. Have the provinces agreed to that?

Mr. ROBERTSON: The provinces have not been asked. If they were to challenge it I presume they would do so in the courts.

Senator BOUFFARD: There are cases which have been decided by the Privy Council. There is the case of the Montreal Harbour which goes beyond the low water mark.

Mr. ROBERTSON: I should say, sir, that this principle does not apply in the case of rivers. The provinces own the river beds. Perhaps I should have made this point clear. I was speaking of regions such as the sea coasts or the coast of Hudson Bay. According to the law officers of the Crown the provinces own the river beds. For example, in the case of the Ottawa River, Quebec owns from its own shore to the middle of the river and Ontario owns the rest.

Senator BOUFFARD: What about the Gulf of St. Lawrence?

Mr. ROBERTSON: There is a line that has been normally taken from, I believe, River St. John to Cap des Rosiers as marking the boundary. The river is considered to be above the line and the Gulf below it.

Senator BOUFFARD: Take in the case of Cape Breton where they have coal mines under the water. The licences for those mines have always been granted by the province. I do not believe that the Dominion Steel and Coal Company, which is operating a mine and taking coal from it, has ever paid anything to the federal Government. That mine is undoubtedly under tidal waters.

Mr. ROBERTSON: I do not think it has ever paid anything to the federal Government, sir, and I would not be in a position to state that the mining rights are definitely federal or provincial. This bill does not purport to change the status of any land. It does not say what land is federal or provincial. What it does say is that wherever it is federal the Territorial Lands Act will apply. If I may revert to Senator Macdonald's original question, the provinces would have no proper interest in this bill because it does not purport to change the status of any land. As I say, it merely claims that where the land is federal the Territorial Lands Act will apply.

Senator MACDONALD: If we pass this bill we assume that all land beyond the low water mark is federal.

Mr. ROBERTSON: We do not necessarily assume anything. The advice we have had from the law officers of the Crown is to the effect that in the case of Hudson Bay and Hudson Strait the land beyond the low water mark is federal. In the case of the shores of the oceans the advice is that the land beyond the low water mark is federal.

Mr. HOPKINS: Within territorial waters.

Mr. ROBERTSON: Yes. When you get outside the territorial waters there is a growing doctrine that the country does not own the continental shelf but can exploit it.

Senator MÉTHOT: How can you justify your argument in the light of section 8 of the Territorial Lands Act, which reads:

Unless otherwise ordered by the Governor in Council, a strip of land 100 feet in width, measured from ordinary high water mark or from the boundary line, as the case may be, shall be deemed to be reserved to the Crown out of every grant of territorial lands, where the land extends (a) to the sea or an inlet thereof; (b) to the shore of any navigable water or an inlet thereof . . .

So it is not just land beyond the low water mark. The other land will become the property of the federal Government.

Senator BOUFFARD: In accordance with your interpretation, Mr. Robertson, you will apply the Territorial Lands Act to all properties that you find are situated within the territorial limits of Canada.

Mr. ROBERTSON: No, sir. The bill does not purport to say that any land is federal or that any land is provincial. All it purports to say is that wherever the land is federal the Territorial Lands Act applies. It does not affect the legal ownership or status in any way.

Senator MACDONALD: If I may take the second part of clause 1, it says:

Any other lands forming part of Canada but not included within any of the provinces . . .

Senator BOUFFARD: Yes.

Senator MACDONALD: That means, I take it, that any land below the water mark comes under the provisions of this act?

Mr. ROBERTSON: Senator, if the advice of our law officers is correct, that is the case, but this bill does not attempt to resolve that question. All it says is: wherever the land is federal, this act applies; if the matter went to the courts, and it was decided that the land was provincially owned below the low water mark, then this act would not apply to it.

Senator BOUFFARD: Mr. Robertson, have you got the opinion of the law officers of the Department of Justice concerning this bill, and if so, could you put that opinion before us?

Mr. ROBERTSON: The opinion of the law officers dealt with a number of specific questions that we raised concerning various matters as they arose. Perhaps I could read from a portion of the opinion of the law officers which appears to be relevant.

Senator BOUFFARD: Mr. Robertson, in the judgment of the Privy Council of the House of Lords on the Fisheries case in 1920, no mention is made about the low water mark; they refer to waters; the decision is, the bed of all waters situated within the territorial limits of a province remains provincial.

Mr. ROBERTSON: If I may say so, senator, I think "tidal waters" would be land covered with water during the tidal movement, and going down as far as the low water line. I believe the two mean the same thing.

Senator BOUFFARD: I read from the judgment:

"The answer was that, generally speaking, the proprietary title to these beds, excepting where expressly transferred, remained provincial.

It followed that the fishing rights were likewise provincial." They go so far as to deal with fishing rights.

Mr. ROBERTSON: In tidal waters.

Senator BOUFFARD: This refers to tidal or any other kind of waters; no difference is made between rivers and beds of tidal waters. The judgment states that the fishing rights would have to be granted by the province, unless the lands had been validly transferred to some other person.

Mr. ROBERTSON: Mr. Chairman, I am not the proper person to deal with such questions of law in respect to this bill. These are matters which should be dealt with by the law officers of the Crown, whose advice we have on certain points. The essential point with respect to this bill is that it does not affect the legal status of any land anywhere; nor does it affect the title to any land. It merely says that if land is federal, wherever that land may be, the Territorial Lands Act applies to it; but the bill does not attempt to deal with the title to that land.

Senator MÉTHOT: Is this proposed legislation necessary or is it unnecessary?

Mr. ROBERTSON: It is necessary.

Senator MÉTHOT: If it is necessary, it is to take away that strip of land 100 feet in width measured from the high water mark. According to you, the title of lands in the Yukon and the Northwest Territories belongs to the federal Government, but when it comes to the land of a province, that is a different thing. Take for instance the city of Toronto which has reclaimed in Lake Ontario a large strip of land, involves a question of the jurisdiction of the province.

Mr. ROBERTSON: According to the advice of the law officers, the land under the Great Lakes is Crown land in the right of the province.

Senator MÉTHOT: But section 8 of the Territorial Lands Act applies to land throughout Canada. Section 8 of the act provides that unless otherwise ordered by the Governor in Council, a strip of land 100 feet in width shall be deemed to be reserved to the Crown, which is the federal Government.

Senator BOUFFARD: Then it will not be possible to administer these lands through the Territorial Lands Act?

Mr. ROBERTSON: No, sir. If you will go on in that section you will see that it provides that, unless otherwise ordered, a strip of land shall be deemed to be reserved to the Crown "out of every grant of territorial lands." But, there would be no territorial lands involved, and therefore it would not apply.

Senator MÉTHOT: Around Ungava Bay, and the same applies to Hudson Bay, you have to consider the interests of Ontario, Quebec and Manitoba.

Mr. ROBERTSON: The essential point is, this bill would not affect the status or the ownership of land anywhere. All its passage would do would be to provide for the control of federal land. You have asked me if the measure was necessary, and I say that it is necessary without getting into any provincial questions whatsoever. As matters now stand, the Territorial Lands Act does not enable us to administer off shore land off the Northwest Territories around Hudson Bay. According to the advice of the law officers of the Crown, the Northwest Territories go only to the low water mark, and we cannot administer land beyond the low water mark off the Northwest Territories under the Act as it stands.

Senator TURGEON: Mr. Robertson, would you read us that portion of the act as it now exists which would be repealed by the passage of this bill?

Mr. ROBERTSON: Section 2 (g) now reads:

“territorial lands’ means lands in the Northwest Territories or in the Yukon Territory that are vested in the Crown or of which the Government of Canada has power to dispose.”

In effect, the act as it stands at the present time is as shown in subparagraph (i) in section 1 of the bill, which says: “(i) lands in the Northwest Territories or in the Yukon Territory”.

Senator MACDONALD: May I ask, why does the act have to be changed with respect to the Northwest Territories and the Yukon Territory?

Mr. ROBERTSON: It does not have to be changed in that respect.

Senator MACDONALD: I understood you to say it did.

Mr. ROBERTSON: The point is, we cannot administer the land lying off the shore of the Northwest Territories, because the advice of our law officers is that the Northwest Territories extend only to the low water mark; therefore, when it says “territorial lands” in the Northwest Territories it includes only land in the Northwest Territories as far as the low water mark—

Senator MACDONALD: I do not see how this act changes that situation in any respect.

Mr. ROBERTSON: It does. Subparagraph (ii) says, “any other lands forming part of Canada but not included within any of the provinces”. To take a specific case, sir, there is at the present time a nickel mine at Rankin Inlet on Hudson Bay, on the shore of the Northwest Territories, which is at the present time mining ore below land immediately above low water mark. The mining operation is inland, but it is quite possible it will be found that the nickel ore goes out under the water. As the Territorial Lands Act now stands, we have no administrative machinery with which to control the operation below low water mark.

Senator MACKINNON: Where is that mine?

Mr. ROBERTSON: It is on the shore of Hudson Bay, about 350 miles north of Churchill, on the west coast.

Senator McLEAN: Mr. Chairman, as I have another meeting to attend at 11 o'clock, and as I appear to be the only Maritime senator here, I would like to put a statement on the record.

Senator MACDONALD: Senator Barbour is here.

Senator McLEAN: The point I have in mind effects Nova Scotia and New Brunswick more than Prince Edward Island. You say, Mr. Robertson, that Ontario and Quebec had the lands bordering on Hudson Bay?

Mr. ROBERTSON: Down to the low water mark.

Senator McLEAN: Was it always land that belonged to Ontario and Quebec?

Mr. ROBERTSON: No sir.

Senator McLEAN: This is a very contentious question in the Maritime provinces. After Confederation those lands were granted to Ontario and Quebec, to enlarge the areas of those two provinces; but Nova Scotia and New Brunswick, who were the other two partners who went into Confederation, received no compensation for this land that was given to the provinces of Ontario and Quebec. We feel that at the time of Confederation the provinces of Nova Scotia and New Brunswick had just as much interest in that land as did Ontario and Quebec.

As I say, this is a contentious question in the Maritime provinces, and I would like that statement to appear on the record.

Senator BOUFFARD: If this bill passes, all the provinces in Canada will be on the same basis as the Northwest Territories and the Yukon Territory,

where, undoubtedly, the federal Government has jurisdiction. If it applies to all provinces in Canada, it means that it applies to Nova Scotia and Quebec. Anyone who wanted to have a concession for the mining of iron ore would have to ask the federal Government whether, in its opinion the ore belonged to the federal Government.

Mr. ROBERTSON: The point is this, Mr. Chairman. Suppose there is iron ore there and the province of Quebec, say, was to go to a law court and say that the land under Ungava Bay was not federal but was provincial and the court was to sustain the province of Quebec, the bill as amended would have no application because that would then be land within a province.

Senator BOUFFARD: It would have an application as up to the present time you had no jurisdiction to deal with these lands except by order in council.

Mr. ROBERTSON: We have no other jurisdiction because there is no federal act applying to it.

Senator BOUFFARD: That is it.

Mr. ROBERTSON: But it is not a question of ownership. If the province owns that land then this act, even if amended, would not apply to it.

Senator BOUFFARD: But if you do amend the act as you now propose to amend it, there would be no concession made of these mines, including the coal mines at Cape Breton. There would be no possibility for the provincial Governments to grant these permits or licences to the mines. You would say to the companies and to the provinces, "These lands belong to us" and a case would have to be taken before the courts.

Mr. ROBERTSON: We have already had several hundred applications for claims off the coast of Hudson Bay. The mining companies that are interested in these are not going to the Quebec or Ontario Governments to record claims because, apparently, their understanding of the law is that these mineral areas are not within Ontario or Quebec. They are coming to us.

Senator MACDONALD: Are these lands off the coast of Ontario and Quebec?

Mr. ROBERTSON: They are off the coast of Quebec for the most part. There has been a good deal of mineral interest up there.

Senator MACDONALD: And you claim they belong not to the provincial Government but to the dominion Government?

Mr. ROBERTSON: We do not claim anything.

Senator MACDONALD: These companies would not make application to you if you did not claim this.

Mr. ROBERTSON: All I say is that we have been advised by the law officers of the Crown that the provincial land only goes to the low water mark off the shore of Hudson Bay and James Bay.

Senator MACDONALD: Yes, but if we pass this bill these applications will not go to the provincial Governments.

Mr. ROBERTSON: They are not going there anyway.

Senator MACDONALD: Well, they would go to the provincial Governments. They will go to the dominion Government and the dominion Government will not consult with the provincial Governments. The dominion Government will issue the licences. Is that not correct?

Mr. ROBERTSON: I would like to make a comment on that statement. If the province of Quebec was of the view that these submerged lands off the shore of Quebec in Hudson Bay are provincial and not federal, it could go to court for a decision on that point.

Senator DUPUIS: If we do not pass this bill they will not have to go to court.

Mr. ROBERTSON: The only difference is that if the bill is not passed nobody will be able to record a mineral claim on these submerged lands.

Senator MACDONALD: Why not?

Mr. ROBERTSON: Apparently the legal advisers of the mining companies that have staked submerged lands think the companies should come to the federal Government. They do, and we cannot record their claims.

Senator MACDONALD: Why should not a similar bill to this be passed in the provinces to give them power to deal with these offshore lands?

Mr. ROBERTSON: Because, if the advice we have had from the law officers is correct, that land does not belong to the provinces.

Senator BOUFFARD: As a matter of fact, Mr. Robertson, in Nova Scotia the only licence the Dominion Steel and Coal Company has is a provincial licence, and the province of Nova Scotia gets all the revenue from the coal that is taken away from these underwater mines.

Mr. ROBERTSON: I am aware of that, sir, and I am not saying anything as to the legal position.

Senator BOUFFARD: No, but suppose we pass this legislation it would mean that anyone who wants to have a licence for a mine would have to go to both the province and the dominion to make sure he could have ownership.

Senator DAVIES: As a layman I would like to ask whether the law officers of the Crown or of the department consulted the law officers of the various provinces on this matter?

Mr. ROBERTSON: No, sir.

Senator BOUFFARD: Do you not think that with respect to a question of such importance as this it would be appropriate to consult the provinces?

Mr. ROBERTSON: No, sir.

Senator BOUFFARD: We are going to have a federal-provincial conference within a few days. Perhaps it could be dealt with then.

Mr. ROBERTSON: I should think that this is the kind of matter for the Government to decide, but it seems to me that if there is a dispute on a point of law then the courts would have to decide upon it.

Senator BOUFFARD: The courts have. It was decided in the Fisheries Case that whether it is stagnant water or the bed of a river or waters within the territorial limits of a province, there is no difference so far as the property of the subsoil is concerned, and it all belongs to the province.

Mr. ROBERTSON: The advice of the law officers of the Crown is that the subsoil of the rivers is vested in the provinces.

Senator BOUFFARD: The Fisheries Case concerned the granting of fishing permits with respect to not only inland waters but also waters surrounding a province, and the Privy Council decided that the fishing permits would have to be issued by the province and not by the federal Government. They did not talk about any strip of land a hundred feet in width or low water marks or high water marks. They decided that all the subsoil belonged to the province.

Mr. ROBERTSON: All I can say is that I am not the person who can or should speak on what a court has decided on questions of law. The essential point is that this bill does not affect legal ownership in any way. In any case, where something belongs to the provinces, this bill has no application.

Senator TURGEON: I am not a lawyer but based on the general conversation that has taken place here this morning I would like to ask what is the objective of this amendment? What makes this proposed amendment necessary under the existing law?

Mr. ROBERTSON: I can deal with that, sir. During 1957 we received 297 applications for mining claims on submerged lands in Hudson Bay. Some of those applications were for lands lying off an island called Smith Island, which is near the east shore of Hudson Bay. It is within the Northwest Territories. The opinion of the law officers of the Crown is that the Northwest Territories only go down as far as the low water mark. Under the act as it stands we can record mining claims in the Northwest Territories, and that means we can record mining claims as far as the low water mark.

Senator BOUFFARD: There is no doubt about that because the whole of the Northwest Territories belongs to the federal Government. But when you come to the provinces it is quite different.

Mr. ROBERTSON: If I may continue, sir, once we get beyond the low water mark off Smith Island we cannot record any mining claims.

Senator METHOT: To whom does that island belong?

Mr. ROBERTSON: The Northwest Territories. It is close by the province of Quebec.

Senator METHOT: And you claim it belongs to the Northwest Territories.

Mr. ROBERTSON: If you study the map you will see it is coloured in the colour of the Northwest Territories.

Senator METHOT: Is it not a question of law as to whom it belongs?

Mr. ROBERTSON: Yes, but as far as I am aware there has never been any contest about this.

Senator METHOT: As I understand it they claim there is a strip of metal which starts under the Bay of Ungava and goes as far as the Northwest Territories under Hudson Bay. That is what the mining men claim.

Mr. ROBERTSON: That is right.

Senator METHOT: So there is no doubt that the part which is situated under the Ungava Peninsula belongs to Quebec, for example, and Quebec's ownership goes up to where, to the low water mark?

Mr. ROBERTSON: Yes.

Senator METHOT: All right. Now, under this bill do you not think you are going beyond the 100 foot strip provision?

Mr. ROBERTSON: No, sir, I do not think so. I do not believe it has that effect, because section 8 of the Territorial Lands Act provides that this 100 foot strip is to be reserved out of every grant of territorial lands. It is not reserved out of anything that is not territorial lands.

Senator METHOT: I may accept that.

Mr. ROBERTSON: I believe that is the case, sir.

Senator BOUFFARD: On the other hand, it conflicts with the decision of the Privy Council which did not make any distinction between various kinds of water. The Privy Council deemed that the waters belong to the federal Government for the purposes of navigation. When it comes to soil or subsoil I do not think there is any judgment, certainly not in the Montreal Harbour Case nor the Fisheries Case, to the effect that any part of the soil or subsoil belongs to the federal Government.

Mr. ROBERTSON: I am not aware of any case on this, but as I say, I am not the person to give legal advice.

Senator BOUFFARD: But you are aware of the Fisheries case?

Mr. ROBERTSON: No, I am not.

Senator BOUFFARD: The legal officers of the Justice Department are aware of it.

Mr. ROBERTSON: They undoubtedly are.

Senator BOUFFARD: I would like to have some of the officers of the Justice Department come here and tell us why they take the stand they do with respect to the federal Government's position concerning soil and subsoil.

Mr. ROBERTSON: Would it be helpful if I were to read you a portion of some of the opinions which they have given to us?

Senator MACDONALD: If we are going to have the law officers here, I do not think it advisable to read their opinions.

I think we are clear on this point: If we pass this bill now the federal Government will be empowered to grant 297 licenses to companies to carry on mining operations off the provincial shores; and that the federal Government will get the revenue from those companies, while the provincial Governments will not. Is that the effect of the passage of this bill?

Mr. ROBERTSON: Pardon me, but Mr. Cunningham, the Assistant Deputy Minister of the department, is here and has something to say on that point.

Mr. F. J. G. CUNNINGHAM: Mr. Chairman, the federal Government has at the present time the right to deal with the mining interests who have staked these claims now, but we would have to do it by Order in Council. The regulations now are sometimes superseded by Order in Council.

Mr. BOUFFARD: Why then is this bill necessary?

Mr. CUNNINGHAM: Because there are so many claims, Mr. Chairman, and we do not want to submit dozens, or perhaps hundreds, of Orders in Council.

Mr. ROBERTSON: There is another reason, senator: In the granting of licences with respect to mineral claims it has been found very important to have a clearly defined legal framework, because there is always the possibility of conflict of claims as to time or place of staking, how a claim is registered and so on. It is very important, therefore, to have a clear legal framework. While, as Mr. Cunningham says, these claims could be dealt with by Order in Council, we have nothing now which defines when an Order in Council would be granted, or what proof one would have to have of a claim, or what work would have to be done to keep a claim alive, and that sort of thing. The only way to do this in proper form, as is done in every province, is to have a clear act under which regulations set out what the requirements are with respect to a claim.

Senator BOUFFARD: What effect is that going to have over these lands?

Mr. ROBERTSON: It will have no effect on provincial land.

Senator BOUFFARD: But for practical purposes you will establish that on certain conditions you will grant a license to a corporation who wants a mine, which may be in the soil or in the subsoil of the property which you think belongs to you.

Mr. ROBERTSON: That is right.

Senator BOUFFARD: But we have at the present time the decisions of the court, which do not make any difference between rivers and tidal waters, and the decisions would seem to indicate that the soil and subsoil belong to the provinces. Now you want to pass legislation under which you will have jurisdiction to claim that soil as belonging to the federal Government, and grant licenses for mining operations to the people who come to you?

Mr. ROBERTSON: I think, Mr. Chairman, a point such as this should be discussed with the law officers of the Crown, not with me.

Senator MACDONALD: One further question with respect to the 297 applications you have mentioned: Have these applications come in within the past few months?

Mr. ROBERTSON: In the year 1957, yes.

Senator MACDONALD: Why was the act not amended earlier? Why have you waited so long to amend the act?

Mr. ROBERTSON: There was no earlier opportunity in 1957.

Senator MACDONALD: We have been here since January.

Mr. ROBERTSON: The numerous applications have come in only during the course of 1957.

Senator MACDONALD: They have come in since January. Did any of the 297 applications come in before January?

Mr. CUNNINGHAM: Mineral explorations and stakings are not carried on in January in the Hudson Bay area. These have mostly come in since May.

Mr. ROBERTSON: In actual fact, we have been aware of this problem since before January; the question was put before the previous administration, as to whether an amendment should be introduced at the previous session. But, as you know, that session was a short one, and the Government of the day felt that it could not be put on the legislative program.

Senator MACDONALD: Are you sure that was the reason why the Government did not put it on its program?

Mr. ROBERTSON: Yes, sir.

Senator MACDONALD: Was this bill ever approved by the previous Government?

Mr. ROBERTSON: In draft, no sir; bills normally are not drafted until it is decided that they are going to be placed on a sessional program.

Senator MACDONALD: So that the previous Government took no action with respect to this bill. You are not suggesting, are you, that the previous Government took any action with respect to the bill which we are now considering?

Mr. ROBERTSON: What I am saying, senator, is that we were aware of this problem, and it was raised; the previous Government was aware of the fact that mineral claims on these submerged lands could not be recorded under the act as it then stood, and that some amendment would be necessary.

Senator MACDONALD: Yes, but the Government did not decide they would do it without consulting the provinces?

Mr. ROBERTSON: No, sir.

Senator MACDONALD: That is what is being done here. We are proposing to amend this act, effecting the lands and resources of Canada—and indeed, valuable resources—and we are doing it without taking the provinces into consideration.

Senator BOUFFARD: And we are doing it with the knowledge that in the past the provinces have granted these licences...

Mr. ROBERTSON: No, sir.

Senator BOUFFARD: With respect to mineral rights, Nova Scotia has granted them.

Mr. ROBERTSON: Senator, if the resources are provincial, and the land involved is owned by the province, it should be pointed out that this bill does not change the title to that land. This bill would not change the right to any resources. All the bill does is say that where land is not within the jurisdiction of a province, then this regime applies; if it is within a province, the regime does not apply.

Senator BOUFFARD: According to article 8 you take it for granted that all the lands from the high water mark belongs to the federal Government and is under its jurisdiction.

Mr. ROBERTSON: No, sir.

Senator BOUFFARD: Do you not take that for granted?

Mr. ROBERTSON: No. Section 8 refers to a 100-foot strip out of territorial lands. If the lands are not territorial, there is no 100-foot strip.

Senator MÉTHOT: Where do you start to measure the 100 feet?

Mr. ROBERTSON: According to the act, this 100 feet "from the ordinary high water mark... shall be deemed to be reserved to the Crown out of every grant of territorial lands." Territorial lands are only lands that are not in a province, so the province cannot be affected. This bill does not purport to affect the title to any land anywhere in Canada. All the bill does is provide the administrative framework for lands that are not now in a province.

Senator BOUFFARD: Mr. Robertson, the bill would allow you to administer these lands which you think belong to the federal Government?

Mr. ROBERTSON: As Mr. Cunningham has said, these lands can be administered now, but in a very inefficient and undesirable fashion; in other words, they can be administered by Order in Council, without any administrative framework. We think this is a very poor way to do it.

Senator DUPUIS: They can administer it under an Order in Council, until that order is cancelled by the court.

Mr. ROBERTSON: Exactly.

Senator DUPUIS: Mr. Chairman, I have some knowledge of the question of the ownership of mineral rights. If my memory serves me right, and I think it does, the Quebec Government and the federal Government are now involved in a question as to ownership of mineral rights on Smith Island.

Mr. ROBERTSON: I have not heard of it.

Senator DUPUIS: All the applications for claims from that island are cleared by the provincial Government.

Mr. ROBERTSON: This is the first I have heard of it.

Senator DUPUIS: I had a case involving some mineral rights, and subject to checking the details in my files, I think one of the claim owners had to join with the others to have a land survey made on Smith Island. So, with respect to mineral rights, the question is not decided. I had the feeling that this bill was for the purpose of settling the whole question.

Mr. ROBERTSON: No sir, it is not.

Senator DUPUIS: That was my feeling.

Mr. ROBERTSON: This bill is by way of an administrative measure, because at the present time there are 297 mining claims on submerged land which have come in for consideration, and may be more.

With respect to Smith Island alone there were 1,080 mining claims recorded under the Territorial Lands Act this year.

Senator DUPUIS: Granted by the federal Government?

Mr. ROBERTSON: Yes.

Senator BOUFFARD: That is because this land is in the Yukon Territories.

Mr. ROBERTSON: The Northwest Territories.

Senator BOUFFARD: No province is affected by these claims or licences that you have granted.

Mr. ROBERTSON: That is right.

Senator BOUFFARD: But when you extend this to the whole of Canada you do away and ignore the decisions rendered by the Privy Council.

Mr. ROBERTSON: We could not do that.

Senator BOUFFARD: We ignore them and we allow the Government to grant licences for mining without consulting the provinces who have been doing this since the beginning of Confederation.

Mr. ROBERTSON: I am not a constitutional expert, but as I understand the constitution the federal Parliament cannot by its own action change the title of any land that belongs to the province.

Senator BOUFFARD: There is no doubt about that. Up to the present time the Privy Council has stated definitely that the soil and subsoil belongs to the provinces and now we are giving you the right to issue licences below the low water mark.

Mr. ROBERTSON: No, sir. The amending bill does not say anything about the low water mark at all. It does not attempt to draw any line of ownership.

Senator BOUFFARD: Section 8 of the act reads:

"8. Unless otherwise ordered by the Governor in Council, a strip of land one hundred feet in width, measured from ordinary high water mark or from the boundary line, as the case may be, shall be deemed to be reserved to the Crown out of every grant of territorial lands, where the land extends

- (a) to the sea or an inlet thereof;
- (b) to the shore of any navigable water or an inlet thereof; or
- (c) to the boundary line between the Yukon Territory and Alaska, or between the Yukon Territory and the Northwest Territories, or between the Yukon Territory or the Northwest Territories and the Provinces of Manitoba, Saskatchewan, Alberta or British Columbia."

You want the authority to grant licences with respect to mineral and other property rights in these lands where up to the present time the Privy Council has decided that the soil and subsoil belong to the provinces.

Mr. ROBERTSON: If I may say so I think the crucial words in that section are, "out of every grant of territorial lands". If there are no territorial lands there are no reservations.

Senator DUPUIS: May I suggest that we adjourn this discussion.

Senator BOUFFARD: I second that motion.

Senator VIEN: I am not a member of this committee but with the permission of the committee I would like to speak on one point.

The CHAIRMAN: Please go ahead.

Senator VIEN: From this discussion it seems to me that title to offshore land has not yet been clearly defined. If it has then this bill is not necessary. If it has not, then you are proceeding to vest the title in the Crown under paragraph 2. I have no doubt what Mr. Robertson has said with respect to territorial lands as so defined in the act, but before you proceed to determine by legislation the rights of the federal or provincial Governments with respect to offshore lands, I think this matter should be made the subject of consultation with the provinces. We should not proceed here to determine the title to the offshore lands without first consulting the provinces.

As has been pointed out, the province of Nova Scotia has assumed the right to grant concessions with respect to waters offshore. It has done this and vast sums of money have been invested to operate offshore mines. I think this is a matter of such consequence it should be submitted to the forthcoming federal-provincial conference, which will be held in Ottawa on Monday and Tuesday of next week. If this subject cannot be placed on the agenda of that conference it should be made the subject matter of a study between the federal Government and the provincial Governments before we are called upon to pass this legislation.

If this bill is purely for administrative purposes with respect to offshore lands in the Yukon Territory and the Northwest Territories, it would be very simple to bring in a bill wherein administrative powers with respect to the offshore lands of the Yukon Territory and the Northwest Territories would be given to the federal Government. However, that would have to be studied in the light of its effects on provincial rights when territorial lands or offshore lands of the Yukon Territory or the Northwest Territories come so near the provincial lands themselves.

The committee is not in a position to do this now and I would suggest that its members carefully consider how they should proceed to bring the federal Parliament and the provinces together to determine the ownership of offshore lands.

Senator MACKINNON: Do you not think we should call the law officers of the Crown here before we indefinitely postpone the consideration of this legislation as suggested by some honourable senators?

Senator MACDONALD: Senator Vien has suggested that this matter might be taken up at the dominion-provincial conference to be held next week.

Senator MACKINNON: That would result in an indefinite postponement with respect to dealing with this legislation.

Senator MACDONALD: I do not know, but if Senator Vien's suggestion could be carried out I think it would help us to expedite this matter.

Senator DAVIES: Do you think there would be time to do it at this conference? There are only two sitting days and they have a lot of financial difficulties to discuss?

Senator MACDONALD: There may not be enough time.

Senator BOUFFARD: It seems to me that everyone here agrees this is an important matter and one that may seriously affect the provinces. It will place those who want to acquire mining licences in an awkward position. They will have to come to the federal Government which thinks the soil belongs to it, and then they will have to go to the provinces, which will claim the soil belongs to them. It will impose a hardship on the companies, who will have to go to both places. I rather doubt whether the provincial and federal authorities could get together on this question next week, but it seems to me that the least we can do is hear the law officers of the Crown and to call upon provincial representatives to appear before this committee, if they feel they have an interest on this important question. If the committee were to invite the provincial ministers concerned to come and put their opinion before it, I think the question would be much clearer and we would know whether any provincial rights were being infringed. Another solution would be to submit the whole matter to the Supreme Court.

Senator MACDONALD: The provinces could go to the Supreme Court and make their representations.

Senator BOUFFARD: Exactly.

Senator MACDONALD: Has the Senate the power to have a question submitted to the Supreme Court?

Senator VIEN: Neither the committee nor the Senate itself could do that because this is a public bill. The right to refer matters to the Supreme Court is limited to private bills.

This committee could very well recommend that this bill be held in abeyance, pending reference by the Governor in Council to the Supreme Court. Neither the Senate nor the House of Commons have the power under section 56 of the Supreme Court Act, which I read before coming down here, to make a direct reference to the Supreme Court with respect to private bills

or petitions for private bills. This being a public bill, the committee could recommend to the Senate that this matter be referred by the Governor in Council to the Supreme Court for a decision.

Senator BOUFFARD: My proposition was—and I do not know whether Senator Vien concurs in it—that consideration of this bill be suspended until we heard the law officers, after having advised all the provinces.

Senator VIEN: We could adjourn until next week.

Senator BOUFFARD: The Dominion-Provincial Conference is to take place here next week. I do not think there would be sufficient time between now and next week to advise the provincial Governments. I think we should give an interval of at least ten days.

Senator MACDONALD: Do you think the provinces should be sent a transcript of our proceedings here today?

The CHAIRMAN: That is a good idea. First, may we have a motion asking for the authority to print the proceedings?

Senator DUPUIS: Mr. Chairman, I move that 600 copies in English and 200 copies in French of our proceedings today be printed.

Senator VIEN: Perhaps the proceedings could be made an appendix to the Senate debates.

Senator BOUFFARD: Notice should be sent to all Ministers of Mines in the provincial Governments.

Mr. ROBERTSON: Perhaps it is not my place to do it, but I would raise the question of whether or not the committee should hear the federal law officers before specifically deciding that they wish to call in representatives from the provinces. The federal officers may well be able to throw light on this bill, which I have not been able to do.

Senator BOUFFARD: If the federal officers are coming here to state the law and give their opinion, I think the provincial representatives should be here at that time; it may be that the provinces may have to study the matter further, before making any suggestions. In any event, it would be very important for the provincial representatives to be notified.

Senator MACDONALD: You agree with that, Senator Methot, do you?

Senator METHOT: Yes.

Senator DAVIES: I do not think we can hurry this procedure. An interval of ten days may not be sufficient time to allow the provincial officers to express an opinion in this matter. While I am not a lawyer, I recognize that the matter is very complicated. While it would be interesting to hear the federal officers, I feel the provincial representatives should be here at that time. We have heard what Senator McLean had to say about a contentious question in the Maritime provinces. We might easily do something which would further prejudice the Maritime provinces.

Senator MACDONALD: Do you think two weeks is too short a time?

Senator DAVIES: Perhaps it is sufficient.

Senator VIEN: The motion before the committee is that the record of these proceedings be printed and distributed in the usual way among senators and members of the House of Commons, and that a copy be sent to the Minister of Mines for each of the provincial Governments, advising them of the next sitting of the committee, which they may attend if they choose to.

The CHAIRMAN: That is the motion. All in favour?

The motion was agreed to.

Whereupon the committee adjourned to the call of the Chair.

1957 Second Session

THE SENATE OF CANADA



PROCEEDINGS  
OF THE  
STANDING COMMITTEE  
ON  
**NATURAL RESOURCES**

To whom was referred the Bill (L), intituled: "An Act to amend  
the Territorial Lands Act".

---

No. 2

---

The Honourable Cyrille Vaillancourt, Chairman

---

WEDNESDAY, DECEMBER 11, 1957

---

WITNESSES

The Honourable J. W. C. Spooner, M.P.P., Minister of Mines,  
Province of Ontario.

Mr. R. G. Robertson, Deputy Minister, Department of Northern  
Affairs and National Resources.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1957

STANDING COMMITTEE

ON

NATURAL RESOURCES

The Honourable Cyrille Vaillancourt, Chairman

The Honourable Senators

Aseltine	Farquhar	Paterson
Barbour	Fraser	Pearson
Basha	*Haig	Petten
Beaubien	Hawkins	Power
Bois	Hayden	Raymond
Bouffard	Horner	Stambaugh
Burchill	Kinley	Taylor ( <i>Norfolk</i> )
Cameron	*Macdonald	Taylor ( <i>Westmorland</i> )
Comeau	MacKinnon	Turgeon
Crerar	McDonald	Vaillancourt
Davies	McKeen	Vien
Dessureault	McLean	Wood (38)
Dupuis	Methot	
Emerson	Nicol	

40 Members

(Quorum 9)

\*Ex Officio member

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate

THURSDAY, October 31, 1957.

“Pursuant to the Order of the Day, the Honourable Senator Haig, P.C., moved, seconded by the Honourable Senator Aseltine, that the Bill (L), intituled: “An Act to amend the Territorial Lands Act”, be now read the second time.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Haig, P.C., moved, seconded by the Honourable Senator Aseltine, that the Bill be referred to the Standing Committee on Natural Resources.

The question being put on the motion, it was—  
Resolved in the affirmative.”

J. F. MacNEILL,  
*Clerk of the Senate.*



## MINUTES OF PROCEEDINGS

WEDNESDAY, December 11, 1957.

Pursuant to adjournment and notice the Standing Committee on Natural Resources met this day at 10.30 a.m.

*Present:* The Honourable Senators: Vaillancourt, *Chairman*; Bouffard, Crerar, Farquhar, Haig, Hawkins, Kinley, Macdonald, McDonald, McKeen, Methot, Pearson, Taylor (*Norfolk*) and Turgeon.—14.

*In attendance:* Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Mr. R. G. Robertson, Deputy Minister, Mr. F. J. G. Cunningham, Assistant Deputy Minister and Mr. G. Carthy, Executive Assistant, Department of Northern Affairs and National Resources; The Honourable J. W. C. Spooner, Minister, Mr. Forbes McFarland, Mining Commissioner and Mr. F. W. Beatty, Surveyor General, Department of Mines, Province of Ontario.

Consideration of Bill L, "An Act to amend the Territorial Lands Act", was resumed.

The Honourable Senator Haig stated to the Committee that inasmuch as he had not had sufficient time to study the Bill fully he would suggest that following today's meeting the matter be adjourned in order that he may better acquaint himself with the subject matter of the Bill.

After discussing on the suggestion of Senator Haig, the Chairman, requested the Clerk of the Committee to read the letter and notice sent by the Chairman to the Ministers of Mines of each province and the replies thereto.

The Honourable Mr. Spooner, Minister of Mines, Province of Ontario then spoke briefly to the Committee. He stated that he would prefer to hear the law officers of the Federal Government in order that the provincial officials of his department would be in a better position to make their representations on this legislation.

The Honourable Senator Vien, seconded by the Honourable Senator Turgeon, moved that the law officers of the Crown be called to give evidence before this Committee. No action was taken on this motion.

The Honourable Senator Haig moved that the Committee invite the Minister of the Department of Northern Affairs and National Resources, the Deputy Minister of Justice and such of his officers as are responsible for the drafting of the Bill to be present at the next sitting of the Committee on Wednesday, December 18th, 1957. Motion carried.

At 11.30 am. the Committee adjourned until 10.00 a.m., Wednesday, December 18, 1957.

Attest.

A. Fortier,  
*Clerk of the Committee.*

THE HISTORY OF THE UNITED STATES

BY CHARLES A. BEAN

THE HISTORY OF THE UNITED STATES, FROM THE FIRST SETTLEMENTS TO THE PRESENT TIME.

THE HISTORY OF THE UNITED STATES, FROM THE FIRST SETTLEMENTS TO THE PRESENT TIME.

THE HISTORY OF THE UNITED STATES, FROM THE FIRST SETTLEMENTS TO THE PRESENT TIME.

THE HISTORY OF THE UNITED STATES, FROM THE FIRST SETTLEMENTS TO THE PRESENT TIME.

THE HISTORY OF THE UNITED STATES, FROM THE FIRST SETTLEMENTS TO THE PRESENT TIME.

THE HISTORY OF THE UNITED STATES, FROM THE FIRST SETTLEMENTS TO THE PRESENT TIME.

THE HISTORY OF THE UNITED STATES, FROM THE FIRST SETTLEMENTS TO THE PRESENT TIME.

THE HISTORY OF THE UNITED STATES, FROM THE FIRST SETTLEMENTS TO THE PRESENT TIME.

THE HISTORY OF THE UNITED STATES, FROM THE FIRST SETTLEMENTS TO THE PRESENT TIME.

THE HISTORY OF THE UNITED STATES, FROM THE FIRST SETTLEMENTS TO THE PRESENT TIME.

THE HISTORY OF THE UNITED STATES, FROM THE FIRST SETTLEMENTS TO THE PRESENT TIME.

THE HISTORY OF THE UNITED STATES, FROM THE FIRST SETTLEMENTS TO THE PRESENT TIME.

THE HISTORY OF THE UNITED STATES, FROM THE FIRST SETTLEMENTS TO THE PRESENT TIME.

THE HISTORY OF THE UNITED STATES, FROM THE FIRST SETTLEMENTS TO THE PRESENT TIME.

THE HISTORY OF THE UNITED STATES, FROM THE FIRST SETTLEMENTS TO THE PRESENT TIME.

THE HISTORY OF THE UNITED STATES, FROM THE FIRST SETTLEMENTS TO THE PRESENT TIME.

THE HISTORY OF THE UNITED STATES, FROM THE FIRST SETTLEMENTS TO THE PRESENT TIME.

THE HISTORY OF THE UNITED STATES, FROM THE FIRST SETTLEMENTS TO THE PRESENT TIME.

THE HISTORY OF THE UNITED STATES, FROM THE FIRST SETTLEMENTS TO THE PRESENT TIME.

**THE SENATE**  
**STANDING COMMITTEE ON NATURAL RESOURCES**  
**EVIDENCE**

OTTAWA, WEDNESDAY, December 11, 1957.

The Standing Committee on Natural Resources met this day at 10.30 a.m.  
Senator Vaillancourt in the Chair.

Senator HAIG: Mr. Chairman, before hearing any witnesses, may I make a statement?

I understand that you have notified the provinces with respect to Bill L, now before you, and I understand the Minister of Mines for Ontario is here today. I have been very busy and have been unable to give this bill full consideration.

I would like to suggest that after you have heard the honourable the minister from Ontario, that you adjourn your hearing on this bill, and give me time to acquaint myself with the whole situation. I do not like the bill very much, because I think it affects a good many provinces. Certainly it affects Manitoba, British Columbia, Nova Scotia, Ontario, Quebec and any other provinces which have coastal waters. For that reason I want to go into the matter fully.

I am going back to Winnipeg during the Christmas recess, and will be discussing this matter with the Premier of the province of Manitoba, and perhaps with some others in the meantime. I am not at this time trying to curtail anything that the Minister from Ontario would like to say—he is at liberty to make a full statement. But in fairness to the committee and to myself. I would ask that this matter be adjourned following today's meeting, in order that I may look into the matter fully.

Senator CRERAR: Would you propose to have the matter come before the committee again before the Christmas recess?

Senator HAIG: Not before the recess, after the recess.

Senator McDONALD: Mr. Chairman, I was not able to attend the last meeting of this committee because of my attendance at the simultaneous meeting of the Land Use Committee. I would like to know if the appropriate officials of the provincial Governments were taken into consultation before this bill was drafted or at the time it was being drafted?

Senator VIEN: Mr. Chairman, I am very happy to have heard the Honourable Leader of the Government state that this committee would adjourn its sitting without taking any definite action on this bill. At the last sitting of our committee it was understood that the law officers, to whom reference was made in the testimony of Mr. Robertson, would be heard. I think that it will advance the work of the committee very materially if we can hear the law officers who have given the opinion on which the officers of the department based their action in presenting this bill. Therefore it seems that the law officers should be heard. We should also hear the Honourable Minister of Mines for the province of Ontario who is here at our invitation. Our committee will be interested in listening to what the Honourable Minister has to say.

Senator MACDONALD: Mr. Chairman, could you tell us if there have been any replies received from the provincial Governments?

Senator McDONALD: Mr. Chairman, could we take these questions in order? In all deference to Senator Vien, I asked the question, had the appropriate officials of the provincial Governments been consulted regarding this bill before it was introduced here.

The CHAIRMAN: Letters were sent to the ministers of all the provinces. I will have the clerk read them.

Senator McDONALD: But, Mr. Chairman, I would like to know if the appropriate officials were consulted before the bill was introduced.

Mr. HOPKINS: According to the testimony of Mr. Robertson at the last meeting of the committee, the answer to Senator McDonald's question is no, Mr. Chairman, because it was not considered at that point it was necessary.

Senator McDONALD: Why would it not be necessary, when, for instance, coal is mined under the water off Nova Scotia for a distance of up to 10 or 12 miles.

The CHAIRMAN: Our Clerk will read the letter that we sent to every province.

The CLERK OF THE COMMITTEE: The letter reads:

Re: Bill L. An Act to amend the Territorial Lands Act.

The above mentioned Bill is now before the Senate Committee on Natural Resources for consideration.

At a meeting of the Committee on Thursday last, the 21st instant, the question of the rights of the Provinces in respect to the legislation proposed by the Bill was raised. After discussion, a Resolution was passed directing that a copy of the Bill, together with copy of the printed proceedings of the Committee, be forwarded to the appropriate department of the Provincial Governments with a request that they be asked for their views on the provisions of the Bill.

Would you please, therefore, let me know if you have any representations to make with respect to the Bill.

Yours faithfully,  
CYRILLE VAILLANCOURT,  
Chairman.

And on December 4th we sent the following notice to each of the provinces:

OTTAWA, December 4th, 1957.

Dear Sir:—

Re: *Bill L, An Act to amend the Territorial Lands Act.*

Referring to my letter of the 27th ultimo, I wish to advise you that a further meeting for consideration of the above Bill will be held on Wednesday, December 11th, 1957, at 10.30 a.m. in Senate Committee Room No. 368.

Yours faithfully,  
The Honourable CYRILLE VAILLANCOURT,  
Chairman.

Following are the replies we received:

St. John's Newfoundland December 11, 1957.  
(via C.N. Telegraph)

Cyrille Vaillancourt, Chairman, Standing Committee on Natural Resources The Senate, Ottawa.

Re amendment Territorial Lands Act. It is opinion of our law officers that the interests of the province are not adversely affected

thereby since the amendment does not purport to change the status of either provincial or federal lands.

W. J. Keough,  
Minister Mines and Resources.

Department of Mines and Minerals  
Alberta  
Office of the Minister

December 4, 1957.

*Re: Bill L, An Act to amend the Territorial Lands Act.*

Dear Sir:

I wish to acknowledge with thanks your letter of November 27, 1957, and to inform you that the Province of Alberta has no representations to make to your committee with respect to Bill L.

Yours very truly,

(Sgd.) E. C. Manning,  
Minister.

The Honourable Cyrille Vaillancourt,  
Chairman,  
Standing Committee on Natural Resources,  
The Senate of Canada,  
Ottawa, Ontario.

Minister of Mines  
Province of  
British Columbia  
Victoria

December 6th, 1957.

The Honourable Cyrille Vaillancourt,  
Chairman,  
Standing Committee on Natural Resources,  
The Senate,  
Ottawa, Canada.

Dear Sir:

*Re: Bill L, An Act to amend the Territorial Lands Act.*

Thank you for bringing to my attention Bill L and for sending me a copy of the Proceedings of your Standing Committee on Natural Resources.

In our opinion paragraph (g) of Section 2 of the "Territorial Lands Act" is ambiguous and it is also our opinion that the amendment does not remove the ambiguity.

Your Committee has brought out very clearly the fact that neither the Act as it stands nor the amendment defines the words in paragraph (g) "or of which the Government of Canada has power to dispose" or in (g) (ii) of the amendment.

It seems to us that to clarify paragraph (g) of section 2 of the "Territorial Lands Act" all the words after Crown should be struck out and something like the following inserted "and such lands shall include land under water".

As mentioned by members of your Committee there has been iron mining in Newfoundland and coal mining in Nova Scotia under the sea. There has been coal mining in British Columbia at Nanaimo under harbour waters. I have not had time to make inquiries as to how titles to such iron and coal were obtained but we have in recent years issued

licences to mine coal off the coast of Vancouver Island; and we have issued in recent years over twenty permits to explore for petroleum and natural gas that include rights to our minerals under coastal waters.

We have proceeded on the assumption that the only practical way to recover minerals beyond the shore of a province is to follow the extension of the mineral seawards. The Federal Government should presumably have the authority to authorize such similar legislation in coastal areas of territories directly under federal jurisdiction as to mineral rights without there being any suggestion of interference with the rights of the provinces in their coastal area.

Thank you too, for your letter of December 4th and further advice contained therein.

Yours very truly,

W. K. KIERNAN,  
*Minister.*

And from the Prime Minister of the Province of Quebec.

CABINET DU PREMIER MINISTRE  
PROVINCE DE QUÉBEC

QUÉBEC, le 6 décembre 1957.

L'honorable Sénateur Cyrille Vaillancourt,  
59, avenue Bégin,  
Lévis, P.Q.

Monsieur le sénateur,

Faisant suite à notre conversation par téléphone de Québec cet avant-midi concernant le bill L et qui est actuellement soumis au Sénat canadien:

Mon collègue, l'honorable W.M. Cottingham, ministre des Mines, m'a communiqué les lettres que vous lui avez adressées, à ce sujet, en date du 27 novembre dernier et du 4 décembre courant. M. Cottingham me demande de vous remercier d'avoir eu l'obligeance de lui transmettre copie du projet législatif en question ainsi qu'un exemplaire des "Proceedings of the Standing Committee on Natural Resources, November 21, 1957".

Il y a déjà quelque temps, mon confrère et concitoyen, l'honorable sénateur Léon Méthot, a porté à mon attention le projet législatif en question. J'ai transmis au sénateur Méthot les objections formelles et l'opposition définitive de la Province de Québec à l'adoption de ce projet législatif.

Je comprends que M. Méthot s'oppose, et avec beaucoup de raison, à l'adoption de ce bill et je formule l'espoir que vous ferez écho aux légitimes protestations de la province à ce sujet.

Veillez agréer mes sincères salutations.

M. L. Duplessis.

The following is a translation of Hon. Mr. Duplessis' letter:

Prime Minister's Office  
Province of Quebec  
Quebec, December 6, 1957.

Honourable Senator Cyrille Vaillancourt,  
59 Begin Ave.,  
Levis, Quebec.

Dear Senator,

Following our telephone conversation this afternoon with respect to Bill L which is at present under study by the Senate.

My colleague, the Honourable W. M. Cottingham, Minister for Mines, has communicated to me the letters which you addressed to him in regard to the above matter, dated November 27 and December 4th. Mr. Cottingham has asked me to thank you for your kind attention in providing him with a copy of the Bill as well as a copy of the "Proceedings of the Standing Committee on Natural Resources of November 21, 1957.

Some time ago my colleague and fellow-citizen, the Honourable Senator Léon Méthot, drew my attention to the proposed legislation. I have already forwarded to Senator Méthot the formal objections and definite opposition of the Province of Quebec to the passage of this Bill.

I understand that Senator Méthot will oppose, and for many reasons, the adoption of this Bill and I express the hope that you also will reflect the legitimate protest of the Province in this matter.

Please accept my most sincere best wishes,

M. L. DUPLESSIS.

Senator McDONALD: Which all goes to show that whenever a bill like this is being considered here it would be wise to first consult with the provinces.

Hon. T. W. C. SPOONER, Minister of Mines, Province of Ontario: Honourable sirs, I have not taken the liberty of writing you, because we feel that this bill is of great importance. So I am present this morning, and I have with me as advisers Mr. Forbes McFarland, who is the Mining Commissioner for the Province of Ontario, and I have also Mr. F. W. Beatty, who is the Surveyor-General for the province.

Our objections to the bill in its present form are that it would appear to encroach upon provincial rights. The language of the Bill is rather ambiguous, and we think that, if a bill of this nature is necessary, it should be written out in much clearer language. We feel that the passing of this bill might develop some, shall we say, difficult situations in dealings in Ontario with respect to mineral lands and other problems; and in going into a bit of history I find that there have been rather unsatisfactory arrangements and agreements between Ontario and Canada with respect to minerals under Indian lands, shall we say, minerals that are located under lands that were Indian lands, and things of that kind. For these very broad reasons, gentlemen, we feel, as many of you have already expressed the opinion this morning, that the bill could have many unsatisfactory implications, and therefore we think the subject is a very serious one, and should be gone into much more thoroughly and we should have a greater opportunity to discuss its subject matters with you or a committee of Government, and certainly that the other provinces should have more time to consider the implications of such a piece of legislation. Now, Mr. Chairman, if you would like to hear from my advisers I would be glad to have them come on the stand and give some reasoning that in their opinion might be of some assistance to your committee in dealing with this matter.

Senator MACDONALD: Before the minister leaves I want to say that as I came into the room Senator Vien was suggesting that our law officers make a statement before we hear from the provincial representatives. Is that correct, Senator Vien?

Senator Vien: Yes, but I was glad the minister had an opportunity of stating his views; they are in line with those of other provinces. If the honourable minister desires that his advisers be heard now, it might complete his presentation.

Hon. Mr. SPOONER: Yes.

Senator MACDONALD: I did not know, Mr. Minister, whether you would prefer that representatives from your province give evidence now or whether you would prefer to hear the law officers of the Dominion.

Hon. Mr. SPOONER: I would prefer to hear the law officers first.

Mr. ROBERTSON: I am not one of the law officers. The law officers from whom the advice or opinion was received were the former and present Deputy Minister of Justice, Mr. Varcoe and Mr. Jackett.

Senator VIEN: Mr. Robertson mentioned at the last sitting of the committee that he was speaking as advised by the law officers of the Crown, and it was understood that they would be present today. Mr. Robertson, did you not decline to express any opinion on the law and were we not expecting that your law officers would be here today to advise the committee?

Mr. ROBERTSON: Mr. Chairman, I do not know whose responsibility it is to summon the witnesses who are supposed to appear. I assume this would be handled by the committee. I simply turned up on my own today to give any further evidence that might be sought of me.

Senator VIEN: Therefore there are no law officers present?

Mr. ROBERTSON: I have not brought any law officers, sir.

Senator VIEN: Are there any here whose opinion is on the record?

Mr. ROBERTSON: Not that I can see.

Senator VIEN: Are these law officers, officers of the Department of Justice?

Mr. ROBERTSON: That is correct.

Senator VIEN: The former Deputy Minister, Mr. Varcoe, and his successor, Mr. Jackett?

Mr. ROBERTSON: Yes.

Senator VIEN: Mr. Chairman, I move that the law officers of the Department of Justice should be requested to appear at our next sitting, and that we now hear the technical advisers to the honourable Minister of Mines.

Hon. Mr. SPOONER: Mr. Forbes McFarland is the Mining Commissioner for the province of Ontario. He has been associated with the Department of Mines in our province for some 30 years.

Senator VIEN: To keep the record straight I would like my motion to be put.

Senator HAIG: Senator Vien can talk as much as he likes but I think we should hear all the witnesses and make whatever motions we want to make later. Making motions in the middle of a discussion doesn't mean anything. Let's hear all the witnesses and decide what we want to do next.

Senator VIEN: I accept this suggestion of the honourable Leader of the Government; my motion can stand until these witnesses are heard; but I will press my motion before we adjourn.

Senator MACDONALD: I would point out, Mr. Chairman, that we are not following the procedure suggested at the last meeting. The procedure suggested at the last meeting was that the law officers should be called and that the provincial authorities should be notified of the meeting in order that they could be here to hear the law officers of the Crown. Now, we are not following that procedure. The provincial authorities' representatives are here—one minister is here, and we are not following a procedure to ascertain what the case for the Dominion Government is. In that respect they are presenting their case before they know what our proposal is.

Hon. Mr. SPOONER: If I may be permitted, Mr. Chairman, I am rather in agreement with the honourable senator here, (Hon. Ross MacDonald, P.C.) and I think that all officers of your department should be here to suggest why

they need such legislation. You are dealing with something that is rather nebulous. We are trying to find out what is attempted to be done without knowing the reason behind it, and it places us in a rather unfortunate position, I suggest.

Senator MCKEEN: You are right.

The CHAIRMAN: I was under the impression that the lawyers were supposed to be here.

Senator HAIG: Is not the truth of the situation this: Should we not ask the minister from whose department this bill comes, to come here and tell us why he or his officials want this bill, and then have the law office tell us why they put these provisions in? Now, provided the law officer tells us what he wants, and provided the law office puts it in the bill, then we will understand his position. It may be this legislation is not what he wanted, although I think it is likely it is; but supposing it is not, then once we find out what the minister wanted we can go ahead and see how the outside people think about that arrangement. The crux of the argument is that this bill is going to take land under the water and call it dominion lands; that is the crux of the argument, and I do not know how they can do that without the Nova Scotia case before us. I do not know how anyone can pass a law without them; in fact I do not know how it is possible because Nova Scotia gave the title to the coal under that 12 miles out.

Senator MCKEEN: The same is true in British Columbia.

Senator HAIG: If there were technical matters to discuss, I could understand it. As a matter of fact, this is not a Government bill.

Senator MACDONALD: Oh, yes it is.

Senator HAIG: It is not a Government bill, it is a bill from one minister. It has not been a Government bill in my time. I do not recall being in the Cabinet when this bill was approved, I will say that candidly.

Senator MACDONALD: The bill was presented to the Senate by the Leader of the Senate as a Government bill; it is not a private bill.

Senator HAIG: Any minister can ask me to introduce a bill for him, and how can I refuse him? A Minister of the Crown asked me to do so.

Senator MACDONALD: I think the bill should go to the Cabinet for approval first before dealing with it here.

Senator HAIG: I think that is right.

Senator VIEN: Mr. Chairman, no bill is ever presented by a minister of the Crown before the cabinet has approved of it. The honourable Leader of the Government may not know whether this bill has been approved of or not, but it is the constant practice that no minister of the Crown presents a bill without the assent of the cabinet, and when the Leader of the Government in the Senate presents a departmental bill like this one, it necessarily becomes a Government bill.

Senator MACDONALD: May I add to that, from my recollection, when a bill is presented to the Senate as a Government bill, it bears the initials of the Prime Minister, and is sent to the Senate for presentation. I would be very much surprised if this bill has not been so initialled.

Senator VIEN: Mr. Chairman, could you request the Clerk of the Senate to produce the original of this bill?

Hon. Mr. SPOONER: Mr. Chairman, we seem to be moving a little fast here, and I have rather changed my mind.

Senator MACDONALD: The Senate always moves fast.

Hon. Mr. SPOONER: May I repeat, sir and honourable gentlemen, what I said a moment ago? I think we are placed in a rather unfortunate position by the fact that we are not aware of the reasoning behind this bill, and so we should be given the opportunity to hear the minister of the department sponsoring the bill, and also the law officers and other witnesses that may give evidence before the committee. We would be very happy to come here at your invitation and present our case, but we would not want to be placed in the reverse position, shall I say. Therefore, I am going to ask your indulgence, in that I be permitted to withhold the evidence of my advisors this morning.

Senator TURGEON: Mr. Chairman, may I make a statement concerning procedure? This is one of the most important measures that has come before the Senate for a long time; not only is it of basic importance in itself, but it is of the greatest interest to the Senate that it protect the constitutional rights of the provinces. Of course we must have regard for the constitutional rights of Canada, but we must not overlook the protection of the provinces.

The Minister of Mines for one of the provinces has officially stated that he would like to withhold his evidence and that of his advisors until he has heard or read the statements to be made by the officers of the Crown. Therefore, I would suggest that we proceed with the motion put forward by Senator Vien in order that we may hear the officers of the Crown at the earliest possible moment, and let the representatives of the provinces come before us at a later time.

Senator BOUFFARD: Why do you not put that in a form of a motion?

Senator TURGEON: I move that we proceed with the motion put forward by Senator Vien.

The CHAIRMAN: Do you agree?

Some SENATORS: Agreed.

Senator HAIG: Mr. Chairman, the members of the committee may pass that motion if they want to, but it does not solve the problem. I think we should pause until the bill comes before us to see whether it has been properly certified. Maybe I should not have introduced the bill at all—I don't know. I am trying to do what the law requires of me. But let me say candidly, I have never been the leader of a party in the house before, and I have only been at it for two months. I am not omnipotent—I make mistakes, and I make lots of them. If I have made a mistake, I will apologize to the committee, but I don't think I made a mistake. I was asked to introduce the bill; it was in my name, and put on my desk and I introduced it. I knew that the department wanted the bill put through, and I presumed they have the necessary consent. I do not know whether they did or not.

As I say, Mr. Chairman, you can put the motion if you like, but I do not think it is going to help us until we find out the true situation. I have asked for a delay while I investigate. If you do not choose to grant me that delay, I will have to withdraw the bill.

Senator MACDONALD: Surely, we can wait until the clerk returns with the original bill.

The CHAIRMAN: We asked the Minister of Northern Affairs and National Resources to come; the Deputy Minister has explained the situation, and I do not think the Minister could add anything to what has been said. I understand you now want to hear the law officers.

Senator VIEN: Mr. Robertson has stated that this bill was necessary for administrative purposes. We found in the bill something more than an administrative device. We now want to find out whether we are right or wrong in our construction of this bill. Mr. Robertson also stated that he could not give us a considered opinion on questions of law; that he spoke as advised by law

officers of the Crown. We did not want to press him further but we asked that the officers of the Crown be summoned. The honourable Leader of the Government suggests that we should hear the officers of the department. If he looks at the minutes of our last meeting, he will find that they contain the evidence of the Deputy Minister, who answered all questions except questions of law. To complete the presentation of the department, we now need answers to our questions of law, and we expected to receive them from the law officers this morning.

There has been some misunderstanding as to who should call the law officers. We appreciate that such misunderstandings do occur, occasionally, but I was told, last week, by an officer of the Crown, that the law officers of the Department of Justice were preparing a brief to be submitted here today. I am surprised that, after an interval of two weeks, they are not here.

Be that as it may, this bill has been introduced in the Senate as a Government bill, and it appeared to us that the Government in the right of Canada is attempting to take title to minerals and other resources under territorial waters and under the continental shelf.

Allow me to refer to the appendix to the House of Commons Hansard of the 28th of November, at page 1653. You will find there Provisional Comments on a Report on the "Law of the Sea." It is a memorandum that had been prepared by the former Minister of External Affairs, and it was submitted to the United Nations on behalf of Canada by the present Minister of External Affairs, the Honourable Sidney Smith, P.C., who obviously shares the opinion of his predecessor. This memorandum is to the effect that the "Law of the Sea" should be more clearly defined.

It is universally admitted that the continental territory of a coastal state extends offshore to three miles from the low water mark. Some nations contend that it should extend to 12 miles; others to 15 miles.

Minerals have been discovered under the waters of the Gulf of Mexico and off the shores of California far beyond the 12 mile belt. The United States Government claims the right to the minerals, not only under territorial waters, but also under what is called the continental shelf. The continental shelf was never clearly defined. Some have suggested that it should extend to a line where the depth of the water is 200 metres (approximately 600 feet); others say that this is too rigid and that it should extend as far as the coastal state can profitably exploit mines.

This is a matter of importance. In the memorandum to which I have referred it is suggested that mines and other natural resources like fisheries, for instance, in territorial waters and the continental shelf should belong to the coastal state. If that be so, when we come to a country like Canada, a Confederation, where natural resources are by virtue of our Constitutional Act, vested in provinces, it seems logical that the provinces are the coastal states and own all natural resources to be found in these offshore waters. Several provinces have assumed to possess that right. The provinces of British Columbia and Nova Scotia have granted concessions to exploit mines in territories—extending several miles off their shores. All provinces should have the same right to the full extent of the continental shelf.

There is here involved a principle that has never been properly discussed before a committee of Parliament nor has it been dealt with by legislation or considered at federal and provincial conferences. It is a matter of great consequence. We suggest that it be made the subject-matter of a serious study at conferences to be held between federal and provincial authorities.

Now it seems that it would advance matters in this committee, and it would enlighten all concerned, if the opinion of the law clerks of the Department of Justice were spread on our records. I, for one, and, I am sure, other

honourable members and provincial authorities would like to know what is the concept of the federal authorities as regards the boundaries of territorial lands vested in the Crown in the right of the provinces.

Apparently, according to Mr. Robertson as advised by the law clerks of the Crown, a province is bounded by the low water mark. I do not accept that theory as regards the property and control of natural resources to be found in, over or under territorial waters. We are anxious to see clearly defined and recognized the principle that the right of the provinces extends not only to the low water mark, but also to all natural resources in the soil and subsoil under territorial waters and under the continental shelf. It also extends to the exploitation and regulation of fisheries in these waters, including the power of regulating sanitary and other conditions affecting the interests of the coastal state.

That is the opinion we submit to this committee; it is a proper construction of the letter and spirit of Confederation; our Confederation Act provides that natural resources are vested in the provinces. We believe that it would be a violation of the spirit of our Confederation Act to withdraw from the provinces any part of those natural resources. Of course, in the Northwest Territories and in the Yukon, which are still vested in the Crown in the right of Canada, offshore mining rights are obviously the property of the Government of Canada. With respect to any other territorial waters the spirit and letter of Confederation should receive the broadest possible construction. The Senate has a particular duty; it is one of its main functions to protect provincial rights in that respect.

Senator BOUFFARD: We have before us a very important matter, and we are very pleased that the provinces have taken an interest in it, and we are glad to see that the Minister of Mines for Ontario is here. It is too bad that the law officers are not here to give the explanations that should have been given this morning. I hate to think that the Minister of Mines and his two officers are going to have to come back to hear the law officers, and I would suggest that, if possible, we adjourn the committee until tonight at 5 o'clock, and arrange for the law officers to be here, so that the Minister of Mines for Ontario and his two officers could hear them, and maybe we could hear the Minister of Mines and his two advisers after the law officers have been heard. It seems to me it would not be difficult to have the Deputy Minister of Justice attend here tonight at 5 o'clock—he has had two weeks to study the matter—so that we can hear him, and the Minister of Mines for Ontario and his two officers could stay here until this afternoon to hear the officer of the Justice Department.

Senator HAWKINS: Some of us have commitments tonight, and I suggest it is hardly fair that we should be advised at this time that there will be a meeting of this important committee at 5 o'clock.

Senator BOUFFARD: I am willing to change my suggestion to make the meeting tomorrow.

Senator KINLEY: What is the hurry? This matter does not seem to be one of urgency. The sponsor is not even here. Why not leave the matter over for a while?

Senator HAIG: I like the suggestion of the two senators from the Province of Quebec. Unless absolutely necessary, we do not want to force people to come here at 5 o'clock. I should like to see a full meeting, because this is a very important matter. If we can meet at 5 o'clock we should ask representatives of the Department of Northern Affairs and National Resources, from which department the Bill comes, to attend, and learn from the Deputy Minister of the Department of Justice, who drew the bill, what his instructions were, and thus let us find out what the Bill does and what their opinion of it is. That is the first thing we should do.

Senator MACDONALD: I would like to know whether it is a Government bill.

Mr. HOPKINS: In the chain of procedure I forgot one thing, and that is that when a Government bill is approved it is signed by the Prime Minister, sent to the House of Commons, and referred by the Clerk to me, and it is printed through the aegis of my office, and the original signed copy is filed in my office with the complete file with reference to the Bill. I have the signed copy here. Under the *ancien régime* they used to be initialled "L. St. L.". Now I see the signature is in full, "John Diefenbaker".

Senator MACDONALD: There is no doubt it is a Government bill.

Senator HAIG: I don't know that. It must have been before my time. Whether it is a Government bill or not, I am not worried about that, but let us have the meeting at 5 o'clock. If someone will move a motion to that effect I will support it. We should have present the Minister of Northern Affairs and National Resources and the Law Officer of the Crown who drew the bill, and ascertain what were his instructions. Do we want anybody else? I think that will take the whole time up to 6 o'clock. Under these circumstances I would agree that we adjourn.

Senator HAWKINS: I strongly object to having that meeting tonight. A group of us are having another meeting which we are committed to attend. This is an important bill. We were called to meet today, but through somebody's negligence we have not the proper witnesses here. It is not our fault that we are here. I am anxious to have the bill dealt with, but I object to a meeting at 5 o'clock tonight.

Senator VIEN: What about tomorrow morning?

Hon. Mr. SPOONER: May I ask the indulgence of the committee? I regret very much that it will be impossible for us to be here tomorrow morning. I have commitments in Toronto tomorrow morning that I must attend to. I cannot agree with statements that have been made before that there seems to be a great hurry about this bill. I would like to, and I had planned to have with us this morning, Mr. Eric Silk, who is the senior legislative counsel for our province, but unfortunately he had a meeting in Washington and could not attend here. I would like to suggest that the meeting be adjourned until the new year. We shall be very happy to come back then, and I think at that time we shall be able to have Mr. Silk with us, and we shall be in a much better position, after we hear the evidence of the law officers and other persons, to discuss this bill than we would be in an hour this evening, or upon some short notice of that kind.

Senator VIEN: Mr. Minister, would it not be helpful to you and to us that the law officers be heard? The record of our proceedings is to be printed; a printed copy of our report, containing the opinion of the law officers would be available to all. We can sit either tonight, at five, or tomorrow at ten, and then adjourn sine die to be reconvened at the call of the Chair.

Hon. Mr. SPOONER: If we can be assured of that, that would be quite satisfactory to us. We would then have the record of the lay officers' statement: We could have it analysed and have an opportunity to return to another meeting of your committee and present our case.

Senator MCKEEN: I should like to support this procedure, because I want to have the opinion of the law officers of the Crown so that the British Columbia Government will know what the situation is, rather than have a meeting called and take action on it at that meeting immediately after the law officers have given their views. I think that the reason for this bill should be clearly defined. British Columbia was not given the lands, like Manitoba, Saskatchewan, Alberta, and the Northwest Territories. Our province was a Crown colony. The lands were never vested in Canada, they were vested in the

Crown colony there. When we came into the Act of Union we had those rights, and we would have them today just the same as Upper and Lower Canada and the Maritimes. I think the principle of this thing goes very, very deep and it is one we should go very carefully on. I strongly support the motion that we have the law officers of the Crown give us their interpretation of the act.

Senator HAIG: I have a suggestion to make. I think we should hear the law officers tomorrow or the next day, if we can. We should record verbatim what they say and send out a report of their evidence to all the Attorneys-General of Canada, telling them of our discussions. We are going to come back early in January, and by that time they will have had a good opportunity to give us their views on the matter. I do not believe they appreciate the importance of this legislation. I think the chairman should write the letter himself the next time, and point out that it is very important that we get an answer from them as to the stand they take.

Senator MACDONALD: I think in view of what has been said today that we should have the minister from the department concerned appear before the committee. This is an important bill, and I am sure the minister would like to give his reasons here for bringing in this legislation. After he has given his explanation we would hear the law officers with respect to our position. If the minister could come tomorrow I would be in accord with the suggestion of the honourable Leader of the Government.

Mr. ROBERTSON: My information is that the minister, unfortunately, has to be in western Canada tomorrow and Friday.

Senator HAIG: What about next week?

Mr. ROBERTSON: As far as I am aware the minister will be in town next week.

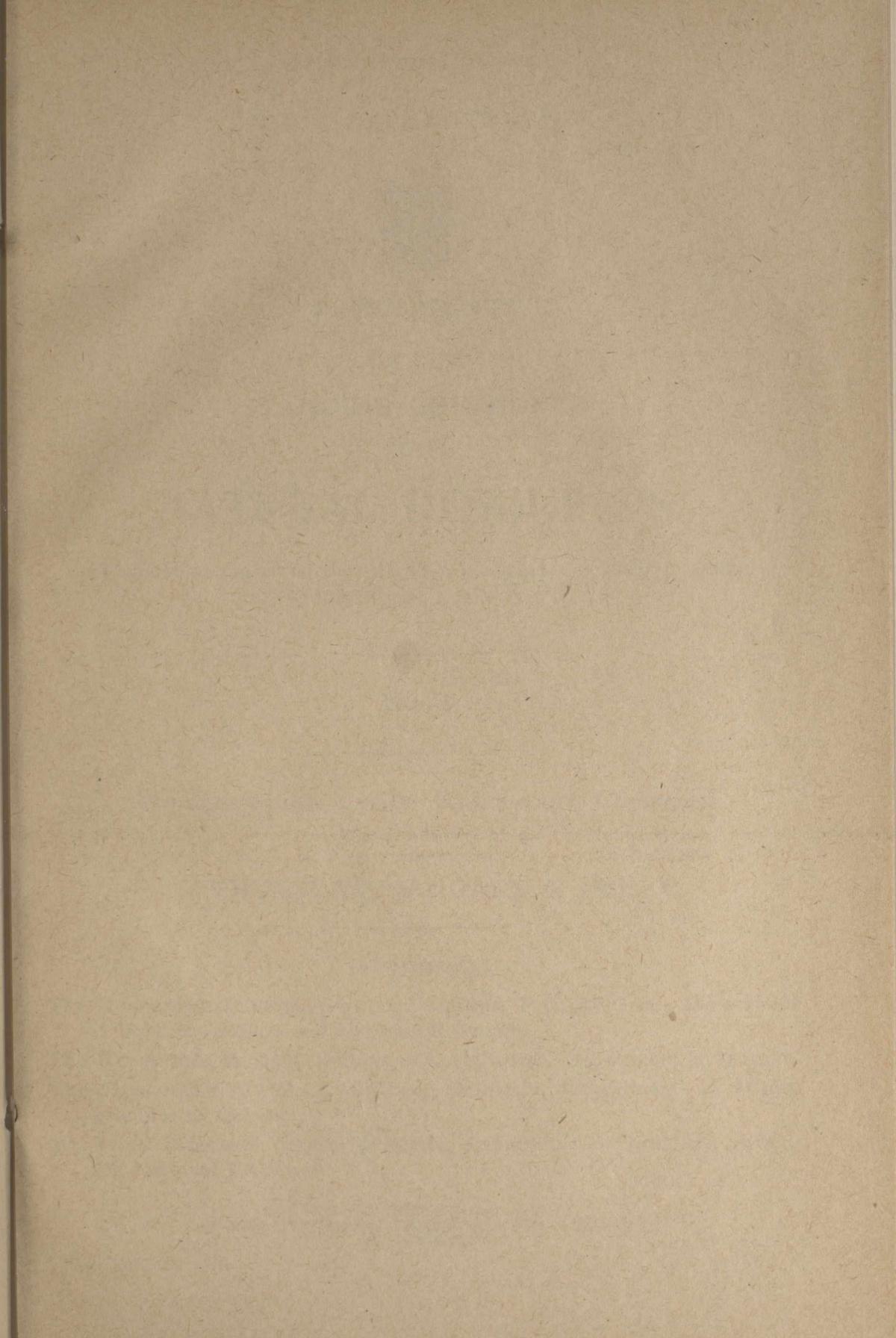
Senator HAIG: I agree with the Leader of the Opposition, that the minister should come and I would therefore move that the committee ask the Minister of Northern Affairs and Natural Resources, and the Deputy Minister of Justice, or whoever drew the bill, to be here next Wednesday morning at 10 o'clock.

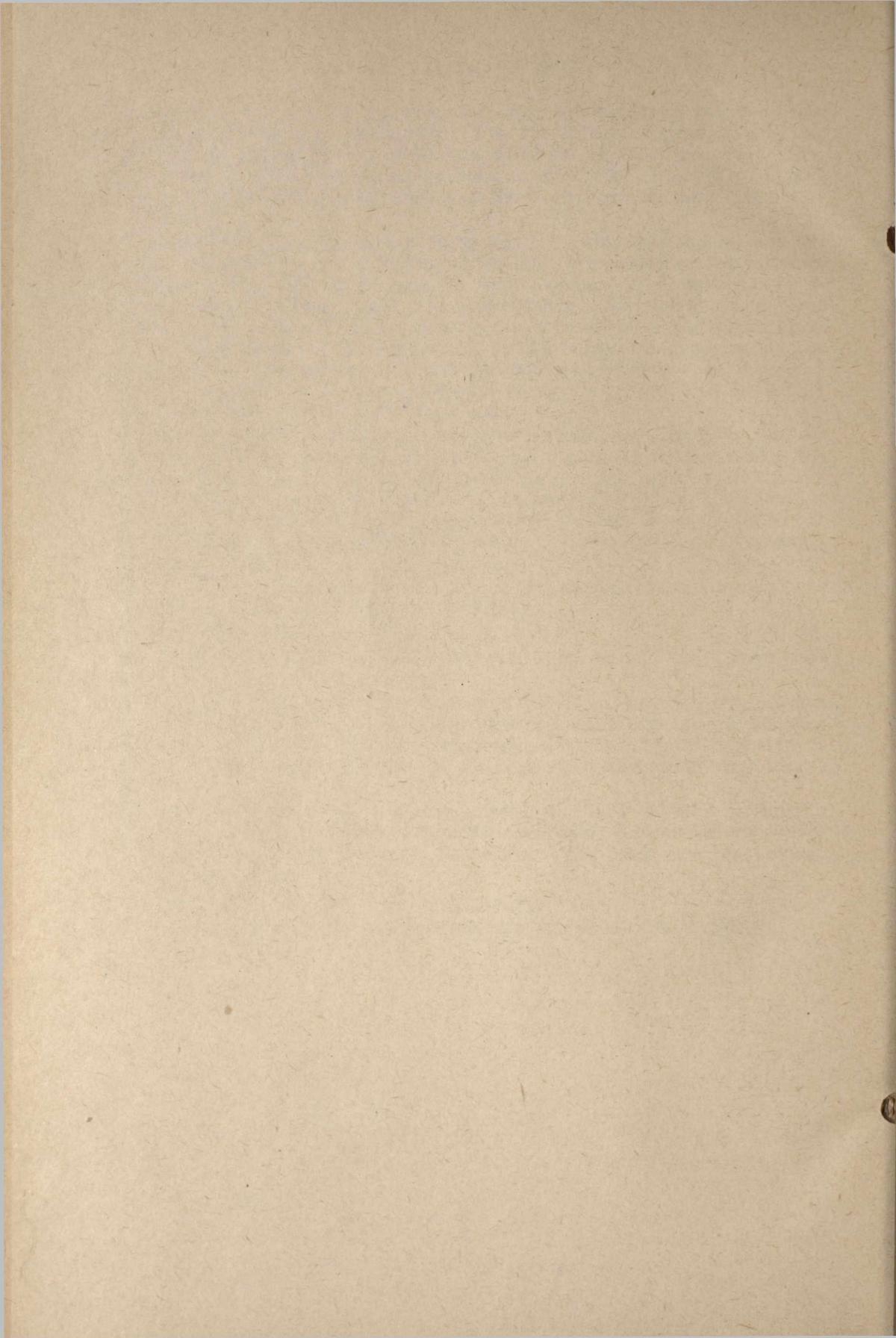
Senator MACDONALD: The understanding is that we will take no definite action with respect to the legislation until the provinces have had an opportunity to read the evidence and the proceedings which take place next week.

Senator HAIG: Yes.

Hon. Mr. SPOONER: That will be satisfactory to us.

The committee adjourned until Wednesday, December 18, at 10 a.m.





THE SENATE OF CANADA



PROCEEDINGS  
OF THE  
STANDING COMMITTEE  
ON  
**NATURAL RESOURCES**

To whom was referred the Bill (L), intituled: "An Act to amend  
the Territorial Lands Act".

---

No. 3

---

The Honourable Cyrille Vaillancourt, Chairman

---

THURSDAY, JANUARY 9, 1958

---

WITNESSES

The Honourable Francis Alvin G. Hamilton, P.C., Minister, Department  
of Northern Affairs and National Resources.

The Honourable E. Davie Fulton, P.C., Minister, Department of Justice.

The Honourable J. W. C. Spooner, Minister, Department of Mines,  
Province of Ontario.

Mr. R. G. Robertson, Deputy Minister, Department of Northern Affairs  
and National Resources.

STANDING COMMITTEE

ON

NATURAL RESOURCES

The Honourable Cyrille Vaillancourt, Chairman

The Honourable Senators

Aseltine	Farquhar	Paterson
Barbour	Fraser	Pearson
Basha	*Haig	Petten
Beaubien	Hawkins	Power
Bois	Hayden	Raymond
Bouffard	Horner	Stambaugh
Burchill	Kinley	Taylor ( <i>Norfolk</i> )
Cameron	*Macdonald	Taylor ( <i>Westmorland</i> )
Comeau	MacKinnon	Turgeon
Crerar	McDonald	Vaillancourt
Davies	McKeen	Vien
Dessureault	McLean	Wood (38)
Dupuis	Methot	
Emerson	Nicol	

40 Members

(Quorum 9)

\*Ex Officio member

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate

THURSDAY, October 31, 1957.

"Pursuant to the Order of the Day, the Honourable Senator Haig, P.C., moved, seconded by the Honourable Senator Aseltine, that the Bill (L), intituled: 'An Act to amend the Territorial Lands Act', be now read the second time.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Haig, P.C., moved, seconded by the Honourable Senator Aseltine, that the Bill be referred to the Standing Committee on Natural Resources.

The question being put on the motion, it was—  
Resolved in the affirmative."

J. F. MacNEILL,  
*Clerk of the Senate.*

ORDER OF BUSINESS

Present at the Meeting of the Trustees of the Society

Thursday, October 11, 1934

The meeting of the Trustees of the Society was held on Thursday, October 11, 1934, at 8:00 P.M. in the Board Room of the Society, 1200 Broadway, New York City. The meeting was presided over by the President, Dr. J. H. ...

1. Report of the Secretary

2. Report of the Treasurer

3. Report of the Executive Committee

4. Report of the Finance Committee

5. Report of the Publications Committee

6. Report of the Nominations Committee

7. Report of the Secretary

## MINUTES OF PROCEEDINGS

THURSDAY, January 9, 1958.

Pursuant to adjournment and notice the Standing Committee on Natural Resources met this day at 11.00 a.m.

*Present:* The Honourable Senators Vaillancourt, Chairman; Barbour, Burchill, Cameron, Crerar, Dessureault, Haig, Hawkins, Macdonald, McLean, Methot, Pearson, Taylor (*Norfolk*), Taylor (*Westmorland*) and Vien—15.

*In attendance:* Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel. The Honourable Francis Alvin G. Hamilton, P.C., Minister, Department of Northern Affairs and National Resources. The Honourable E. Davie Fulton, P.C., Minister, Department of Justice. The Honourable J. W. C. Spooner, Minister, Department of Mines, Province of Ontario. Mr. R. G. Robertson, Deputy Minister, Department of Northern Affairs and National Resources. Mr. G. Carty, Executive Assistant, Department of Northern Affairs and National Resources. Mr. W. R. Jackett, Deputy Minister, Department of Justice. Mr. E. A. Driedger, Assistant Deputy Minister, Department of Justice.

Consideration of Bill L, "An Act to amend the Territorial Lands Act", was resumed.

The Honourable Francis Alvin G. Hamilton, P.C., was heard in explanation of the Bill and was questioned thereon. He informed the Committee that in view of apparent misunderstanding of the Bill in its present form it was decided to present for the consideration of the committee the following amendment:—

"1. Paragraph (g) of section 2 of the Territorial Lands Act is repealed and the following substituted therefor:

(g) 'territorial lands' means

- (i) lands in the Northwest Territories or in the Yukon Territory, and
- (ii) lands underlying any of the waters included within the boundaries of the Provisional Districts of Mackenzie, Keewatin and Franklin, as described in the annex to the Order of the Governor in Council made on the 16th day of March, 1918,

that are vested in the Crown or of which the Government of Canada has power to dispose; and'".

The Honourable E. Davie Fulton, P.C., was heard with respect to the legal aspects of the Bill, and was questioned thereon.

Mr. R. G. Robertson, Deputy Minister, Department of Northern Affairs and National Resources, was also heard in further explanation of the Bill and was questioned thereon.

The Honourable J. W. C. Spooner, Minister of Mines, Province of Ontario, was again heard.

On MOTION of the Honourable Senator Vien it was ORDERED that the following documents be made available for the use of the Committee at its next sitting:—

1. Order in Council No. 655 dated 1918.
2. Copy of the proposed amendment.
3. Copy of the Ontario Boundaries Extension Act, which appears in the Statutes of Canada for the year 1912, Chapter 40.

Motion carried.

At 12.45 p.m. the Committee adjourned to the call of the Chair.

Attest.

A. Fortier,  
*Clerk of the Committee.*

**THE SENATE**  
**STANDING COMMITTEE ON NATURAL RESOURCES**

**EVIDENCE**

OTTAWA, Thursday, January 9, 1958.

The Standing Committee on Natural Resources met this day at 11 a.m.

Senator Vaillancourt in the Chair.

The CHAIRMAN: We have with us this morning the Minister of Northern Affairs and National Resources, Hon. Mr. F. A. G. Hamilton. Before we proceed any further we should hear Mr. Hamilton.

Hon. Mr. HAMILTON: Mr. Chairman and honourable senators, this bill concerns itself with an administrative matter in the Department of Northern Affairs and National Resources and it is intituled An Act to amend the Territorial Lands Act. The bill has been before my department, the Department of Justice, and the Government for two years. The purpose of the bill is to meet an administrative problem of the department in recording some claims of mining companies in the northern areas to mineral lands which are under the water or partially under water in Hudson Bay and in Ungava.

At first it was thought to make an amendment to the Northwest Territories Act but this did not seem to be satisfactory, so finally it was decided to amend the Territorial Lands Act. It is sought to add to the present act this clause:

(g) "territorial lands" means

- (i) Lands in the Northwest Territories or in the Yukon Territory, and
- (ii) any other lands forming part of Canada but not included within any of the provinces, that are vested in the Crown or of which the Government of Canada has power to dispose;

To me that provision seems very clear and we in the department certainly were surprised at the misinterpretation and misunderstanding that seems to have arisen.

I have described the purpose of the bill as being purely administrative for the department and to us it seems very clear what it means. When I say "any other lands forming part of Canada but not included within any of the provinces, that are vested in the Crown" it strikes me that is as clear as we can make it.

We seek no power to take over the land of any province or any area not described as being precisely within our powers.

I will not go into the details, the background, of what has happened in committee because I have read the evidence, but I would like just to say this, that it is not the intention of the Government to force anything on any person or any group that is unwilling to accept.

Senator REID: Or on any province?

Hon. Mr. HAMILTON: Or on any province.

We want this provision from an administrative point of view and therefore I still think that this amendment is well framed.

Senator VIEN: Could you explain a little more what is meant by: "Wanted from an administrative point of view"?

Hon. Mr. HAMILTON: The Department administers the lands in the Northwest Territories and the Yukon, and in the administration of those lands there are questions of land resources and mineral resources, and there are companies operating in the north and particularly in the Belcher Islands and on one of the islands in Ungava Bay which have staked claims to mining properties either partially under the water or completely so. Under the existing legislation it is not possible for us to register them. The claims are kept on file in our Department but are not actually recorded. As I understand it from the departmental officials, this act was designed to provide the legal framework under which these claims can be accepted and recorded under the laws of Canada. This amendment was framed to give us the legal right to deal with these offshore lands, including the lands under the waters off the shoreline of the islands within the Arctic Archipelago and under James Bay, Hudson Bay, and Ungava Bay.

Senator VIEN: Then, why do you not limit it to the Yukon and Northwest Territories?

Hon. Mr. HAMILTON: Because the acts are very clear as to how the property of the provinces is limited only to the shoreline.

Senator VIEN: The coastal state that has power over territorial waters and the continental shelf, would seem to be Her Majesty in Right of Canada as regards territories still within federal jurisdiction which should continue to be administered by the federal Government; but natural resources are provincial under the provisions of the B.N.A. Act, and territorial waters and the continental shelf adjacent to the coast of a province should be administered with respect to natural resources by Her Majesty in Right of the Province, the federal Government retaining jurisdiction over the control of navigation, the regulation of fishing appliances, national defence and compliance with international treaties. Natural resources being vested in the province, the province should be considered the coastal state in that regard.

Hon. Mr. REID: Hear, hear.

Senator VIEN: We should follow the rule set out by the Privy Council with respect to inland waters.

Hon. Mr. HAMILTON: I wonder if I might interrupt the honourable senator for a moment? It is not in my province to discuss the legal question that you have just raised. As Minister of this Department I have made it very clear that we are only interested in the simple administrative problems in these areas. I think it will be of interest to the committee to say that the Government is willing to clear away any question of doubt by limiting the application of this amendment to the clearly-defined boundaries as set out by the Quebec Boundaries Extension Act of 1912 and the Ontario Boundaries Extension Act of 1912, and the 1918 Privy Council order laying down the boundaries of these northern territories? In plain language, we are prepared to limit the application of this bill to the areas of the Northwest Territories—

Senator VIEN: And the Yukon.

Hon. Mr. HAMILTON: —and the Yukon including the areas under Hudson Bay, James Bay and up to the Ungava part, which is clearly defined here in the Acts I have mentioned.

Senator REID: No.

Senator VIEN: No. The jurisdiction of the province extends to fishing resources within territorial waters. The federal Government determines the nature of the equipment that can be used, but the fish belong to the provinces. The offshore mines under territorial waters would also be left to the province

except in the Yukon and Northwest Territories. If this bill applied only to the Yukon and Northwest Territories there would be no further objection to it.

Senator REID: Hear, hear.

Hon. Mr. HAMILTON: Let me point out, honourable senators, that in a letter dated December 30, 1957, signed by the Honourable Mr. Spooner, Minister of Mines, the Government of the Province of Ontario takes an altogether different point of view. I will read the relevant paragraph, and will table the letter if that is the wish of the Committee:

"It is observed from the report of the proceedings before the Senate Committee on Natural Resources, that the main concern is the land under the waters of Hudson Bay. This Government would have no objection to the amendment if it were restricted to the lands under James and Hudson Bay."

Senator VIEN: But Ungava is also within the Province of Quebec.

Hon. Mr. HAMILTON: Not the land under the waters of Ungava. I think it might be helpful to read to the committee the acts of the Federal Government which deal with this question of provincial boundaries.

Senator MACDONALD: May I ask one question in the meantime? You stated that you required this bill for the purposes of administration?

Hon. Mr. HAMILTON: Yes.

Senator MACDONALD: And I presume that is in connection with the Northwest Territories and the Yukon territory?

Hon. Mr. HAMILTON: Yes, and I mentioned specifically islands in the Hudson Bay and in Ungava.

Senator MACDONALD: And are they within the Northwest Territories and the Yukon territory?

Hon. Mr. HAMILTON: They are within the boundaries of the Districts of Mackenzie, Keewatin and Franklin, according to the Privy Council order of March 16, 1918.

Senator MACDONALD: Is that part of the Northwest Territories?

Hon. Mr. HAMILTON: No, the Northwest Territories now are limited under the statute just to the boundaries as laid down in the Northwest Territories Act, but do not include the land underneath the waters off those territories.

Senator MACDONALD: Well, why could not the second part of the bill be amended to read as follows:

"Territorial lands' means

- (i) lands in the Northwest Territories or in the Yukon Territory, and
- (ii) any other lands forming part of the Northwest Territories or of the Yukon Territory but not included within any of the provinces,

Senator REID: What objection could there be to that?

Hon. Mr. HAMILTON: In one sense, in the general sense, if you define the lands the the Northwest Territories and the Yukon as the lands not included in the Province of Quebec, and not included in the Province of Ontario, that would be according to the acts which govern the boundaries of those two provinces.

Senator MACDONALD: I do not think we would want to find them in this act.

Hon. Mr. HAMILTON: My colleague, the Minister of Justice, is also here, and, if possible, we have proposed to get rid of this doubt which exists. I understand there is a question concerning these waters underneath the sea off the provinces, off the Gulf of St. Lawrence, and off the east coast of Canada.

Senator MACDONALD: And off the west coast?

Hon. Mr. HAMILTON: Yes, off the west coast.

Senator MACDONALD: Together with Hudson Bay and James Bay?

Hon. Mr. HAMILTON: Yes; but I am pointing out that the Province of Ontario has no objection to James Bay and Hudson Bay.

Senator MACDONALD: Quebec might have some.

Hon. Mr. HAMILTON: This is the operative section of the bill—let me read the proposed amendment which should clear up any doubts as to our intention. Section (g) as now further amended would read as follows:

(g) 'territorial lands' means

(i) Lands in the Northwest Territories or in the Yukon Territory, and

(ii) lands underlying any of the waters included within the boundaries of the Provisional Districts of Mackenzie, Keewatin and Franklin, as described in the annex to the Order of the Governor in Council made on the 16th day of March, 1918,

that are vested in the Crown or of which the Government of Canada has power to dispose;

Senator VIEN: Have you copies of the proposed amendment?

Hon. Mr. HAMILTON: Yes, I have them, and I will have my deputy distribute them.

Mr. ROBERTSON: Some additional copies are being prepared if there are not enough to go around.

Senator VIEN: Mr. Minister, if you get down to brass tacks you will find that no legislation has ever determined who is the owner of natural resources under territorial waters or the continental shelf. That question should not be determined by a law, but it should first be referred to a federal-provincial conference. You are by this bill attempting to take the natural resources under the waters adjacent to the boundaries of sea-bound provinces. In our opinion these natural resources should belong to the province. As the point has never been clearly determined, the provinces involved should be consulted.

Senator PEARSON: Senator Vien, I would point out that the continental shelf is not a regular straight line a certain distance from the shore; it may be 100 miles, 50 miles or perhaps two miles away from the shore. How could you define that? When you get 200 miles distance you may get into an international conflict.

Senator VIEN: No. The question does not arise. Whatever the continental shelf and territorial waters be, such water should be under federal jurisdiction for treaty purposes and for the regulation of navigation and national defence, but not otherwise.

Senator CRERAR: Mr. Chairman, I am bound to say that I am getting a bit confused by the discussion. If I understand the Minister right, and I think I do, this legislation does not propose to claim offshore rights, with respect to the shores of any of the provinces that may be on the ocean or other waters.

Hon. Mr. FULTON: Honourable senators, may I say something—?

Hon. Mr. CRERAR: Pardon me a moment. If I understood the Minister right, he said he would amend the legislation so that it would apply only to offshore territorial lands.

Now, quite obviously, Ontario lands on Hudson Bay for example, or those within the boundaries of Manitoba or Quebec are not "territorial lands"—they are provincial lands.

Senator MACDONALD: I am not so sure of that. I would like to be sure of that before I approve of this bill.

Senator CRERAR: That is what I understood was the intention of the minister.

Now, that would be, to me, a sensible solution of this matter. We do not want to get into interminable discussions with the provinces of Ontario, Manitoba or Quebec about lands in Hudson Bay as to whether, if oil is discovered a mile or so off the shoreline, the federal Government has the right to that oil. The federal Government clearly has the right to what is territorial land but let us get a clear definition in this legislation of what are territorial lands. That certainly would not apply to Nova Scotia, would not apply to Quebec in the Gulf of St. Lawrence or British Columbia on the Pacific Coast. There may be some question as to how far Canadian jurisdiction extends—does it extend three miles, or are we going to take the more modern concept that our jurisdiction runs out 12 miles or 15 miles. But whatever the decision on that may be my contention is that it would be very unwise to disturb the right of the provinces to any discoveries under water three miles out from the shoreline, or 12 miles out, but we have the right of course to that control within what are strictly territorial lands. My suggestion, Mr. Chairman, would be that we agree upon that, and if I understood the minister rightly, he is quite agreeable to accept an amendment of that nature and it then becomes a problem of clarification of this legislation and that should not be beyond the resources of the law officers of the department.

Senator HAIG: Mr. Chairman, before the minister speaks again I would like to hear the Minister of Justice give an interpretation of the legal situation. I think the committee as a whole feels that we want to give whatever power is required to the Department of Northern Affairs and National Resources that does not interfere with the rights of any provinces. We do not intend to interfere with the rights of any province, at least I think that is the general feeling of the committee.

Hon. Mr. HAMILTON: We have no power or desire to do so.

Senator HAIG: But we do not intend to give the power in this bill, or at least I do not think that we do. What I think we should do is to follow the suggestion of Senator Crerar, namely to confine this to the Yukon and the Northwest Territories, and there is apparently no dispute about that, so the only question left is that of Hudson Bay and Ungava Bay.

Now, Mr. Chairman, I would suggest that we hear from the Minister of Justice how far these rights conflict with these other claims and then we will know what the issue is.

Senator Vien, from Montreal, talks about another matter and he is right if that were the issue, but that is not the issue, and the minister has said that that question can stand aside, that he does not want it. That eliminates that matter.

Hon. Mr. HAMILTON: I wonder if before the Minister of Justice speaks I might say a few final words. I have to apologize to this committee for having to hasten away but I have a very important bill coming before the other house and I am scheduled to speak first and so I will have to leave.

I think I have made the position of the Government clear by proposing a new amendment which makes even more clear the limited nature of the amendment which is really to meet an administrative problem of the department.

I have a map here which I would like to show to the committee, and probably Senator Crerar will understand this best. This map is a partial picture of the Hudson Bay and the Ungava area. This map shows in very bright colours the boundaries of Manitoba, Ontario and Quebec according to the Manitoba Boundaries Act, the Ontario Boundaries Act and the Quebec Boundaries Act of 1912. You will notice that the Northwest Territories under this act is described as the shore of the Hudson Bay and James Bay, and runs around the shore. You will notice that the boundaries of the provinces just go as far as the shoreline, and that is the boundary described in the act.

So what we are asking in this amendment is not applicable to land under the sea on the East coast or West coast. But we are asking for the land under the sea to the north of the provinces of Quebec, Ontario and Manitoba as shown by these boundaries here on the map, generally referred to as being the North-west Territories.

Senator REID: Mr. Chairman, might I ask the minister this question? Has he considered the impact it might have say on the province of Québec, because by the explanation given now the boundary line comes right to the shores and that would take away from the province of Quebec the right to minerals underneath the water, if that was defined as being under federal territorial jurisdiction. In other words, I take it from your explanation that it takes away the powers of the provinces concerned to any rights beyond the shoreline.

Hon. Mr. FULTON: Could I clarify that point for the honourable senator, Mr. Chairman?

Senator MACDONALD: Mr. Chairman, just before the Minister of Northern Affairs and National Resources goes I would like to say that I am sure we all appreciate your attendance here this morning. We know that you have two bills coming before the House of Commons this morning, and we do appreciate that you have taken the time to come here and discuss this bill, which is a very important bill. One reason for which the Senate was set up was to protect the interests of the provinces, and for these reasons this bill, for the Senate, is one of the most important that has come before it. We wish to express our appreciation for your attendance and we hope that if we do not get through here this morning that you will be able to come back when you will have more time at your disposal, but we do appreciate your attendance here today.

Hon. Mr. HAMILTON: The committee is very kind.

Senator CRERAR: Mr. Fulton, before you start would you inform us how far today, in law, does Canadian jurisdiction extend into tidal waters?

Hon. Mr. FULTON: Mr. Chairman, I would rather not express an opinion on that question because there is a conflict of opinion as to whether jurisdiction extends 3 miles or 12 miles or from headland to headland and all sorts of other opinions, and I might even say that international negotiations are pending right now and I would sooner not express an opinion on that point.

I appreciate very much the opportunity of appearing before this committee today to try to clarify the intention of the Government with respect to the drafting of this bill and the purpose of the bill.

My interest in it arose first in connection with the draftmanship of it, for which the Department of Justice is responsible, and our instructions were that the bill should not seek to add to the Crown in right of Canada any authority over lands which do not now belong to Canada. It is not intended by the bill and has not been intended by the bill from the outset, in accordance with the instructions which we have received, to assert directly or indirectly, or to acquire directly or indirectly any rights over lands under territorial waters which do not now belong to the Government of Canada. We felt that in drafting the bill as it was originally presented to you that had been made clear,— that the effect of the bill is not to add to Canada any rights and particularly rights as against any province that the central Government does not now have. However, it became apparent that there were doubts and reservations in your committee so we had another look at the bill, and in discussion with my colleague the Minister of Northern Affairs and National Resources we came to the conclusion that we could amend the bill—without interfering with its purpose, and with the hope that any residual doubts would be removed—in such a way as to make it perfectly clear that all that is asked here is the right to make regulations with respect to lands under territorial waters which are now in the jurisdiction of the federal government of

Canada. The amendment would make it clear we do not say we have the right to make regulations with regard to lands under territorial waters which may be in the control of a province; only that we have that right to make those regulations with regard to lands under territorial waters which are now under the jurisdiction of the dominion Government.

That has been the purpose of the bill throughout. The amendment which is now proposed has been drawn in the desire to make it clear that the operation of this act will not extend to the Pacific Coast, in which the province of British Columbia is interested; will not extend to the Gulf of St. Lawrence, in which the province of Quebec is interested; will not extend to a large portion of the coast of Labrador, in which that province is also interested; and will not extend to the Great Lakes, in which the province of Ontario is interested.

In other words, it will be confined to the areas where I understand the lands under territorial waters can be agreed now to be lands within the jurisdiction of the Government at Ottawa.

Senator MACDONALD: May I interrupt the Minister to ask a question? The latter part of the amendment refers to lands as described in the annex to the order of the Governor in Council.

Hon. Mr. FULTON: I was just going to come to that, Senator Macdonald.

Senator MACDONALD: That is not a statute, is it? It is an order in council.

Hon. Mr. FULTON: Yes, it is an order in council made on March 16, 1918, which I should probably read to you now.

Senator MACDONALD: Would that order in council be passed without prior consultation with the provinces?

Hon. Mr. FULTON: I am afraid, Senator Macdonald, that I could not tell you whether in 1918 there was consultation before this order in council was passed. As I understand it this order was passed in pursuance of statutes in regard to the addition of territories to Manitoba, Ontario and Quebec.

Senator VIEN: The order in council has been printed?

Hon. Mr. FULTON: Yes.

Senator VIEN: Mr. Chairman, could we have a copy of the order in council for the members of the committee?

The CHAIRMAN: Yes.

Senator VIEN: You could read the schedule of the act into the record.

Hon. Mr. FULTON: I would be glad to do that but I wonder if I might go back for a moment to the effect of the statutes providing for the extension of the boundaries of Ontario, Quebec and Manitoba in 1912. Up to that time, I think I am correct in saying—and I would like the Deputy Minister of Northern Affairs to correct me if I am wrong—the boundaries of those provinces did not extend to the Arctic waters or Hudson Bay except for one very small portion in James Bay. The lands in those areas north of the then provincial boundaries had always been territorial lands and under the jurisdiction of the Government of Canada.

Senator REID: Does that line start from the high water mark of the province?

Hon. Mr. FULTON: At that time, sir, the boundaries of the provinces did not extend to the Arctic Ocean or to Hudson Bay, so the question of high or low water mark did not exist.

Senator REID: What about the high water mark of Hudson Bay?

Hon. Mr. FULTON: They did not go to Hudson Bay. Only a very small portion of James Bay was covered. I am informed that the limits of the provinces of Ontario and Quebec at that time were such that the northern

boundaries followed a line cutting through Fort Albany and continuing across the southern tip of James Bay to approximately Old Factory. Then the boundary of Quebec continued on the projection of that line to the east.

Senator REID: Is that the new boundary you have marked now?

Hon. Mr. FULTON: No, that is the old boundary.

Senator MACDONALD: And what time was that?

Hon. Mr. FULTON: Up to 1912. At that time, by agreement, certain areas of those northern lands which had previously been territorial lands and under the jurisdiction of the Government of Canada were added to the provinces of Manitoba, Ontario and Quebec respectively. I would like to read to you the relevant portions of the statutes by which those additions were made. Ontario is exclusively concerned with Hudson Bay waters, Quebec with both Hudson Bay waters and Ungava Bay waters, and Manitoba exclusively with Hudson Bay waters, so far as this boundary description is concerned.

The first of these acts in the statutes of 1912, which I should like to refer is cited as the Ontario Boundaries Extension Act. In the description of the boundary there is defined a line to be followed until it meets Hudson Bay. Then it continues: "thence easterly and southerly following the shore of the said bay to the point where the northerly boundary of the province of Ontario as established under the said Act intersects the shore of James Bay."

I am informed that this act made it clear that the boundary ended at the shore of Hudson Bay and James Bay respectively, and I understand that it has always been accepted and agreed that the word "shore" meant the low water mark. That is in the statute which added this territory to Ontario and in effect extended Ontario to the shores of Hudson Bay, which it previously had not reached. It would seem from this that the lands over which Ontario has jurisdiction extend only to the low water mark of Hudson Bay. We have a letter from the Ontario Minister of Mines, Mr. Spooner, that so far as Ontario is concerned, if the proposed amendment to the bill is accepted, Ontario will then have no objection. They assert no claim to any lands beyond the low water mark of Hudson Bay and James Bay.

Senator MACDONALD: I understand that Mr. Spooner is here today and probably he could speak for himself in that respect.

Hon. Mr. FULTON: If you wish at this point I would be glad to have Mr. Spooner correct me if I am wrong or corroborate me if I am right.

Senator MACDONALD: I thought it was agreed at the last meeting that this committee would take no definite action without referring the bill again to the provinces.

Hon. Mr. FULTON: Well, I cannot speak for that, of course, Senator, because I was not here. I am only speaking from the data and information I have been given, and with regard to the legal position as I understand it as the result of the statutes by which the territories of the provinces were extended to the waters of Hudson Bay and the Arctic.

Senator MACDONALD: I do not question the letter of the Honourable Mr. Spooner. I did not follow it too carefully when it was read. Since he is here I think it would be better to hear from him.

Hon. Mr. FULTON: I should of course not purport to speak for him if he is here. I was not aware he was here, and I merely saw the copy of the letter, from which so far as I could gather he indicated agreement with the proposition I have stated; but if he is here, I should not speak for him.

Then with regard to the situation in Quebec, the act in question is an act to extend the boundaries of the Province of Quebec—cited as the Quebec Boundaries Extension Act of 1912—and the relevant portions of the statute, in so far as the lands bordering the waters are concerned, are as follows:

"thence northerly and easterly along the shores of Hudson Bay and Hudson Strait;"

Which would incorporate this area here—

“thence southerly, easterly and northerly along the shore of Ungava Bay and the shore of the said strait; thence easterly along the shore of the said strait to the boundary of the territory over which the island of Newfoundland has lawful jurisdiction.”

In other words, until it meets the coast of Labrador. And you will notice the word “shore” is used throughout.

Senator WALL: In other words, so far in our argument both the Province of Ontario and the Province of Quebec have accepted as a limit to their jurisdiction, the shoreline?

Hon. Mr. FULTON: That is my information, sir, yes.

Senator WALL: According to the acts of 1912?

Hon. Mr. FULTON: Yes.

Senator WALL: And therefore the problem now we would pose to ourselves is what indeed is the definition of “shoreline.” Are there any rulings by the Department of Justice, or otherwise, to give us a clarification of what ostensibly now is a fixed situation by those two boundaries?

Hon. Mr. FULTON: Yes; and the same in the Province of Manitoba, with respect to this portion of the westerly shore of Hudson Bay.

Senator CRERAR: May I ask a question? Supposing oil were discovered two miles from the shoreline here in Ontario under Hudson Bay. To whom would that oil belong? Where would jurisdiction lie, with Ottawa or Ontario?

Hon. Mr. FULTON: My information and my interpretation of the law is that it would belong to Canada. The boundary of Ontario, in accordance with the interpretation of the statute given just now, stops at the shoreline at low water mark.

Senator CRERAR: Isn't that the crux? If oil is discovered say two miles from the shoreline, whether or not Ontario or Canada would have jurisdiction is really the question. There is no question at all if oil were discovered two miles up here. That is clearly established.

Hon. Mr. FULTON: Off the shore of the territory, no. I understand, although I could be wrong in this—Mr. Speaker can speak authoritatively on the point—that there would be no conflicting claim by Ontario if oil were discovered two miles off the border of Ontario out in Hudson Bay.

May I make this point, that by the inclusion in the bill of the words “that are vested in the Crown or of which the Government of Canada has power to dispose”, it is made clear that the Government of Canada is not seeking to assert by this act that they have any new right, but is merely asserting their right to make regulations with regard to lands belonging to them now. If a contrary claim to the land or minerals should be entered at any time by any province, then as I understand it the situation is that the province would have the right to go to court and say that the Government of Canada does not have power to dispose of these lands or minerals because they are under the sea adjacent to the province and therefore belong to the province. But by this bill we say that so far as the lands belong to Canada we have the right to make regulations, and if a province asserted a contrary title, they could go to court and say, “We want an interpretation of the act of 1912, and we claim the boundary of the province does not stop at the shoreline.”

Senator CRERAR: Would it not be a good thing to clear that by way of illustration?

Hon. Mr. FULTON: I do not think we could. The only way we could clear that up in this legislation would be if we did assert ownership in the words of the bill itself, and that is the very thing that I understood hon. senators are anxious we should not do.

Senator CRERAR: In this particular case the oil is two miles away and belongs to Ontario.

Hon. Mr. FULTON: I understand Ontario does not assert that proposition, insofar as this area is concerned. It is also my understanding, though I may be wrong, but it was certainly my understanding that the concern of the Province of Quebec extended mainly to the Gulf of St. Lawrence where this boundary proposition—

Senator VIEN: The shore of Ungava as well.

Hon. Mr. FULTON: Then I may have been misinformed, Senator, but I understood that in view of the clear wording of the act of 1912 the Province of Quebec did not assert the proposition that its rights extended beyond the shoreline in this area. Are you suggesting, Senator, that a province would have jurisdiction over natural resources which lie beyond its boundary?

Senator VIEN: Well, you say the provinces are bound by the shoreline. We all agree. But a question has arisen in the Gulf of Mexico and offshore, in California; the United States have asserted that they have the right to the natural resources which are under territorial waters and the continental shelf. This has become a very live question which is being discussed internationally. As applied to Canada, what we suggest to the Government is this: leave the natural resources that are to be found in or under the continental shelf and territorial waters to the provinces, because the provinces are, in that respect, the coastal states. When the territorial limits of the provinces of Manitoba, Ontario and Quebec were extended, all the powers of the federal Government were transferred to those provinces. It is true that the territories so transferred were bound by the shoreline; they were so bound even before the transfer. But now, natural resources being provincial by right, such rights should now extend to natural resources to be found in territorial waters or the continental shelf, adjacent to the provincial coastlines.

Senator REID: May I ask a question?

Senator VIEN: Yes, please do.

Senator REID: Has the question of the shoreline been defined? We had an interpretation this morning that "shoreline" in so far as the Northwest Territories referred to in the bill before us, went to the low watermark. That does not apply to British Columbia?

Senator HAIG: No, that does not apply to British Columbia.

Senator REID: So, when we speak about "shoreline" I do not think it has been identified for all purposes.

Hon. Mr. FULTON: There is one point which I think might be relevant: I am informed that the stand has always been that these are inland waters, namely, the waters of Hudson Bay, Hudson Strait and those waters—

Senator VIEN: Hudson Bay is the high sea. As you know, Great Britain will never admit that Hudson Bay is an inland water.

Hon. Mr. FULTON: Canada has always taken the position that it is a territorial water.

Senator VIEN: But that has not been settled.

Hon. Mr. FULTON: In many of the text books I understand it is frequently referred to as an example of a case in which salt water is nevertheless inland water.

Senator VIEN: But is the question settled between Britain and Canada as regards the character of Hudson Bay? I think you will find that Great Britain will never admit that Hudson Bay is an inland water.

Hon. Mr. FULTON: Senator, I hesitate, and indeed I want to avoid, getting into a legal controversy. May I put it this way: it is new information to me that there is a dispute between Britain and Canada on that point. I understand there never has been a dispute, and I am informed there is no dispute outstanding at the present time on that point, that they are inland waters. I think the position is we do claim it and always have—that is my information.

Senator REID: We claim that against the United States, because every American fisherman who comes to Canada has to take out a licence before he can fish in Hudson Bay.

Hon. Mr. FULTON: I understand we claim it against everybody. I am informed that there is no claim made by Great Britain adverse to our position that Hudson Bay is inland water.

Senator VIEN: Is that so?

Hon. Mr. FULTON: That is my information. I must say that I speak subject to correction, because I came here with this as an assumption and had not done a great deal of research; but I believe I am correct in making that statement.

Senator VIEN: Are there not several questions pending at present: for instance with respect to a straight line from the most easterly point of Nova Scotia to the most easterly point of Newfoundland, and in the same way a straight line to close Hudson Bay, so as to make it a body of inland water?

Hon. Mr. FULTON: Senator, I do not want to get into too many refinements. The waters of Hudson Bay and Hudson Strait, to the extent to which they are surrounded by land, are entirely surrounded by Canadian territory. Therefore, probably that is the foundation for the determination that these are inland waters.

With respect to the line you referred to, there has never been the same assertion in that connection as there has been with Hudson Bay, and has been for upwards of 200 years.

Senator MACDONALD: If honourable senators are through with that subject, I should like to ask the Minister a question as a matter of information. Could you tell us, Mr. Minister, if the western boundary of the mainland of the province of British Columbia is described as going just to the shoreline?

Hon. Mr. FULTON: That is the western line?

Senator MACDONALD: Yes. And with respect to the eastern boundary of Nova Scotia, does the description of that province go just to the shoreline?

Hon. Mr. FULTON: Senator, I cannot answer that, because I would be speaking without research; but it is my understanding that the problem has never arisen, because no territory was transferred to British Columbia on her western shores, by which the boundaries of that province were established. The boundaries go to the sea, and it was never necessary to define them. Where you had an accretion of territory to the three provinces of Manitoba, Ontario and Quebec, it was necessary to define the boundary, but it was not ever necessary in the case of the western shore of British Columbia or the eastern shore of Nova Scotia.

Senator MACDONALD: When the province of British Columbia was established was it not necessary to describe it by metes and bounds?

Hon. Mr. FULTON: I don't know, but I doubt it.

Senator MACDONALD: Well, certainly there is a description of the boundary between Alberta and British Columbia?

Hon. Mr. FULTON: Yes, because that is a boundary between two provinces. But there is nothing west of British Columbia except the Pacific ocean, and therefore there was no necessity to define boundaries—except the Panhandle boundary with Alaska.

Senator MACDONALD: Would the western boundary of British Columbia be described merely as the Pacific ocean?

Hon. Mr. FULTON: Senator, I don't know, because I have not looked it up.

Senator MACDONALD: The point is, if it is described as being to the shore of the Pacific ocean . . . ?

Senator PEARSON: Why should it be?

Senator MACDONALD: You would have to have some description.

Hon. Mr. FULTON: We can look that up.

Senator REID: Is it not a fact that British Columbia, being a colony, assumed all the rights of Great Britain, and when that province entered Confederation it took those rights and still claims all the rights that Great Britain had?

Senator PEARSON: Under the international control of water, yes.

Hon. Mr. FULTON: It is to avoid any controversy as between the province of British Columbia and the dominion of Canada over this bit that the amendment to confine its effect to these waters is now proposed; we do not regard it as necessary, but we are prepared to agree to it to make it clear beyond any doubt that this bill is confined to land under the waters of the Arctic, Hudson Bay and Ungava Bay. As I say, as far as possible I wish to avoid entering into controversy with any senator, but I would like to deal with Senator Vien's proposition that although there are physical limitations in the territory as defined, never the less the results of the acts of 1912 still leave the possibility that the lands under the sea adjacent to the provinces fall under provincial control.

I should like to refer to the opening words of section 2 of this statute from which I have read in part with reference to Quebec. It contains these words:

"The limits of the province of Quebec are hereby increased so that the boundaries thereof shall include, in addition to the present territory of the said province, the territory bounded and described as follows . . ."

Then follows the description, and with respect to the portion in question the description is confined to the shore. It seems to be, and I understand it has always been, accepted that with respect to these particular areas the limitation of Quebec, of Ontario, and of Manitoba, extend to the low watermark on the shoreline.

Senator REID: May I ask, were they consulted, and did they agree?

Hon. Mr. FULTON: These statutes of 1912 were enacted as a result of agreements with the provinces for the addition of these territories, which formed the basis of the limits of the provinces.

Senator WALL: May I come back now to the contents of this new amendment? It appears to me that the acts of 1912 clearly delimited the boundaries, and in effect said that everything past the shoreline was territorial water. In the meantime we have created some districts in the territorial waters that are under the jurisdiction of Canada. If everything past the shoreline is in effect territorial waters now what is the purpose of this amendment whose delimitation to the districts of Keewatin, Mackenzie and Franklin we understand and appreciate. In other words I am concerned that this amendment does nothing at all, that it just merely confirms the state of things as they existed since 1912.

Hon. Mr. FULTON: If I understand your question correctly, Senator Wall, that would be the case. Again I understand that has always been so and certainly it is the position the federal Government must take, that as a result of the definitions contained in the acts of 1912, the boundaries and the jurisdiction—the territorial jurisdiction—of the provinces ended at the shoreline of the territories added, and that anything outside was in territorial waters—although in this case inland waters, the inland waters of Canada.

Senator WALL: Would you clarify for me what exactly this new amendment does do?

Hon. Mr. FULTON: It makes it clear that the effect of the bill is confined only to the waters of the Arctic and Hudson Bay and Ungava Bay, and does not extend say to the west coast of Canada.

Senator WALL: But suppose I were a kind of a mean advocate and I contend that it in effect does nothing.

Senator HAIG: It does one thing—it will mean that British Columbia and Nova Scotia will have no fear if the amendment passes, because the legislation could not possibly apply to them.

Senator WALL: But it merely confirms the condition that exists now.

Senator HAIG: This act limits itself clearly to territorial waters and that is all.

Hon. Mr. FULTON: Mr. Chairman, I think that Mr. Robertson, the Deputy Minister of the Department interested, could clarify that point.

Mr. R. G. ROBERTSON (*Deputy Minister, Department of Northern Affairs and National Resources*): Mr. Chairman, that is a confusing point, and I might clarify it for the committee. The definition of the Northwest Territories has been changed on a number of occasions as parts were cut out from it to form additions to the provinces. For instance, land has been cut out to add to the provinces of Saskatchewan and Alberta, to Ontario and to Quebec and so forth.

These changes, when one reaches the area of Hudson Bay and Ungava Bay and Hudson Strait and so on, have not taken out of the federal jurisdiction lands underlying those waters—that land has been federal ever since all this area was transferred to Canada in 1868 and 1870.

Senator HAWKINS: Where did that right come from?

Mr. ROBERTSON: From Great Britain. Ruperts Land and the Northwest Territories were transferred to Canada in 1868 and 1870 by Britain and the rights of the Hudson Bay Company were extinguished under certain terms.

In 1918 when the districts of Keewatin and Franklin and Mackenzie were defined they were described to cover the Northwest Territories as they were then defined, and they went down around the shore of Hudson Bay and James Bay and so on.

Senator WALL: Confirming 1912?

Mr. ROBERTSON: Exactly.

Then in 1950 the Northwest Territories Act was revised, to establish a purely administrative area to be covered by the Council of the Northwest Territories, and when it was revised it was revised so that the jurisdiction of the council extended over the land areas, which is a reasonable and a sensible definition, because the resources are in the federal administration anyway, they do not come under the jurisdiction of the Council.

Senator VIEN: We are all agreed on that.

Mr. ROBERTSON: Yes.

So that the definition of the boundaries of the Northwest Territories made in 1950 was limited to the land area above water. A consequential result of that, which I do not think anyone appreciated at the time, was that, by defining

the Northwest Territories in that way, the result was to take the submerged land out of the regime of the Territorial Lands Bill. This did not mean that it ceased to be federal land, but that in this one bill it just ceased to be territorial land, and so the purpose of this legislation before us this morning is to define this land which I think is, beyond legal doubt, federal land, as territorial land for the purpose of the Territorial Lands Act. In other words, it simply seeks to repair an incidental result of the 1950 amendment.

Senator CRERAR: The effect of this will be to leave off-shore rights to lands adjacent to provincial boundaries to be determined if necessary in future by agreement with the provinces?

Senator VIEN: Except that you will take over Ungava Bay?

Hon. Mr. FULTON: We assert no ownership rights in this bill.

Senator VIEN: I appreciate that, but you will need the powers conferred in this bill to have the right to grant mining licences off-shore on the Ungava Bay. If you say, as you stated a minute ago, that it would not apply to the west shore of Hudson Bay so that the province of Ontario—

Hon. Mr. FULTON: I said the west shore of Canada, that is the shore of British Columbia. We are making it quite clear that this legislation will apply only to the waters of the Arctic, Hudson Bay and Ungava Bay and does not extend to the eastern shores or the western shores of Canada.

Senator VIEN: If in Ontario, for instance, which is now bounded by the shore of Hudson Bay, minerals are found two miles off shore under Hudson Bay—as I understood you a minute ago, you stated that there would be no objection taken by the federal Government to the province of Ontario granting rights.

Hon. Mr. FULTON: No, Senator Vien, I am sorry. I said what is perhaps the exact opposite. At the present time, in my view, the law is—and it is not being changed by this bill—that if minerals were discovered two miles off shore in Hudson Bay or two miles from the low water mark they would belong to Canada and fall to be disposed of under federal jurisdiction. That is the situation today, and all we are seeking by this bill is to rectify the omission referred to a moment ago by Mr. Robertson and make it clear that we have the right to regulate. But so far as Ontario is concerned it has been pointed out that they agree—Mr. Spooner, Minister of Mines for Ontario, is here and if I am asserting a proposition to which Ontario does not agree perhaps we should have that fact established now, but it is my understanding that Ontario does agree.

Senator CRERAR: Is there not a question here beyond Ontario agreeing with this? This affects all the other provinces.

Hon. Mr. FULTON: I think in the light of the amendment it would affect clearly only Ontario, Quebec and Manitoba.

Senator CRERAR: Assuming that it does. Assuming it is limited to that.

Hon. Mr. FULTON: Again I say this bill does not assert any ownership, it is not a disguised attempt to assert ownership.

Senator CRERAR: Take the point that I raised a moment ago, that if today oil were found in Hudson Bay off the shores of Ontario, Quebec or Manitoba, and these provinces or any one of them put up a claim to that oil because it was found off their boundaries that question then would have to be referred to the courts and settled in the courts? That question would then have to be referred to the courts and settled in the courts, the meaning of this annex to the order of the Governor in Council in 1918?

Hon. Mr. FULTON: Correct, sir, and as to the effect of the statutes of 1912, if the provinces assert a proposition contrary to that which I have asserted

today the courts will have to determine it. This bill will in no way lessen the rights of the provinces to assert such a proposition.

Senator CRERAR: I agree with you but would it not be desirable to clear that point up now? Frankly, my own view is that the offshore rights in this particular instance should rest with the provinces of Manitoba, Ontario and Quebec. It should be left with those provinces. That is, we should not do anything that might open the door to us having a contrary claim. I am not a lawyer but I thought paragraph (g) (ii) could be amended in this way:

"lands underlying any of the waters included within the boundaries of the provisional districts of Mackenzie, Keewatin and Franklin, but exclusive of the lands adjacent to the boundaries of any province."

Hon. Mr. FULTON: That is a matter of policy and whether that proposition would be agreeable must be left to my colleague the Minister of Northern Affairs to say. Speaking from the legal position it is my impression that such an amendment would be in effect to say that Canada does not own and is not entitled to the lands under the waters off the shores of those provinces. Speaking as Minister of Justice I would not agree that such a position is sound in law, certainly in so far as these waters of Hudson Bay and the Arctic are concerned.

Senator CRERAR: I think you are right in that statement but my concern at the moment is to avoid future differences of opinion between Manitoba, Saskatchewan and Alberta. I am not clear that this might not affect other provinces as well.

Hon. Mr. FULTON: I do not think it could possibly affect Saskatchewan or Alberta.

Senator CRERAR: I am thinking, for instance, of Nova Scotia. Suppose oil is discovered two miles off the low water mark of Nova Scotia? Who controls it, the federal Government or the provincial Government?

Hon. Mr. FULTON: It was in order to avoid any possibility of conflict in regard to such questions in this bill that we suggested the amendment.

Senator CRERAR: What you are doing is to say "We will not touch that question now but leave it to the courts to decide in the future".

Hon. Mr. FULTON: Yes, if it arises.

Senator MACDONALD: Yes, but your proposed amendment, Senator Crerar, does not settle that question. It would still have to be determined whether it is within the province or not.

Senator CRERAR: I agree with you but I think it would settle it so far as Manitoba and Saskatchewan are concerned. I do think it should be possible to clarify this matter now so that there would not be any question in the future of conflict between Ontario, Manitoba or Quebec as to who owns the offshore rights.

Hon. Mr. FULTON: It was my understanding that with respect to the areas now being discussed there was no conflict and that no assertion was made by Manitoba, Ontario or Quebec with regard to the lands under the waters off these shores, but I understood further that Quebec is not prepared to make, as it were, the same admission with regard to the waters in the Gulf of St. Lawrence. Therefore, if we amended the bill to confine it to these northern areas, Ontario, Quebec and Manitoba would all accept it. If my information is incorrect—

Senator VIEN: It is.

Senator CRERAR: Mr. Fulton, as a practical matter may I suggest that if a large oil field were discovered off the Quebec shore of Hudson Bay, say two miles out in tidal waters, you would certainly hear from Mr. Duplessis as to who had right to it.

Hon. Mr. FULTON: If you are right then I would imagine the proper solution at that time would be a reference to the Supreme Court of Canada as to the effect of the statute of 1912 and any other relevant statute. In the meantime somebody has to be authorized to make regulations with regard to exploration and development.

Senator CRERAR: I quite agree with you.

Hon. Mr. FULTON: That was the sole purpose of this bill. It was not to assert ownership or title which we do not now have.

Senator MACDONALD: Mr. Minister, with all due respect, although I do not agree with Senator Crerar's suggestion, I cannot see why you have any objection to it because in the original bill you use the words "any other lands forming part of Canada" and then these are the words you use "but not included within any of the provinces". If that language was good there why do you object to Senator Crerar's suggestion to having it included here?

Hon. Mr. FULTON: I am afraid I do not recall at the moment the details of Senator Crerar's suggested amendment.

Senator CAMERON: What would have happened had this potential oil bonanza been discovered on November 1, 1957, before any of this came up? What would have been the position?

Hon. Mr. FULTON: I am informed by the Deputy Minister that it could have been administered by order in council but not under the Territorial Lands Act.

Senator MACDONALD: And that is the way it is being administered, I understand. Speaking at the last meeting the Deputy told us that the granting of licences over the years has been done by order in council, and that at the present time there are, I think he said, some—

Senator VIEN: 297 applications.

Senator MACDONALD: —yes, 297 applications pending.

Mr. ROBERTSON: Actually there are at the present time over 1,400. The figure changes from day to day.

Senator VIEN: Could Mr. Robertson describe for us the territory to which they apply?

Mr. ROBERTSON: I could give an indication, Senator Vien. At the present time the claims that mining companies want to register and which we cannot register under the act because of this technical omission, total 1,424. Of this number, 125 are submerged claims off Smith Island.

Hon. Mr. FULTON: Excuse me, Mr. Chairman, and honourable senators, but I have just been given a note that my estimates are coming up immediately in the House of Commons. I had hoped I could spend the full morning with you but apparently they have finished Mr. Hamilton's bill rather more quickly than he anticipated. If you will excuse me I will leave now but I would be glad to come back and attend any other session of the committee if I can be of help to you. I shall await the word of your Chairman.

Senator VIEN: We are all very grateful to the Minister for having come to give us the position of the Department of Justice with regard to this matter, and I am sure we all highly appreciate his having been with us this morning.

Hon. SENATORS: Hear, hear.

Senator VIEN: Mr. Chairman, before this meeting is adjourned I wonder if Mr. Robertson could give us a description of the territory to which these applications apply?

Senator REID: May I suggest, Mr. Chairman, that at our next meeting we be provided with copies of the order in council of 1918. We should have that

material before us. I am not doubting the statements of the ministers or the deputy ministers, but I think we should have the documents before us to study.

Senator HAIG: And the statute of 1912.

Senator REID: The statute of 1912 as well.

The CHAIRMAN: May we hear from the Honourable Mr. Spooner?

Senator MACDONALD: I do not know if it is fair to the Honourable Mr. Spooner to ask him to speak at this time. It is true that he is here, but I do not know if he has his legal advisers with him. I believe the previous witnesses were here with legal advice right at hand and were prepared to give evidence. The Honourable Mr. Spooner may be prepared, but I do not think we should insist.

The CHAIRMAN: Mr. Spooner?

Hon. Mr. SPOONER: Mr. Chairman, and gentlemen: I came here today not actually to attend this meeting but to attend another meeting, and I thought I would come and spend an hour with you this morning. For what it is worth I would like to say this, that it appears to me that the difficulty with this bill goes back to the 1950 bill. Subsection (g) of section 2 describes territorial lands, and says:

“Territorial lands” means lands in the Northwest Territories or in the Yukon Territory that are vested in the Crown or of which the Government of Canada has power to dispose.

Now, that immediately poses a problem of what happens to the rest of the territorial lands that are outside Northwest Territories and Yukon Territory, and I think that the purpose of the amendment is to correct that shortage in the legislation. That being the case I have no alternative but to accept the boundaries of Ontario as having been confirmed by the acts of 1912 and the order in council of 1918, and I am not going to argue whether Ontario boundaries are to be extended, because that is irrelevant to the question this morning. I am satisfied that our legal advisers will be satisfied with the amendment that is proposed by the minister, and that is to add a subsection or another section to (g) describing territorial lands as also being lands underlying any of the waters included within the boundaries of the provisional districts of Mackenzie, Keewatin and Franklin, as described in the annex to the Order in Council of March 16, 1918. That being the case, if it is the intention of the committee to recommend the minister's amendment, at the moment I see no reason why we would not be entirely in agreement with it. If what you are attempting to do is to legislate for these lands that are in Hudson Bay and James Bay, then I think that that is satisfactory to us. As I said at the meeting here in December our objection to Bill L is that it was much too broad in scope. Now the scope of the bill has been limited to the requirements of the day, and therefore I think that we will be quite prepared to support and agree to this amendment.

Now, Mr. Chairman, I would hope that as in the past you would supply me with minutes of the proceedings so that we may study them, and we shall then communicate with you, sir, as chairman of this committee, and also with the Minister of Northern Affairs, and give you the benefit of our advice for whatever it is worth. I do not think I need to add any more.

Senator VIEN: How would your rights to the natural resources under the territorial waters of the continental shelf be affected?

Hon. Mr. SPOONER: Well, sir, I do not think we would be adversely affected because of the fact that since 1912 the boundaries of our province have a certain limitation.

Senator VIEN: Except that under the act, as we stand now natural resources belong to the provinces. Now a question has arisen in various places

in the world, and in Canadian areas as well, as to who are the owners of the natural resources offshore.

Hon. Mr. SPOONER: I would say, sir the provisional Districts of Mackenzie, Keewatin and Franklin, in the same way that we might have a mine, for instance, that covers the boundaries or is located within two provinces. That is possible.

Senator VIEN: Well, suppose you found mineral deposits, oil, or otherwise, offshore the Ontario boundary on Hudson Bay?

Hon. Mr. SPOONER: Well, that would not affect us because our boundaries are set since 1912.

Senator VIEN: Yes, but coastal waters belong to coastal states. As between federal and provincial Governments, in Canada, we have never determined who is the owner of natural resources to be found therein. In the spirit of our Confederation Act, in my humble opinion, they belong to the provinces which are the coastal states. There is nothing in any statute that gives the federal Government the ownership of the offshore resources. The federal Government is proposing a bill which will have the effect of asserting for the federal Government the ownership of these natural resources. Well, I say that this question has never been defined.

Hon. Mr. SPOONER: Well, sir, that is rather an involved matter, and I am not prepared to discuss matters of an international nature.

Senator VIEN: I do not believe this is the place to discuss that; I suggest that the place to discuss it is at a federal-provincial conference or the Supreme Court. I would rather suggest that it be referred to a federal-provincial conference.

Hon. Mr. SPOONER: Well, Mr. Chairman, I doubt that I can answer the honourable senator's statement. But I would look upon it in this way: Canada has ten provinces and the territories. Let us for the moment consider that the territories are under the same degree of government, shall we say, as in the provinces; and therefore, as I mentioned before, the boundaries of Ontario, in so far as they extend into James Bay and Hudson Bay, have been set out in legislation which has been on our statutes for many years. Whether I agree with that or not is irrelevant. It would appear to me that this amendment proposed today limits the definition of "territorial lands" and corrects an apparent deficiency in chapter 263, passed in 1950, dealing with territorial lands.

Senator VIEN: But no legislation has ever determined the point that is at issue, namely, the ownership of offshore natural resources.

Senator PEARSON: Do you not think, Senator Vien, that it is defined when you say the shoreline is the boundary? You have a definite boundary between Ontario and Quebec as far as the land is concerned, and the province of Ontario and the province of Quebec extend to the shoreline and no further. Therefore, the federal Government, which had control of all mineral resources under those lands before they were transferred to the provinces, continued to hold the mineral rights under the lands covered by water. The provinces go to the shoreline and no further; they have no further jurisdiction beyond the shoreline.

I would point out that this is not an international water; it does not come within the question that concerns British Columbia or Nova Scotia. That is a different situation altogether. These are under the provisional districts of the Mackenzie, Keewatin and Franklin. Those districts extend right up to the shoreline of Quebec, Manitoba and Ontario; they also control mineral rights under the waters.

Senator VIEN: Every coastal country—

Senator PEARSON: Now you are talking of a different subject altogether; it has nothing to do with this bill.

Senator VIEN: I am speaking to the point you have just raised. The shore-line boundary applies to every coastal state—

Senator PEARSON: You are still raising that question, which I say does not apply to this bill.

Senator VIEN: If the proposed legislation excluded Ungava Bay, there would be no further objection.

Senator HAIG: By you?

Senator VIEN: By me—there might be by others.

Senator HAIG: Mr. Chairman, I move we adjourn.

The CHAIRMAN: Is it proposed that we send this amendment to the provinces?

Senator VIEN: I have suggested that a copy of the amendment, a copy of the Order in Council, the Statutes of 1912, and the Territorial Lands Act, Chapter 253 of the Revised Statutes, be sent to all concerned and to members of this committee.

The CHAIRMAN: Honourable senators, what is your wish in this respect?

Hon. SENATORS: Agreed.

The committee adjourned to the call of the Chair.

