COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF A REFERENCE to the Court of Appeal pursuant to section 8 of the *Courts of Justice Act*, RSO 1990, c. C.34, by Order-in-Council 210/2024 respecting permitting international play in an online provincial lottery scheme

RECORD OF THE ATTORNEY GENERAL OF ONTARIO

Volume 2 of 2

May 31, 2024

ATTORNEY GENERAL OF ONTARIO
Crown Law Office - Civil
720 Bay Street, 8th Floor
Toronto ON M7A 2S9
Tel: (416) 908-7465

Joshua Hunter, LSO #49037M
josh.hunter@ontario.ca

Ananthan Sinnadurai, LSO #60614G
ananthan.sinnadurai@ontario.ca

Hera Evans, LSO #66269Q
hera.evans@ontario.ca

Jennifer Boyczuk, LSO #70838L
jennifer.boyczuk2@ontario.ca

Counsel for the Attorney General of Ontario

TO: **THE REGISTRAR**
Court of Appeal for Ontario
130 Queen Street West
Toronto, Ontario M5H 2N5

AND TO: OLTHUIS KLEER TOWNSHEND LLP
250 University Avenue, 8th Floor
Toronto ON M5H 3E5
Tel: 416.981.9943
Fax: 416.981.9350

Nick Kennedy LSO#: 65949Q
nkennedy@oktlaw.com

Sarah Glickman LSO#: 82707D
sglickman@oktlaw.com

Counsel for the Intervener,
Mohawk Council of Kahnawà:ke

AND TO: DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7
Tel: 416.863.5595

Matthew Milne-Smith LSO# 44266P
mmilne-smith@dwpv.com

Chanakya A. Sethi LSO# 63492T
csethi@dwpv.com

Kristine Spence LSO# 66099S
kspence@dwpv.com

Jacqueline Houston LSO# 85990N
jhouston@dwpv.com

Lawyers for the Interveners,
Atlantic Lottery Corporation, British Columbia Lottery Corporation, Lotteries and Gaming Saskatchewan and Manitoba Liquor & Lotteries Corporation

AND TO: ATTORNEY GENERAL OF BRITISH COLUMBIA
1301-865 Hornby Street
Vancouver, BC V6Z 2G3
Tel: 604.660.0679

Robert Danay
robert.danay@gov.bc.ca

Keith Hogg
keith.hogg@gov.bc.ca

Counsel for the Intervener,
Attorney General of British Columbia

AND TO: BORDEN LADNER GERVAIS LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West, Suite 3400
Toronto ON M5H 4E3
Tel: 416.367.6000
Fax: 416.367.6749

Graeme Hamilton LSO# 56790A
ghamilton@blg.com

Teagan Markin LSO# 74337R
tmarkin@blg.com

Lawyers for the Interveners,
NSUS Group Inc. and NSUS Limited

AND TO: HENEIN HUTCHISON ROBITAILLE LLP
235 King Street East
Toronto, ON M5A 1J9

Scott C. Hutchison LSO# 29912J
shutchison@hhllp.ca

Kelsey Flanagan LSO: 74127U
kflanagan@hhllp.ca

Brandon Chung LSO# 83164E
bchung@hhllp.ca

Counsel for the Intervener, Flutter Entertainment plc

AND TO: **MCCARTHY TÉTRAULT LLP**
66 Wellington Street West
Suite 5300, TD Bank Tower
Toronto ON M5K 1E6
Tel: 416.601.4343

Danielle M. Bush LSO# 30586O
dbush@mccarthy.ca

Adam Goldenberg LSO# 69114R
agoldenberg@mccarthy.ca

Gregory Ringkamp LSO# 83479R
gringkamp@mccarthy.ca

Rachel Abrahams
rabrahams@mccarthy.ca

Lawyers for the Intervener,
the Canadian Gaming Association

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF A REFERENCE to the Court of Appeal pursuant to section 8 of the *Courts of Justice Act*, RSO 1990, c. C.34, by Order-in-Council 210/2024 respecting permitting international play in an online provincial lottery scheme

Table of Contents

TAB 6

THE SENATE OF CANADA

SPEAKER: Hon. Élie Beauregard

Official Report of Debates

1952

Editor: H. H. EMERSON, *C.S.R.*, Room 236, The Senate
Reporters: B. P. LAKE, *C.S.R.*, G. B. HAGEN, *C.S.R.*
P. H. SHELTON, *C.S.R.*, T. S. HUBBARD, Jr., *C.S.R.*
V. LEMIRE, *M.B.E.*, *C.S.R.* (Sessional)
Translators: THE BUREAU FOR TRANSLATIONS

SIXTH SESSION, TWENTY-FIRST PARLIAMENT
1 ELIZABETH II

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1952

APPENDIX

REPORT OF

ROYAL COMMISSION ON

REVISION OF CRIMINAL CODE

OTTAWA,
February 22, 1952.

To: The Honourable STUART S. GARSON, Q.C.
Minister of Justice,
Ottawa.

Your Commissioners, pursuant to their instructions, have the honour to submit the annexed draft Bill to revise the Criminal Code which has been prepared by them under the terms of reference appointing them, as contained in Order in Council P.C. 2275 of the 10th day of May, 1951.

An examination and study of the Criminal Code was authorized by Order in Council P.C. 527 of the 3rd day of February, 1949. This task was assigned to a Commission consisting of Hon. W. M. Martin, Chief Justice of Saskatchewan, Chairman; Mr. Justice Fauteux and Mr. F. P. Varcoe, Q.C., Deputy Minister of Justice, with Mr. Arthur Slaght, Q.C., Toronto, as Counsel. The Commission was to have the assistance of a Committee comprised of Mr. Robert Forsyth, K.C., (now Judge Forsyth), Toronto, Mr. Fernand Choquette, K.C., (now Mr. Justice Choquette), Quebec, H. J. Wilson, Q.C., Deputy Attorney General of Alberta, Edmonton, Mr. J. J. Robinette, Q.C., Toronto, and Mr. Joseph Sedgwick, Q.C., Toronto. The personnel of the Committee was subsequently increased and Mr. W. C. Dunlop, Q.C., Halifax, Mr. H. P. Carter, Q.C., St John's Newfoundland, and Mr T. D. MacDonald, Q.C., Ottawa, became members of the Committee. As some members of the Commission and the Committee found that judicial duties and other commitments made it impossible to devote the time necessary to the revision and as the work had progressed to a stage where it could be carried on by a smaller committee, the Committee was reorganized by Order in Council P.C. 68/4633 of the 26th day of September, 1950. On the 10th day of May, 1951, as above stated, by Order in Council P.C. 2275, the present Commission consisting of Hon. W. M. Martin, Chief Justice of Saskatchewan, Chairman; Hon. Mr. Justice Fernand Choquette, Quebec, His Honour Judge Robert Forsyth, Toronto, Mr. H. J. Wilson, Q.C., Edmonton, Mr. Joseph Sedgwick, Q.C., Toronto, and Mr. A. A. Moffat, Q.C., Ottawa, was appointed and authorized and directed to prepare a draft Bill to revise the present Criminal Code.

The terms of reference were as follows:

(*a*) revise ambiguous and unclear provisions;
(*b*) adopt uniform language throughout;
(*c*) eliminate inconsistencies, legal anomalies or defects;
(*d*) rearrange provisions and Parts;
(*e*) seek to simplify by omitting and combining provisions;
(*f*) with the approval of the Statute Revision Commission, omit provisions which should be transferred to other statutes;

(*g*) endeavour to make the Code exhaustive of the criminal law; and

(*h*) effect such procedural amendments as are deemed necessary for the speedy and fair enforcement of the criminal law.

The Committee appointed by Order in Council in February 1949, and reorganized by Order in Council of the 26th day of September, 1950, held, in all, twelve meetings, each one occupying a period of about one week. Prior to the reorganization of the Committee in September 1950, the Committee worked in close co-operation with the Commission in making a general survey of the Code and in laying the groundwork for the present draft Bill. Your Commissioners have found the preliminary work done during this period of great value and many of the decisions taken at that time have been incorporated in the draft Bill. Your Commissioners feel that they would be remiss if they did not express their appreciation of the very valuable work done by those who, through judicial duties and other commitments, found that they could not continue with the work of revision. They therefore take this opportunity to express their sincere appreciation to

Hon. Mr. Justice Fauteux,
Mr. F. P. Varcoe, Q.C.,
Mr. J. J. Robinette, Q.C.,
Mr. W. C. Dunlop, Q.C.,
Mr. H. P. Carter, Q.C., and
Mr. T. D. MacDonald, Q.C.,

for the very valuable contribution which they made toward the work of revision.

The Commission appointed by Order in Council of the 10th day of May, 1951, has held four meetings, one in each of the months of June, September, October and November, each meeting extending over a period of about one week.

The Committee and the Commission have been of the opinion that the views of the provincial authorities should be obtained in connection with certain matters, particularly with respect to procedure. For this reason the provincial authorities have from time to time been communicated with and meetings were held with their representatives at Calgary in the month of August, 1949, prior to the annual meeting of the Canadian Bar Association, and in September, 1951, in the City of Toronto at the time of the meeting of the Criminal Law Section of the Conference of Commissioners on Uniformity of Legislation in Canada. The latter meeting was arranged to obtain the views of the provincial representatives with respect to a proposed revision of Parts XV, XVI, XVIII and XXI of the Code. Certain changes in procedure were suggested in order to give effect to the following purposes:

(*a*) to simplify the summary trial procedure and to expedite the disposition of cases;

(*b*) to attain greater uniformity in the procedure relating to summary trials of offences, whether punishable by indictment or on summary conviction;

(*c*) to provide uniform procedure with respect to the forfeiture of bail.

It is a matter of satisfaction to be able to report that there was general approval by the provincial representatives of the suggested changes in procedure.

Extent to Which Revised Code is Exhaustive of the Criminal Law

Under the terms of reference the Commission is directed to endeavour to make the Code exhaustive of the criminal law. Sections 10, 11 and 12 of the present Code make the criminal law of England applicable in the Provinces of

Ontario, British Columbia and Manitoba, as it existed on the 17th day of September, 1792, the 19th day of November, 1858, and the 15th day of July, 1870, respectively, in so far as it has not been repealed by any Act having the force of law in the respective provinces or by the Criminal Code or any other Act of the Parliament of Canada. There are no similar provisions in the Code with respect to any of the other provinces. As to the Province of Quebec, there can be no doubt that from the date of the Quebec Act, 1774, the English criminal law has been in force except as altered, varied or modified by competent authority. As to the Maritime Provinces there are no statutes, Imperial or Canadian, which expressly deal with the introduction of the criminal law of England, but that law is considered as having been adopted in so far as it is applicable to local conditions. Vide: Tremeear, 5th Ed., p. 44, and cases there cited. As to Alberta and Saskatchewan, the Northwest Territories Act, 1886, c. 50, as amended by C. 28 of 1897, s. 4, provided that the laws of England relating to civil and criminal matters as they existed on July 15th, 1870, shall be in force in the Territories in so far as they are applicable, and in so far as they have not been altered, varied or modified by any Act of the Parliament of the United Kingdom applicable to the Territories or of the Parliament of Canada, or by any Ordinance of the Lieutenant-Governor in Council or of the Legislative Assembly. When the Provinces of Alberta and Saskatchewan were formed in 1905 it was provided by both the Alberta and Saskatchewan Acts that all laws existing before the coming into force of those Acts should continue in the new provinces in so far as they were not inconsistent with the Acts or where the Acts contained no provision intended as a substitute for them. In the Province of Newfoundland, broadly speaking, the law of England as to crime and offences in so far as it could be applied was in force when the province entered Confederation in 1949. The Criminal Code, however, was proclaimed in force in Newfoundland on August 1, 1950.

Your Commissioners are of the opinion that the Code should be exhaustive in so far as criminal offences are concerned, but that the criminal law of England, as presently in force, should be continued in respect of all other matters. In order to give effect to this opinion, clauses 7 and 8 have been placed in the draft Bill. These clauses are as follows:

> "7. (1) The criminal law of England that was in force in a province immediately before the coming into force of this Act continues in force in the province except as altered, varied, modified or affected by this Act or any other Act of the Parliament of Canada.
>
> (2) Every rule and principle of the common law that renders any circumstance a justification or excuse for an act or a defence to a charge continues in force and applies in respect of proceedings for an offence under this Act or any other Act of the Parliament of Canada, except insofar as they are altered by or are inconsistent with this Act or any other Act of the Parliament of Canada.
>
> 8. Notwithstanding anything in this Act or any other Act, no person shall be convicted
>
> (*a*) of an offence at common law,
>
> (*b*) of an offence under an Act of the Parliament of England, or of Great Britain, or of the United Kingdom of Great Britain and Ireland, or

NOTE: Where the reference is to a provision of the present Code, the word "section" is used. Where the reference is to a provision of the draft Bill, the word "clause" is used.

(c) of an offence under an Act or Ordinance in force in any province, territory or place before that province, territory or place became a province of Canada,

but nothing in this section affects the power, jurisdiction or authority that a court, judge, justice or magistrate had, immediately before the coming into force of this Act, to impose punishment for contempt of court."

Under these provisions the criminal law of England in so far as it relates to procedure in criminal matters, common law defences and the powers of a court to punish for contempt of court are preserved.

Your Commissioners recognize that the original Code was not intended to be a complete Code and that common law offences were still retained. However, we have come to the conclusion that by incorporating in the draft Bill all of the common law offences in respect of which charges are currently laid, all offences which should be adopted from the common law are included. The offences which have been incorporated are common law conspiracy (clause 408(d), public mischief (clause 120), indemnification of bail (clause 119(2)(d)) and compounding a felony (clause 121). A specific punishment applies in respect of each offence. Certain common law offences are, in the opinion of your Commissioners, obsolete and archaic and are not retained, e.g., champerty and maintenance, barratry, refusing to serve in office and being a common scold.

Rearrangement and Consolidation

The Criminal Code was first enacted in 1892 and was founded largely upon the draft Code prepared in 1878 by the Commissioners appointed by the Imperial Government for the purpose of drafting a Code of the English criminal law, and also upon Stephen's Digest of the criminal law. Since that time amendments and additions have been made at nearly every Session of Parliament. Some of the amendments and additions have not been placed in appropriate portions of the Code. Your Commissioners have consolidated and rearranged sections which deal with the same subject matter and have thus facilitated reference.

Having regard to the Appendices to this Report and the study which will be given to the draft Bill, your Commissioners do not consider it necessary to set out in detail the rearrangement and consolidation that has been made. However, as an indication of the manner in which this work has been done, a number of examples are given.

Rearrangement

The present Code allocates provisions under divisions based on subject matter. One result of this is, for instance, that rules of evidence whether of general application or related to a particular offence are gathered together under the heading of "evidence" in Part XIX. This arrangement is inconvenient because it necessitates not only reference to the provision creating the offence but also reference to Part XIX for the purpose of ascertaining whether or not there is a special rule of evidence relating to the particular offence. For example, section 394 of the Code deals with offences in respect of lumber and lumbering equipment. Section 990 provides that where the material which is the subject of a prosecution under section 394 bears a registered mark, this constitutes prima facie evidence that the material which is the subject of the charge belongs to the registered owner of the mark.

In the draft Bill, provisions which are of general application are continued in a Part that is of general application, while provisions which relate to a specific offence have been put with the section creating the offence. In as much

as section 990 is limited to an offence under section 394, it has been carried into clause 285 so that the special provision relating to offences under this section may be readily ascertained.

Other examples are cases in which corroboration is required or where there is a limitation of time for the commencement of a prosecution. In such cases the requirement of corroboration or the limitation of time is placed with the clause that creates the offence. In the case of forgery, the provision in section 1002 requiring corroboration is incorporated as subsection (2) of clause 310.

Consolidation

The work of consolidation is designed to do away with duplication and needless repetition, and provisions are drafted in a form that, where possible, eliminates particularization and reduces to a minimum the need for amendment. For example, the present Code contains provisions dealing with false entries in books of account. Section 413 makes it an offence for an officer of a corporation to make false entries. Section 414 makes it an offence for a clerk or servant to falsify books of account, etc. Section 418 makes it an offence to falsify books of account to defraud creditors. Sections 484 and 485 make it an offence to make false entries in books of account of a government or of a bank. In all these instances the gravamen of the offence is that it is done with an intent to defraud. In the consolidation of these provisions (clause 340) particularization is eliminated and it is made an offence *with intent to defraud* to falsify books of account, etc.

Another instance of consolidation to which attention is directed and which is intended to meet existing and future conditions, is to be found in Part X which deals with counterfeiting. The object of this Part is the protection of the currency. By a comprehensive definition of currency and the consolidation of provisions which dealt separately with the various kinds of coin and with paper money, a simple and complete code relating to this subject has been evolved.

Consolidation has also been carried out in matters of procedure. One instance of this is the creation of a separate Part (Part XIX) dealing with the calling of witnesses and the taking of evidence on commission. At present these matters are dealt with in the several procedural Parts. This has resulted in the enactment of a great number of provisions, each group designed to cover the subject for the purposes of the proceedings dealt with by the Part in which they appear.

Your Commissioners have therefore consolidated in one Part (Part XIX) all provisions relating to compelling the attendance of witnesses and the taking of evidence on commission.

It has been found that many sections of the Code relating to particular offences may be omitted because the offences are capable of being dealt with in one general provision. For example, sections 358-388 create many separate offences for different kinds of theft. These sections are dropped and only one offence of theft is created for which appropriate punishment is provided. It is pointed out that this is in conformity with the policy of Parliament as a similar step was recently taken in respect of the offence of forgery.

UNNECESSARY PROVISIONS.

Certain provisions are not retained because the same subject matter is dealt with in other Statutes of Canada. The following are examples:

Sec. 222A which deals with manufacture, importation and sale of living bacteria, is now dealt with by the Pest Control Products Act, R.S.C., 1927, c. 5, as amended by 1939, c. 21.

Sec. 224 which makes it an offence for a person to expose for sale articles which he knows are unfit for human food, is now adequately covered by the Food and Drugs Act, R.S.C., 1927, c. 76, as amended by 1946, c. 23, s. 2.

Sec. 504A dealing with moneylenders is also covered by provisions of the Small Loans Act, S.C., 1939, c. 23.

Sec. 506 dealing with offences in respect of copyrights is unnecessary in view of similar provisions in the Copyright Act, R.S.C., 1927, c. 32.

For the same reason we are of the opinion that the subject matter of clauses 411 and 412 (sections 498 and 498A) should be dealt with in the Combines Investigation Act. We do not feel free to omit these provisions from the draft Bill because we are informed that a Committee has been appointed by the Minister of Justice to study combines investigation legislation.

In our opinion sections 1143-1148 inclusive of the Code relate to matters which should more properly be dealt with under provincial law. Section 1148 recognizes the validity of provincial law in relation to these matters and most provinces have expressly dealt with them. To avoid confusion and duplication these provisions are not retained.

In our opinion section 508 and subsections (4), (5) and (6) of section 515 are of doubtful validity. In any event they relate to matters which should more properly be dealt with under provincial law. They are in fact covered by statutory enactments in the provinces.

Section 1048 provides that the court may award as compensation to a person aggrieved an amount not exceeding one thousand dollars, which shall be deemed a judgment debt. This has been changed (clause 638) to provide that compensation may be awarded out of moneys found in the possession of an accused. The limitation in amount has been removed because the amount found in the possession of a convicted person sometimes exceeds one thousand dollars and a limitation might work injustice. The creation of a judgment debt is considered a civil matter and this portion of the present provision is not retained.

PROCEDURE

The major changes in procedure have been made in Parts XV, XVI, XVIII and XXI of the present Code.

Parts XVI and XVIII deal with the trial of indictable offences by magistrates and judges. These Parts readily lend themselves to consolidation and are combined in Part XVI of the draft Bill. The object of the consolidation is to provide a complete and expeditious procedure for the non-jury trial of indictable offences.

Under the proposed procedure the special jurisdiction conferred upon magistrates will be exercised only by those who are expressly appointed for that purpose. The requirement that magistrates must be expressly appointed to exercse jurisdiction under the Part is inserted in the expectation that the provinces will designate only qualified persons. The following is the definition of "magistrate":

> " 'magistrate' means a person appointed under the law of the province, by whatever title he may be designated, who is specially authorized by the terms of his appointment to exercise the jurisdiction conferred upon a magistrate by this Part, but does not include two or more justices of the peace sitting together."

Consideration was given to the extension of the absolute jurisdiction of magistrates and it was decided that cetrain minor extensions of this jurisdiction would be justified. It is therefore extended to include offences under

clause 179 which are cognate to those mentioned in clause 176 and over which a magistrate now has absolute jurisdiction. Clause 176 deals with betting, pool-selling and book-making. Clause 179 deals with lotteries. The absolute jurisdiction was further extended to include attempts to commit the offences of obtaining property by false pretences, receiving and retaining, where the value of the property does not exceed fifty dollars.

In view of the requirement that magistrates who are to exercise jurisdiction under the Part must be expressly appointed for the purpose, it was decided that the number of offences which should now be required to be tried by judge and jury should be reduced to include only treasonable offences, piracy and piratical acts, murder, manslaughter, combinations in restraint of trade, discrimination in trade, accessory after the fact to murder or treason, attempt to commit murder and conspiracy to murder (clause 413). The rights of an accused are in no way impaired as he is entitled to elect whether he will be tried by a judge and jury, by a judge alone, or by a magistrate.

Provision is made to enable an accused who is in custody in one province to have charges outstanding against him in another province disposed of if he wishes, but only where the accused admits his guilt and the Attorney General of the province in which the offences were committed consents. (clause 421 (3)).

The anomaly which presently exists with respect to sentences where a magistrate tries an offence mentioned in section 773, is abolished. Sentences which may be imposed for these offences will be the same whether the offence is tried summarily by a magistrate or is tried by a higher court.

Under Part XVI of the draft Bill no magistrate has absolute jurisdiction over any offence that is punishable by imprisonment for more than two years.

Summary Conviction Offences

With respect to Part XV (now Part XXIV of the draft Bill) which is the code of procedure for summary conviction offences, the purpose of the changes which are made is to bring about greater uniformity in procedure with respect to summary conviction offences and indictable offences.

The draft Bill provides that a proceeding under this Part must be commenced by an information under oath and that more offences than one may be included in an information as separate counts (clause 696). However, there is reserved to the court power to order a separate trial in respect of one or more of the counts where it is in the interests of justice so to do.

Under this Part the right of appeal is extended to permit appeals against sentence alone. Appeals are to be heard on the evidence taken at the trial and the powers of the court hearing an appeal in a summary conviction matter are similar to those of the courts which hear appeals in indictable offences. In order to ensure that the court will have before it all essential evidence, authority is given to hear witnesses called on the trial as well as additional witnesses.

Forfeiture of Bail

The provisions in respect of the forfeiture of bail contained in Part XXI of the present Code are not satisfactory. These provisions have been completely rewritten and are contained in Part XXII of the draft Bill. They provide a simple and uniform procedure for all the provinces.

Courts

In the draft Bill courts are specifically defined as superior courts of criminal jurisdiction or courts of criminal jurisdiction. The terminology of the present Code that involves references to such courts as Oyer and Terminer and General Gaol Delivery is not retained.

Simplification

The provisions relating to arrest with or without warrant by a peace officer or other person are shortened and simplified. (Clauses 434-438.)

The provisions relating to justification for acts authorized by law to be done in the administration or enforcement of the law are combined in clauses 25 and 26.

Substantive Changes

Your Commissioners have made substantive changes in the criminal law which in their opinion eliminate certain inconsistencies, legal anomalies and defects in the law.

One example is that under the present Code on a charge of rape or indecent assault, the evidence of the complainant need not be corroborated. However, a rule of practice requires the trial judge to give a warning as to the danger of convicting on the complainant's evidence alone. This rule is codified and extended to cases of carnal knowledge (clause 134) with the result that under the draft Bill corroboration of the evidence of the complainant is no longer required in cases of carnal knowledge.

Gaming Provisions

Your Commissioners have considered the gaming sections of the Code. While we are of the opinion that these sections contain certain inconsistencies and anomalies we have suggested no substantive changes because of the controversial nature of the matters involved.

Sentences

The sentences provided in the present Code follow no apparent pattern or principle and in our view are frequently not consonant with the gravity of the offences to which they relate.

Your Commissioners are of the opinion that there should be a few general divisions of punishment by imprisonment, each offence being assigned to one of the divisions. Accordingly, apart from the cases where the sentence of death may be imposed, maximum sentences of imprisonment are provided as follows:

(*a*) Life,
(*b*) 14 years,
(*c*) 10 years,
(*d*) 5 years,
(*e*) 2 years.

Suspended Sentence

The provisions relating to suspension of sentence contained in section 1081 of the Code are varied in clause 638 of the draft Bill. Under section 1081 where a person is convicted of any offence and no previous conviction is proved against him, the court may suspend the passing of sentence, but if the offence is punishable with more than two years' imprisonment, the concurrence of counsel acting for the Crown is required. It is the opinion of your Commissioners that the powers of the court to suspend the passing of sentence should not be subject to the consent of counsel for the Crown. It is a fundamental principle of the administration of justice that the law should be administered by a free and independent judiciary, and in determining whether a convicted person should be released on suspended sentence and thus be given an opportunity to rehabilitate himself, or should be sent to prison, the discretion of the judge should be unfettered. Under the provisions of clause 638 the court has power to suspend sentence in the case of any offence without the concur-

rence of counsel for the Crown, but the Crown is given an appeal against the suspension of sentence. (Clause 581 (*d*)). The provisions with respect to previous convictions have been retained.

Fines

The provisions of the present Code empowering the imposition of fines in lieu of or in addition to any other punishment are retained.

Minimum Punishment

Your Commissioners consider that all minimum punishments should be abolished and none are continued in the draft Bill.

In 1878 Sir John Holker, then Attorney General of England, in introducing the original Draft Code in the House of Commons, said:

> "Minimum punishments were a great evil, and I am happy to say that these punishments have been to a very considerable extent set aside by recent legislation; and now a very large discretion is confided to judges, and they are enabled, upon their view of the circumstances, to mitigate the punishment almost to any extent. I think that is right."

Chief Justice McRuer in Vol. 27 of the Canadian Bar Review (1949), p. 1003, writes in part as follows:

> "It is much easier to justify a fixed punishment for murder, with all the safeguards of review that have been thrown around the execution of the sentence, than a minimum sentence for theft of a motor vehicle. An arbitrary law of the latter character tends to corrupt the administration of justice by creating a will to circumvent it. Even parliament itself has shown such a disposition by the enactment of section 285(c) of the Criminal Code which, although appearing to create a separate crime, defies the legal mind to distinguish it from theft properly defined."

Punishment for Summary Conviction Offences

In keeping with our desire for simplification, the draft Bill provides one general penalty for all summary conviction offences, namely, a fine of $500 or six months' imprisonment, or both.

Indeterminate Sentences

Your Commissioners have considered the question of indeterminate sentences and have consulted the provincial representatives in the matter. There was no general feeling in favour of such sentences, and while we believe they would have some merit, we think it would be impracticable to provide for such sentences until the requisite machinery, including a parole board, has been established.

GRAND JURY

Your Commissioners favour the abolition of the Grand Jury in the interests of uniformity. It has been abolished in every part of the British Commonwealth except in Canada where it is retained in five provinces, namely, Ontario, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland. However, the Grand Jury forms part of the judicial machinery for the enforcement of the law in those provinces where it has been retained. Moreover it has in the past been abolished only in those provinces that have asked for its abolition. In these circumstances we do not feel free to recommend its abolition without the support of the provinces concerned.

CRIMINAL NEGLIGENCE

We have considered the question as to the degree of negligence necessary to constitute a criminal offence.

A great deal of confusion has arisen, particularly in motor manslaughter cases, as to the degree of negligence required to sustain a conviction against an accused person. Much of the confusion arises by reason of the standard of care set forth in section 247 which reads as follows:

> "247. Every one who has in his charge or under his control any thing whatever, whether animate or inanimate, or who erects, makes or maintains anything whatever which, in the absence of precaution or care, may endanger human life, is under a legal duty to take reasonable precautions against, and use reasonable care to avoid, such danger, and is criminally responsible for the consequences of omitting, without lawful excuse, to perform such duty."

This definition appears to impose criminal liability for what might be termed civil negligence, yet the weight of judicial authority is to the effect that in order to sustain a conviction, it must be shown that the negligence of an accused person went beyond a mere matter of compensation and showed such disregard for the lives and safety of others as to amount to a crime against the state and conduct deserving punishment.

There is also the difficulty with respect to cases involving so-called involuntary manslaughter and particularly motor manslaughter in which the jury is reluctant to convict an accused person notwithstanding that he may have been guilty of reckless conduct amounting to criminal negligence. This difficulty gave rise to the enactment of section 951(3) of the Criminal Code which enabled a court, upon a charge of manslaughter arising out of the operation of a motor vehicle, to acquit the accused of manslaughter and find him guilty under section 285(6) notwithstanding that the degree of negligence required to warrant a conviction for the major or minor offence was the same. In order to resolve these difficulties we have dropped section 247 and also section 951(3) and have inserted a definition of criminal negligence in clause 191 of the draft Bill as follows:

> "191. (1) Everyone is criminally negligent who shows a wanton or reckless disregard for the lives or safety of other persons
>
> (*a*) by doing anything, or
>
> (*b*) by omitting to do anything that it is his duty to do.
>
> (2) For the purposes of this section, "duty" means
>
> (*a*) a duty imposed by law, or
>
> (*b*) a duty for the breach of which a person may be found liable in civil proceedings."

This definition is followed by clauses 192 and 193 which provide that everyone who by criminal negligence causes the death of another person is guilty of an indictable offence and is liable to imprisonment for life, and any person who by criminal negligence causes bodily injury to another person is guilty of an indictable offence and is liable to imprisonment for ten years.

The definition of criminal negligence in clause 191 is in accord with judicial authorities which state that wanton or reckless misconduct is required to support a charge involving criminal negligence: *R. v. Bateman,* 94 L.J.K.B. 791; *Andrews*

v. Director of Public Prosecutions, 106 L.J.K.B. 370; *R. v. Greisman,* 59 O.L.R. 156, and 46 C.C.C. 172; *R. v. Baker,* (1929) S.C.R. 354. In *R. v. Bateman,* supra, Lord Hewart stated that to support an indictment for manslaughter based on criminal negligence, the prosecution must prove the matters necessary to establish civil liability (except pecuniary loss) and in addition must satisfy the court that the negligence alleged "went beyond a mere matter of compensation and showed such disregard for the lives and safety of others as to amount to a crime against the state and conduct deserving punishment". See also the remarks of Lord Atkin in *Andrews v. Director of Public Prosecutions,* supra, and Tremeear, 5th Ed., pp. 271 et seq.

It should be observed that under clause 192 any one who is convicted for causing the death of another person by criminal negligence in operating a motor vehicle is liable to life imprisonment.

In clause 194(5) it is provided that a person commits culpable homicide when he causes the death of a human being by criminal negligence. Under this provision any one who causes the death of another person by criminal negligence may be indicted for manslaughter, and if found guilty is liable under clause 207 to imprisonment for life.

In concluding the report on the subject of criminal negligence, attention should be called to the provisions of clause 221(1) which make it an offence to be criminally negligent in the operation of a motor vehicle whether or not such operation causes bodily injury to or death of another person. Because of this provision it has been unnecessary to retain subsections (1) and (6) of section 285.

Place of Trial (Newspapers)

The Commission has considered that subsection (2) of clause 421 which provides that the proprietor, publisher, editor or other person charged with the publication of a defamatory libel in a newspaper or with conspiracy to publish a defamatory libel shall be dealt with, indicted, tried and punished in the province where he resides or in which the newspaper is printed. The majority of the Commission is of the opinion that the provision is contrary to the well established principle of the criminal law that an accused should be indicted, tried and punished where the offence is committed and that there appears to be no good reason under modern conditions why this principle should not be preserved in relation to newspapers. However, in view of the fact that this section was recently before Parliament, it is retained in the draft Bill.

Conclusion

Your Commissioners desire to state that as to some of the provisions of the draft Bill there was a difference of opinion. While the draft Bill presented reflects in some respects the view of the majority only, no useful purpose can be served by indicating specifically the matters in which differences of opinion were not fully resolved.

The following Appendices are attached hereto:

Appendix A—Table of Concordance showing disposition of sections of the present Code.

Appendix B—Table of Concordance showing origin of clauses in the draft Bill.

Appendix C—Table of Contents of the draft Bill.

In concluding this report your Commissioners wish to take this opportunity of expressing their appreciation of the valuable assistance and untiring service which they have received from the following personnel:

Mr. J. C. Martin, Q.C., who has acted as Counsel to the Committee and Commission;

Mr. A. J. MacLeod, of the Department of Justice for his assistance in the drafting of the Bill; and

Mr. L. J. Ryan, who acted as Secretary to the Committee and Commission.

Respectfully submitted.

(Sgd) W. M. MARTIN, *Chairman,*
ROBERT FORSYTH,
FERNAND CHOQUETTE,
H. J. WILSON,
J. SEDGWICK,
A. A. MOFFAT.

Ottawa,
January 22, 1952.

TAB 7

FINAL REPORT ON LOTTERIES

to

THE SENATE AND THE HOUSE OF COMMONS PRESENTED ON TUESDAY, JULY 31, 1956.

The Special Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries begs leave to present its

FOURTH REPORT

of the current session, being the Committee's final report upon the question whether the criminal law of Canada relating to lotteries should be amended in any respect and, if so, in what manner and to what extent. The First Report of the Committee was a recommendation concerning its quorum presented on March 21, 1956. The Second and Third Reports were, in that order, the Final Reports on Capital and Corporal Punishment and were presented on June 27, 1956, and July 11, 1956, respectively.

The Minutes of Proceedings and Evidence tabled in both Houses on June 29, 1955, by the preceding Committee were referred to this Committee; and, at this time, the Committee is returning the remaining portion which is applicable to the question of lotteries. At the current session, no further evidence was printed and all proceedings were conducted *in camera*.

The sources of evidence taken and witnesses heard on the lotteries question during the first two sessions are listed alphabetically in Number 21 of the Committee's 1955 printed Minutes of Proceedings and Evidence, and a chronological schedule of the sittings of the Committee for the same period appears in the same Number.

Respectfully submitted,

SALTER A. HAYDEN,
Joint Chairman representing the Senate.

DON. F. BROWN,
Joint Chairman representing the House of Commons.

TABLE OF CONTENTS

FINAL REPORT ON LOTTERIES

FINAL REPORT ON LOTTERIES

CHAPTER I—SCOPE OF INQUIRY

1. The Committee confined itself to a study of the operation of the laws governing lotteries in Canada and other jurisdictions. Other aspects of gambling were beyond its terms of reference. It considered, however, that the game of "Bingo" and similar games were within its terms of reference even though, legally, such games are regarded as games of chance and not as lotteries. They were included because they are not dissimilar to lotteries in operation and, moreover, they are games usually arranged and played by organizations having similar purposes to those organizing lotteries for benevolent purposes, which have been the main concern of the Committee's inquiry.

CHAPTER II—PRESENT LAW

2. The English Statutes prohibiting lotteries, enacted in the early part of the nineteenth century, were extended to Canada and these prohibitions were codified in 1886 in a general act relating to lotteries. This statute was substantially re-enacted in the first Criminal Code of 1892. The section of the present Criminal Code dealing with lotteries is section 179. It prohibits lotteries in general and exempts certain types of lotteries from this general prohibition. The section is basically the same as the corresponding section in the 1892 Code, but contains many additions and changes made in the intervening years. The section has always been dealt with piecemeal and has never had a thorough overall revision.

3. It is clear that the federal Parliament has power to enact laws prohibiting and regulating lotteries by virtue of its jurisdiction over criminal law. The courts have held that provincial Legislatures have no jurisdiction to permit the operation of lotteries forbidden by the Criminal Code.

4. The governing provisions of the Criminal Code are set forth as an appendix. The effect of the main section dealing with lotteries, namely section 179, may be summarized as follows:

(1) Offences Relating to Lotteries:

(*a*) Publishing, advertising or printing lottery scheme; source, 1892 Code; Criminal Code, s. 179(1)(a).

(*b*) Selling or otherwise disposing of lottery tickets; source, 1892 Code; Criminal Code, s. 179(1)(b).

(*c*) Sending, transmitting or otherwise delivering or knowingly accepting for conveyance any tickets or articles connected with a lottery; source, 1932, c. 8, s. 1, to supplement the prohibitions contained in the Post Office Act by covering other modes of transmission such as express; Criminal Code, s. 179(1)(c).

(*d*) Conducting or managing a lottery; source, 1895, c. 40, s. 1; revised 1943-44, c. 23, s. 8; Criminal Code, s. 179(1)(d).

(*e*) Conducting any scheme for disposing of property under which one contributor may receive a larger amount than paid in because others have contributed to the scheme even though the outcome depends on skill; source, 1935, c. 56, s. 3; Criminal Code, s. 179(1)(e).

(*f*) Disposing of goods, wares or merchandise by any mode of chance or mixed chance and skill, where the competitor pays valuable consideration; source, 1922, c. 16, s. 11; Criminal Code, s. 179(1)(f).

(*g*) Inducing the staking of money on gambling devices such as punch board, shell games or wheels of fortune, and playing three-card monte; source, 1922, c. 16, s. 11; Criminal Code, s. 179(1)(g-j).

(*h*) Buying lottery tickets; source, 1892 Code; Criminal Code, s. 179(4).

(*i*) Foreign lotteries prohibited; source, 1892 Code; Criminal Code s. 179(7).

(2) Exemptions:

(*a*) Games and contests prohibited by s. 179(1)(f) and (g) are permitted at agricultural fairs, (except dice and other specified games); proviso enacted 1925, c. 38, s. 4; Criminal Code, s. 179(3).

(*b*) Small raffles at bazaars, held for religious or charitable objects, where permission to hold the same has been granted by the municipality and the prize is first offered for sale and does not exceed $50.00; source, 1892 Code; Criminal Code, s. 179(8)(b).

(*c*) The division of property by lot by joint tenants; recalling securities by lot and other lesser exemptions; source, 1892 Code; Criminal Code, s. 179(8).

(3) Other Penalties:

(*a*) Apart from fine and imprisonment, property (including money) connected with a lottery is subject to forfeiture; Criminal Code, s. 179(5).

(*b*) Search warrants may be obtained when an offence is suspected and persons and property may be detained thereunder. If not claimed, the property is subject to forfeiture. Telephone and Telegraph equipment may not be interfered with; Criminal Code, s. 171.

5. The game of bingo, which the courts have declared to be a game of chance, falls under the prohibition of section 176 of the Criminal Code which makes the keeping of a common gaming house an offence. A common gaming house is defined in section 168. This definition is subject to an important proviso which specifies that a place is not a common gaming house while used "occasionally" by charitable or religious organizations for the purpose of playing games for which a direct fee is charged if the proceeds are used for charitable or religious objects. The interpretation of the word "occasional" has been a source of continual difficulty and it appears to have justified, in some areas, the holding of bingos with a remarkable degree of regularity. While, ordinarily, bingo games, for which a fee is paid and for which prizes are offered, would fall within the prohibition of the Gaming Section of the Criminal Code, they are usually held in circumstances which bring them within the indefinite scope of the exemption covering games played "occasionally" for charitable or religious purposes.

CHAPTER III—OPERATION AND ENFORCEMENT OF LOTTERY LAWS

Section 1: Lotteries in Canada

6. There appeared to be widespread support for lotteries organized for charitable and benevolent purposes. These lotteries, although usually of doubtful legality, take many forms in Canada and are relatively common in

their occurrence. The purpose may be to support some community project, such as the building of a rink or a hall or some charity of general benefit to the community. Not infrequently a lottery of this type is based upon the award of an automobile as the first prize and sometimes lesser prizes consisting of television sets, refrigerators, and other valuable durable goods. Many of these lotteries are run by churches, service clubs, and other reputable voluntary organizations and receive widespread support from the community in general. Fund-raising schemes based on lotteries of this kind are frequently parallelled by large bingo games operated by charitable or religious organizations for worthy purposes. In some parts of Canada the prizes awarded at bingo games are very substantial. Particulars were obtained from organizations regularly sponsoring bingo games in one larger Canadian city indicating that it was not uncommon for two or more automobiles to be awarded during the night's play together with a wide range of valuable and less expensive prizes. The widespread occurrence of lotteries and bingos of this type poses the most acute problem of control. There was evidence that sales-promotion contests, in the nature of lotteries, carried on by press, radio and other means were increasing in volume and created an equally difficult problem of control under the present law.

Section 2: Results of Inconsistencies and Anomalies in Present Law

7. There was general agreement that the lack of clarity in the present lotteries provisions made efficient enforcement impossible. This defect arises from the lack of integration of the present provisions referred to in paragraph 2 and from the contradictions and uncertainties resulting from judicial interpretation. The Committee is of the opinion that the present law ought to be carefully redrafted to eliminate the ambiguities and inconsistencies which have militated against proper enforcement. The main problems created by the unsatisfactory wording of the present law are set forth in Chapter VI which contains the Committee's proposals for amendment.

Section 3: Lack of Public Support for Lottery Laws

8. The Committee is of the opinion that the enforcement of the present provisions is a matter of concern in all parts of Canada. It appears that the standards of enforcement vary from province to province and that considerable variations occur within provinces reflecting to some extent the differing opinions of various communities on lotteries. Whatever the variations in standards of enforcement, the Committee notes that there is widespread difficulty in enforcement and it is disposed to accept the statement of the Commissioner of the Royal Canadian Mounted Police that there is lack of support for the present prohibitory laws and that they cannot be enforced in the face of adverse public opinion.

9. The effect of this lack of public support for the present lotteries law is observable in many parts of Canada. There is a fairly widespread violation, not only of the spirit but the letter of the lotteries law, frequently by organizations representative of the community in general and motivated by worthy purposes of community improvement or charity. The Committee has little doubt that the results of this evasion of the lotteries law are serious in that the law and law enforcement in general are thus brought into contempt.

Section 4: Fraudulent Lotteries

10. An unsatisfactory by-product of the present situation is the existence of fraudulent lotteries which law-enforcement agencies are unable or unwilling to control. This being so, it is difficult to protect the public from fraudulent

lottery schemes where all or the major portions of the proceeds are taken by promoters operating under the guise of charity. Several types of fraud were brought to the Committee's attention. There was evidence of widespread sales of counterfeit Irish Sweepstakes tickets. Lotteries had been promoted by professional operators, hidden by some spurious charitable organization or purpose, all the proceeds of which were taken by the promoters. Some lotteries, organized by reputable organizations for worthy purposes, had been entrusted to the management of professional promoters who had retained most of the proceeds. There was evidence that professional operators had conspired to manipulate and cheat at bingo games and thereby gain valuable prizes. It is difficult to control these frauds under the existing laws.

Section 5: Conclusions

11. The Committee recognized that there are many differences of opinion on lotteries in Canada. Nevertheless, the Committee received sufficiently clear indications of opinion from most law-enforcement agencies to indicate their dissatisfaction with the present situation and their view that some substantial changes in the law are required in order to correct it. In particular, the Committee is under the impression that most law-enforcement agencies consider that clarification of the existing lotteries provisions will not, of itself, solve the difficulty and that some new departure in policy is required to bring order into the administration of the lotteries law.

CHAPTER IV—GENERAL CONSIDERATIONS AFFECTING LOTTERY LAWS

Section 1: Introduction

12. The Committee received expressions of opinion from law-enforcement agencies and organizations representative of all sections of Canada, and, in addition, heard evidence on the history and effect of lottery laws in the United States and other countries from Virgil W. Peterson of the Chicago Crime Commission. Through the co-operation of the Department of External Affairs, it obtained particulars of the lottery laws of seventeen foreign countries and a special presentation on Australian lottery laws made by Miss Isobel Atkinson and was later commented on by the Australian government. The presentations covered all aspects of the lottery problem and it is only possible to summarize their effect in general terms.

Section 2: Submissions and Arguments favouring Relaxation of Existing Prohibitions

13. The Attorneys General of most provinces, the Canadian Association of Chiefs of Police and the Commissioner of the Royal Canadian Mounted Police, all representing the preponderant view of law-enforcement agencies, favoured clarification and some relaxation of the present prohibitions against lotteries. They were supported by the Canadian Legion, the Trades and Labour Congress, and to a lesser extent by the Canadian Association of Exhibitions and allied organizations who sought an extension and clarification of the existing exemptions in favour of agricultural fairs.

14. The considerations mentioned in Chapter III were urged as the principal reasons for relaxing existing prohibitions against lotteries. It was contended that lack of public support for existing prohibitions had resulted in inability to enforce the law and this in turn had tended to bring the law into disrepute. Relaxation, which would bring the law into step with public opinion, was urged as the solution for the present difficulty. Those favouring this course

drew a parallel with the attempted prohibition of the sale of alcoholic beverages. Prohibition had failed and had been replaced by licensing and control laws which were said to be relatively more enforceable. A new system of control based on these premises would enable the authorities to control promoters of lotteries and prevent individuals from profiteering from charitable lotteries. It was also contended that charitable and worthy causes would benefit from amendment which would legalize the holding of lotteries for these purposes.

Section 3: Submissions and Arguments favouring Maintenance or Extension of Existing Prohibitions

15. Relaxation of the existing prohibitions was opposed by the Canadian Council of Churches, representing the principal Protestant churches in Canada and also, in separate submissions by the United Church of Canada and the Anglican Church. The Canadian Welfare Council, which was supported in its representation by the Assistant Director of Police for the City of Montreal and the Police Chief of Hull, opposed relaxation and proposed further restrictions, as did the Retail Merchants' Association of Canada. The presentation of Virgil W. Peterson favoured maintenance of strict prohibitory laws because, in his view, history indicated that attempts to control the problem by regulating legalized lotteries or other forms or gambling would fail.

16. Those opposed to lotteries raised both moral and practical arguments against relaxing existing prohibitions. From the standpoint of moral principle it was urged that lotteries were inherently wrong because they were based on chance. They had adverse effects on both the individual and the nation because they fostered a desire "to obtain something for nothing" and were disruptive in their social and economic consequences. They set a poor example for young people. It was alleged that lotteries had been abolished in the United States and the United Kingdom in the nineteenth century for practical and not moral or religious reasons because experience had shown that they produced disastrous economic and social consequences.

17. It was also contended that experience in other jurisdictions had demonstrated that any attempt to achieve better control through licensing or other similar devices was not likely to succeed and that the only effective way of dealing with lotteries was by strict enforcement of prohibitory provisions. Organized gambling in any form was a focus of criminal activity in the community and the extension of lotteries would create new opportunities for exploitation by the criminal element. The door would be opened to profiteering and professional promoters. Further, it was maintained that the creation of new opportunities for legalized gambling through lotteries would not stop illegal sales of foreign sweepstakes tickets or fraudulent lotteries.

18. Lotteries were also condemned as an unsatisfactory and inefficient method of raising money for charity. Under the best of circumstances, an unduly high proportion of the money raised was devoted to prizes and expenses. Experience indicated that, where competition existed between lotteries, expenditures for prizes to attract patronage were increased and the balance available for charity tended to decrease. There was also the danger that charitable lotteries would undermine charitable giving generally because purchasers of lottery tickets would refrain from making substantial donations to worthy causes. It was claimed that lotteries preyed on the poor, that they were patronized by persons least able to afford them; and that some families had suffered because of over-indulgence in lotteries and bingo.

19. Contests, in the nature of lotteries designed to promote sales of merchandise, were condemned because they diverted attention from normal values,

led to higher prices, and placed small independent merchants, who were in no position to offer elaborate prizes, at a disadvantage. The widespread occurrence of this type of contest fostered a gambling spirit and made enforcement of the ordinary lottery laws more difficult.

Section 4: Conclusions

20. The Committee is impressed, above all else, by the unsatisfactory condition which now exists and which tended to worsen during the time the Committee had the subject under study. It is the Committee's belief that the principal aim of new legislation should be to provide workable laws which will receive public support and which can be effectively enforced.

21. The Committee does not wish in any way to give countenance to or encourage widespread organized gambling through lotteries or other means. It recognizes that unrestrained gambling would produce grave moral, social and economic effects in the community and it is of the opinion that the duty of the state is to ensure that lotteries and other forms of gambling are kept within limited bounds. This desirable result has not been achieved and, in the Committee's opinion, cannot be achieved within the framework of the present law.

22. The Committee, therefore, considers that the law should be amended with three purposes in view. First, the prohibitions against lotteries must be clearly stated; second, the inconsistencies in the present law must be eliminated; and third, the types of lotteries to be permitted must be clearly defined and subjected to effective supervision and control. The implementation of this policy will result in the effective prohibition and restriction of several types of lotteries now carried on in spite of their dubious legality. It will also result in some relaxation of existing prohibitions to permit adequate and workable control. It is precisely because the Committee has concluded that the present prohibitory laws do not protect the public that it is disposed to recommend some relaxation in line with the same reforms introduced with respect to the control, sale, and consumption of alcoholic beverages. Prohibition proved unworkable and led to many serious abuses; but the present system of licensing and control, which is supported by the main body of public opinion, has worked satisfactorily and on the whole appears to have contributed to efficient law enforcement.

CHAPTER V—STATE LOTTERIES

23. Only one representation was received by the Committee favouring state lotteries. The Committee considers that there is no widespread support or demand for state-operated lotteries in Canada. It, accordingly, does not recommend any state lotteries.

24. The Committee noted that state lotteries are operated in many countries of radically different racial origins and traditions. Where state lotteries occur, they are usually acknowledged to be a facility created by the state for the purpose of directing the gambling instincts of the public into a controlled channel. It should be noted that the common impression, that state lotteries provide substantial revenues and significantly relieve the burden of taxation in countries where they are held, is not supported by the evidence received by the Committee. In countries holding state lotteries, the revenue derived from such lotteries is generally very small in comparison with total government expenditure. Only a few nations attempt to justify the existence of state lotteries on the ground of their relatively insignificant contribution either to the total national revenue or to specific purposes such as health, education or

charity. The organization which advocated a state lottery in Canada frankly intended that it should be set up for the purpose of providing facilities for gambling and not as a means of raising revenue for any purpose.

25. The Committee has concluded that no useful purpose could be achieved by the institution of a state lottery in Canada. It considers that the proper role of the state is to control and regulate such gambling activity as is permitted to private citizens by the general law, and that it is not appropriate for the state to provide facilities for gambling to the public. The Committee includes, in the prohibition of state lotteries in Canada, those which might be operated by provincial and municipal governments as well as the federal government.

CHAPTER VI—CONCLUSIONS AND RECOMMENDATIONS

Section 1: Lotteries Prohibited Subject to Clearly-defined Exceptions

26. The Committee considers that all lotteries should be prohibited except to the extent that their operation is authorized by clearly limited and defined exceptions contained in the Criminal Code. The exceptions which the Committee recommends are described in Section 3 of this Chapter.

Section 2: Specific Proposals to make Prohibition Effective

(*a*) Repeal and Re-enactment of all Lottery Provisions

27. In order to carry into effect the proposal contained in paragraph 25, the Committee considers that the anomalies, ambiguities and inconsistencies in the present law will have to be eliminated. No further patching of the numerous paragraphs enumerated in paragraph 4 can accomplish any useful purpose and the Committee recommends that the present lottery provisions be repealed in their entirety and replaced by completely new provisions carrying into effect the policies recommended in this Chapter. In particular, to avoid some of the major causes of uncertainty and confusion arising from the present provisions, the Committee recommends that the detailed changes discussed in the following paragraphs be incorporated in the new lotteries law.

(*b*) "Consideration" not an Element in Lottery

28. Doubt exists whether the paying of consideration by a participant in a lottery is an essential element of the offence. Because of this uncertainty, various types of contests in the nature of lotteries, where consideration is not specifically paid by the participant, have been upheld; while, in other cases, courts have either stated that consideration is not an element or have held that consideration of an intangible kind has in fact been given. The Committee considers that the hallmark of a lottery is the disposal of prizes of goods or money by any mode of chance and that the presence or absence of consideration is an irrelevant consideration. Accordingly, it recommends that the law be clarified by clearly specifying that consideration is not an essential element of a lottery.

(*c*) Prohibition of Pools and Sweepstakes

29. The law at present prohibits pools, sweepstakes and similar schemes where the award of prizes is dependent upon the result of a horse race, sports contest or other uncertain event. The Committee considers that the law prohibiting lotteries should continue to apply to such schemes regardless of whether the award of the prize is dependent upon chance, skill or a mixture of chance and skill. The Committee further considers that such pools, sweepstakes and similar schemes should not be included within the category of permitted lotteries described in Section 3.

(*d*) Lotteries to include Bingo

30. The Committee has already noted that at least one important judicial decision has held that bingo is a game of chance and falls under the Gaming Section of the Criminal Code. Other decisions have held that bingo is a lottery. The Committee considers that in its essence bingo is more accurately described as a lottery in which prizes are distributed by means of chance rather than as a game in which players pit their skill and luck against each other. In addition, it appeared to the Committee that in practice voluntary organizations regarded bingos and lotteries as alternative methods of raising funds for worthy purposes. The Committee recommends that the law be clarified to insure that bingo and similar games be subjected to the same prohibitions and controls as apply to lotteries.

(*e*) Advertising Contests

31. The Committee noted the prevalence of a great variety of advertising and promotion contests in the nature of lotteries. These contests are conducted on business premises and by means of press, radio and television. Because the present provisions are so uncertain in their effect, difficulty has been experienced in controlling such contests. Several problems may be mentioned. The present section prohibits the disposal of goods by any game of mixed chance and skill, but does not prohibit the award of money prizes. In most commercial contests, doubt exists as to whether consideration is given by the contestant and, for the reasons outlined in paragraph 28, it is difficult to secure a conviction in such circumstances. In other cases doubt exists where the final award of the prize is made dependent upon some alleged exercise of skill although in fact the winner is selected by chance; an obvious example being where a name is drawn and the person is required to answer an extremely simple question to obtain the prize. There are other contests in which skill ostensibly plays a part but which in fact are conducted like lotteries with the award depending almost solely on chance. An example is the completion of an advertising slogan where the winner is chosen by casual selection from among thousands of contestants. Still other contests depend for their apparent legality on the completion of some fictitious or nominal purchase or sale when in fact a winner is selected by lot. An example is afforded by the "photo-nite contests" in vogue in some motion-picture theatres.

32. The Committee considers that the prevalence of this type of advertising contest is not beneficial to the community. These contests are purely commercial in their inspiration and confer no social benefit. They appeal to the gambling instinct and, because they are so widespread, undoubtedly stimulate it. While commercial lotteries of this type are operated, it is and will continue to be extremely difficult to enforce prohibitions and restrictions against lotteries organized by reputable groups for charitable and community purposes. Moreover, the Committee is impressed by the evidence that the operation of such commercial contests distorts the community's sense of values, diverts attention from prices and quality of merchandise, and may enhance the cost of goods. In addition, the Committee considers that such contests place the small, independent merchant at a disadvantage in relation to large stores which can absorb more easily the cost of prizes and the extra overhead expense which such promotions inevitably create.

33. The Committee recommends that the laws prohibiting lotteries should apply equally to advertising and promotion contests which involve any element of chance.

(*f*) Games Played "occasionally" for Charitable Purposes

34. One of the most confusing provisions in the existing law is the proviso excepting, from the definition of a common gaming house in section 168(2)(b), a place used "occasionally" by charitable or religious organizations for games for which a direct fee is charged when the proceeds are used for charitable or religious objects. The Committee noted that the uncertainty of the meaning of the word "occasionally" made it difficult for law-enforcement authorities or the courts to establish any standards by which the propriety of bingo games conducted for charitable purposes could be judged. It was the general conclusion that the unsatisfactory nature of this exempting provision made effective enforcement difficult. In view of the recommendations contained in Section 3 of this Chapter, which clearly specify the conditions under which lotteries, including bingo games, can be lawfully held, the Committee recommends that this proviso be deleted and be replaced by one which states that the holding of such authorized lotteries would not bring premises within the definition of a common gaming house.

Section 3: Proposals in Aid of Enforcement

(*a*) Prosecution of Winners and Confiscation of Prizes

35. Some witnesses drew the Committee's attention to the fact that winners of large lotteries and sweepstakes receive considerable publicity and are apparently never prosecuted for participation in illegal activities. The present law prohibits the possession of illegal lottery tickets and also provides for the confiscation and forfeiture of property, including prizes, connected with a lottery. The Committee is of the opinion that the apparent immunity from prosecution enjoyed by winners of large illegal lotteries and sweepstakes militates against effective enforcement. Accordingly, it recommends that the provisions prohibiting the acquisition and possession of lottery tickets and authorizing the confiscation of prizes and other property connected with lotteries be more consistently enforced by the responsible law-enforcement authorities, and that the provisions be clarified to the extent necessary to facilitate effective enforcement.

(*b*) Importation of Foreign Lottery Tickets

36. Although foreign lotteries, including sweepstakes, are prohibited in Canada, the Committee noted that no specific prohibition existed against the importation of foreign lottery tickets. The Committee recommends that appropriate amendments be made to the customs laws to prohibit the importation of foreign lottery tickets and any advertising and other material connected with such lotteries.

Section 4: Exemptions

(*a*) Lotteries in Aid of Charitable, Religious, and Community Purposes

37. The Committee considers that the present exemption which authorizes the holding of raffles at bazaars with the consent of municipal authorities is no longer workable. Prizes, although not limited in number, cannot exceed $50.00 in value and must first be offered for sale. The limitation on the value of prizes is unrealistic in terms of today's values and the restriction of permitted lotteries to bazaars where the prizes are first offered for sale does not reflect the present habits of the Canadian people.

38. The Committee considers that some adequate provision should be made for the holding of lotteries in support of charitable, religious, and other community purposes. Such lotteries appear to command widespread support among the Canadian public and the present law, to a considerable extent, has been rendered unenforceable because of this public sentiment.

39. Certain general observations apply to such lotteries. Experience shows that any attempt to draft unduly severe laws restraining lotteries and other indulgences tends to create disrespect for the law in general. It is equally true that failure to impose proper restraints on such lotteries will make them attractive to professional promoters. Prizes, although sufficient to attract patronage, should not be permitted to become so valuable as to create large lotteries because large lotteries inevitably attract professional operators. Essential expenses for printing and other necessities must be met but expenses for advertising should be curtailed and no payment by way of wages, commission or otherwise should be permitted for services of individuals in the promotion or conduct of the lottery. It is essential to provide for some type of supervision and auditing. This involves licensing and inspection, two functions not traditionally associated with criminal law but which appear essential to effective enforcement.

40. The Committee, with the above principles in view, recommends that the law be amended to provide that lotteries organized and conducted under the conditions set forth in the following paragraphs be exempted from the general prohibition against lotteries.

(i) Licence

41. Each lottery must be licensed by competent provincial authority or by such municipal authority as the province may designate. The licence must be conditional on the observance of the conditions recommended in the following paragraphs and the licensing authority, after proper investigation, having satisfied itself of the qualifications of the applicant. In the preparation of legislation, some consideration should be given to provision for an appeal from or review of decisions of licensing authorities.

(ii) Eligible Organizations and Purposes

42. Only organizations having charitable, religious or other purposes beneficial to the community at large should be eligible for licences. Such organizations need not be incorporated. Specifically, it should be a condition of each licence that the net proceeds of the lottery should be devoted to charity, religion or community welfare.

(iii) Restrictions on Licence

43. No organization should be permitted to conduct concurrent lotteries. No subsequent licence should be issued to any organization unless and until all reports and requirements connected with its previous lottery are completed to the satisfaction of the licensing authority. Any organization which violated the terms of its licence would be ineligible for a subsequent licence for a period of five years.

(iv) Prize Limits

44. The Committee gave careful consideration to the best method of limiting lotteries. It recognized that in some areas regular lotteries or bingos for small prizes were held for worthy purposes while in other parts of Canada large lotteries were held at less frequent intervals. The Committee reached the conclusion that it would not be realistic to attempt to limit the number of

lotteries which any organization might hold in a year because such an arbitrary limitation would invite evasion by small groups which would be no easier to prevent than the present violation of the lottery laws. The Committee considered that it would be more realistic to limit the total value of prizes which any organization could dispose of by lotteries in any calendar year to $5,000. This limit would permit the award of an automobile, a most popular type of prize for the larger type of raffle, or, alternatively, the holding of a considerable number of lotteries for more modest prizes. Prizes, whether purchased or donated, would be valued at their retail list price at the time the lottery was conducted.

45. It is necessary to prohibit the holding of joint lotteries by two or more organizations or any similar practice designed to pyramid the value of prizes awarded on one occasion above the maximum of $5,000 prescribed for a single organization.

46. For the purpose of computing prize limits, the value of prizes awarded by a group of organizations connected with or part of the same institution would have to be added together so that no institution could evade the prize limit by the conduct of numerous yearly lotteries by subsidiary or affiliated organizations.

(v) Expenses Limited

47. Limitation of expense is necessary to prevent the incursion of professional operators by making permitted lotteries unprofitable and unattractive to them. Likewise, limitation of expense is essential to ensure that a reasonable proportion of the proceeds is devoted to the purposes for which it is organized. For example, the evidence presented with reference to large bingo games operated by service clubs in one larger Canadian city indicated that an increasing proportion of the proceeds was devoted to prizes and other expenses as a result of competition to attract patronage. The result was that less than one-fifth of the gross proceeds on the average was ultimately available for charitable and other worthy purposes.

48. The Committee gave careful consideration to the possibility of limiting expenses, apart from prizes, by specifying a fixed dollar-limit or a ceiling based on a percentage of prizes or gross receipts. The Committee recognized that the percentage or absolute levels of expense appropriated for a small lottery would not be suitable for a larger lottery. Moreover, it considered that any percentage limitation based on gross proceeds could not be met if patronage were limited by circumstances beyond the control of the organization. Because of this, fixed expense limits did not appear realistic and the Committee considered they would not be enforceable.

49. The Committee concluded that the most realistic method of controlling expense was by the prohibition or limitation of certain types of disbursement. In reaching this conclusion, the Committee also was influenced by the consideration that the ceiling on prizes would effectively limit the gross proceeds and provide a practical limit to indiscriminate expense.

50. The Committee recommends that no fee, commission, salary or any other type of remuneration be paid to any individual in cash or in kind or in free lottery tickets or in any other manner for any services performed in promoting, organizing, or conducting the lottery. This prohibition would not extend to *bona fide* tradesmen's accounts for the supply of essential services and supplies, janitor service, or auditing service. The prohibition is intended to eliminate the professional promoter. It is also intended to ensure that

lotteries promoted by organizations for the benefit of the community are in fact operated by the voluntary effort of members of those organizations and are not turned over to the management of outside parties.

51. Special restrictions are necessary to ensure that the proceeds are not appropriated under the guise of rent either for equipment or premises. The experience of other jurisdictions indicates that rental of lottery equipment should be prohibited because the operation of such rental services attracts an undesirable element who would acquire a vested interest in the continuance of lotteries. Likewise, it is essential to limit the payment of rent for premises to a fixed sum and to prohibit any rent based on a percentage of the proceeds. The rent should be the fair economic rent ordinarily charged for such premises. Consideration should be given in framing any legislation to the prevention of holding lotteries in premises which may have been acquired, as has happened in other jurisdictions, by professional operators with the intent of obtaining an undue percentage of lottery proceeds.

52. The Committee considers that the size of a lottery can be effectively limited if advertising is restricted. Restriction on advertising will also avoid the dissipation of proceeds in costly competition for patronage. The Committee recommends that advertising be restricted to posters attached to the premises occupied by the organization conducting the lottery, the place where the lottery is to be held, and the place where the prizes are displayed. The display of prizes outside the area covered by the licence should be prohibited. Advertising through the mails, or by the distribution of handbills, or by sound truck should be prohibited. Advertising by radio, television, or newspaper should be restricted to three newspaper advertisements of not more than one-eighth page each and three spot advertisements by radio or television prior to the holding of the lottery.

(vi) Area of Operation

53. The licensing authority must specify the area within which lottery tickets may be offered for sale by the licensee. The restrictions on prizes and expense recommended above will assist in confining lotteries to their prescribed areas.

(vii) Report

54. Within a specified period after the holding of the lottery, the licensee must submit to the licensing authority a report, verified to the satisfaction of the authority, indicating, in detail, gross receipts, disbursements for prizes and other expenses, net proceeds available for charitable, religious or community purposes. Such reports must be kept available for inspection and publication. An annual summary of the results of such lotteries should be submitted by each licensing authority to the Minister of Justice to facilitate the compilation of statistics.

(viii) Enforcement

55. The violation of any of the conditions outlined above, as well as any conditions attaching to small lotteries and agricultural fairs, would be an offence for which the chief officers of the organization would be held responsible.

(*b*) Small Lotteries

56. The Committee noted that it was not uncommon for organizations holding meetings, bazaars, or social gatherings to have incidental raffles. Frequently, a small door prize is raffled and sometimes food and other small articles are raffled as a means of disposing of them at the end of the gathering. The Committee considered that it is not practicable to subject raffles of this

type to the licensing provisions outlined in the preceding paragraphs. Accordingly, it recommends that small raffles be exempted from such licensing provisions and be authorized as exceptions to the general prohibition against lotteries if they meet the following conditions:

(i) The raffle is not the main purpose of the meeting or gathering and is merely incidental thereto.

(ii) Only goods may be raffled and the total value of such goods should not exceed $50.00; cash may not be given in place of goods.

(iii) The meeting or gathering must be held for non-commercial purposes.

(*c*) Agricultural Fairs

57. At present, agricultural fairs are dealt with under the Lotteries Section and are exempted from the provisions of both the Lotteries and Gaming Sections. With the exception of certain notorious games, all the usual games of chance found on the midway of an exhibition are legalized. In recent years, doubt has arisen as to whether the pre-sale of admission tickets off the exhibition premises, upon which draws for valuable prizes are based, is authorized by the exemption. It has been strongly represented to the Committee that such pre-sale is essential to some exhibitions as a form of rain insurance and as a means of guaranteeing a satisfactory crowd at such exhibitions.

58. The Committee has concluded that it is desirable to clarify the law by specifying that the pre-sale of exhibition tickets to which a lottery is attached is lawful. Such pre-sale can only be undertaken by an agricultural exhibition association recognized as such by the federal or a provincial government. The association must obtain a licence from the licensing authority vested with responsibility for licensing the lotteries referred to in Section 1 of this Chapter. The restrictions and conditions governing such lotteries would apply to any lottery scheme attached to the pre-sale of exhibition admission tickets with the exception that the licensing authority may permit expenditures to cover the cost of ticket sales on such scale as it may deem appropriate and also may authorize expenditures for prizes of a value not exceeding $10,000.

CHAPTER VII—SUMMARY OF RECOMMENDATIONS

59. The Committee's recommendations may be summarized as follows:

(1) All lotteries should be prohibited except those which are clearly and definitely exempted. The recommended exemptions are set forth in item (5) below.—(*See paragraph 26*)

(2) To give effect to the above principal recommendation of the Committee, the following specific proposals are made:

(*a*) The existing lottery provisions in the Criminal Code should be repealed in their entirety and re-enacted to eliminate ambiguities and inconsistencies.—(*See paragraph 27*)

(*b*) It should be made clear that "consideration" is not to be an essential element of lotteries.—(*See paragraph 28*)

(*c*) The existing prohibition against sweepstakes, pools, and similar schemes should be continued, strengthened, and enforced.—(*See paragraph 29*)

(*d*) Bingo and similar games should be dealt with on the same basis as lotteries.—(*See paragraph 30*)

(*e*) All types of advertising contests in which chance plays any part should be clearly prohibited.—(*See paragraph 33*)

(*f*) The existing exemption of games of chance played "occasionally" for charitable purposes should be replaced by the exemption set forth in item (5) below.—(*See paragraph 34*)

(3) The importation of foreign lottery tickets should be prohibited.—(*See paragraph 36*)

(4) State lotteries should be prohibited as at present.—(*See paragraphs 23-25*)

(5) Exemption of three types of lotteries is recommended, as follows:

(*a*) Lotteries licensed by provincial or delegated authority in aid of charitable, religious, and community purposes if they meet the following conditions:

(i) Retail value of prizes offered by any one organization not to exceed $5,000 in any year.—(*See paragraphs 37-55*)

(ii) Expense to be limited by prohibition against payments to promoters or any other persons for services performed in connection with the lottery; by the limitation of rent and similar charges; and the restriction of advertising.—(*See paragraphs 47-52*)

(iii) Properly audited reports on the operation of each such lottery to be submitted to the licensing authority prior to the issue of a subsequent licence.—(*See paragraph 54*)

(*b*) Small raffles of goods only may be held without licence in connection with non-commercial gatherings provided that the raffle is merely incidental to the gathering and the prizes do not exceed $50.00 in total value.—(*See paragraph 56*)

(*c*) The present exemption permitting the operation of midways at agricultural fairs to be continued, and agricultural fair associations to be permitted, if licensed, to hold lotteries for prizes not exceeding a total of $10,000 yearly in connection with the pre-sale of admission tickets.—(*See paragraphs 57-58*)

60. The Appendix to this Report is annexed hereto.

Respectfully submitted,

SALTER A. HAYDEN,
Joint Chairman representing the Senate.

DON. F. BROWN,
Joint Chairman representing the House of Commons

APPENDIX

CRIMINAL CODE PROVISIONS GOVERNING LOTTERIES

(2-3 Eliz. II, Chapter 51, 1953-54)

INTERPRETATION

168. (1) In this Part,

(*a*) "bet" means a bet that is placed on any contingency or event that is to take place in or out of Canada, and without restricting the generality of the foregoing, includes a bet that is placed on any contingency relating to a horse-race, fight, match or sporting event that is to take place in or out of Canada; "Bet".

(*b*) "common bawdy-house" means a place that is "Common bawdy-house."

(i) kept or occupied, or

(ii) resorted to by one or more persons

for the purpose of prostitution or the practice of acts of indecency;

(*c*) "common betting house" means a place that is opened, kept or used for the purpose of "Common betting house."

(i) enabling, encouraging or assisting persons who resort thereto to bet between themselves or with the keeper, or

(ii) enabling any person to receive, record, register, transmit or pay bets or to announce the results of betting;

(*d*) "common gaming house" means a place that is "Common gaming house."

(i) kept for gain to which persons resort for the purpose of playing games; or

(ii) kept or used for the purpose of playing games

(A) in which a bank is kept by one or more but not all of the players,

(B) in which all or any portion of the bets on or proceeds from a game is paid, directly or indirectly, to the keeper of the place,

(C) in which, directly or indirectly, a fee is charged to or paid by the players for the privilege of playing or participating in a game or using gaming equipment, or

(D) in which the chances of winning are not equally favourable to all persons who play the game, including the person, if any, who conducts the game;

(*e*) "disorderly house" means a common bawdy-house, a common betting house or a common gaming house; "Disorderly house."

(*f*) "game" means a game of chance or mixed chance and skill; "Game."

(*g*) "gaming equipment" means anything that is or may be used for the purpose of playing games or for betting; "Gaming equipment."

(*h*) "keeper" includes a person who "Keeper."

(i) is an owner or occupier of a place,

(ii) assists or acts on behalf of an owner or occupier of a place,

(iii) appears to be, or to assist or act on behalf of an owner or occupier of a place,

(iv) has the care or management of a place, or

(v) uses a place permanently or temporarily, with or without the consent of the owner or occupier; and

"Place."

(*i*) "place" includes any place, whether or not

(i) it is covered or enclosed,

(ii) it is used permanently or temporarily, or

(iii) any person has an exclusive right of user with respect to it.

Exception.

(2) A place is not a common gaming house within the meaning of subparagraph (i) or clause (B) or (C) of subparagraph (ii) of paragraph (d) of subsection (1)

(*a*) while it is occupied and used by an incorporated *bona fide* social club or branch thereof if

(i) the whole or any portion of the bets on or proceeds from games played therein is not directly or indirectly paid to the keeper thereof, and

(ii) no fee in excess of ten cents an hour or fifty cents a day is charged to persons for the right or privilege of participating in the games played therein; or

Charitable organizations.

(*b*) while occasionally it is used by charitable or religious organizations for the purpose of playing games for which a direct fee is charged to persons for the right or privilege of playing, if the proceeds from the games are to be used for a charitable or religious object.

Onus.

(3) The onus of proving that, by virtue of subsection (2), a place is not a common gaming house is on the accused.

(4) A place may be a common gaming house notwithstanding that

Effect when game partly played on premises.

(*a*) it is used for the purpose of playing part of a game and another part of the game is played elsewhere; or

(*b*) the stake that is played for is in some other place.

SEARCH

Warrant to search.

171. (1) A justice who receives from a peace officer a report in writing that he has reasonable ground to believe and does believe that an offence under section 176, 177, 179 or 182 is being committed at any place within the jurisdiction of the justice, may issue a warrant under his hand authorizing a peace officer to enter and search the place by day or night and seize anything found therein that may be evidence that an offence under section 176, 177, 179 or 182, as the case may be, is being committed at that place, and to take into custody all persons who are found in or at that place and requiring those persons and things to be brought before him or before another justice having jurisdiction, to be dealt with according to law.

(2) A peace officer may, whether or not he is acting under a warrant issued pursuant to this section, take into custody any person whom he finds keeping a common gaming house and any person whom he finds therein, and may seize anything that may be evidence that such an offence is being committed and shall bring those persons and things before a justice having jurisdiction, to be dealt with according to law. Search without warrant, seizure and arrest.

(3) Except where otherwise expressly provided by law, a court, judge, justice or magistrate before whom anything that is seized under this section is brought may Disposal of property seized.

(*a*) declare that any money or security for money so seized is forfeited, and

(*b*) direct that anything so seized, other than money or security for money, shall be destroyed,

if no person shows sufficient cause why it should not be forfeited or destroyed, as the case may be.

(4) No declaration or direction shall be made pursuant to subsection (3) in respect of anything seized under this section until When declaration or direction may be made.

(*a*) it is no longer required as evidence in any proceedings that are instituted pursuant to the seizure, or

(*b*) the expiration of thirty days from the time of seizure where it is not required as evidence in any proceedings.

(5) Where any security for money is forfeited under this section, the Attorney General may, for the purpose of converting the security into money, deal with the security in all respects as if he were the person entitled to the proceeds thereof. Converting security into money.

(6) Nothing in this section or in section 431 authorizes the seizure, forfeiture or destruction of telephone, telegraph or other communication facilities or equipment that may be evidence of or that may have been used in the commission of an offence under section 176, 177, 179 or 182 and that is owned by a person engaged in providing telephone, telegraph or other communication service to the public or forming part of the telephone, telegraph or other communication service or system of such a person. Telephones exempt from seizure.

179. (1) Every one is guilty of an indictable offence and is liable to imprisonment for two years who Lotteries.

(*a*) makes, prints, advertises or publishes, or causes or procures to be made, printed, advertised or published, any proposal, scheme or plan for advancing, lending, giving, selling or in any way disposing of any property, by lots, cards, tickets, or any mode of chance whatsoever; Publishing lottery scheme.

(*b*) sells, barters, exchanges or otherwise disposes of, or causes or procures, or aids or assists in, the sale, barter, exchange or other disposal of, or offers for sale, barter or exchange, any lot, card, ticket or other means or device for advancing, lending, giving, selling or otherwise disposing of any property, by lots, tickets or any mode of chance whatsoever; Disposing of lottery tickets.

(*c*) knowingly sends, transmits, mails, ships, delivers or allows to be sent, transmitted, mailed, shipped or delivered, or knowingly accepts for carriage or transport or conveys any Conveyance of material for lottery.

article that is used or intended for use in carrying out any device, proposal, scheme or plan for advancing, lending, giving, selling or otherwise disposing of any property by any mode of chance whatsoever;

Conducting lottery scheme.

(*d*) conducts or manages any scheme, contrivance or operation of any kind for the purpose of determining who, or the holders of what lots, tickets, numbers or chances, are the winners of any property so proposed to be advanced, loaned, given, sold or disposed of;

Conducting scheme for disposal of property.

(*e*) conducts, manages or is a party to any scheme, contrivance or operation of any kind by which any person, upon payment of any sum of money, or the giving of any valuable security, or by obligating himself to pay any sum of money or give any valuable security, shall become entitled under the scheme, contrivance or operation, to receive from the person conducting or managing the scheme, contrivance or operation, or any other person, a larger sum of money or amount of valuable security than the sum or amount paid or given, or to be paid or given, by reason of the fact that other persons have paid or given, or obligated themselves to pay or give any sum of money or valuable security under the scheme, contrivance or operation;

Disposal of goods by game of chance.

(*f*) disposes of any goods, wares or merchandise by any game of chance or any game of mixed chance and skill in which the contestant or competitor pays money or other valuable consideration;

Inducing persons to stake money.

(*g*) induces any person to stake or hazard any money or other valuable property or thing on the result of any dice game, three-card monte, punch board, coin table or on the operation of a wheel of fortune;

Playing three-card monte.

(*h*) for valuable consideration carries on or plays or offers to carry on or to play, or employs any person to carry on or play in a public place or a place to which the public have access, the game of three-card monte;

Receiving bets on three-card monte.

(*i*) receives bets of any kind on the outcome of a game of three-card monte; or

Permitting three-card monte.

(*j*) being the owner of a place, permits any person to play the game of three-card monte therein.

"Three-card monte."

(2) In this section "three-card monte" means the game commonly known as three-card monte and includes any other game that is similar to it, whether or not the game is played with cards and notwithstanding the number of cards or other things that are used for the purpose of playing.

Exemption of Agricultural fairs.

(3) Paragraphs (*f*) and (*g*) of subsection (1), in so far as they do not relate to a dice game, three-card monte, punch board or coin table, do not apply to an agricultural fair or exhibition, or to any operator of a concession leased by an agricultural fair or exhibition board within its own grounds and operated during the period of the annual fair on those grounds.

Offence.

(4) Every one who buys, takes or receives a lot, ticket or other device mentioned in subsection (1) is guilty of an offence punishable on summary conviction.

(5) Every sale, loan, gift, barter or exchange of any property, by any lottery, ticket, card or other mode of chance depending upon or to be determined by chance or lot, is void, and all property so sold, lent, given, bartered or exchanged, is forfeited to Her Majesty. Lottery sale void.

(6) Subsection (5) does not affect any right or title to property acquired by any *bona fide* purchaser for valuable consideration without notice. *Bona fide* purchase.

(7) This section applies to the printing or publishing, or causing to be printed or published, of any advertisement, scheme, proposal or plan of any foreign lottery, and the sale or offer for sale of any ticket, change or share, in any such lottery, or the advertisement for sale of such ticket, chance or share, and the conducting or managing of any such scheme, contrivance or operation for determining the winners in any such lottery. Foreign lottery included.

(8) This section does not apply to Saving.

(*a*) the division by lot or chance of any property by joint tenants or tenants in common, or persons having joint interests in any such property; Dividing property by lot.

(*b*) raffles for prizes of small value at any bazaar held for any charitable or religious object, if permission to hold the same has been obtained from the city or other municipal council, or from the mayor, reeve or other chief officer of the city, town or other municipality, wherein such bazaar is held, and the articles raffled for thereat have first been offered for sale and none of them has a value exceeding fifty dollars; Raffles at church bazaars.

(*c*) the distribution by lot of premiums given as rewards to promote thrift by punctuality in making periodical deposits of weekly savings in any chartered saving bank; or Rewards to promote thrift.

(*d*) bonds, debentures, debenture stock or other securities recallable by drawing of lots and redeemable with interest and providing for payment of premiums upon redemption or otherwise. Recalling securities by lot.

TAB 8

CANADA

HOUSE OF COMMONS DEBATES

OFFICIAL REPORT

FIRST SESSION—TWENTY EIGHTH PARLIAMENT

17 ELIZABETH II

VOLUME V, 1969

COMPRISING THE PERIOD FROM THE TWENTY FIRST DAY OF JANUARY 1969 TO THE EIGHTEENTH DAY OF FEBRUARY 1969, INCLUSIVE

INDEX ISSUED IN A SEPARATE VOLUME

THE QUEEN'S PRINTER, OTTAWA, 1969

29180—288½

Mr. Macdonald (Rosedale): Yes, Mr. Speaker, as I indicated to the hon. member for York South we shall soon be making an announcement with respect to the legislative program for the balance of the session, perhaps on Thursday next.

• (3:00 p.m.)

GOVERNMENT ORDERS

CRIMINAL CODE

Hon. John N. Turner (Minister of Justice) moved second reading and reference to the Standing Committee on Justice and Legal Affairs of Bill C-150, to amend the Criminal Code, the Parole Act, the Penitentiary Act, the Prisons and Reformatories Act and to make certain consequential amendments to the Combines Investigation Act, the Customs Tariff and the National Defence Act.

He said: Mr. Speaker, in introducing this massive bill I am very sensitive of the solemn duty that I have to the law of this country and of the effect that this bill, if adopted by the house, will have on the individual lives and individual human rights of everyone in Canada. I speak this afternoon with the confidence that this legislation is the most important and all-embracing reform of the criminal and penal law ever attempted at one time in this country. The omnibus measure contains matters of deep social significance which, in the course of time, will affect the lives of most of us, perhaps each one of us, in varying degrees.

I submit this bill to the scrutiny of this house, weighing as best I can the delicate balance between law and morals and the historic ideal of the rule of law in a free society. In placing these matters before you, sir, the government is endeavouring to have the criminal law reflect the attitude of what most persons believe to be reasonable and necessary for the well-being of our society or, to put it in another way, to bring the law into line with the times.

[*Translation*]

The interest shown in that project has been tremendous. No wonder that such interest often became argumentative.

In my opinion, it would have been absolutely unrealistic to hope that the proposals which have been made would be free of controversy. However, the fact that such controversy exists, although serious and sober, ought not to stand in the way of the proposed bill before this house.

We have listened to and carefully weighed the arguments and the views from all sides and, on that basis, we have tried to draft a bill which, we believe, is sound and useful and will receive the approval of most of the people in this parliament as well as outside.

[*English*]

Much has been said and written recently about the concept of law and order. It was probably the underlying issue in the recent election in the United States. We are not immune from that discussion; what is happening there is contagious. We are witnessing what has been described as a new search for human values and relationships—relationships between man and man and between men and government, new relationships that have new meaning in the technical and psychological context of our age.

What this search and the accompanying changes mean, as far as I am concerned, are not a demand for law and order that freeze men into a predetermined pattern but law and order that respond to change and to movement and give us options. Because, sir, yesterday's order, if unresponsive to change, becomes tomorrow's oppression.

[*Translation*]

It is not the first review of the Criminal Code. However, I do not think that any other review of our criminal statutes has aroused such a great interest. It is true that in 1954, parliament studied and adopted a general review of the Criminal Code but its main purpose was, on the one hand, to give it a more orderly and understandable pattern and, on the other hand, to change and repeal provisions which had become obsolete. Since its inception in 1892, until the early 50's, the Code had been amended several times, but in a piecemeal fashion and without any overall plan. By making these remarks I do not wish to depreciate the results achieved by the review of 1954.

It was really a necessary and significant task. However, it did not get the kind of contribution which the bill under consideration has inspired all across the country.

No bill concerning the Criminal Code has been as much scrutinized and commented upon by members of the legal profession as well as the people in general.

This bill will be remembered, I am sure, as a high point in penal reform in Canada.

[*English*]

This bill is identified, and will be identified in the future, with the indelible imprint of our Prime Minister (Mr. Trudeau). It was he who had the courage to assemble it, to introduce it into parliament and to defend it across the land under the sharp scrutiny of a general election. If ever, then, there was a legislative measure that has been tested by public opinion and received a popular mandate, if ever the people of Canada have been given an opportunity to participate in public debate surrounding a legislative measure, it is this omnibus Criminal Code bill. We in this House of Commons, sir, have had a full opportunity to review and discuss it. The people of Canada have had every opportunity to look at it and to talk about it.

Since assuming this portfolio I have received representations, both public and private, from every quarter. I am glad to say that I sought all the advice I could from whoever would give it to me. I am grateful to those in the house and outside the house who have made their views known to me. I particularly want to thank, of course, the members of the legal profession from whom we heard. I am grateful to the memberships of the various delegations who came to see us, and I thank the thousands of individual citizens who expressed their opinions to me.

We were, of course, in touch with the provincial Attorneys General, and with the permission of the house I should like to table at this time the correspondence sought earlier by the hon. member for Calgary North (Mr. Woolliams) between the various Attorneys General of the provinces and the government of Canada.

Mr. Nielsen: It is a little late now.

Mr. Turner (Ottawa-Carleton): I said that I would submit it at the appropriate time. With the permission of the house I should like to table it now.

Mr. Speaker: Is that agreed?

Some hon. Members: Agreed.

• (3:10 p.m.)

Mr. Turner (Ottawa-Carleton): It took some time, I might say, to obtain the necessary consent of the Attorneys General, which explains in some measure the delay in tabling the documents. As will be seen from a comparison of Bill C-150 with the earlier Bill C-195, the representations we received did result in certain changes. Finally, I am grateful to all hon. members from all parties who gave me their advice and counsel and understanding.

[*Translation*]

Mr. Speaker, this bill is not easy to read. It contains 120 clauses in 126 pages. It takes a stand on some of the controversial questions of our time. Some of them pertain to the most inner part of our lives: life itself, death and the most delicate personal relations between human beings. I would be amazed indeed if even one of the hon. members showed an equal enthusiasm for all of the 120 proposals. Who could expect that? Any amendment to the Criminal Code induces controversy. Our response to this bill will depend upon our tolerance and our understanding of the needs of a pluralist society, a society where everyone must strive to reconcile his opinions and personal beliefs, including the ones dearest to his heart, with those of his neighbours, who are also earnest and sincere.

This bill will also test our respect for the sacredness of the law. It will prompt many of us to search their own hearts thoroughly.

[*English*]

Some hon. members have had to struggle with themselves to accept this bill. Some have had to struggle mightily because it deals with fundamental concepts. I understand this, and the Prime Minister and members of the government understand it. I hope nothing I say today or in the later stages of this bill will give any hon. member any impression other than that I deeply respect the consciences and private convictions of all hon. members.

Mr. McGrath: Will the minister permit a question?

Mr. Turner (Ottawa-Carleton): With the indulgence of the hon. member I will, at the end of my speech. I know the pressures to which a good many hon. members are subjected, and I respect them. Nevertheless, I believe that all the provisions of this bill are beneficial and in the best public interest, and I hope the measure I am introducing this afternoon will eventually find favour with the majority of hon. members and, even more important, meet with the approval of most of our fellow citizens.

Despite the variety of the subject matters contained in the bill and despite the wide range of views held about them, the government is firm in its conviction that this house

and the Standing Committee on Justice and Legal Affairs later will deal with this bill as one bill, indivisible, and not as several individual items of legislation. When I first accepted this portfolio I wanted to assure myself that the will of the house could be properly tested on every clause. I am satisfied, particularly under the new rules, that this can be done. I am now satisfied that the Standing Committee on Justice and Legal Affairs will review the bill clause by clause. When the bill is reported back to the house from committee, amendments to any clause are permissible under the new rules. So, sir, no hon. member will be deprived of the opportunity of making his view or vote known or felt, if that is his intention.

Why should the bill be split? Hon. members are not being deprived any rights in respect of any clause. And if the bill were split, how would we go about splitting it? Would there be a separate bill for the clauses affecting therapeutic abortion, lotteries, the breathalizer test or the gun law? How far would we go and where would we stop? The government is of the opinion that this bill stands for the general principle of criminal and penal law reform and should be dealt with by the house on that basis.

I want to say, too, that the government fully endorses this bill. It is a government bill, bears the government stamp and will be supported by the government. We feel bound to the bill as the principal item of social reform in this session of parliament. It is identified with our Prime Minister and party. We believe it has been tested favourably with the people of Canada and has met the approval of the people in a general election. We believe therefore that, on the one hand, we have the right and, on the other hand, the duty to stand behind the bill in all stages of debate that will follow.

Some hon. Members: Hear, hear.

Mr. Turner (Ottawa-Carleton): Again I want to say that I recognize the personal and individual trials of conscience that some hon. members have faced, and I hope that in my dealings with any hon. member I do not trespass on the inner preserves of his private convictions.

With the indulgence of the house I should like to deal with some individual provisions of the bill, with some of those that have provoked the most comment. One of the most significant amendments proposed in the bill is aimed at the drinking driver. I think all hon. members are concerned about the rash of highway accidents and death on our roads, and it might be useful to recite a few figures. In Canada, 5,379 people died in highway accidents in 1967. This was over 200 more people than died in the same way in 1966. Publications of the Dominion Bureau of Statistics show that in the years from 1958 to 1967 the number of persons killed on our highways rose by over 66 per cent and the number of persons injured in the same period in highway accidents rose by more than 100 per cent. During the first six months of 1958, compared with the similar period in 1967, increases were registered in all categories of motor vehicle accidents. Traffic injuries were up 8.4 per cent over the same period in 1967 and traffic deaths were up 4.1 per cent over that same period in 1967.

The point of this part of the legislation is that the drinking driver is responsible for a disproportionate share of these accidents. The truth of what I am submitting to the house has been forcefully demonstrated by the study carried on in Grand Rapids, Michigan. This study is regarded as the best and most exhaustive practical study in this field in North America. By careful comparisons of groups of persons who were involved in traffic accidents—the study extended over a year and each group covered some 8,000 people—the experts who conducted the study were able to demonstrate a number of things. They demonstrated that blood alcohol levels over 0.04 per cent are definitely associated with an increased accident involvement. The probability of accident involvement increases rapidly at alcohol levels over 0.08 per cent and becomes extremely high at levels above 0.15 per cent. When drivers with blood alcohol levels over 0.08 per cent have accidents they tend to have more single vehicle accidents, more severe accidents in terms of injury and damage and more expensive accidents than similar sober drivers.

Another point brought out by the study is that drivers in the higher alcohol level classes tend to become involved more frequently in the more severe accidents. Less than 5 per cent of the drivers in the 0.00 per cent alcohol level class are involved in fatal and serious personal injury accidents but almost 10 per cent of the drivers in the 0.08 per cent and higher alcohol level class are involved in the severest class of accidents. Thus an accident involved driver in the 0.08 per cent and higher alcohol level class is almost twice as frequently involved in a fatal or serious accident as the driver in the 0.00 per cent alcohol level

class. This, then, I would submit to Your Honour is the answer to the question, what do deaths and injuries on the highways have to do with the drinking driver?

• (3:20 p.m.)

The next question which arises is, what assurance is there that the setting of a statutory blood alcohol limit and the compulsion to take a breathalyzer test will have any appreciable effect on drivers who drink and, in turn, on the death and injury rate? Apart from the obvious answer dictated by the figures I recited from the study, and from common sense, the experience in the United Kingdom gives ground to expect that if this legislation passes there will be several hundred Canadians alive next year who would not be alive if there were no compulsory breathalyzer test. There will be several thousand more persons uninjured and several thousand more hospital beds free for people with other illnesses which would otherwise be occupied by patients broken in bone and spirit in traffic accidents.

[*Translation*]

In addition to showing the part which is played in traffic accidents by drivers who take alcoholic drinks, the study entitled "Grand Rapids" supports the opinion that .08 per cent represents the real danger level. That is why this figure of .08 per cent was proposed by the standing committee on justice and legal affairs, a few years ago, by the Canadian Bar Association, by the British Medical Association and by the Legislature of Manitoba in its resolution of May 1968. It is also the figure which was used in 1967 in the Road Traffic Act in the United Kingdom.

As for the Canadian Medical Association, they recommend a figure of .05 per cent. The present bill recommends the adoption of a figure set—with the support of a number of authorities—at .08 per cent.

An act which would make it an offence for anyone to drive an automobile when the alcohol level in his blood exceeds .08 per cent would be unrealistic, from a practical point of view, if at the same time, it did not provide for compulsory tests.

Consequently, the present bill suggests that, under definite circumstances, a citizen could be requested to provide a sample of his breath to be analyzed. The bill does not request any sample of blood or urine.

[Mr. Turner (Ottawa-Carleton).]

[*English*]

When the resolution in favour of compulsory breathalizer tests was passed by the Canadian Bar Association, there were immediate outcries across Canada that such a proposal was a retrograde step and involved compulsory self-incrimination. I want to say that the traditional rules of self-incrimination apply only to statements or declarations made by accused persons. The view I am now expressing is supported by the Supreme Court of Canada. Self-incrimination does not extend to physical or real conditions or to mark such as a man's fingerprints, footprints, the state of his clothing, the state of his behaviour or the state of his breath. Under the bill the driver is not subject to a compulsory breathalyzer test unless at that time, or within the previous two hours, he has conducted himself in such a way that a peace officer, in the words of the bill, "would have reasonable and probable grounds" in arresting him for impaired driving.

The burden would be on the Crown to prove his conduct and if the arrest was not justified the driver would be entitled, with impunity, to refuse the breathalyzer test.

Mr. Woolliams: If he doesn't he is convicted.

Mr. Turner (Ottawa-Carleton): We will discuss that, Mr. Speaker.

As a member of the legal profession and as someone who believes in civil rights I think any type of compulsion is unsavoury in a free society, and any type of compulsion enforced by penal statute or by the state must find its justification not merely in a rule of law but in the needs of the community. I am submitting to the house that the needs of the community more than justify the proposed amendment.

Mr. Woolliams: Don't misrepresent the law.

Mr. Turner (Ottawa-Carleton): With respect, I do not think I am misrepresenting the law, but we can argue that later. As with other provisions of this bill, it is a question of weighing the conflicting interests—the balance of public convenience—that can never be totally reconciled. It is my view and the view of the government that in deciding which is the more vital to social order in Canada and to the benefit of the majority of the people in our country, there should be severe penalties in case of drinking and driving.

I am determined to fight murder on the highways and to combat carnage on the

roads. I am convinced that firmer action is required by this parliament to shake up the conscience and state of awareness of the Canadian people, and to support the sound sense of the admonition found on some billboards, "If you drink don't drive, if you drive don't drink." If you heed that observation I can say that is the admonition to which this test is applied. All of us have been in the situation where we have said to ourselves—and I am not a hypocrite about this—"There but for the grace of God go I."

• (3:30 p.m.)

I now want to talk briefly about firearms. A number of significant amendments are proposed which will tighten control over the availability and the use of firearms in the interest of public safety. This is a tougher gun law. There are some entirely new offences and procedures created by the bill. It provides for the making by a court of a prohibitory order against criminals who have been convicted of offences involving firearms. It provides for a new search and seizure procedure at the instance of the provincial Attorney General where the personal safety of any person is involved. It provides for a new offence of selling or in any way transferring a weapon to anyone under a prohibition order or to anyone of unsound mind. It provides for a new offence of dangerous use, carriage or possession of firearms, aimed at the trigger-happy hunter, the type who goes out into the woods, hears something and fires, the type who sees something, does not know what it is, and fires. At the moment juries are loath to convict because the only available charge is criminal negligence with a maximum penalty of life. This new offence will have a maximum penalty of two years.

The bill provides for a more realistic approach to the question of possession of firearms by younger persons by generally prohibiting children under the age of 14 from using firearms except under the personal supervision of someone who has a permit, someone who is lawfully entitled to use a firearm. It requires young people between 14 and 17 years of age to obtain a permit to possess a firearm of any sort.

I am going to confess to the house that I do not believe there is any foolproof gun law. Even if we were to withdraw every weapon in the country—

An hon. Member: You would have a revolution.

Mr. Turner (Ottawa Carleton): —even apart from the political factors involved, if we were to enforce registration of every weapon in the country a gun could always get into the wrong hands, and in this area of legislation, as in others, it is not possible to reconcile all the conflicting interests.

I am glad to say that no gun enthusiast or organization of sportsmen or gun club has ever suggested to me that there should not be a gun law. The real issue, I would submit to hon. members, is to achieve controls which will discourage and penalize the criminal and the criminally careless, which will remove lethal weapons from the irresponsible or mentally ill, which will help to foster social attitudes against violence and which will at the same time leave the avenue open for responsible people to engage in legitimate sport and hobbies involving firearms in the same way as those interested in motor racing are left free under restricted and controlled conditions to exceed the speed limit.

I now want to turn briefly to the question of lotteries. I may say that I am dealing now with those clauses of the bill that have provoked the most public response and comment. The proposed amendments concerning lotteries—and when I use the word "lotteries" I mean games of chance generally—incorporate a fundamentally new approach in the sense that the amount and nature of gaming which will be permitted will depend to a considerable extent on the policy of provincial authorities in issuing the licences to which I will refer in a moment. The attitude toward lotteries in Canada varies in various parts of the country. The proposed amendments will provide, to an appreciable degree, for recognition of that fact. The nature of the proposed amendments might be described as local option within prescribed limits set in the Code. The amendments also clarify an important obscurity in the present law in relation to the conduct of lotteries by religious and charitable organizations.

[*Translation*]

I shall just deal, Mr. Speaker, with a few essential aspects. First of all, any provincial government, either alone or in conjunction with the government of another province, will be allowed to conduct a lottery. I was asked, on several occasions, whether municipal institutions would be also allowed to conduct lotteries, under the proposed act. The answer is no, except in the case of provincial lotteries where they may be appointed as representatives of the provinces.

Secondly, no province will be allowed to conduct any lottery system in another province without being authorized to do so by the government of the latter.

Thirdly, charitable and religious organizations will be allowed to run lotteries under a provincial licence. How many and how big these lotteries may be will depend on the licences. As the law now stands, those organizations can occasionally have lotteries, but the words "occasionally"—"à l'occasion" —and "usually" explain the great differences which exist between the lotteries authorized in various regions of the country. In the final analysis, the attitude of the local authorities is the determining factor. And it is that ambiguity, which I pointed out a while ago, which will be removed.

[*English*]

We have heard more from individuals on the proposed amendments concerning abortion than on any other provision. This aspect of the law was also the subject of exhaustive consideration by the Standing Committee on Health, Welfare and Social Affairs. It is a matter that is undoubtedly of profound concern to all of us, and it has been the subject of debate, often very emotional debate, for a number of years.

The Prime Minister and I have both said on previous occasions that in considering this proposition before the house it is important to bear in mind the uncertain state of the present law. To assume that the present law on abortion is clear and thereby to move on from there to allege that the amendments are too stringent, or not stringent enough, or in substance change nothing is, in my submission, arguing from a false premise. The fact is that the present state of the law is not clear and one of the overriding purposes of the legislation is to clarify it.

The legal officers of the Department of Justice have been unable to find a single reported Canadian case, involving a charge of unlawfully procuring an abortion, which discusses abortion for medical reasons as a defence to that charge. Some claim that in Canada there is no defence whatever to a charge of procuring a miscarriage based upon medical considerations; others argue that a miscarriage may be procured if it is necessary to preserve a woman's life; and still others maintain that the law is not being amended in substance but is merely being codified and will reflect what is now being done in hospitals under responsible management by ethical members of the medical profession with the tacit, if not the express, approval of those responsible for the administration of the criminal law.

The essential point of the proposed amendments is that abortion shall not be unlawful if a committee of physicians in an accredited hospital certify that in their opinion the continuation of the pregnancy of the female person, of the mother, would or would be likely to endanger her life or health. Those are the words of the clause. I wish to emphasize that the test is danger to the life or health of the expectant mother.

Whether an abortion is justified for the reasons mentioned will involve the making of a decision by members of the medical profession based on medical considerations. Needless to say, that judgment will have to be made in a bona fide manner. Under this bill abortion based solely on considerations of eugenics or the commission of sexual offences is not included. Therapeutic abortion committees will not be called upon to decide whether a criminal offence has been committed. We have considered that such a therapeutic abortion committee is not the proper forum to deal with questions of that kind.

I realize full well that this matter goes right to the essence of life, goes right to the bone. There is not going to be any consensus on this issue in this house or in the country. There are those on the one hand who abhor abortion for any cause, or for any reason whatsoever. There are those on the other hand who would make abortion wholly permissive or at the personal option of the woman. We have not reached a consensus between those views in this bill. We have reached only what I might call an accommodation. When the life or health of a mother is in jeopardy, therapeutic miscarriage will be absolved from the penalties in the criminal law.

• (3:40 p.m.)

This proposed legislation does not authorize the taking of foetal life; it does not promote abortion. It simply removes certain categories of abortion from the present place they have on the list of indictable offences. I want to repeat that the legislation does not promote abortion; it permits it under the restricted circumstance where the mother's life or health might be in danger. I believe that any member—and I say this after a good deal of personal reflection—may in good conscience support this clause if he is convinced as I am that its net effect will be to foster rather than impede the general public and civic good.

women is not punished in England, and although it may be theoretically in America, it is so rare as to be negligible in practice.

The Catholic and traditional Christian attitude to homosexuality was developed at a time when there was little knowledge of either the extent or causes of homosexuality, and today these approaches need to be modified in the light of new knowledge. Homosexuality is now known to be much more widespread than was thought in the past, as the researches of Dr. Kinsey and others have shown. In the first of the Kinsey reports, published in 1948, on the American male, Dr. Kinsey used case histories of 12,000 men. He concluded—

And this is rather startling,

—that 37 per cent of the male population of the United States had had some homosexual experience between the beginning of adolescence and old age. For males who had remained single until the age of 35, the figure rose to 50 per cent. Of the male population 25 per cent had more than incidental homosexual experience or reactions for at least three years between the ages of 16 and 55. Of the males 8 per cent were exclusively homosexual for at least three years within these age limits, and 4 per cent of the white males were exclusively homosexual throughout their lives after the onset of adolescence. Dr. Kinsey and his assistants found these results startling, but when they were checked they yielded the same result. An aberration is not, of course, right because it exists, as Kinsey at times assumes, but the figures do indicate that homosexuality is not a problem confined to a tiny group of perverts but one of much wider social significance.

What are the causes of homosexuality? Medical evidence and opinion can supply no agreed answer, but it is widely accepted that apart from perverts who have turned to homosexual practices entirely of their own free will, there are inverts, who form the majority, whose psycho-sexual impulses are directed more or less exclusively towards persons of the same sex. Traditional Christian thought has been ignorant of this state of inversion and has tended to regard the whole problem as one of perversion without extenuating circumstances.

The writer goes on and points out that the law on homosexuality has never really been enforced. He points out that where it is enforced, the majority of the people convicted are not the type of people who should be put in jail. He points out that there is nothing to show they will be rehabilitated if they are put in jail. Even the churches go along with that view.

Many people who have considered the subject conclude that our common law does not effectively distinguish between sin, which is a matter of private morals, and crime, which is an offence against the state having anti-social consequences. However, many of us who have practised before the bar of justice, and others in many fields, know that punishment has been imposed on a small minority of offenders in Canada and sometimes on those who least deserved to be imprisoned.

Our standing committee must reach the conclusion in the light of scientific, psychiatric, psychological research and knowledge that imprisonment is largely ineffectual to reorient those with homosexual tendencies. I would ask the committee to consider this question: If a law is ignored, if a law is unenforceable, if it is indeed unjust, is that not grounds to make the change even though we may abhor legal permissiveness? These acts are accepted in Canada de facto today if not de jure. Does this section solve the problem? It might. That is for the committee to decide.

I now turn to the question of lotteries. Coming from Calgary, where Mrs. Mary English has dedicated her life to the support of legalized lotteries to be used for medical research and charitable enterprises, and where she has gathered 500,000 signatures and claims that she journeyed from coast to coast to obtain these on a shoe-string budget of $1,000, I would hope that the committee would take a very liberal viewpoint—and of course I mean with a small "l"—on the suggested changes. I think that the Minister of Justice (Mr. Turner) in drafting these sections of the bill has walked a very tight rope, in fact razor-edged.

The minister has endeavoured not to offend those who consider lotteries as gambling, even when the funds go to support churches and social welfare enterprises, and those who accept lotteries as good, moral, legal sport. The strongest argument that Mrs. English puts forward is, and these are her statistics:

—the Irish Sweepstake draws about $100,000,000 each year and only $6,000,000 returns. That means $94,000,000 benefits another country.

Some hon. Members: Shame.

• (8:20 p.m.)

Mr. Woolliams: Why should we accept these facts? If we were to wake up some morning and read in the paper that John Jones, our neighbour, won a sweepstake, then was charged under the Code and put in jail, we know what a hue and cry would go up. So, this law is unenforceable. Do these new sections allow the Kinsmen or other fraternal organizations to run a raffle in order to raise funds to build a swimming pool for children? I doubt that; I do not know, but I do not think so.

Then there is the section on firearms. I would like now to briefly direct my attention

I should like to say a brief word about lotteries. I wish to say to hon. members that I have no moral objection to lotteries. I have no moral objection to gambling. I hope hon. members will believe me, although they may easily conclude that I am protesting too much. But I have never gambled. I am not interested. It just bores me.

Mr. Turner (Ottawa-Carleton): You are a member of the N.D.P.; you have to be a gambler.

Mr. Lewis: I am told that I ought to be a gambler because I am in the N.D.P. In that sense the hon. minister is right; but I am gambling on the basis of principles which I hope some day to persuade the hon. minister to see.

Mr. Turner (Ottawa-Carleton): That is a real long shot.

Mr. Lewis: It probably is. So long as it is a long shot we will continue to stand by our principles, something which I would recommend to other hon. members in this house.

I have no moral objection to lotteries or gambling. I do have objection to heads of families gambling at the expense of their families. That is a different question. But if people want to have lotteries I do not have any moral objection to them. I therefore welcome those changes which enable charitable and religious organizations to carry on lotteries for charitable and religious purposes. I see no objection to that at all. I do, however, have considerable objection to a change in the law which would make it possible for states to hold lotteries. I do not object to this on moral grounds but on the simple social ground that—and this is now a word which has been made parliamentary by the Prime Minister—this is a hell of a way to raise money for social purposes.

An hon. Member: What about Jean Drapeau?

Mr. Lewis: He tried it and failed. If we need funds for social welfare we ought to raise them directly from the people who have the funds. They should make funds available to society because they are the people, whether they are in the middle or high income groups, who have made their income, either in a profession, business or wherever, as a result of the collective effort of society. They ought to provide, through taxation, the funds necessary for social purposes. To me it is just simply unacceptable to have gambling or lotteries for that purpose. This would destroy every possibility of planning the economy. As I read this clause I could imagine the minister of finance—either the previous, present or future minister of finance—trying to determine what revenues will be available for social measures. He would consider the revenues he would take from taxes and then have to make some kind of guess concerning the amount of money that would come in from lotteries. He would try to balance his budget on the basis of lotteries. Seriously, it is for reasons of this kind that I object to state lotteries. Gambling is not the way to raise money for social purposes.

I am almost at the end of my time, but I hope the house will let me have a few minutes longer. If I may I should like to say a few words about the section dealing with insanity. I wish to say to the minister that the amendments he has brought in with regard to insanity deal in my opinion—I am not an expert in criminal law—with the least important part. They are very important and very necessary, but they do not deal with the most important section of the Code relating to this subject; that is section 16 itself. What is needed is an amendment to section 16 which defines insanity. That is what is needed. We need an amendment to the law which will get rid of the old outdated, hoary, untenable, no longer appropriate McNaghten rules by which our courts are governed. This just makes no sense at all in 1969. The minister has not amended that at all. He has not touched section 16. The courts are still able to apply completely inapplicable laws that are no longer in tune with the developments in psychology and psychiatry.

What the minister does give us, however, are very useful means of appealing, in certain circumstances and under certain rules, when the question of insanity arises. But I submit that it is much more important that we amend section 16, the definition of insanity itself. I recommend to him a private bill which was tabled during a previous parliament by my colleague, the hon. member for Greenwood (Mr. Brewin). In this bill he applied the rule adopted by the United States court of appeal 14 or 15 years ago.

Finally, I should like to say to the Minister of Justice that my colleagues and I greet with pleasure the amendments to the Combines Investigation Act dealing with fraudulent advertising. Let me emphasize that advertising in our modern society is not the kind of

Let me now refer to the gun laws. When the original bill was presented I found this subject to be the most contentious in my riding, apart from the abortion provisions. All sorts of gun clubs made representations to my colleague, the hon. member for Dartmouth-Halifax East (Mr. Forrestall), and myself. We have heard nothing from them since as a result of the changes the minister has brought about, so I fully support the measure as it now stands. Indeed, my strong reluctance before was that it seemed to impose perhaps overly strong burdens on members of professional gun associations, those people who would not be expected to misuse guns in any event. As far as the general principle is concerned, I do not believe there is an inalienable or sacred right to carry weapons. I fully support the idea that we must have gun laws and gun control.

Thirdly, sir, I give my wholehearted support to the concept set forth at page 101 of the omnibus bill which involves the question of day parole. This is the first time we have had day parole as such spelled out with reference to the functions of the National Parole Board. It was the magistrate I mentioned earlier, Mr. Haley of Dartmouth, who first used, at least to my knowledge, day parole in Canada. He felt that somebody given a jail term for impaired driving or the like should not have to spend all the time during his sentence in jail because this would impose a hardship on the wife and family. He felt certain persons should be allowed out by day to earn a living, while still undergoing the stigma of being in jail at night.

I believe the idea of day parole probably began in respect of offences under provincial statute. I am glad to see this idea extended as a nationwide principle. I hope members of the committee will invite Judge Haley to come to Ottawa to tell about some of the cases he has dealt with on these terms. This is a far-reaching step in Canada, but it is a method which has been used in other parts of the civilized world, including the state of California where it was perhaps first tried.

Finally, I should like to turn to those areas in respect of which I am in strong disagreement. The first of these concerns lotteries. Lotteries are mugs games or methods of having the people who do not have the wherewithal to pay taxes pay for services that should be paid by state taxes. To my knowledge there has not been such a lottery which has lived up to expectation. New York State is trying one and the revenue is running well below what it was hoped to achieve in this way. The state of New Hampshire has had one for several years, again with the same result.

Getting closer to home, the city of Montreal is trying to run a lottery and is now having to increase the prizes, still without achieving the intended goal. Montreal calls their scheme a voluntary tax measure, but whatever it is called it still smells the same as a lottery. The town of Moose Jaw seems to be getting sucked into this general trend. I hope the people there will have sense enough to turn back before they become embroiled in a venture which will not achieve what they have in mind.

The United States was chock full of lotteries during the last century. Some 60, 70 or 80 years ago federal law wiped out every last one and there were very few, except several skilled promoters, who mourned the passing of lotteries. I suppose the following generation has forgotten about them and now thinks we should give lotteries a try. I suggest this is a mug's game or a method of talking poor people into spending money ill-advisedly on the chance that lightning will, in some pleasant way, strike them. No responsible parliament should give its sanction to this method of raising public revenue.

A British royal commission in 1951, after examining this question came to the conclusion:

> —that there is no important advantage to be gained by the establishment of a national lottery and that there is no reason, in this particular case, to depart from the general principle that it is undesirable for the state to make itself responsible for the provision of gambling facilities.

I turn to the view of two gentlemen who faced each other across the aisle in this very chamber for a long period of time. They were two bachelor Prime Ministers, neither of which was the present Prime Minister (Mr. Trudeau). In 1934 when R. B. Bennett was prime minister and spoke about a bill to legalize lotteries, he said:

> When I am asked to exercise my vote as a member of the House of Commons of Canada to say that we shall legalize that which has brought the misery to the human race that games of chance and lotteries have brought, I propose to exercise my vote against any such thing . . . If I were to sit upon a jury, I would have to find the evidence against lotteries far outweighs any suppport that can be found either in the past or the present.

• (8:30 p.m.)

From the other side of the aisle Mackenzie King, perhaps agreeing with the Right Hon.

R. B. Bennett one of the few times in his life—I do not know; they certainly both agreed they should be bachelors but perhaps this was another area of agreement—said this:

> I find myself in entire agreement with the Right Honourable the Prime Minister. My convictions in the matter are quite as firm, as profound and sincere as his own . . . I hold that there are very strong reasons why those who have to do with the shaping of public opinion should not further or countenance any measure which, by statute, would publicly encourage gambling.

Mr. Baldwin: Maybe he thought there was a very close relationship between bachelorhood and lotteries.

Mr. McCleave: The hon. member for Peace River (Mr. Baldwin) has made a remark which I hope goes on the record. It is a very pertinent one on the possible connection between lotteries, bachelorhood and gambling.

Mr. Nesbitt: I have never gambled in my life.

Mr. McCleave: And the hon. member for Oxford (Mr. Nesbitt) has never gambled in his life.

An hon. Member: He is a bachelor.

Mr. McCleave: My second area of strong disagreement with what is proposed in the omnibus bill relates to homosexuality. If I were to approach this as a problem to be solved, I probably would not see it either in terms of crime or of punishment but in terms of disease or pathological complaint. I suggest to this honourable chamber that we should take a close look at a new method of tackling the problem, as we should. I hope in time we shall take a new approach to the problem of alcoholism and how we tackle it. I think they are very much the same type of problem. I think it is wrong to deal with them as crimes first, and then crimes deserving of the particular forms of punishment that we have because our forms of punishment are very limited. In any event, my conscience becomes so abhored by the thought of the sanction that we hope to give to homosexuality that I have no option but to vote against the provision.

I would draw the attention of the minister and those members who will be on the committee to the fact that the consenting portion of the proposal before us is somewhat curiously drafted. It is almost on all fours with the portion of the Criminal Code which deals with consent in the case of rape. But instead of using the words "false and fraudulent representations," as are set forth in section 145 of the Criminal Code dealing with rape, this bill uses the words "false and fraudulent misrepresentations." The purists of language in the house might wish to find out the difference between "false and fraudulent misrepresentations" and "false and fraudulent representations".

I draw another matter to the attention of the minister. I do this sort of thing tonight because I suppose there will be a few more days of debate before we get to committee, and this will give the minister's advisers a chance to further study the measure. I suggest that if a homosexual act is procured by duress or force, this should be in the exception feature of the proposed clause. This clause provides that a person shall be deemed not to consent to the commission of an act if the consent is extorted by threats or fear of bodily harm or is obtained by false and fraudulent misrepresentations as to the nature and quality of the act. I am suggesting that somebody's arm may be twisted behind his back to consent to such an act, and therefore this should be added to the other exceptions. In any event, as a matter of basic principle and because I think we have to set standards by which we expect people to live, I could not give my consent to the homosexuality provisions of the proposed omnibus bill.

The third point on which I disagree violently with the government which brought in this measure concerns the clause which would make it an offence to refuse a breathalyzer test if a policeman asks one to undergo it. If a policeman has good and reasonable grounds to believe that you should undergo a test he will probably have enough evidence to support his case against you, and that will be that. There will be a conviction, a fine and the loss of your driver's licence. I think that is fair ball, for the reasons I indicated earlier, namely, that the holocaust on the highways is now so severe that we have to take steps here, whether we like to or not, to do something to cut it down. But I say this provision is going too far because it represents double punishment of a person. I propose, therefore, to vote against the provision.

Finally, I come to the area of extreme and extraordinary doubt. This is the provision that deals with abortion. I have listened to the arguments. I have read a bit on the subject; not as much as I would like, but I will read some more. There are a couple of points that tend to crystallize my thinking. I know the objection of the Roman Catholic church

churches, both the national bodies and local churches. There is a tendency for some people to assume that the churches will be narrow-minded and traditional, but in the last little while I have had communications from churches as widely varied as the United Church of Canada, the Baptists, the Mennonites, the Lutherans, and the Unitarians. That is quite a broad spectrum of churches. If we got them all together the ecumenical movement would be well on its way.

In the letters I have received I find there has been basically the kind of approach to the problem of abortion and the problem of homosexuality that I have been trying to set out this afternoon. They do not all agree in every little detail. Some of them, and I respect their views, would like to keep abortion in the Criminal Code and to make more precise the authority of the therapeutic abortion committees and so on. These are points that should be considered by the standing committee to which this bill is referred.

But I think it is significant that in the main the churches and the church people who have been thinking about this are saying to us, "Apply reason, apply psychology, apply compassion, apply human understanding to these problems." And if I may, since I have referred to the churches, I would like to congratulate most warmly those who have written to me telling me about the meetings they have held, the study groups they have set up, and the specialists who have discussed these matters with them. This is what we are trying to get these days, participatory democracy, but at any rate, Mr. Speaker, I am sure we will be going along with the serious-minded and thoughtful people in this country if we move in the direction I have suggested, if we treat these two matters not as criminal offences but as human problems deserving the best attention and consideration we can give to them.

Now, sir, I would like to take a minute or two to refer to a number of subjects—and because I see my time is running along I shall do no more than refer to them in the form of headings—that have been mentioned by others in this group, notably by my parliamentary leader, the hon. member for York South (Mr. Lewis), and my colleague from Winnipeg North (Mr. Orlikow). I speak in this context of things that have been left out but which we think ought to be in the Criminal Code amendments.

I refer first to the proposal that corporal punishment should be abolished. We are not living in the dark ages, in the 17th, 18th or 19th century. We are living in the 20th century. Surely corporal punishment should go.

I also think that the code should include a clear statement on the right of persons to counsel. We assume that right exists but it is not protected by law.

Lately a great deal has been said about the desirability of expunging a criminal record where the person who has been found guilty lives for a period of time without any further violation of the law. A few glaring examples have been brought to our attention of persons who have had to suffer double punishment throughout their lives because of some minor infraction that became part of their records.

Also, Mr. Speaker, I think that legislation regarding wire-tapping should have been included in this bill to amend the Criminal Code. Like others in my party I am little surprised, the hon. member for York-Scarborough (Mr. Stanbury) having produced such an excellent bill dealing with this matter, that his proposals were not incorporated in Bill C-150.

As I understand the new rules, Mr. Speaker, especially the report stage to which I have been referring, we may be able to deal with some of these matters at that time as well. The rules say that at the report stage there can be amendments to delete, to alter, to restore, or to add. Most of the rule changes we made were for the purpose of avoiding duplication and of saving time, but we knew what we were doing when we brought in the report stage. We were not saving time but we were providing a clearcut opportunity for decisions to be taken by parliament on these individual issues. I hope we will avail ourselves of that opportunity at the report stage to deal in the way I have suggested with the items I have listed.

That leaves just one other subject to which I would like to refer for a minute or two. It is the question of state lotteries. Others who have taken part in the debate have said this, so I underline what they have said, that to me it is moving back two or three centuries to think that we can solve any of our problems, whether in terms of getting money into public treasuries or in terms of undergirding welfare programs, health programs, education programs or what have you by resorting to state lotteries.

A great deal has been said about the Irish sweepstakes, but we have never had any suggestions that that country does very well

out of its sweepstakes. The idea of sweepstakes has been tried recently in the state of New York and the reports coming from that state already suggest it has been a failure. It has also been tried in our own country, in the city of Montreal, and that city seems to be in greater financial difficulty now than it was before this venture was undertaken. It seems to me, Mr. Speaker, that state lotteries cannot be operated without giving to the people the notion that this is going to be an easy way of providing for public needs, whether they are welfare, health, education or what have you programs. The money obtained in this way simply will not be sufficient to underwrite these programs. Furthermore lotteries, particularly state lotteries, are really the most regressive form of taxation the mind of man can conceive.

• (3:10 p.m.)

We have enough regressive taxes already from this government across the way. There is the social development tax which is being collected from the people of Canada now even though it is not yet the law of the land. It is a highly regressive tax. It is a tax of 2 per cent payable on the first $6,000 of taxable income but anyone with a taxable income over $6,000 does not pay one cent more. So the result is very regressive. However, when there is an attempt to raise public money by lotteries the people make their contribution not according to ability to pay but according to their dire need and their desperate hope that somehow they may break out of their poverty. The fact is it is the poor who will put the money into state lotteries. As a result they will be caught in a scheme of regressive taxation that is utterly wrong, utterly unscientific and utterly out of line with any economic theory that applies in this country today. So I hope we will make this distinction.

As I said a moment ago, I have been pleased with the letters I have received from a number of churches, both national bodies and local congregations. I have noted with interest their comments on this very subject. The churches write to me to say they do not like gambling at all. They think it caters to the worst in people, that it degrades and cheapens life; but then they say they realize it is unrealistic to try to legislate today against private games of chance or against the fun people have in various kinds of small private lotteries. In other words, the churches are being realistic in admitting there is a point beyond which they or we cannot go.

[Mr. Knowles (Winnipeg North Centre).]

Having said that, however, the churches come down exactly where I have come down, that is, whatever else we may agree to, let us not make the social and economic mistake of establishing or even permitting state lotteries at the federal, provincial or municipal level. I agree with them and I welcome their support. The Minister of Justice (Mr. Turner), when bringing forward this bill and speaking on the matter, said it was a kind of local option the government had in mind in bringing this forward in the bill in this way. I submit it is more than that. If this bill passes containing the provisions about state lotteries this will be parliamentary approval of the principle of raising money in this way and of the principle of the most retrogressive form of taxation there is. Therefore when I move an amendment at the report stage to clause 13 of the bill to delete the reference to state lotteries, unless the standing committee has already taken it out, I hope my amendment will receive the support of a majority of the members of this house.

When I move that amendment it will not be cluttered, obscure or part of a package. It will stand on its own feet just as will the amendments regarding other contentious subjects. I look forward to the report stage of this bill. At that point we will stand up, we will be counted, and we will take our decision on these various points. I hope the result will be a bill that is even better than it is now. It will be better if it deals with the problems of abortion or homosexuality in human terms, and it will be better than it is now if it deals with such problems as corporal punishment, the right to counsel, the deletion of criminal records and wiretapping which are not contained in the bill. It will also be better than it is now if we take out the retrograde proposal to approve state lotteries. Therefore it will be a pleasure for me to vote for the second reading of this bill so that it can be studied by the committee, but either in the committee or back in the house I hope we will make the kind of improvements I have tried to suggest.

Mr. Steven Otto (York East): Mr. Speaker, my purpose in speaking to this bill is to bring to the attention of the house and the country the little things that appear in bills. When we discuss vast subjects, as we did in respect of the house rules, the comment can be made that things are passed that are not even debated. The point I want to bring to the attention of the house is a small one in this bill. It has to do with clause 16 which involves drinking and driving. I wish to

• (4:10 p.m.)

[*English*]

Mr. Andrew Brewin (Greenwood): Mr. Speaker, a good deal of what I would like to say on this subject has already been well said by others in the debate and I do not want to repeat what they have said. The hon. member for York South (Mr. Lewis), the hon. member for Vancouver-Kingsway (Mrs. MacInnis), the hon. member for Fundy-Royal (Mr. Fairweather), the hon. member for Winnipeg North Centre (Mr. Knowles), the hon. member for Winnipeg North (Mr. Orlikow), and this afternoon the hon. member for Egmont (Mr. MacDonald), have all put forward points of view about this bill that I share. I certainly will try not to repeat their remarks, but for two reasons I would like to say a little bit about the bill. One reason is that I have had some experience in the field of criminal law in a professional way, and from this I have developed some very definite impressions and opinions. The other reason that I want to speak briefly on the bill is that quite a number of my constituents have taken the trouble to write to me on various topics covered by the bill, and I think they have a right to know where their representative stands.

I support the bill as a whole and I will vote for it on second reading. In the committee I would like to seek some amendments made that I think would be improvements and also amendments at the report stage of the bill. On the whole I think the bill is an advance but not such an advance that I greet it in such lyrical terms as the Minister of Justice (Mr. Turner) allowed himself when he introduced the bill. But it is an advance. I think it is an advance toward a more humane system of justice. But notwithstanding that, I agree with the hon. member for Egmont that it is really only a scratching of the surface. I welcome the bill if, and only if, it is the forerunner of a more systematic revision of the Criminal Code as a whole.

In my view we in this house should adopt the words used in the United States by Mr. Justice Brennan of the Supreme Court when he said:

> We may be at the threshold of a major re-examination of the premises which underlie our system for the administration of criminal justice.

It behooves us, not only here in Canada but in the United States, to examine our system of criminal justice to see whether it is (a) a humane system and (b) whether it is or is not effective. If we look into this matter I think we can agree that we have ignored the scientific knowledge developed in the fields of penology and criminology. Up until now the opinion has been widely held that the legal system should be made by lawyers and administered by lawyers. I am a lawyer myself but I think the legal administration of law, particularly in the field of punishment, has left us with a system which just does not work, which in actual fact does not do justice, which makes it possible for organized criminals to carry on organized crime. It leaves us with punishment which is a vicious sort of punishment, punishment that is not curative, punishment that is directed at a great many of the poor, the impoverished and the inadequate who are victims of the system.

In my view it will be the proper task of this parliament, of the Standing Committee on Justice and Legal Affairs in particular, and of the new independent national law reform committee to undertake nothing less than a major re-examination of our whole system. If this bill is taken as an accomplishment of law reform and we rest on our laurels with it, then I think the bill will do more harm than good. But if it stimulates an interest and concern in this field it will be worth while.

• (4:20 p.m.)

Recently, Mr. Speaker, a book has been published which I recommend to hon. members. It is called "The Crime Of Punishment," and it is by a physician and psychiatrist, Dr. Karl Menninger, who has described our system for controlling crime as ineffective, unjust and expensive. I think that somewhere else he uses an even stronger phrase about it. He says in effect that it is crime-breeding rather than crime-preventing. These are the words of a man who has studied the system that has existed in the United States, and I do not think the system here is very different. I want to make the need for major re-examination the basic thesis of my contribution to this debate, but before doing so I should like to refer to some of the highlights of the bill.

I join with the remarks of the hon. member for Egmont and the hon. member for Winnipeg North Centre regarding lotteries. The provision of the bill to expand lotteries and to provide the right to the government of Canada and the governments of the provinces to conduct lotteries is anti-social and a blot upon what would otherwise be a reform of the law. I hope we will take a real look at this provision in the committee. I say this not because I greatly object to gambling—I think it is a strong human instinct which cannot be supressed entirely by law—but because it gets into the field of taxation which is in-

equitable, unjust and retrogressive. It exploits the desire to make easy money on the part of those people who can least afford to pay. Every state which has attempted state lotteries has been forced to abandon them because of their poor results. Yet because of some popular pressure, perhaps popular ignorance, we are urged to expand the scope of lotteries.

I have no doubt that in my own constituency the majority of my constituents would say they are in favour of expanding lotteries. I do not like to take a stand perhaps different from that of many of my constituents, but in this field my conscience requires me to say that most of them have not studied the facts. Had they done so I am sure they would agree with most of us who urge that we take this provision out of the bill. We need a more equitable and just tax system. When we need a juster tax system, why should we be denied a method of approach which is intelligent and just rather than an approach which is inequitable, inexpensive and pushes costs upwards? Lotteries are, in effect, taxes which are unjust, unreasonable and unfair, and I certainly hope to get the opportunity to vote against this part of the legislation. I will vote against what I think might turn out to be a social nuisance.

Let me say a word about the moot question of abortion. We all recognize that this is a delicate subject which involves peoples' deepest religious feelings. We are discussing the sanctity of human life. All I can say is that while I respect the views of others it is my view that it would be more convenient and more humane to take abortion out of the field of criminal law. I agree with the hon. member for Vancouver-Kingsway that we should remove it from the sphere of criminal law altogether. If we are to have a law in respect of abortion I think the proposal in the bill is reasonable because it specifically refers to life and health, and these are intimately interconnected. I do not understand how abortion can be said to be disregard of life when we permit an operation which may save the life and basic health of one fully developed personality at the expense of a personality that has not developed.

I cannot go into all the fine refinements of theology in respect of this matter, but I know different churches take different views. The church to which I happen to belong has recognized, I think rightly, that the views it used to hold are no longer applicable in this modern age of scientific development. I go along with that view, not entirely because that is my church but because I think it is sound sense and a matter of respect of humanity.

Let me say a word about the law in respect of homosexuality. I hope the committee will study this whole question to ascertain whether the legislation we are proposing in this field is adequate. I want to say that the basic principle in respect of this matter should be that private aberrations or illnesses should not become public crimes. If they are made into public crimes they open the door to blackmail without providing a cure of the disease. They add to the human misery which can flow from this affliction.

It is my suggestion that we look into this matter to see what other jurisdictions have done about it. Perhaps something more could be done than will be done by the provisions in this bill, although in my opinion they are steps in the right direction.

I was particularly pleased to read the proposals in the bill for the expansion of the National Parole Board. I do not want to deal with this at length because it can be dealt with in detail at a later stage. I do want to emphasize that this system has worked and worked well. It has rehabilitated many people. But those responsible in this bill have worked with inadequate facilities and without a sufficient, number of trained people to carry out the functions of supervisory parole. No arguments of economy should stop us from expanding this service which has been shown to be beneficial and, incidentally, a matter of sound economy as well. We create a sort of false economy when we cut down services of that sort. We condemn people to jail for long terms at great loss to their lives and great expense to the public. If we are to extend this system of parole we must also increase the funds available to those who are doing the actual job of supervising in the field.

In the course of this debate hon. members have made reference to the inadequacies of this so-called omnibus bill and its omissions. I suppose each one of us has a list of different omissions, but in my mind the notable omission is in respect of bail. A number of studies have been made in this regard. Learned experts have referred to the wastefulness, injustices and inequities of our bail system. Why cannot our Department of Justice prepare a revision of the bail provisions of the code?

I should like to see a new definition of insanity as a defence to a criminal charge spelled out. We now have a definition that every learned psychiatrist and medical man in the world has condemned as being inadequate. Distinguished lawyers, including my

former senior partner, Chief Justice McRuer, have expressed a view which I think happens to be wrong and not in accordance with the times. They have taken an over-technical approach, as lawyers sometimes do.

I do not know why we cannot in this house, rather than somewhere else, deal with hate literature. I think there are many other spheres in which there is an urgent need for change. If this is an omnibus bill, we need not one omnibus but a whole fleet of omnibuses in order to remove the inadequate laws we have in the field of criminal law and bring in up to date provisions.

At this stage I should like to refer to a point I mentioned before when I said I would like to adopt as the theme of my remarks the need for a thoroughly radical revision of the system of criminal justice. Let me quote Dr. Menninger, an eminent psychiatrist:

> It is a well known fact that relatively few offenders are caught and most of those arrested are released. Society makes a fetish of wreaking punishment as it is called on occasional captured and convicted individuals. This is supposed to control crime by deterrence. The more valid and obvious conclusion—that getting caught is thus made the unthinkable thing—is overlooked by all but the offenders. We shut our eyes to the fact that the scapegoats must go through the mill to keep the legend of punishment alive and to keep our jails and prisons, however expensive, crowded and wretched.

• (4:30 p.m.)

I could cite passage after passage from Dr. Menninger's book. He is a person who knows what he is talking about, who has studied the facts, not the facts of some ideal system of justice, not the facts of what ought to be, but the facts of what is. Such people say we are not dealing adequately with the problem of violence. The hon. member for Egmont said that we on this continent face a very serious problem in connection with violence. We shall not solve that problem by doing more of the same, by increasing the number of police officers and jails and imposing punishments of the type that have been imposed. We will have to go a great deal deeper than this if we are to solve the problem.

In the solution of the problem we shall have to use methods of scientific research which have been adopted in other fields and found to work. We shall have to say to the lawyers and to society in general: Your system has not worked. The cold war that exists between lawyers and the social workers, psychiatrists, medical men, penologists and others expert in this field must be ended; the situation must be changed.

[Mr. Brewin.]

I tell the house quite frankly that when I studied law I was taught nothing about what happens to people after they have served a term of imprisonment. I was taught what the sections of the Criminal Code contained but nothing at all about what happens to these people because of our system. Magistrates, judges and those concerned with administering our system of justice are not as such concerned with what happens afterwards to those whom they condemn even if they are personally sympathetic. They do not have to make decisions in this respect. They have to decide whether the penalty will be imprisonment for two years, three years or six months. Whether as a result of the penalty any cure will be provided, or whether it will create more criminals and promote recidivism is not part of their concern, expertise or knowledge. We have to consider this problem and ask the lawyers, who are a group with honourable principles and many great traditions, to get together with the social scientists, the medical men and psychiatrists and study and evaluate what are the consequences of our present system and how it can be improved.

I support this bill by and large, with the exceptions I have mentioned. It is a step forward. But I want to emphasize that unless it is treated by the government, this parliament and the public as merely a first step, a move toward a radical and thorough revision of our whole system, it will be inadequate and almost a waste of time. These are subjects that deal with deeply rooted feelings, prejudices and traditions. I think we must recognize that the time has come for change, for bold revision.

I hope that the law reform committee which will be set up will be a committee that will not tinker around, as lawyers have so often done, with the wording of the Criminal Code and things of that sort. I hope the committee will seek the best possible advice from people like Dr. Menninger, for example. We know that the field of psychiatry is changing. Those engaged in this field have developed new approaches and therapies which have been far more successful than the old-fashioned psychiatry practised in the past. Until we become up to date in this field we shall race constantly the type of violence, disorder and misery that now exists which has been growing and threatens our society.

[*Translation*]

Mr. Roland Godin (Portneuf): Mr. Speaker, the former Bill C-195 which has become,

since the last elections, Bill C-150, has benefited from a wide publicity: radio, television and newspapers alike have taken up the matter. Contrarily to many bills which are often passed without the public bothering about them, this bill is popular in every class of society. We get letters from mothers and fathers who convey to us their ideas on the subject or they use the "Letters to the Editor" or other columns which are available to them in the newspapers.

I have received quite a lot of mail since this bill was introduced in the house. In addition to the personal letters which were sent to me I have a brief from the Association des bureaux médicaux des hôpitaux de la province de Québec and also a brief from the Alliance pour la vie, located in Hull, P. Q.

We have also received recommendations, and blueprints from the Association des Parents Catholiques du Québec, from the Société Saint-Jean-Baptiste in Montreal, from the Fédération des Sociétés Saint-Jean-Baptiste du Québec, from the Foyers Notre-Dame and from les Équipes Notre-Dame, from the Chapitre métropolitain des Chevaliers de Colomb, from the Chevaliers de Champlain, from the Dames Hélène de Champlain, from the Association des Puéricultrices de la Province de Québec, from the Association des Infirmières Catholiques du Canada, from the Action Nationale, from the Fraternité des Policiers de Montréal, from the Fédération des Fraternités de policiers de la Province de Québec.

Mr. Speaker, among all these briefs, all these letters, there is just one single letter in favour of the bill as proposed; if I had to speak on behalf of all those who oppose the bill as presented, I guess it would take me at least 40 hours.

Like the previous speakers, I shall be satisfied with the forty minutes at my disposal, but I shall simply point out to you, Mr. Speaker, that forty minutes for an area of 50,000 voters do not amount even to a minute for a thousand voters and that forty minutes to deal with a bill that contains more than 100 clauses is not all that much.

So I made a choice, and the first subject that I want to talk of is the one that proposes to modify the Criminal Code so as to authorize the federal and provincial governments to organize and to manage a lottery, and to deliver permits to charitable or religious organizations to agricultural fairs or exhibitions or a private citizen so that they can organize and manage a lottery.

Mr. Speaker, we can support this bill while opposing lotteries. I think our present system is useful because a few persons only have dared to use it.

And yet we remember the prohibition era in the province of Quebec, when the few innkeepers who engaged in bootlegging became millionaires. Today, because of the distribution right and left of licences or permits, the innkeepers realize that there are too many of them and that the majority of them have financial troubles.

By legalizing lotteries and by generalizing these systems, their "beneficial" effects are cancelled, if I may use that expression.

Today, the city of Montreal's voluntary tax can be advantageous. But on the day when any one, religious associations, the federal government, the provincial governments, the cities, the municipalities, agricultural exhibitions, individuals, can do the same, in short, the day when there are as many fishermen as there is fish, it will then be realized that this clause of the bill left only disillusions and numerous victims among low income people who believed, at one time, that they had found the solution to their problems.

There is another section of the bill that does not leave any room for doubt as regards its efficiency. It is section 16. The purpose of that amending section of the law would be to oblige the driver of a motor vehicle to submit to a breathalizer test whenever it is required by a peace officer who believes, on reasonable and probable grounds, that that person's ability to drive is impaired.

Mr. Speaker, such a procedure will facilitate the work of the peace officers and will also protect citizens against abuses or errors on the part of certain peace officers. We have all seen at one time or another automobile accidents, where policemen failed to do their duty because they were dealing with influential people. It may happen however that small folk become the victims of peace officers. I am thinking about a Quebec City carpenter, head of a family, who after spending the evening at the home of friends, where he had had a few drinks went back home in his car. Now, he saw a policeman on a street corner.

• (4:40 p.m.)

Shaken by the publicity, and in good faith knowing that one must never drive whenever one's ability is impaired by alcohol instead of asking a friend to drive him home, he asked the first policeman he saw to do so. In order to help him, the peace officer accepted to take

TAB 9

OFFICIAL BILINGUAL ISSUE

FASCICULE BILINGUE OFFICIEL

HOUSE OF COMMONS

CHAMBRE DES COMMUNES

First Session
Twenty-eighth Parliament, 1968-69

Première session de la
vingt-huitième législature, 1968-1969

STANDING COMMITTEE
ON

JUSTICE AND LEGAL AFFAIRS

COMITÉ PERMANENT
DE LA

JUSTICE ET DES QUESTIONS JURIDIQUES

Chairman Mr. Donald R. Tolmie *Président*

MINUTES OF PROCEEDINGS
AND EVIDENCE

PROCÈS-VERBAUX ET
TÉMOIGNAGES

No. 9

TUESDAY, MARCH 11, 1969

LE MARDI 11 MARS 1969

Respecting
BILL C-150
Criminal Law Amendment Act, 1968.

Concernant le
BILL C-150
Loi de 1968 modifiant le droit pénal.

Appearing
Minister of Justice and Attorney General of Canada.

Hon. John N. Turner

A comparu
Ministre de la Justice et Procureur général du Canada.

WITNESS—TÉMOIN

(See Minutes of Proceedings)

(Voir Procès-verbal)

THE QUEEN'S PRINTER, OTTAWA, 1969
L'IMPRIMEUR DE LA REINE, OTTAWA, 1969

29737—1

[*Text*]

The Chairman: Yes. Clause 7 on page 24 I think should stand. There will be a witness on Thursday morning to change this section. Clause 8 on page 24 has been passed, and the next one is Clause 9 on page 25.

Shall Clause 9 carry?

Mr. Hogarth: I would like to have some explanation of the change.

Mr. Turner (Ottawa-Carleton): Mr. Chairman, Clause 9 chould be read together with parts of Clause 10 and Clause 13. The main clause here is Clause 13 relating to lotteries, and Clause 9 relates to that.

If I may I will make a short general statement on the lottery question and then you may find it appropriate to deal with Clause 8 and those parts of Clause 10 that deal with lotteries and then the general Clause 13 on page 31.

The most significant thing about the proposed changes respecting lottery schemes—and that phrase includes games of chance generally—is that this type of activity by religious and charitable organizations will be left largely to the discretion of the provincial authorities through provincially-issued licences.

The same considerations will apply to agricultural fairs and exhibitions, with respect to gaming connected with such fairs and exhibitions, conducted off the exhibition grounds, and with respect to gaming at public places of amusement.

We believe, Mr. Chairman, that this will enable local attitudes and local considerations to govern in this matter, and that it will be more accurately reflected at the provincial level.

The sections also provide, of course, that provincial governments will be authorized to conduct what is commonly referred to as a state lottery, and if it chooses to do so, that the federal government will be authorized to conduct a state lottery. That is my opening statement, Mr. Chairman.

Clause 9 merely relates to the definition of the common gaming house.

The Chairman: Shall Clause 9 carry? Mr. Valade?

Mr. Valade: I would like the Minister to clarify a point. Is the purpose of bringing the federal government into the Act to allow the use of such facilities as the postal facilities, should the federal government set up its own lottery system? Is the purpose of this section to allow federal services such as the post office to contravene the law?

• 1140

Mr. Turner (Ottawa-Carleton): It was felt Mr. Valade, that if provincial governments were to be

[*Interpretation*]

Le président: Oui. À mon avis, on devrait réserver l'article 7 du bill en page 24. Jeudi matin nous aurons un témoin pour modifier cet article. L'article 8 à la page 24 a été approuvé ainsi que l'article suivant du bill à la page 25.

L'article 9 est-il approuvé?

M. Hogarth: Pourriez-vous nous expliquer le changement.

M. Turner (Ottawa-Carleton): Monsieur le président, l'article 9 du bill devrait être lu en même temps que certaines parties des articles 10 et 13 du Bill. L'article principal est l'article 13 du bill portant sur les loteries, et l'article 9 du bill porte sur le même sujet.

Si vous le permettez, je vais faire un petit exposé très général sur la question des loteries et puis vous jugerez peut-être opportun d'étudier l'article 8 ainsi que les parties de l'article 10 du bill qui porte sur les loteries et enfin l'article général n° 13 du bill à la page 31.

Le point le plus significatif des changements proposés à l'égard des jeux de hasard et des loteries—et cela comprend tous les jeux de hasard en général—c'est que ce genre d'activité dans les organisations religieuses à but non lucratif ou charitables sera laissée en grande partie à la discrétion des autorités provinciales qui devront avoir des permis émis par le gouvernement provincial. Il en sera de même pour les foires agricoles et les expositions pour ce qui est des jeux en dehors des terrains de l'exposition, ainsi que les jeux qui se trouvent dans les parcs d'amusements publics.

Nous croyons, monsieur le président, que cette façon de faire donnera plus d'importance aux attitudes et aux considérations locales dont les résultats rejailliront sur le plan provincial.

Les articles prévoient aussi que les gouvernements provinciaux pourront organiser ce qu'on appelle communément, «loterie nationale» et le gouvernement fédéral pourra, s'il le veut, organiser sa propre loterie nationale. C'est tout ce que je voulais dire, monsieur le président.

L'article 9 du Bill porte simplement sur la définition d'une salle commune de jeux.

Le président: L'article 9 est-il approuvé? M. Valade?

M. Valade: J'aimerais simplement que le ministre éclaircisse un point. Le fait d'inclure le gouvernement fédéral dans la loi a-t-il pour objet de lui permettre l'usage des installations telles que celles de l'administration postale, advenant la décision du gouvernement fédéral d'organiser sa propre loterie? Cet article a-t-il pour objet de permettre aux services fédéraux, comme les postes, d'enfreindre à la loi?

M. Turner (Ottawa-Carleton): On estimait, monsieur Valade, que si les gouvernements provinciaux avaient

[*Texte*]

given the power to establish a provincial lottery or, through their agents, conceivably, a municipal lottery, the federal government ought to have the same power, if the federal government some day wanted to use it. This section does not establish a state lottery. It just allows the provinces, if they should so wish, or the federal government, if it should so wish, to embark on such a scheme. It is my understanding on the reading of the clause—and this relates particularly to Clause 13 and not Clause 9—that if a provincial government wanted a provincial lottery it would have to be done by an act of the legislature. If the federal government wanted to set up a federal lottery it would have to be done by Order in Council.

Mr. Valade: My point, Mr. Chairman, was that if this provision was not made, then the Post Office services could not be used?

Mr. Turner (Ottawa-Carleton): As I understand it, the Post Office facilities cannot be used to transmit an illegal lottery. In the future if a lottery were legal, that is to say, provincially authorized, then the mails would carry it within the province concerned. There is a provision in the bill prohibiting a lottery being distributed outside the province which has allowed it unless the receiving province also consents. Otherwise the mails would be refused, presumably, to interprovincial use of a provincial lottery.

Mr. Valade: Even with the present provision it would not be allowed.

Mr. Murphy: Is Montreal breaking the law?

Mr. Turner (Ottawa-Carleton): We do not know whether Montreal is breaking the law or not, Mr. Murphy, because it is before the Supreme Court of Canada. However this provision would not affect the Montreal lottery scheme, if it is a lottery, because there is no discretion given to municipal lotteries here unless they are agents of the province—unless they are provincially allowed.

Mr. Valade: May I ask, Mr. Chairman, another question of the Minister? Does this section deal with foreign lotteries? What are the provisions?

Mr. Turner (Ottawa-Carleton): A foreign lottery remains illegal.

Mr. Valade: Yes, I understand that. I understand that under the law governing foreign lotteries the person who wins the lottery, and whose name and face is being shown widespread across the country, cannot be prosecuted, but that the person selling the ticket is

[*Interprétation*]

l'autorisation d'organiser une loterie provinciale, ou de donner cette autorisation à leurs agents pour organiser une loterie municipale, le gouvernement fédéral devrait bénéficier du même pouvoir si un jour il désirait de s'en servir. Cet article n'établit pas le principe d'une loterie nationale. Il permet simplement aux provinces si elles le désirent, ou au gouvernement fédéral s'il le veut de lancer une telle initiative. Si je lis bien cette disposition et je parle notamment de l'article 13 et non à l'article 9, à savoir que si un gouvernement provincial désire une loterie, il lui faudrait adopter une loi de l'Assemblée législative en conséquence. Si le gouvernement fédéral désirait établir une loterie fédérale, il lui faudrait procéder par décret du Conseil.

M. Valade: Mais je disais, monsieur le président, que si cette disposition n'était pas adoptée, alors l'utilisation des services postaux ne pourrait pas être autorisée?

M. Turner (Ottawa-Carleton): Si je comprend bien, les services postaux ne peuvent être utilisés pour transmettre des renseignements sur une loterie illégale. À l'avenir, si les loteries provinciales étaient légales, le service postal alors pourrait servir dans la province en cause. Il y a une disposition dans le bill qui interdit qu'une loterie soit distribuée en dehors du territoire de la province à moins que la province récipiendaire donne son consentement. Autrement, le courrier serait refuser à la frontière.

M. Valade: Même avec les dispositions actuelles, cela ne serait pas permis, n'est-ce pas?

M. Murphy: La ville de Montréal enfreint-elle la loi?

M. Turner (Ottawa-Carleton): Nous ignorons si la ville de Montréal commet une infraction à la loi ou non, Monsieur Murphy, parce que la cause est entre les mains de la Cour suprême du Canada. Toutefois, cette disposition n'affecterait pas la loterie de Montréal, par exemple, car aucune discrétion ne serait donnée aux loteries municipales, à moins que les municipalités ne soient considérées comme des mandataires de la province. À moins qu'elles aient la permission de la province.

M. Valade: Une autre question que j'aimerais adresser au ministre, monsieur le président? Cet article porte-t-il sur les loteries étrangères? Quelles seraient les dispositions qui s'appliqueraient?

M. Turner (Ottawa-Carleton): Les loteries étrangères demeurent illégales.

M. Valade: Je comprends. La personne, notamment, qui gagne à une loterie et dont le nom et la photo est exposé à travers tout le pays, cette personne ne peut pas faire l'objet d'une poursuite, mais la personne qui vend le billet peut faire l'objet d'une poursuite aux

[*Text*]

prosecuted under the present legislation. Is there something in this proposed legislation to correct this?

Mr. Turner (Ottawa-Carleton): I would like to clarify that because under the present law, and even under the law as amended–I am referring to the present Criminal Code, Article 179, subsections (4) and (5):

> (4) Every one who buys, takes or receives a lot, ticket or other device mentioned in subsection (1)...

Which would include a foreign lottery.

> ... is guilty of an offence punishable on summary conviction.

Subsection (5) reads:

> (5) Every sale, loan, gift, barter or exchange of any property, by any lottery, ticket, card or other mode of chance depending upon or to be determined by chance or lot, is void, and all property so sold, lent, given, bartered or exchanged, is forfeited to Her Majesty.

That means that a foreign lottery is illegal that anybody participating in a foreign lottery scheme can be prosecuted; that any property passing under a foreign lottery scheme can be confiscated. Why is it not? Provincial Attorneys General do not choose to prosecute.

Mr. Valade: On that point, Mr. Chairman, the gains can be forfeited. Are there any such cases in the Department where the winnings of foreign lotteries have been forfeited?

Mr. Turner (Ottawa-Carleton): We do not enforce these provisions. They are enforced by provincial Attorneys General and we have no record of them.

Mr. Valade: Yes, but the Minister of National Revenue certainly should have the possibility of forfeiting those revenues because they are not...

• 1145

Mr. Turner (Ottawa-Carleton): At the moment they are still capital gains. They are not taxable so the Minister of National Revenue would not be interested.

The vanishing capital gains, Mr. Valade.

The Chairman: I have allowed some latitude, but if we are sticking right to Clause 9 this general discussion is not in order. We can pass on Clause 9 and proceed clause by clause. Perhaps this is better because we will be getting to the actual substance in Clause 13.

The Chairman: Mr. Gilbert.

[*Interpretation*]

termes de la loi à l'heure actuelle. Y a-t-il quelque disposition pour rectifier cette anomalie?

M. Turner (Ottawa-Carleton): J'ai une disposition ici qui semble expliciter tout cela. Aux termes de la loi actuelle, et même aux termes de la loi modifiée, les dispositions modifiées de la loi, l'article 179, paragraphes (4) et (5):

> (4) quiconque achète, prend ou reçoit un lot, un billet ou un autre article dont fait mention le paragraphe (1)...

ce qui comprendrait une loterie étrangère.

> est coupable d'une infraction punissable sur déclaration sommaire de culpabilité

Le paragraphe 5 se lit comme suit:

> (5) Toute vente, tout prêt, don, troc ou échange d'un bien au moyen de quelque loterie, billet, carte ou autre mode de tirage qui doit être décidé par la chance ou par le hasard ou en dépend, est nul, et tout bien ainsi vendu, prêté, donné, troqué ou échangé est confisqué au profit de Sa Majesté».

Autrement dit, les loteries étrangères sont illégales. Quiconque participe à un projet de loterie étrangère peut être poursuivi; toute propriété ou tout bien transmis par cette loterie étrangère peut être confisquée. Les procureurs généraux des provinces ne font pas de saisies mais pourraient le faire.

M. Valade: A ce sujet, monsieur le président, les gains peuvent être confisqués. Y a-t-il des cas de ce genre au ministère? Est-ce que les gains par des loteries étrangères ont été confisqués?

M. Turner (Ottawa-Carleton): Nous n'appliquons pas ces dispositions. Ce sont les procureurs généraux provinciaux qui devraient appliquer ces dispositions.

M. Valade: Oui, mais le ministre du revenu national pourrait sûrement confisquer ces revenus parce qu'ils ne sont pas...

M. Turner (Ottawa-Carleton): A l'heure actuelle, il s'agit encore de gains de capitaux. Ils ne sont donc pas imposables, alors le ministre du Revenu national n'est pas intéressé. Il faudrait donc imposer les gains de capitaux, monsieur Valade.

Le Président: J'ai accordé une certaine latitude. De fait, nous devrions nous en tenir à l'article 9. Nous pourrions peut-être passer rapidement sur l'article 9 et étudier les articles un à un. Nous en viendrons à la substance de la question, je crois, à l'article 13. Monsieur Gilbert?

[*Texte*]

Mr. Gilbert: Mr. Chairman, I have a question for the Minister. What provinces, if any, have made representations to the Department to have this law with regard to provincial lotteries changed? In other words, why the encouragement?

Mr. Turner (Ottawa-Carleton): To the best of our knowledge, Mr. Gilbert, we have received no formal submissions either for or against this particular provision from any provincial government.

Mr. Gilbert: Then if that is so, why are you making the change? If there have been no representations, why the necessity?

Mr. Turner (Ottawa-Carleton): We are assessing public opinion in this country. We feel that public opinion in this country is not unanimous about it and that it might vary from region to region. We are, therefore, leaving it to the regions, as that public opinion may be interpreted by provincial governments that their provincial Attorneys General have control over whether or not there should be lotteries permitted within provincial boundaries.

The Chairman: Mr. Blair.

Mr. Blair: This is not really on a question of order, but one of procedure. We are approaching the major amendment in Clause 13 which would be a new section, 179A. The sections we are now discussing are rather incidental to it, and I wonder whether we are advancing our position by, as it were, raising points of substance about Clause 13 at this stage in dealing with these incidental provisions. Perhaps the Committee would accept the suggestion that we should deal with the substantive provisions in Clause 13 and then come back to these incidental sections which would stand or fall on our decision on Clause 13.

The Chairman: Yes, I think this point is well taken. If Clause 13 does not pass, for example, then passage of Clause 9 or 10 would not be warranted. I think, if it is the wish of the Committee, we should turn to the substance, which is Clause 11, and then these questions which are now being asked would be in order.

Mr. Turner (Ottawa-Carleton): Clause 13.

The Chairman: Clause 13.

Mr. Turner (Ottawa-Carleton): Clause 13 and then come back to Clauses 9, 10 11 and 12?

The Chairman: Yes. Is that agreeable?

On clause 13, proposed Section 179A. *Permitted lotteries.*

The Chairman: Mr. Gilbert.

[*Interprétation*]

M. Gilbert: Monsieur le président, j'ai une question pour le ministre. Quelle province, s'il en est, a présenté des instances au ministère pour que la loi soit modifiée en ce qui a trait aux loteries provinciales? Autrement dit, pourquoi donne-t-on cette forme d'encouragement?

M. Turner (Ottawa-Carleton): Au meilleur de nos connaissances, monsieur Gilbert, nous n'avons reçu aucunes instances officielles, ni contre ni pour ce projet, de la part d'un gouvernement provincial.

M. Gilbert: Pourquoi alors les changements sont-ils apportés? Pourquoi la nécessité, s'il n'y a pas eu d'instances?

M. Turner (Ottawa-Carleton): Nous évaluons l'opinion publique. Nous estimons que l'opinion publique au Canada n'est pas unanime là-dessus et qu'elle peut varier de région en région. Par conséquent, nous laissons aux régions le soin de décider comment les gouvernements provinciaux doivent appliquer les opinions régionales et décider s'il doit y avoir, par conséquent, les loteries provinciales ou non.

Le Président: Monsieur Blair.

M. Blair: Je n'en appelle pas au règlement, mais à la procédure. Nous arrivons au principal amendement, c'est l'article 13 qui correspondra à un nouvel article, 179A. Les articles dont nous parlons maintenant sont plutôt accessoires, et je me demande si nous progressons vraiment lorsque nous soulevons des questions de fond au sujet de l'article 13? À cette étape-ci, je me demande si nous devrions nous arrêter aux accessoires avant d'en venir à l'essentiel. Peut-être le Comité accepterait-il ma proposition, savoir, que nous devrions nous en tenir à l'article de fond qui est l'article 13, puis revenir aux articles marginaux qui pourraient être réservés en attendant.

Le Président: Oui, je crois que ce point est bien valide. Si l'article 13 n'est pas adopté, par exemple, les articles précédents tomberaient d'eux-mêmes. Par conséquent, nous pourrions peut-être en venir immédiatement à l'article 13, et puis revenir à l'article 10, 11 et 12. L'article 13, à la page 31.

M. Turner (Ottawa-Carleton): L'article 13.

Le président: L'article 13

M. Turner (Ottawa-Carleton): L'article 13 et ensuite revenir aux articles 9, 10, 11 et 12?

Le Président: Oui, si les membres sont d'accord.

Sur la clause 13, l'article proposé 179A—*Loteries permises.*

Le Président: Monsieur Gilbert.

[*Text*]

Mr. Gilbert: Just to follow up the question that I asked the Minister: he says that there have been no representations by provincial governments in regard to these changes, then you are accepting that full responsibility for the full responsibility for this change. Is it right to assume that you are personally in favour of these state lotteries?

Mr. Turner (Ottawa-Carleton): I do not think you want to take any assumption one way or the other, Mr. Gilbert. The government feels that this is a matter to be left to provincial discretion.

The Chairman: Mr. Peters.

Mr. Peters: Mr. Chairman, in regard to the remarks the Minister made a few minutes ago about the fact that the federal government has been given the discretion of passing by Order in Council the right to conduct federal lotteries, but, as far as the provincial governments are concerned, their responsibility has to be by way of an enactment. What is the reason for the difference?

Mr. Turner (Ottawa-Carleton): Because this is a federal law. There is no way a province could test political opinion short of going before the legislature. This

• 1150

is a federal law which is sufficient to implement any federal action. There is nothing in here to implement provincial action and you cannot implement provincial action by Order in Council based on a federal statute. It is a constitutional problem.

Mr. Peters: May I ask another question? Why is it the government's position to ban international lotteries when obviously these are being engaged in very generally and there are very few prosecutions? There have been seizures, but very few prosecutions in the past—and it is generally accepted, I would think, by the majority of people that we represent. I do not think there is a riding in this country where Irish Sweepstake tickets are not being sold by the provincial police and others who travel around the country, and I have bought them from the provincial police. Why should we be so holier-than-thou in saying that this is not acceptable?

Mr. Turner (Ottawa-Carleton): So far as the federal government is concerned I hope we are not being sanctimonious about this, Mr. Peters. We are merely saying, so far as domestic lotteries are concerned, that that is a matter for provincial discretion. So far as foreign lotteries are concerned, they are still illegal but their enforcement is left—as is the enforcement of the Criminal Code—to provincial jurisdiction.

Mr. Hogarth: As I understand it, Mr. Minister, one of the great provisions of the proposals with respect to lotteries is that the domestic governments, be they the

[*Interpretation*]

M. Gilbert: Pour donner suite à la question que j'ai posée au ministre: le ministre a dit qu'il n'avait reçu aucune instance de la part des gouvernements provinciaux au sujet des changements, par conséquent, il assume la responsabilité de ces changements. Peut-on donc supposer que le ministre personnellement est en faveur des loteries nationales?

M. Turner (Ottawa-Carleton): Je ne suis en faveur de rien, monsieur le président. Le gouvernement estime simplement que c'est une question qui devrait être laissée à la discrétion des provinces.

Le Président: Monsieur Peters.

M. Peters: Monsieur le président, en ce qui concerne les remarques du ministre faites il y a quelques minutes portant sur le fait qu'il a été laissé à la discrétion du gouvernement fédéral de se donner par décret du conseil, le droit de tenir des loteries fédérales, mais en ce qui concerne les gouvernements provinciaux, leur responsabilité doit être fondée sur un acte législatif. Pourquoi cette différence?

M. Turner (Ottawa-Carleton): Parce qu'il s'agit là d'une loi fédérale. Une province ne peut pas vérifier l'opinion politique sinon en assemblée législative. Il s'agit là d'une loi fédérale qui permet d'appliquer n'importe quelle initiative fédérale. Mais rien ne permet d'appliquer l'initiative provinciale. Nous ne pouvons pas, je crois, par décret du conseil, appliquer une initiative provinciale, en fonction d'une loi fédérale. Il s'agit d'un problème d'ordre constitutionnel.

M. Peters: Puis-je poser une autre question? Pourquoi le gouvernement s'oppose-t-il aux loteries internationales, alors qu'évidemment elles sont presque partout au pays et qu'il y a très peu de poursuites? Il y a eu des saisies, mais très peu de poursuites par le passé et ceci, je crois, est généralement accepté par la majorité des gens que nous représentons. Je ne crois qu'il existe un comté au pays . . . où les tickets du Sweepstake Irlandais ne sont pas vendus par la Police provinciale ou d'autres gens qui voyagent, et j'ai moi-même obtenu des tickets de la Police provinciale. Pourquoi être aussi «Sainte-Nitouche» et dire que c'est inacceptable?

M. Turner (Ottawa-Carleton): En ce qui concerne le gouvernement fédéral, nous ne sommes pas je pense trop cagots, nous disons simplement qu'en ce qui concerne les loteries à l'intérieur du Canada, cette question relève des autorités provinciales. En ce qui concerne les loteries étrangères, elles sont encore illégales mais l'application de la Loi, tout comme pour la Loi pénale, est laissée aux juridictions provinciales.

M. Hogarth: Si j'ai bien compris, monsieur le ministre, une des principales dispositions des nouvelles propositions relatives aux loteries, c'est que les gouverne-

[*Texte*]

federal or the provincial government, have control through licencing provisions over who is going to operate a lottery, what the stakes are going to be and all aspects of it. The Lieutenant Governor in Council can use discretion where certain types of persons might be infiltrating that particular business which will now become lawful, and this is a control they do not have over foreign lotteries. Therefore I submit that is a very valid reason for keeping foreign lotteries illegal. I am not pointing at any particular foreign lotteries but there are certainly a number of them which are questionable when it comes to what is happening to the money at the other end.

Mr. Turner (Ottawa-Carleton): That is right. The reason, of course, we can contemplate allowing provincial governments to legalize—if I may use that word—domestic lotteries is that they can set the terms of the conduct of those lotteries under provincial licence. They have absolute control as to the terms, the amount of money involved, and so on, whereas there is no way of controlling the operation of a foreign lottery.

Mr. MacGuigan: Mr. Chairman, as I understand it one of the principal purposes of this reform of the Criminal Code is to bring the law into accord with the contemporary moral views of the people, and if we are going to have a section of the Criminal Code which not only will not be enforced but cannot be enforced because people believe in buying tickets in foreign lotteries and intend to continue doing so, and the attorneys general are obviously not going to convict, then perhaps we ought to have a procedure for licensing foreign lotteries as well, and which the Government of Canada might establish.

Mr. Turner (Ottawa-Carleton): I will accept that proposition, Mr. MacGuigan. If there are provincially-authorized lotteries there might be less inducement to buy a ticket on a foreign lottery.

Mr. MacGuigan: That is true.

The Chairman: Mr. Gilbert.

Mr. Gilbert: Are you taxing the earnings on these lotteries? With the shortage of money that the federal government has at the moment it would be a prime opportunity.

Mr. Turner (Ottawa-Carleton): I find just being Attorney General is a full-time occupation, Mr. Gilbert.

Mr. Gilbert: I thought you would bring it to the attention of the Minister of National Revenue.

The Chairman: Mr. Peters?

Mr. Peters: I do not really see how we can allow this to happen. The Minister has indicated that it is not

[*Interprétation*]

ments, à l'intérieur du Canada, qu'ils soient fédéral ou provinciaux, ont le pouvoir d'autoriser les loteries, de fixer les prix et tous les autres aspects. Le Lieutenant Gouverneur en Conseil pourra utiliser sa discrétion si quelqu'un s'infiltre dans cette organisation qui devient légale, contrôle qu'on ne peut pas exercer sur les loteries étrangères. Et il me semble que c'est là une raison valide pour que les loteries étrangères restent interdites. Je ne vise aucune loterie étrangère en particulier, mais je crois que certaines sont quelque peu douteuses en ce qui concerne l'emploi de l'argent.

M. Turner (Ottawa-Carleton): Oui, c'est exact. Nous voulons permettre aux gouvernements provinciaux de pouvoir légaliser, si je peux employer ce mot, des loteries domestiques dont ils pourront définir les termes dans des permis provinciaux. Les provinces auront le contrôle complet, elles pourront déterminer les sommes d'argent en cause et autres, tandis qu'il n'y a aucune façon de contrôler le fonctionnement des loteries étrangères.

M. MacGuigan: Monsieur le président, si j'ai bien compris les principaux objectifs des modifications du Code criminel, c'est que la Loi soit adaptée aux vues morales actuelles, contemporaines. Si nous devons avoir un article au Code criminel qui ne peut être appliqué, qu'il ne l'est pas parce que les gens croient dans les loteries étrangères et continueront à acheter des billets et si les Procureurs généraux ne doivent pas intenter d'actions, alors le gouvernement devrait peut-être prévoir une procédure d'autorisation des loteries étrangères?

M. Turner (Ottawa-Carleton): J'admet votre point de vue, M. MacGuigan, mais s'il y a des loteries provinciales autorisées, alors les gens auront moins de raisons d'essayer d'acheter des billets de loteries étrangères.

M. MacGuigan: Bien sûr.

Le président: M. Gilbert.

M. Gilbert: Vu la pénurie, la lacune de fonds dont souffre le gouvernement fédéral, n'y aurait-il pas lieu d'imposer les gains sur ces loteries?

M. Turner (Ottawa-Carleton): Je trouve que déjà mon poste de Procureur général me donne assez de travail.

M. Gilbert: Je pensais que vous pourriez le signaler au ministre du Revenu national.

Le président: M. Peters?

M. Peters: Monsieur le président, je ne vois pas comment nous pouvons laisser cela survenir. Le ministre

[*Text*]

enforceable. I am of the opinion that we should look at the possibility of licensing foreign lotteries conducted in this country so that they are enforceable. I have always been concerned about the fact that a person selling Army and Navy or Irish Sweepstakes in this country may not be giving us a fair deal; we may be getting cheated in that that the money may not be put in or the tickets may not be turned in. It seems to me that if we are going to have lotteries at all we have to provide a certain amount of protection for the people who are purchasing these lottery tickets.

As it now stands we just turn our heads. We do not say they are a bad thing; we just say we will not recognize them. It seems to me we should have legislation in order to licence people who are selling international lottery tickets in this country and that we should enforce any regulations we set up.

• 1155

Mr. Turner (Ottawa-Carleton): In reply to Mr. Peter's remark, the difficulty is that we have no way of enforcing the conditions attaching to a foreign lottery. There is just no possibility of supervision and even if we were so inclined, that would be our problem in acceding to your suggestion.

Mr. Peters: Mr. Chairman, at present if some law officer wishes to enforce a conviction against someone for purchasing these tickets the Code provides him with the machinery.

Mr. Turner (Ottawa-Carleton): Right.

Mr. Peters: And yet they are not enforcing it. There is certainly no direction being given to enforce it so I think we should take it out. If we cannot enforce it and have no intention of enforcing it, and believe that society does not want it enforced, then it seems awfully foolish to revamp the Code and leave it in when it is a non-enforceable provision.

Mr. Turner (Ottawa-Carleton): There may be some merit in what you say, Mr. Peters, but I think the provincial attorney general would probably prefer to await their experience in handling a domestic lottery before they broadened out into the international sphere.

The Chairman: Mr. Chappell?

Mr. Chappell: As I see it, Mr. Chairman, the Government of Canada is not going to start a lottery business in Canada, and there will not be any lotteries in Canada at all unless and until some province passes legislation. It strikes me that to consider licencing and regulating foreign lotteries before we have lotteries in Canada at all would be premature. The enforcing of our present law is a different thing altogether. However, I do not see how we can consider control over foreign lotteries until we have some in operation in Canada.

[*Interpretation*]

indique que cela ne peut pas être appliqué. Il me semble que nous devrions étudier la possibilité d'autoriser les loteries étrangères au Canada pour pouvoir les contrôler. Je me suis toujours demandé si une personne qui vend des billets de loterie des *Sweepstakes* Irlandais de l'Armée ou de la Marine n'est peut-être pas juste avec nous; l'argent n'est peut-être pas versé, les billets ne sont peut-être pas retournés. Il me semble que si nous avons des loteries, nous devons assurer une certaine protection aux acheteurs de billets. A l'heure actuelle, nous ne faisons que les ignorer; nous ne disons pas que c'est mauvais; nous les laissons faire, nous ne reconnaissons pas cette activité. Il me semble que nous devrions avoir des dispositions législatives accordant l'autorisation de vendre des billets de loteries étrangères et nous devrions veillez à ce que les règlements soient respectés.

M. Turner (Ottawa-Carleton): La difficulté, en ce qui concerne les observations de M. Peters, c'est que nous ne pouvons pas du tout contrôler ou vérifier les conditions régissant les loteries étrangères. Il n'y a aucun moyen de surveillance. Même si nous voulions le faire, nous n'aurions pas les moyens de le faire.

M. Peters: Monsieur le président, si un policier, un agent de paix désire accuser quelqu'un pour avoir acheté des billets de loterie, peut-il légalement le faire?

M. Turner (Ottawa-Carleton): Oui.

M. Peters: Et pourtant on ne le fait pas. Aucune directive ne demande l'application. Je pense que nous devrions tout simplement biffer l'article. Si on ne peut pas l'appliquer, si on ne veut pas l'appliquer, si on pense que la société ne veut pas qu'on l'applique, il semble ridicule de modifier le code et de laisser cette disposition inapplicable.

M. Turner (Ottawa-Carleton): Ce que vous dites est peut-être fondé, monsieur Peters mais je crois que les procureurs généraux provinciaux aimeraient peut-être voir l'expérience qu'ils vont acquérir au chapitre des loteries domestiques avant de s'occuper des loteries étrangères.

Le président: M. Chappell?

M. Chappell: Monsieur le président, si j'ai bien compris, le gouvernement du Canada ne veut pas se lancer dans des loteries. Il n'y aura pas de loterie au Canada tant qu'une province n'adoptera pas une mesure législative en ce sens. Il me semble qu'il serait prématuré de songer à accorder des permis et à contrôler des loteries étrangères avant d'avoir des loteries au Canada. Ce n'est pas du tout la même chose que d'essayer d'appliquer la Loi actuelle. Je ne vois pas comment nous pourrions commencer à réglementer les loteries étrangères alors que nous n'avons pas de loteries au Canada.

[*Texte*]

The Chairman: Mr. Gervais?

Mr. Gervais: You said that there has been no application of the law, but so far as Quebec is concerned I know of several instances where seizures have been made over the past few years. I will readily admit that the law is not applied fully, but certainly an attempt is made in certain instances.

The Chairman: Mr. MacEwan?

Mr. MacEwan: Mr. Chairman, I just wanted to ask the Minister if "meaningful consultation" was–which is the well-known phrase–carried out with the attorneys general of the various provinces on many or most of these amendments which are now before us?

Mr. Turner (Ottawa-Carleton): Yes. Every year the federal Department of Justice meets with the Commission on Uniformity of Legislation in Canada representing all of the provincial attorneys general. The subject of lotteries has really been discussed off and on for the last five or six years at those conferences. Bill C-195, the predecessor to this bill, from which there have only been a few changes–some of those changes, as a matter of fact, as a result of comments by provincial attorneys general or their representatives–in its C-195 form received a week's study by the Uniformity Commissioners in late August of 1968.

Mr. MacEwan: I take it from what the Minister told Mr. Gilbert that this particular amendment which we now have before us was not discussed with the attorneys general.

Mr. Turner (Ottawa-Carleton): No, other than at the Uniformity Conference. However, as a result of some of their submissions Bill C-195 was changed as it now appears in C-150, so there certainly was "meaningful consultation" in the way it was understood by Premier Smith and myself.

Mr. MacEwan: I will tell him.

The Chairman: Gentlemen, it is now 12 o'clock. Perhaps this would be a good time to adjourn. I think some of the members have certain duties elsewhere.

We do not have a meeting this afternoon. Our next meeting will be on Thursday at 9.30 a.m., at which

• 1200

time we will have Professor Mewett as our witness.

[*Interprétation*]

Le président: M. Gervais?

M. Gervais: Vous avez dit que la Loi n'avait jamais été appliquée, mais je connais plusieurs cas au Québec, où des saisies ont été effectuées. Je reconnais que la Loi n'est pas appliquée dans toute sa rigueur, mais on a parfois essayé de l'appliquer.

Le président: M. MacEwan?

M. MacEwan: Monsieur le président, est-ce que des consultations sérieuses avec les procureurs généraux des différentes provinces ont eu lieu pour tous ces amendements que nous étudions?

M. Turner (Ottawa-Carleton): Oui. Chaque année le ministère fédéral de la Justice rencontre la Commission pour l'uniformité de la législation au Canada. Cette commission représente tous les procureurs généraux des provinces. La question des loteries a été discutée occasionnellement depuis cinq ou six ans, lors de ces conférences, le Bill C-195, prédécesseur de ce bill et auquel certains changements seulement ont été apportés, certains changements résultant de commentaires faits par les procureurs généraux ou leurs représentants. Le bill C-195 donc, dans sa forme primitive, a fait l'objet d'une semaine d'étude par les commissaires préposés à l'uniformité, à la fin d'août 1968.

M. MacEwan: Cet amendement dont nous sommes saisis, d'après ce que le ministre a dit à M. Gilbert, n'a pas été discuté avec les procureurs généraux, n'est-ce pas?

M. Turner (Ottawa-Carleton): Non, sauf aux conférences sur l'uniformité. Cependant, à la suite de leurs commentaires, le Bill C-195 a été changé. Il y a donc eu des «consultations sérieuses» du moins c'est l'interprétation que le premier ministre Smith et moi-même donnons à ces mots.

M. MacEwan: Je lui dirai.

Le président: Messieurs, il est midi. Je crois que certains députés ont des tâches ailleurs. C'est peut-être le moment d'ajourner.

Nous n'avons pas de réunion cet après-midi. Notre prochaine réunion aura lieu jeudi à 9 h 30 et nous aurons alors un témoin, le Professeur Muir.

TAB 10

CANADA

HOUSE OF COMMONS DEBATES

OFFICIAL REPORT

FIRST SESSION—TWENTY EIGHTH PARLIAMENT

18 ELIZABETH II

VOLUME VII, 1969

COMPRISING THE PERIOD FROM THE TWENTIETH DAY OF MARCH, 1969, TO THE TWENTY FIFTH DAY OF APRIL, 1969, INCLUSIVE.

INDEX ISSUED IN A SEPARATE VOLUME

THE QUEEN'S PRINTER, OTTAWA, 1969

29180—436½

Heaven . . . that the corruption of the earliest inhabitants of this world was punished by the great flood . . . They should also be reminded that moral corruption was the primary cause of the wars which steeped Europe in blood, the cause of the invasions of the Barbarians who brought the Roman Empire to its doom. We are threatened with a third world war and the yellow peril is at our door.

In those days, people used to say:

If P. E. Trudeau, a bachelor, is too blind or too insensitive to these dangers, he is unworthy of being the Minister of Justice of a Christian country.

Mr. Speaker, the moment of decision has come, I believe: either we accept the immutable values and the ideal coming from God or we stagger down the slope leading to the most cowardly selfishness and to the social anarchy, which brought the downfall of pagan Rome.

Such are the things at stake. I feel that every member should do his utmost to pass only adequate legislation, and if the hon. Minister of Justice, who is piloting this bill, still has a glimmer of decency in his soul he should reverse his stand and support the amendment in question.

• (8:10 p.m.)

[*English*]

Mr. Deputy Speaker: Order, please. My understanding is that the hon. member for Lotbinière (Mr. Fortin) has already spoken on this amendment.

[*Translation*]

Mr. André Fortin (Lotbinière): Mr. Speaker, I should like, with the permission of the house, to direct a question to the hon. minister or to his parliamentary secretary, in order to elucidate something which, in my opinion, should be clarified.

It has to do with paragraph (2) of section 7, where it is said and I quote:

—an act shall be deemed not to have been committed in private if it is committed in a public place, or if more than two persons take part or are present;

Mr. Speaker, here is my question. Since—

[*English*]

Mr. Turner (Ottawa-Carleton): On a point of order—

Mr. Deputy Speaker: Order. The hon. member has already spoken, and he cannot speak again.

[Mr. Godin.]

[*Translation*]

Mr. Fortin: Mr. Speaker, I do not want to make a speech but put a question to the minister to clear up a few things.

[*English*]

Mr. Deputy Speaker: I must advise the hon. member that if the minister were speaking he could pose a question, but as the minister is not speaking he cannot ask a question, unless of course there is unanimous consent.

Some hon. Members: No.

Mr. Deputy Speaker: Apparently there is not unanimous consent. Is the house ready for the question?

Some hon. Members: Question.

Mr. Deputy Speaker: Is it the pleasure of the house to adopt the said amendment? All those in favour will please say yea.

Some hon. Members: Yea.

Mr. Deputy Speaker: All those opposed will please say nay.

Some hon. Members: Nay.

Mr. Deputy Speaker: In my opinion, the nays have it.

And more than five members having risen:

Mr. Deputy Speaker: Pursuant to section 11 of Standing Order 75 the recorded division on the proposed motion stands deferred.

The house will now proceed to amendment No. 10.

[*Translation*]

Mr. Laprise: I rise on a point of order. I see that amendment No. 9 is on the order paper. To my knowledge, it was not defeated. I would therefore like to know what happened.

[*English*]

Mr. Deputy Speaker: Order, please. On Friday last it was ruled and agreed to that we would deal with amendment No. 9 following the discussion of amendments Nos. 10 and 11.

Mr. Stanley Knowles (Winnipeg North Centre) moved:

That Bill C-150, an act to amend the Criminal Code, the Parole Act, the Penitentiary Act, the Prisons and Reformatories Act and to make certain consequential amendments to the Combines Investigation Act, the Customs Tariff and the National Defence Act, be amended by deleting from clause 13 thereof paragraph (a) and paragraph (b) of sub-section (1) of the proposed new section 179A of the Criminal Code.

He said: Mr. Speaker, I believe that the purpose of my amendment is very clear. I also believe that there are many members of the House of Commons who support what I am seeking in this amendment, and when the vote on it takes place I hope that the majority will vote in its favour.

Clause 13 of Bill C-150 is the main part of this bill dealing with the question of lotteries. Its main effect is to liberalize the law of Canada with respect to lotteries, and it does this under several headings. Regardless of any views that some of us may have about lotteries generally, and I do have such views, it is not our purpose to oppose the attempt to widen the law so far as ordinary games of chance and things of that sort are concerned. We agree that if the law is to be widened with respect to office pools, raffles, bingos, games of chance and so on, there should be strict controls, and in that respect we think that the provisions of clause 13 are commendable.

However, Mr. Speaker, there are two things provided in clause 13 that many of us in the House of Commons do not like, and I make the strongest appeal I can to the Minister of Justice (Mr. Turner) to reconsider his position. The two things I refer to are the authority that is provided on the one hand for the federal government to conduct lotteries, and the authority provided on the other hand for provincial governments also to conduct lotteries.

Again, if I may multiply a few words to make our position clear, those of us who are speaking on this issue are not asking for any change in the government's position so far as lotteries generally are concerned, but we do ask this house to take a stand against state lotteries. That is the purpose of my amendment which seeks to remove from clause 13 paragraphs (a) and (b) of sub-section (1) of the proposed new section 179A. In taking this stand, Mr. Speaker, we do so not with any blue law approach but because, in the main, we feel that lotteries as a way of raising money for the state or as a way of helping people to win prizes are not good economics.

• (8:20 p.m.)

In our view state lotteries are nothing more than a form of taxation. In fact the one widespread lottery under public auspices being held in this country at this time is called a voluntary tax. The thing that is wrong about lotteries as a form of taxation is that it is the most regressive form that could be imagined. That is saying something in this House of Commons because this government has done very well in dreaming up regressive forms of taxation. I think one of the worst we have ever had is the two per cent social development tax that is still being collected, even though parliament has not approved it. But lotteries are even worse than that. When lotteries are used by governments, federal, provincial or even municipal for that matter, for the purpose of raising taxes there is no relationship whatsover to the ability of people to pay. In fact, those who are least able to pay are those who are enticed by the possibility of winning a prize. They are the people who can least afford to lose their money in this way and they are the ones who lose the most.

If people wish to take part in lotteries conducted by private organizations, by various charities and others on a voluntary basis, that is their business. But surely, it is something entirely different for the state to use lotteries as a means of raising revenue and for the state to put the stamp of approval on this method. The hope, of course, that the government has in resorting to lotteries is that people will participate because they hope they will win. The fact of the matter is most people lose in any kind of lottery. So does the state. The few examples that there are, are not being placed before us as reasons that we should pass this legislation. Reports from the state of New York indicate that the attempt there to raise money by way of a state lottery has not been successful. We hear many references to the Irish sweepstakes, but we do not hear much said about the great social improvements that have taken place in Ireland on the basis of money raised in the sweepstakes. The reason is clear: there are no such improvements. While we hear about the widows and others who win the lotteries held by the city of Montreal, there is no suggestion that the lotteries being carried on by the city have solved that city's financial problems.

We think that on every count this is the wrong way to go about things. In our view it ought not to be passed by this House of Commons. I recognize the government's position that this legislation is only permissive. The government argues that the passing of clause 13, and the eventual passing of this bill, does not bring federal or provincial lotteries into being. But permissive legislation has a way of being used. In my view there is no doubt that if this legislation is passed it is only a matter of time until provinces, under pressure, will resort to it. It can be only a matter of time

until the federal government, under that same kind of pressure, will resort to this retrogressive way of raising money for the state or of helping people put more money into their own pockets. That is the reason we urge very strongly that this house vote for my amendment and delete these two subparagraphs from clause 13 of this bill.

We have had a good deal of correspondence about Bill C-150. I should like to say that I am particularly proud of the kind of letters and submissions that have reached my desk from the churches and church organizations which have written me. I have some of them here on my desk tonight, but I shall refer to only one of them. I am picking one that is typical and also one which I think states the case very well. Normally, one can expect churches to take a careful position on these matters of social concern. It has interested me that the major churches that have been in touch with me—I admit that most of them are churches on the Protestant side but in these ecumenical days that distinction does not matter—have taken a progressive stand on questions such as abortion, homosexuality and so on. But we are not now discussing those subjects. The thing that interests me is the stand that most of the churches have taken on the question of lotteries and I find myself in agreement with them. They admit their general dislike for lotteries in any form. They admit that in their view games of chance as a way of making economic progress for the individual or anybody else are not good. But they are realistic enough to admit that it is just about impossible to legislate against every game of chance there is.

Nevertheless, these churches have come down strongly and said that in the name of all that is decent, sensible, economic and just they cannot agree with the provision in Bill C-150 in respect of state lotteries, either federal or provincial. I said I have a number of letters and that it is my intention to pick up and read only one of them. This happens to be from the Charleswood Mennonite Church, situated in metropolitan Winnipeg. This is a church other than the one I happen to belong to and Charleswood is not in my constituency. I thought this letter was one of the best which came to me and it sums up the position stated in most of the letters from churches and church organizations. It came over the signature of Mr. Rempel, the pastor of the church, and Mr. Keyler, the chairman of the church organization. I was told in this letter, as no doubt was the member for Winnipeg South Centre (Mr. Osler) because I believe since this church is in his constituency he would have received the same letter, that the members of this church were anxious to submit their comments on the various matters in respect of the Criminal Code but before they did so their congregation spent five Sunday mornings during December and January discussing the issues of lotteries, abortion and homosexuality.

The members of this congregation went over the matters very carefully with experts and finally decided to submit their comments to various members of parliament. They made it clear that the letter they submitted to us in its final form was approved unanimously by the members of that church congregation. I should like to read what this church said on the question of lotteries. It is brief, to the point, and I think we should pay attention to it:

> We recognize that office pools, raffles, bingos, and other forms of lotteries are widely used. Although these types of "games of chance" appeal basically to people's weaknesses, their discontinuance cannot be effectively legislated. It is our opinion, therefore, that privately operated lotteries should be legalized, but they should be strictly controlled by the Government, as is wisely proposed in Bill C-150.

That is one paragraph. I think it is well stated. I think the Charleswood Mennonite Church is to be commended for its position.

• (8:30 p.m.)

The letter continues with this one short paragraph:

> We are strongly opposed, however, to the federal and provincial governments using lotteries to raise revenue. We feel that this method of fund-raising has been shown to be both inefficient and unjust. It is primarily a tax on the weak and the poor.

I commend this particular congregation on that statement in respect of lotteries. This congregation has dealt with the whole broad question including private and state lotteries, and I think its position in both respects is realistic. I am sure, in fact, that there are many members of this house who take this position, and I hope they will so indicate either in the speeches they make on this amendment or in their votes when the time for voting on this amendment arrives.

In that connection, I hope we will demonstrate at some point during the report stage that this bill is not all cut and dried. I was pleased that the Standing Committee on Justice and Legal Affairs made a number of changes to Bill C-150. This demonstrates the

[Mr. Knowles (Winnipeg North Centre).]

validity of the committee system we are trying to put into effect. I know that a friend of mine along the front row a bit objected the other day by saying the committee was a failure. I think in his view it was a failure because it did not do what he wanted it to do. Among other things, that committee made changes, some of which were opposed by the Minister of Justice (Mr. Turner), and that is good.

The Standing Committee on Justice and Legal Affairs, whatever one might say about the Standing Committee on Transport and Communications, did a good job on this bill. Now that we are at this report stage, which I think is an innovation that is good but is being put to the test right now, it would be unfortunate if out of the 44 amendments put down by members not one of them was approved when it came to a vote. I hope this is one on which members will vote as they feel they ought to, without regard to what the government or the party may have said, with the result that we will take the position we do not want this regressive form of taxation or the injustice involved in state lotteries.

Having made these several references to taxation, may I go on and put it this way. What on earth is the point of having a Carter Royal Commission go into the whole question of taxation, and what is the point of having the government study that report and put all those people in the Department of Finance to the task of going into the ins and outs of it in order to bring down a white paper to develop a taxation system that is fair, if we then turn around and shoot the thing full of holes by bringing in state lotteries which have no relationship whatsoever to any kind of fair taxation system? That is why I take this stand. There are opinions on the moral and social nature of lotteries. It has been said under other headings that it is pretty hard to get a consensus on most social judgments and moral opinions. Surely, when it comes to cold, hard economics we can get a consensus. I hope there will be sufficient support for this amendment that when the time comes for the vote to be taken it will carry and we will delete paragraphs (a) and (b) from sub-section (1) of the new section 179A of clause 13 of the bill.

If this happens there are one or two consequential things that would have to be done, such as relettering some of the other clauses. I was advised before I put down my amendment that this would be within the prerogative of the law counsel, so we have no problem there. All we need to do is get this house to take the proper position on this issue.

I said earlier I recognized that what the Minister of Justice has in mind is that this is only permissive legislation. When the minister was speaking on second reading, I think he said that what this bill does in this respect is provide for a sort of local option, leaving it to the federal or provincial governments to have lotteries or leave them alone as they may wish. This provision will not work in that way. If you put the stamp of approval on state lotteries by this kind of legislation, it is only a matter of time until we have them.

As a matter of fact, I find it difficult to take that argument from the Minister of Justice, because if he is putting in this clause, and he remains the Minister of Justice, he would be the one to bring in an order for state lotteries. If he does not intend to do that, why is he putting this in the bill now?

It is not my desire or my intent to speak at length on this matter. I hope I have made my point. I do have one other point on this legislation I wish to draw to the attention of the minister. Before doing so may I emphasize that so far as I am concerned, I am not putting this matter on any narrow blue law basis. I am putting it on the basis of what is common sense and good economics. I have cited the position that the churches have taken because I think they are to be commended for the realism of their approach. As I say, the two paragraphs I read from the letter from the Charleswood Mennonite Church on the outskirts of Winnipeg I think represent the essence of the church's opinion and this House of Commons ought to pay attention to it.

I said I had one other piece of evidence. I think the Minister of Justice is acquainted with the Minister of Consumer and Corporate Affairs (Mr. Basford). In fact, I believe they are good friends. A year ago during the leadership campaign I think they were on the same team. At any rate, I should like to introduce the Minister of Justice to the Minister of Consumer and Corporate Affairs who, like others in the government, runs around making speeches. He has some public relations people in his department who give us copies of these speeches.

The Minister of Consumer and Corporate Affairs made a speech on Friday of last week at the annual meeting of the British Columbia

division of the Consumers' Association of Canada at the Grosvenor Hotel in Vancouver, British Columbia. We get so many of these that one does not know whether he should take the time to read them all, but one learns to leaf through them.

Mr. Turner (Ottawa-Carleton): You only read the ones you agree with, Stanley.

Mr. Knowles (Winnipeg North Centre): I had to go to the last few pages of this one to find what I wanted, and it came as a surprise to me as I did not expect it. I expected to throw this speech away. In any event, I got to the end of the speech and found that the minister discussed with the members of the British Columbia division of the Consumers' Association of Canada the folly of games of chance and prizes as conducted by the retail trade in the United States and Canada. He expressed a strong belief that this sort of thing should be curtailed.

The minister, in referring to these games and gimmicks in the United States, suggested that the chances of winning prizes vary from game to game but are found to be monetarily low regardless of the game. He said that, as a whole the programmed chances of winning a cash prize per store visit were about 3.4 to 1,000. He referred to a quotation from an article which appeared in the United States.

The minister went on to refer to the fact that once the odds of winning a major prize feel to zero, the advertising implications reached a peak. Once the one major prize was won in a particuliar area the advertisements began to emphasize this fact. The clear implication was that other prizes of the same size were available when in fact they were not. Consumers who believed they were available were being deceived. I could go on with these statements by the hon. minister's friend who stood up before the Consumers' Association of Canada and stated that one of the things we must get rid of was this practice of games, chances, prizes and gimmicks in which stores indulge in an attempt to entice people in simply because of their gambling instinct. Many of these people feel they are going to win, but the minister made it clear that they do not have a chance.

• (8:40 p.m.)

What kind of a situation is this? These ministers are sitting too far apart. We have one minister saying we must get rid of games of chance conducted by the retail trade in this country while another minister sitting at the other end of the cabinet benches, is saying it is time to permit games of chance and lotteries conducted by the government itself. How ridiculous a situation can you get? These two ministers are good friends, and I hope they will get together. I hope the Minister of Justice will take the advice of his friend the Minister of Consumer and Corporate Affairs, to the effect that there is just no economic sense in trying to make money, trying to raise revenue from the people of this country by means of lotteries. If the people of Canada want to conduct lotteries in a private way, our law for a long time has said it is all right, and the law still says this. But let us not put the stamp of approval on state lotteries run by federal government or by the provinces. This is why I ask for support of this amendment.

I emphasize that this amendment is not a package involving several propositions. There is no confusion here. There is no question of having to vote one way or the other because of all the elements involved. There is one clear, simple issue in this amendment, and that is its opposition to state lotteries, federal or provincial. I hope the house will support me in that opposition.

Mr. G. W. Baldwin (Peace River): Mr. Speaker, I shall be very brief. In our approach to this matter we still retain the same freedom of action which was referred to by our leader at the time of second reading of the bill. I intend to support the principle put forward by the hon. member for Winnipeg North Centre (Mr. Knowles). I can say in very few words why I intend to do so. I accept many of the comments made by the hon. member. I would like to think that the people of Canada have had enough of gambling. They gambled last June 25.

Some hon. Members: Hear, hear.

Mr. Baldwin: Hoping for a royal flush, they got a busted straight, and lost.

An hon. Member: They lost badly.

Mr. Baldwin: I have very considerable reservations about the federal government and the provincial governments becoming involved in lotteries. Some years ago I sat on the estimates committee which looked into this issue. We examined the records and figures relating to the lotteries conducted by the Irish Republic. Although we never made a report or any recommendations which came into the house, at that time our conclusion

was that the amount of money which found its way into the realm of hospital improvement in the Irish Republic hardly justified the work and problems created by allowing the state to become involved in gambling. I fear that if this were done in Canada, very serious problems could arise with regard to administration.

While I have every intention of supporting the other amendments which the government has introduced I cannot see my way clear to supporting the section with regard to lotteries. Therefore, I intend to support the amendment offered by the hon. member for Winnipeg North Centre.

[*Translation*]

Mr. Real Caouette (Témiscamingue): Mr. Speaker, I would like to deal with the amendment proposed by the hon. member for Winnipeg North Centre (Mr. Knowles) concerning lotteries; it seems reasonable to us. Actually, the purpose of clause 13 is to add section 179A of the Criminal Code which reads as follows:

(1) Notwithstanding any of the provisions of this Part relating to gaming and betting, it shall be lawful

(a) for the Government of Canada to conduct and manage a lottery scheme in accordance with regulations made by the Governor in Council and for that purpose for any person in accordance with such regulations to do any thing described in any of paragraphs (a) to (f) of subsection (1) or subsection (4) of section 179;

and also to enable the—

(b) For the government of a province either alone or in conjunction with the government of another province—

—thus becoming a sort of co-operative lottery or allowing a group of provinces or two provinces to join together to—

—to conduct and manage a lottery scheme in that province, or in that and such other province, in accordance with any law enacted by

—legislation—

Mr. Speaker, it is generally recognized that people like games of chance, they like gambling; it is only natural.

We see for example, people rushing to church bingoes, or social club bingoes.

Lotteries do not improve the economic level of a nation, a province, a municipality, a school board or whatever. Somebody is making a profit, but at the expense of all of those who buy tickets or indulge in gambling.

Mr. Speaker, according to the spirit of this bill, we will eventually have national, provincial or municipal lotteries, and perhaps even school, charity organizations and social club lotteries. All such lotteries will tend to improve the economic situation of some administration in all those fields.

The municipal lottery of Montreal is still going on. Such a lottery was launched in the hope it would solve the financial problems of that city, but it took a few months to realize that the lottery was inadequate. The municipal authorities had to increase the land tax, public transportation tickets and the cost of all municipal activities.

Provincial and federal lotteries would accomplish the same thing with exactly the same results.

I believe, Mr. Speaker, that the people of Canada need other things than lotteries. I know people who play bingo. Bingo-playing is a disease, so we play bingo. Not necessarily to support a charitable institution, but in the hope of winning first prize. Sometimes, a week's salary is thus wasted away. As for the salary of the family head, it is spent in one week, playing bingo in the hope of drawing the big prize. Most of the time, one does not draw the big prize; one is poorer than before.

As far as the principle of lottery is concerned, the Ralliement créditiste cannot recognize it. However, there are exceptions to every rule, and we think that our parishes, for instance, or religious organizations—

An hon. Member: So there is an exception.

Mr. Caouette: There are exceptions because the present system makes them necessary.

If our parish priests were assured of being able to meet their obligations in their field, if young people never spoke of bingoes, there would no longer be problems. I hear the Minister of Justice (Mr. Turner) speak of that exception. We did not create it, it is the system advocated by the Minister of Justice. He is the one who makes it necessary to resort to exceptions.

From the time I was a child, I have seen all kinds of bingos and they were all illegal. The parish priest was always afraid of being arrested. No province could authorize the holding of a bingo, because lotteries or bingos, were dealt with in the Criminal Code, and come under federal jurisdiction.

• (8:50 p.m.)

Mr. Speaker, why are lotteries resorted to today? I am speaking about those held by

religious organizations, social clubs and churches to raise the funds they are unable to obtain through other means in the present situation. In our crazy set-up, we must tolerate that the parish priest ask his flock to play bingo. But the principle does not change. That does not improve the living conditions of the people as a whole. That does not put money into circulation, but further taxes the people in order to enable a few to make some very short-lived gains. That does not last for any length of time. We always get the same results and we know what they are. Mr. Speaker, if we must admit that bingos, because of our present system, may temporarily help charitable organizations, we do not believe that the federal government is a charitable organization. We do not believe that the federal government should organize a national lottery in Canada.

We do not belive that the provincial government should establish a provincial one, nor the municipal governments any local ones. But, with regard to charitable organizations, because of the present situation, they have no other ways of raising money, except lotteries or bingos.

So we shall support the amendment moved by the hon. member for Winnipeg North Centre (Mr. Knowles), but we remain convinced that this is not a solution to the problems which affect the whole nation.

Mr. Speaker, it has been a long time since that lotteries project was first suggested to the government. The government is strongly urged to set up a lottery or to amend the Criminal Code and I say again that this would not settle the matter.

However, in view of the financial system we live in, charitable organizations and social clubs are compelled to resort to bingos. Let us enable them to do so without breaking the law as has been the case since bingos are conducted throughout the country.

Mr. Speaker, we are going to support the amendment of the hon. member for Winnipeg North Centre, but we still maintain that setting up a lottery will not settle anything. This is quite clear in our mind.

This amendment suits us in the circumstances. It will enable charitable organizations to paddle and dabble in a system which the Minister of Justice wishes to maintain at all costs in Canada.

[*English*]

Hon. John N. Turner (Minister of Justice): I should like to clarify very briefly the purpose of these two subsections to which the amendment of the hon. member for Winnipeg North Centre (Mr. Knowles) applies.

The new section 179A to be found in clause 13 of the bill provides, as the hon. member suggested, that lotteries shall henceforth be lifted from the Criminal Code and placed within provincial option under a licence of the provincial attorneys-general if their purpose is charitable or religious or if they are run by charitable or religious organizations. That is to be found in paragraph (c) of the first subsection of section 179A. At the same time, a similar local option is given to a provincial attorney general or to a Lieutenant Governor in Council in respect of agricultural fairs or exhibitions or to operators of a concession leased by an agricultural board or an exhibition board to conduct and manage a lottery scheme in the province.

It seemed logical to the government that if the criminal law were to be withdrawn from lotteries managed by private organizations, charitable and religious, or by agricultural fairs, an option should also lie with the provincial government itself or with an agent of a provincial government, and, since this was being done, that the criminal law should be totally withdrawn in its application to the federal government in this area as well.

I wish to deny categorically any suggestion that clause 13, particularly the provisions to which the hon. member's amendment relates, in any way sets up a provincial lottery scheme or a federal lottery scheme. It in no way does this. It merely takes both areas out of the ambit of the criminal law—and I think the hon. member for Winnipeg North Centre will agree with the substance of what I am saying.

Mr. Knowles (Winnipeg North Centre): It will just make it possible.

Mr. Turner (Ottawa-Carleton): That is right. It just makes it possible. It withdraws the application of the criminal law and makes this a question of civil, public policy. It does not establish a new tax because no new lottery scheme is set up. As the hon. member for Winnipeg North Centre suggested correctly, it is, if one wishes to call it so, permissive legislation. It does establish a local option and it now becomes a question of public policy at the federal and provincial levels whether lottery schemes ought to be established. It is not a stamp of approval. Since the hon. gentleman referred to my colleague the Minister of

Consumer and Corporate Affairs (Mr. Basford), may I say it is not even a trading stamp of approval. In no way does it establish any lottery scheme under public auspices in this country.

Mr. Knowles (Winnipeg North Centre): It may not be a trading stamp of approval but it is a poor trade.

Mr. Turner (Ottawa-Carleton): Let us begin with the provinces. Sub-paragraph (b) of subsection (1) of the new section 179A, which is affected by the amendment, reads:

Notwithstanding any of the provisions of this part relating to gaming and betting, it shall be lawful

(a) for the Government of Canada to conduct and manage a lottery scheme in accordance with recommendations made by the Governor in Council and for that purpose for any person in accordance with such regulations to do anything described in any of the paragraphs (a) to (f) of subsection (1) or subsection (4) of section 179.

• (9:00 p.m.)

What does this mean? It means that the criminal law is withdrawn. It means that the government of a province would have to go before its legislature and get the approval of public opinion in the province. It would have to get the approval of the majority of the members, duly elected, of the provincial legislature. Only then, would a provincial lottery be established. All that this withdrawal of this type of lottery scheme from the criminal, the penal law means is that if a province is willing to face public opinion in the province and decides to introduce an enabling provision in the legislature of the province, then the provincial government takes upon itself before its own legislature the introduction of such legislation. Through its criminal law the federal government says: "That is your business. We are withdrawing from the field. We are giving you the option. You decide in terms of the opinion of your own people in the province whether you want a lottery scheme. If you do, the conditions that you attach to such scheme are a provincial matter".

This being the case, it seemed to the government logical that if the application of the criminal law to the establishment of a lottery is to be withdrawn in the provincial area it ought to be withdrawn in the federal field in the same fashion. So that the establishment of a lottery would become no longer a question of criminal law but of public policy, for which the government of the day would be responsible. May I say to you, Mr. Speaker, and through you to the members of the house, that as far as I know the federal government at present has no intention of establishing a lottery scheme. We wanted the bill to be symmetrical.

The establishment of a lottery by a provincial government would be by provincial statute and would be without the criminal code. In the federal area such establishment would be by order in council, which would have to be proclaimed and would be subject to the usual confidence vote in the House of Commons. In any event, there is no present intention to enter that field.

Mr. Douglas (Nanaimo-Cowichan-The Islands): Would the minister permit a question. Would he explain to the house why members of the legislature would have some voice in determining the terms and conditions under which a provincial lottery would be conducted, whereas members of parliament would have no voice whatever in expressing their opinion with regard to the terms and conditions under which a federal lottery would be conducted?

Mr. Turner (Ottawa-Carleton): Because at the moment no provincial legislature has had the opportunity in any way of pronouncing itself upon the subject. As I say, an order in council would be subject to all the motions of want of confidence that are available to members of this house, and the government of the day would so govern and so limit.

Mr. Douglas (Nanaimo-Cowichan-The Islands): I do not think that answers the question. That would give hon. members the opportunity to vote either confidence or lack of confidence in the government but would not express any opinion on the terms and conditions under which a lottery should be conducted. Surely, that is an important item for those who might want to support a lottery, though I am not one. They would want the terms and conditions set out in the statute under which the lottery was to be operated.

Mr. Turner (Ottawa-Carleton): I suggest to the hon. member that a want of confidence motion in connection with such an order in council could go to the terms and conditions, as it could to the terms and conditions of any order in council.

Mr. Andrew Brewin (Greenwood): Mr. Speaker, notwithstanding what the Minister of Justice (Mr. Turner) has to say, I should like to rise to support the amendment proposed by my colleague the hon. member

for Winnipeg North Centre (Mr. Knowles). I deeply regret that this legislation, which in general is civilized and civilizing, would have incorporated within it this particular feature of permitting federal or provincial lotteries. In my view, this is a blot on what is otherwise an enlightened piece of legislation.

I do not know whether it is too late to appeal to the Minister of Justice to look at this matter again; I suppose it is. I do not know whether it is too late to appeal to the House of Commons here assembled to look at it again, and to reject the present provision in this bill. As I say, I believe in an otherwise enlightened and civilized piece of legislation, this is something that would be deeply regretted if the house saw fit to adopt it. I am not against lotteries because of any puritanical or restrictive points of view. I assume that gambling is a natural instinct, one that cannot be repressed.

Mr. Knowles (Winnipeg North Centre): How otherwise would this government have ever got elected?

Mr. Brewin: That is a good point. But when we come to consider the effect of this legislation as far as lotteries are concerned, I think we have to admit that this provision is permissive of a socially injust, regressive and unfortunate system of taxation; that is the net result of it.

I have here a quotation I should like to read to the house contained in a publication called *The Christian Century*, though I do not know to which century the reference is.

Mr. Knowles (Winnipeg North Centre): It has not come yet.

Mr. Brewin: I agree with my colleague. The quotation is this:

In the final analysis, revenue must come from productive enterprise. Gambling produces no wealth; it merely redistributes it from the hands of the many into the hands of the few.

The essence of this legislation is that it permits a redistribution of wealth that hits the people who are the poorest and least able to give. It takes from the many and gives to the few. That is the basic effect of legislation of this sort. It dries up the well-springs of genuine and decent charitable giving. It has been tried out on many occasions. The pendulum for and against lotteries has swung first one way and then the other. I believe many important institutions were founded as a result of lotteries. Somebody told me that Harvard University was built from the proceeds of a lottery. There used to be times when the sheriffs of the courts in England went out and sold lottery tickets, which was something like the raising of bond revenue for the government of the country. Similarly, when justices travelled throughout the country they sold lottery tickets. But every time it has been tried it has been found to involve all sorts of undesirable social consequences.

I am surprised at the permissive attitude of the Minister of Justice. He says: "Well, we don't intend to do this or expect to be asked to do this, but we will give the provinces permission to do it". That sort of permissiveness is the very vice that is destroying sound attitudes.

Britain has experienced this same swing of the pendulum. The British have passed legislation giving the opportunity for gambling wider scope. I have in front of me a press clipping, the headline of which is: "Britain's gambling craze saps energy and resources". I suggest that that is the natural tendency of legislation of this sort. A state lottery is bound to result, as the headline says, in a sapping of energy and resources. It is promoting delusions on the part of people who cannot afford to have such delusions.

• (9:10 p.m.)

I do not know why a piece of legislation which makes good sense, which is civilized and civilizing, should include a clause on lotteries when experience shows that lotteries do not work, are not sound, and do not bring intelligent results. I know that there is widespread public opinion favouring lotteries. I would not mind betting that if I consulted some of my constituents they would be in favour of lotteries. Why is that, Mr. Speaker? I submit it is because they have no experience showing how destructive and unjust lotteries can be.

I plead with the minister to look at this clause again. I plead with the house to take a responsible view of this matter and to support the amendment of the hon. member for Winnipeg North Centre (Mr. Knowles). I do not ask that because he is my colleague; I ask it in the name of common sense and good judgment.

Hon. Robert L. Stanfield (Leader of the Opposition): Mr. Speaker, I am in a curious position. I say that if charitable organizations and municipalities are to be exempt from the provisions of the Criminal Code with respect

to lotteries, provincial legislatures ought also to be exempted. Frankly, I question the wisdom of having parliament exempt charitable organizations. How can the government say that if provinces operate lotteries they will be breaking the law? Certain narrow exemptions are included in the bill. I do not think it is correct to say that an analogy can be drawn with respect to what is being legislated for the provinces and what is being permitted under the federal authority. When one considers the matter at all, one sees that the Criminal Code is being changed to permit lotteries to be operated by the federal government. In short, parliament is being asked to allow the government to run lotteries.

Such legislation goes far beyond any legislation that would merely amend the Criminal Code. Frankly, we are being asked to authorize the Governor in Council to establish lotteries. That is absurd. One may ask, why is this government asking parliament for authority to operate lotteries.

An hon. Member: Because Benson's desperate.

Mr. Stanfield: This is absurd.

Mr. John Gilbert (Broadview): Mr. Speaker, I support the amendment of the hon. member for Winnipeg North Centre (Mr. Knowles). The arguments of the hon. member for Winnipeg North Centre and the hon. member for Greenwood (Mr. Brewin) were so clear, concise, and convincing that it is hardly necessary for me to speak.

This afternoon the hon. member for Peace River (Mr. Baldwin) berrated me for praising the Minister of Justice (Mr. Turner) for the provisions regarding homosexuality. Probably I went a little too far in praising the minister. I think the amendments concerning homosexuality, abortions, guns, and parole have been brought in because the intention is to bring about an enlightened society—and Lord knows, we will have to wait a long time for a just society.

At present I am speaking about the lottery clause of the bill, and I support the amendment of the hon. member for Winnipeg North Centre. The Minister of Justice may say that the lottery clauses are permissive only; yet I do not think that the introduction of this clause shows that the government has an enlightened view on this matter.

When supporting the idea of lotteries, many Canadians cite as an example the Irish sweepstakes. They say that much money from Canada is flowing out to foreign lotteries and that if we have our own Canadian lottery the outflow of that money will cease. May I point out to hon. members that the Irish sweepstakes are operated, not by any government authority, but by private authority. In the 36 years this private authority has run the sweepstake it has made in profits $1.2 billion and made available to hospitals and other charitable organizations only $140 million. If that Irish private organization were considered in that country an ordinary corporation subject to corporation taxes it would pay much more than $140 million in taxes on profits of $1.2 billion. In other words, the $140 million paid to charities and hospitals is less than any taxes a comparable corporation would have had to pay.

An hon. Member: What about the prizes?

Mr. Gilbert: Someone asks, what about the prizes? To that I can only say that the amount of money given to hospitals and other charitable organizations makes me think that the Irish sweepstakes have been hardly worth promoting. I do not think the state ought to make itself responsible for the provision of gambling facilities. It is undignified. The government of Canada should not enter the gambling business. Many studies into lotteries have been conducted in Britain and Canada. The Joint Committee of the House of Commons and the Senate studied in depth the question of lotteries. That was in 1956, I believe. That committee concluded we should not have lotteries here, and made that recommendation. They said that lotteries will bring little tax revenue. Studies have indicated that lotteries in Quebec will net that province little more than $10 million at the highest, an insignificant figure which will do little in Quebec to help hospitals and charitable organizations.

I do not think we ought to support this new legislation, and we ought to support the amendment of the hon. member for Winnipeg North Centre. The minister ought to know the effects of lotteries in New York city and New Hampshire. Responsible authorities there have said that lotteries, from the point of view of the state, have not been a financial success and have not helped to meet some of the problems they were intended to meet.

I asked the minister when he appeared before the Standing Committee on Justice and Legal Affairs who was promoting this new lottery legislation. He said no one in particular was, and therefore the responsibility for introducing this legislation must be laid at the minister's doorstep. Even though the hon.

member for Peace River (Mr. Baldwin) finds the praise for the minister a little too eloquent, I ask the minister to give second thought to the legislation he is bringing forth and to give close attention and co-operation to the amendment of the hon. member for Winnipeg North Centre.

• (9:20 p.m.)

This amendment makes sense. It means the provincial and federal governments will not be promoting the gambling instinct among Canadians. It is not worthy of any government to promote this type of instinct. I need not underline the fact that the operation of any lottery adds little to employment opportunities. The few people required to operate a lottery will not solve any of the employment problems which we face today. That cannot be used as an argument.

I fear the minister may have to bring forth a song with regard to lotteries. We all know the song, "Don't play bingo tonight mother, stay home with daddy and me". A new national song may have to be brought forth with regard to the operation of lotteries to replace this song. I say, Mr. Speaker, the government should not make itself responsible for gambling facilities. It should not promote the gambling instinct because that is unproductive and unworthy of the government of Canada.

Mr. Baldwin: May I ask the hon. member a question?

Mr. Gilbert: Certainly.

Mr. Baldwin: Would the hon. member be prepared to ask unanimous consent of the house to review the remarks he made in his first speech?

Mr. Gilbert: I have full confidence in the Minister of Justice (Mr. Turner). He believes in the trustworthy process of democracy. After hearing the eloquent pleas of the hon. member for Winnipeg North Centre and the hon. member for Greenwood (Mr. Brewin), even discounting the remarks which I make, I am sure the minister will be persuaded like Paul on the road to Damascus, to see the light and bring forth the proper legislation.

Mr. David MacDonald (Egmont): Mr. Speaker, I rise to speak briefly on this particular amendment. I have not spoken on some of the other amendments because, on second reading, I had an opportunity to state in a general way my position on the most contentious issues encompassed in the amendments to the Criminal Code. I agree with other hon. members that the particular amendments included in the bill represent an attempt by the minister and members of the house to up-date and bring into conformity the laws of the land as we currently know them. Someone might immediately suggest this is what we are also doing with regard to gambling. A good deal of gambling is carried on in this country under one guise or another. If looked at squarely, much of it is carried on illegally, but government and police officials tend to look the other way when gambling of one kind or another takes place in this country.

Quite frankly, I do not feel the hon. member for Winnipeg North Centre (Mr. Knowles) has gone far enough in this amendment. I did not have the opportunity to hear his remarks. I do not know why he would distinguish between lotteries operated by provincial or federal authorities as opposed to those operated by religious or charitable institutions or agricultural affairs. Gambling is gambling, no matter where it takes place. The issue is surely the same. I believe gambling does little or nothing to encourage people in the correct ethics that motivate and guide the structures of our society and economy. We cannot have a two-sided view, people doing right in one situation and wrong in another.

There have been many experiences with various forms of lotteries. The hon. member for Broadview (Mr. Gilbert) mentioned the song, "Don't Play Bingo Tonight Mother". During my time as an active minister and pastor I had to deal with a number of individuals who became victims of an addiction to gambling. It is not the purpose of the minister's amendments to encompass all the various problems of morality in our society.

Our lawmakers have a responsibility to lay down at least general guide lines, but when dealing with the matter of lotteries we have gone far astray. The idea of giving permission to institutions, provinces and governments to conduct lotteries is in direct contradiction to everything the government does in the exercise of its authority. I know of no government department or agency that essentially says, you can expect to receive something for nothing. Therefore, I find it extremely surprising and illiberal, if I may describe it that way. It will do no good.

While the government may find people in certain areas strongly in support of lotteries, they will in truth weaken the moral fibre of

the country and create a number of other problems. The minister is young and intelligent, and I find it hard to believe he thinks this is a reform measure.

Mr. Woolliams: He is younger than you.

Mr. MacDonald (Egmont): His concept of reform is vastly different from mine. I do not find very much wrong with some of the other amendments in this bill. In fact, in some cases, there is too little being done. As was mentioned earlier, half a loaf of bread is better than none. I cannot understand why one proposal in this omnibus bill sets back the whole trend of reform. I presume there have been political pressures, perhaps within the government caucus. Perhaps there have been pressures we have not heard about in this chamber which have been brought to bear on the department and its officials. The government has not assessed what is proper reform when drafting in this bill.

I will be happy to support this amendment. As I say, it does not go far enough. Religious institutions should be teaching that we should not expect something for nothing. It is shocking to see that they might be permitted, under this bill, to carry on games of chance. There are the very people who would condemn a man who becomes addicted to gambling, whether at the race track, in a poker game or in whatever form it may appear. Now, of course such a man will be encouraged in a large way to believe this is a good thing. He will even be encouraged, in the advertising that will follow, to believe that in some way he is supporting his country because he buys lottery tickets on a regular basis.

• (9:30 p.m.)

If that is the kind of attitude we are going to generate amongst the people of this country, then God help us all because we have fallen far short of understanding what it is that really makes for an effective society in which people work together, not for one person to gain a great many advantages over another without earning them, but in which each individual makes his own contribution for the mutual benefit of all.

I plead, as other members have done, that the minister give this matter very serious consideration. I would also speak frankly to hon. members on all sides of the house, telling them that in my estimation this is the most illiberal aspect of these amendments to the Criminal Code.

Mr. Les Benjamin (Regina-Lake Centre): Mr. Speaker, I wish to express my support for the amendment moved by the hon. member for Winnipeg North Centre (Mr. Knowles) for reasons that I do not think have yet been expressed this evening but that I believe are in the minds of members in all parties. I support the amendment because it seems to me that government lotteries whether they be federal, provincial or municipal, are essentially an evasion of the principle of responsible government. They are an attempt at the evasion of the consequences of taxation legislated by parliament, legislatures and municipal councils. They are an attempt to finance government by taking advantage of something that might be considered a weakness in all of us. They are an appeal to an instinct or to a state of mind that has been generated through the brainwashing that has taken place for so many years, the brainwashing which says that there is something intrinsically bad about a tax dollar spent, and something intrinsically good about a dollar spent by or for private endeavour.

Government lotteries in my opinion are an attempt to create a myth or an illusion that there is an easy way to finance the cost of governing ourselves. They are not an easy way, Mr. Speaker. Those of us who are in parliaments, legislatures and municipal councils know that the ways of paying for governing ourselves are never easy. All of us, as legislators, accept the responsibility of assessing the costs of governing ourselves, and from time to time should we assess the wrong ways of taxing ourselves we should be prepared to accept any consequences. Lotteries are an attempt to evade such consequences.

Whatever demand there may be in the country for lotteries, be it a majority demand or a minority demand, be it from some provinces or municipalities, even be it in the minds of some of the members of the government, I submit that demand has arisen mainly as a result of the brainwashing that has take place as a result of the unholy amount of editorials and publications that have continually condemned government spending and government taxation. This myth that there is something bad about a tax dollar spent and something good about a private dollar spent needs to be exploded once and for all.

It seems to me that legislators above all should be doing a positive job in stressing the value of tax dollars, in urging citizens to be concerned about those from whom tax dollars are raised and how they are raised and spent,

as well as the amount of tax dollars. As I have said, lotteries are an attempt to evade the principle of responsible government.

I hope that the Minister of Justice (Mr. Turner) will change his mind and will agree that the amendment moved by the hon. member for Winnipeg North Centre is valid.

I do not know if this will be a sufficient reason for the hon. member for Egmont (Mr. MacDonald), but I submit that when a church, a lodge or a fraternal organization has a raffle, a punch board, or whatever other means they may use to raise funds, in almost all cases the overwhelming majority of those funds are raised from their own members. It is a way of taxing themselves to pay for their own organization. It may also be an admission by an organization that it is unable to do its financing through what could be considered more ethical and moral means. But it is still a way of taxing themselves for their own benefit because they cannot go to property, incomes or corporations for their financing. They rely upon voluntary giving, and they look upon raffles as a form of voluntary giving.

I suppose that all hon. members, after spending a week-end in their constituencies, return here with pockets full of raffle tickets. If one were to add them up they would represent a fair number of dollars over a year and very few, if any of us, have ever won a prize. I know I haven't. I am a born loser in these things. I hope that I am making some reasonable rationalization as between state lotteries and raffles held by fraternal, charitable and religious organizations. I might say, Mr. Speaker, that I consistently refuse to buy a raffle ticket from an organization whose aims and purposes I oppose. For example, I would never buy a ticket in a draw sponsored by the Liberal Association in Regina-Lake Centre constituency.

Mr. Turner (Ottawa-Carleton): But each time you run as a candidate for the N.D.P. that is the greatest gamble you can take of your life.

Mr. Benjamin: When political parties hold raffles in my constituency most of the proceeds come from their own members and supporters. It is a method of taxing themselves. But surely, it is not logical in a democratic society for a government to attempt to evade responsibility and the consequence of taxation by using lotteries as a mythical, easy way to help finance government. Surely, this is an appeal to base instincts and base motives.

Surely, it is an appeal to greed and selfishness of the worst kind. While this may be bad for individuals and small organizations, surely it is doubly bad for governments. I hope that the Minister of Justice will agree that the responsibility for and consequences of tax levying by governments must remain with the field of legislating for taxation rather than in the field of lotteries.

[*Translation*]

Mr. André Fortin (Lotbinière): Mr. Speaker, now before the house is a motion proposed by the hon. member for Winnipeg North Centre (Mr. Knowles) to delete from the omnibus bill, paragraphs (a) and (b) of clause 13 seeking to legalize lottery schemes at the levels of the federal as well as the provincial governments.

Mr. Speaker, clause 13 of the omnibus bill reads in part as follows and I quote paragraph (a) of subsection 1:

> (a) for the Government of Canada to conduct and manage a lottery scheme in accordance with regulations made by the Governor in Council—

Moreover it would be legal, and I read paragraph (b):

> (b) for the government of a province, either alone or in conjunction with the government of another province, to conduct and manage a lottery scheme in that province, in accordance with any law enacted by the legislature of that province—

Mr. Speaker, it is then a matter of establishing a national lottery scheme, making it possible for a province to participate. On the other hand, those of us who follow those questions closely, already know about a municipal lottery which, in fact, is nothing but a voluntary tax levied by the City of Montreal.

The City of Sherbrooke has also approved the establishment of a municipal lottery similar to that of Montreal but on a smaller scale.

However, in paragraph (c) of the bill, it is further proposed to legalize any lottery scheme for a charitable or religious organization, under a licence issued by a province, provided the benefits are used for charitable or religious purposes.

• (9:40 p.m.)

Mr. Speaker, there are consequently many kinds of lotteries. In my opinion, it is important then to distinguish among them, with regard to the amendment of the hon. member for Winnipeg North Centre that seeks to reject the government proposals.

In order to facilitate that study, Mr. Speaker, we must ask ourselves the following question: Why establish a lottery system? What reason prompts us to set up and operate such a system? What is the purpose of those clauses? When considering the matter a little more thoroughly, Mr. Speaker, we realize that the provinces in general are all in favour of setting up a lottery.

Apparently, the federal government is completely in favour of a lottery system. We note that more and more municipalities also wish to establish their own lottery system.

Why do the various levels of government wish to establish a lottery system, as if it were bones for dogs?

I think, Mr. Speaker, that the answer is simple enough. In the first place, the various governments, when establishing a lottery system, want to solve their financial problems. Some representatives of the federal, municipal or federal governments openly state that they want to support their administration and obtain an additional source of income.

Other representatives who are not so honest, at the municipal as well as at the provincial or federal levels, do not say that it is partly to solve their financial problems, but basically, that is the reason which motivates them.

As for the second reason, I think it is because an original solution was found to the financing, planning and construction of hospitals, homes for the aged, jails, etc.

In my opinion the third motive is the following: The provincial, municipal and federal governments wish to seek a source of revenue other than taxes because the population is overtaxed at the federal, provincial and municipal levels.

And the finest example is that of the city of Montreal where Mayor Drapeau had no other choice than to establish a "voluntary tax", according to his own words in order to enable the city of Montreal to honour its obligations. This also was intended to secure another source of revenue, to channel other income from the general public while not leveying a new tax which would have been badly received by the people.

Therefore, Mr. Speaker, if we follow up this logical reasoning, each of these levels of government must levy a tax in disguise, a tax which we want to sugarcoat to make it more palatable, a tax which we would like to be voluntary, because less and less people are paying up spontaneously.

Mr. Speaker, this brings me to a basic principle which might enlighten us. I think that first of all we must clearly establish that this is a lottery scheme and what we just said shows it is an admission that the monetary system is unable to fulfil its purpose, and to meet community as well as individual requirements.

The wish to establish a lottery or a national, provincial or municipal lottery scheme, is an admission of incapacity, Mr. Speaker, in view of the increasing obligations, the more and more serious financial problems and the greater financial frictions that result from the bigger loans we must make abroad to honour our obligations.

The wish to establish a lottery scheme is, in my humble opinion, an admission of the incapacity of our present monetary system to achieve its purpose, which is to meet the needs of the people.

That is why, at the present time, the governments have no choice—at least, that is what they say—but to establish what many have called a national barbotte, in which any one will flounder, take a chance or bet, knowing that there will be only one big winner, the government, the State, and that always at the expense of the individual. Mr. Speaker, I feel that this is fundamental.

The wish to set up a lottery scheme is an admission of imcompetency considering the increased financial requirements of our provincial, municipal and federal administrations.

Secondly, the amendment to the Criminal Code concerning lotteries is a way of evading the basic problem, that of money.

Mr. Speaker, the governments are confronted more and more with financial problems they are unable to cope with, for they are blind and obtuse, and absolutely refuse to examine seriously our proposals. They well know that the Canadian people are unable to pay more taxes, as they are already overtaxed.

At the present time, the federal government is raising illegal taxes which are not authorized by the Parliament of Canada. He needs money, but he does not want to say so to the people. That is why he is in favour of a lottery system.

While he is putting up a gigantic advertising campaign to incite people to buy a ticket for this or that lottery, in short, to take part in this national barbotte, the state, that is the provincial, the federal or the municipal government, collects this money and reduces the buying power of the Canadian people by that

amount. It is a disguised tax used by governments who do not take their responsibilities.

But what is even more serious is that the problem always remains there, dormant, inherent to our complex situations, to our financial problems, and nobody has enough courage to try to solve them.

• (9:50 p.m.)

Thirdly, a lottery is, in my humble opinion, merely an essential source of additional income for governments, whether they admit it or not, because they cannot increase their revenues without levying more taxes.

However, I cannot help, but say that governments are blind because they want to.

Mr. Speaker, if the government was willing to consider our solution, that is to resort to the Bank of Canada to finance the building of hospitals and schools, of roads and bridges, etc. it would then really tackle the problem.

On the other hand, the philosophy that has led to the establishment of this national bank was to serve the Canadians. Moreover, this is provided for in the British North America Act.

However, the governments that have succeeded one another since confederation have always been and are more and more in the pay of high finance. In fact, municipal, federal and provincial governments are in the pay of high finance and make annual pilgrimages abroad in order to borrow the amounts necessary to run the country. However, here in Canada, they want to set up a lottery system.

How stupid and illogical is our present fiscal and monetary system since it prompts us to take measures which are not bad in themselves but which compel us to acknowledge that we are powerless and blind in front of a problem whose solution is becoming more and more imperative.

That is why, Mr. Speaker, I am pleased to support the motion of the hon. member for Winnipeg North Centre, designed to make illegal the establishment of a lottery administered by the Canadian government or by the provinces. And why, Mr. Speaker? Because this would be to negate the real problem, to lie to the country, in short we would be deluding ourselves, we would be deceiving the population, we would be dodging our basic responsibilities which are primarily to manage public funds.

Mr. Speaker, if we favour a national lottery with a view to allowing people to co-operate in financing the public domain, we have only to abolish all federal taxes and ask those who are willing to participate in the federal government barbotte by sending them their contributions. Then those who do not want to pay taxes will be forced to pay them, and those who are crazy enough to pay taxes will be allowed to do so.

Mr. Speaker, to my mind that is illogical. The government wants to levy new taxes, but there is not a single minister who has the courage to do so. When they do, they put out a book of about 500 pages; they hide the tax in the middle page and make us swallow it as if it were a pill.

Mr. Speaker, whether our taxes are called social progress taxes, social recession taxes, or surtaxes, we go around in circles, because the solution has not been found. The Canadian people are allowed to take part in national barbottes which, at best, reduce the purchasing power of the taxpayers at a time when they need more and more of it.

Mr. Speaker, may I call it ten o'clock?

[*English*]

PROCEEDINGS ON ADJOURNMENT MOTION

A motion to adjourn the house under Standing Order 40 deemed to have been made.

CANADA COUNCIL—GRANT TO STANLEY GRAY —REQUEST FOR INVESTIGATION OF POLITICAL ACTIVITY.

Hon. W. G. Dinsdale (Brandon Souris): Mr. Speaker, I propose tonight to raise the question in a very formal and deliberate way of the award of a Canada Council grant of $5,500 to one Professor Stanley Gray. I raise this matter quite deliberately and with the full knowledge that the government, the minister, pundits and others may seek to misrepresent what I am saying and accuse me of interference with or opposition to the independent operation of the Canada Council. I am prepared to run the risk of that misrepresentation because I feel very sincerely that this matter involves two vital questions which must be considered in this parliament, as they are being considered in this country. My mail would indicate, as I am sure the mail of other hon. members does, that this question is being very seriously and earnestly considered by a great number of people in Canada. First, there is the legitimate question of the priorities of public funds and whether these limited funds should be spent to assist a person who is dedicated to the encouragement of

Hon. Jean-Eudes Dubé (Minister of Veterans Affairs): Yes, Mr. Speaker, the research work has begun. It has not yet been terminated.

DEFENCE PRODUCTION

SEA TRIALS OF HYDROFOIL

Mr. J. M. Forrestall (Dartmouth-Halifax East): Mr. Speaker, my question is for the Minister of National Defence. Further to a question which I attempted to ask the other day, and in order to offset any detrimental rumours, I wonder whether the minister could briefly report on the trials of the hydrofoil?

Hon. Léo Cadieux (Minister of National Defence): Mr. Speaker, as every member of the house knows, I hope, we have had very successful trials with H.M.C.S. *Bras d'Or*. I do not believe we are experiencing any serious difficulty, though there were some rumours that we were experimenting with hydrodynamic vibration, when the ship was in transit, from hull to foilborne. These are matters that we would like to know more about, but they are not of a serious nature. We expect the experiments that we are conducting now will prove that they have been worth while.

Mr. Speaker: Orders of the day.

BUSINESS OF THE HOUSE

PROCEDURE ON CRIMINAL CODE AMENDING BILL

Mr. Robert McCleave (Halifax-East Hants): Mr. Speaker, may I rise on a point of order at this point for the information of members. Because of certain confusion may I ask the house leader when the recorded votes will take place in respect to the first 11 amendments?

Hon. Donald S. Macdonald (President of the Privy Council): Mr. Speaker, my understanding is that the disposition of the Chair would be to put the votes at the end of the debate on the first 11 amendments.

[*Translation*]

GOVERNMENT ORDERS

CRIMINAL CODE

REPORT STAGE

The house resumed, from Monday, April 21, consideration of Bill C-150, an act to amend the Criminal Code, the Parole Act, the Penitentiary Act, the Prisons and Reformatories Act and to make certain consequential amendments to the Combines Investigation Act, the Customs Tariff and the National Defence Act, as reported (with amendments) from the Standing Committee on Justice and Legal Affairs. And the motion of Mr. Knowles:

That Bill C-150, An Act to amend the Criminal Code, the Parole Act, the Penitentiary Act, the Prisons and Reformatories Act and to make certain consequential amendments to the Combines Investigation Act, the Customs Tariff and the National Defence Act, be amended by deleting from clause 13 thereof paragraph (a) and paragraph (b) of subsection (1) of the proposed new section 179-A of the Criminal Code.

Mr. André Fortin (Lotbinière): Mr. Speaker, yesterday we were discussing a motion to the hon. member for Winnipeg North Centre (Mr. Knowles) designed to make it illegal for the federal government and the provinces to set up a lottery.

Last night, at the beginning of my speech, I listed some arguments to justify my opposition, not to the amendment of the hon. member for Winnipeg North Centre but to the provisions of clause 13 of the omnibus bill.

Mr. Speaker, I want to make it clear that I am not against lotteries, but rather opposed to the reasons, avowed or not, which prompt the federal, provincial or municipal governments to set up a lottery for their benefit rather than in the interest of the Canadian people.

I said last night that the intent of starting a national, provincial or municipal lottery was an admission of the inability of the present Canadian monetary system to finance the public sector, at a time when demands of citizens are ever increasing.

Mr. Speaker, I unreservedly support the proposal of the hon. member for Winnipeg North Centre, because I feel that it will not solve the problem and that it will only defer its settlement.

In my opinion, hon. members should be serious and responsible enough to take over the administration of public affairs. It is disgraceful to make annual journeys to New York, France and other countries to obtain the necessary funds to finance the administration of Canada.

Mr. Speaker, the governments can no longer tax directly or indirectly nor overtax the Canadian people.

The people are overtaxed, their purchasing power is inadequate and the unemployment rate has reached its maximum level. It is more than ever advisable to take our responsibilities and to ask ourselves whether a national lottery can truly improve financial conditions in Canada.

Even if we have nothing against lotteries, we have to ask ourselves whether they can still improve the situation. I feel, Mr. Speaker—

• (3:00 p.m.)

Mr. Speaker: Order. I am sorry to interrupt the hon. member, but his time has expired.

Mr. Fortin: Mr. Speaker, I would like to be allowed one more minute.

Mr. Speaker: Does the house agree to let the hon. member carry on his remarks?

Some hon. Members: Agreed.

Mr. Fortin: Thank you, Mr. Speaker.

I think that if it is logical and rejects the proposal of the hon. member for Winnipeg-North-Centre, not because lotteries are immoral and a bad thing as such, but because they fail to provide an answer to the major problem facing Canada at present, the government would be wise to seriously consider the possibility of making use of the Bank of Canada, which is a tool which should be of use to the Canadian people. In fact, one could resort to the Bank of Canada to finance the public sector, the construction of roads, bridges, schools, and help the provinces.

It is obvious that municipalities and governments both federal and provincials are in a financial state of stagnation. This should prompt us to assume our responsibilities, instead of being satisfied with a makeshift solution, such as lotteries. Let us tackle the real problem and particularly let us make use of the Bank of Canada.

Mr. J.-A. Mongrain (Trois-Rivières): Mr. Speaker, I wish to add a few words to what the hon. member for Lotbinière (Mr. Fortin) just said.

First of all, I must say that I agree with him about the advisability of a bank reform. In fact, many years ago, I was advocating the establishment of banks which would be the counterpart of those which now exist in Europe, under the name of "communal funds" and which are designed to assist municipalities and school boards.

Of course, the hon. member for Lotbinière would have to show me how that can be carried out but I recognize in principle the merits of the solution he proposes.

However, I might bring some clarification concerning his arguments against lotteries.

By this bill, the government wishes to relinquish exclusive control over lotteries and to stop prohibiting them as it used to, giving the provinces the power to allow charitable organizations especially to conduct lotteries, that is to levy taxes without it being too painful, as the mayor of Montreal is now doing.

As long as our friends of the Ralliement Créditiste fail to reform the monetary system, that could be useful. However, I would remind the hon. member for Lotbinière that during conventions of the Union of Quebec Municipalities and of the Canadian Federation of Mayors, the Quebec mayors have moved, for a great many years, resolutions requesting the provincial and federal governments to transfer control over lotteries to the provinces.

Naturally, if the federal government gives the provinces control of the lotteries in their territory, it can reserve the right to establish a national lottery, but that is unlikely for the time being. It does not seem to be its desire, but we cannot stop it from doing what we authorize the provinces to do.

I believe that the hon. member for Lotbinière will admit that it is significant that the mayors of the province of Quebec, for at least 12 to 15 years, promoted the idea that the federal government should leave the control of the lotteries to the provinces, that would operate them for purposes they would deem acceptable.

I remember that, in 1963, when the Canadian Federation of Mayors held its annual conference in Toronto, the mayors of the province of Quebec brought forward this idea which has been discussed now for at least twelve years and which has always been rejected. In 1963, the majority of the Canadian mayors present accepted the proposition of the mayors of Quebec to recommend that the federal government hand over to the provinces control of the lotteries established for charitable or other purposes.

Of course, I do not think it necessary that we discuss the morality or the advisability of lotteries. It will be each province's responsibility to decide if it can be done.

In Montreal, a lottery has been created, even though it was given a structure which is more acceptable than a lottery as such. It can be useful, until such time as our hon. friends of the Ralliement Créditiste manage to reorganize the international monetary system, which will provide us with banks, provincial or municipal, designed to help finance municipalities and school boards.

Is it justified to prevent the federal government from giving control of lotteries to the provinces? My hon. friend must have noted that I did not try to make fun of him and did not even mention the opinions he has expressed on the reorganization of the monetary system, because I support them to the extent that they are feasible.

However, I want to say that if most mayors in Quebec, within the Union of municipalities and the Canadian Federation of Mayors have seen fit during the last 12 years or so to exert pressure on the federal government to bring it to transfer the control of lotteries to the provinces, I think this recommendation should be supported.

[*English*]

Mr. T. C. Douglas (Nanaimo-Cowichan-The Islands): Mr. Speaker, the amendment before us is extremely important. I was surprised and shocked last night to hear the minister give a very inadequate explanation for the proposal to amend the Criminal Code to authorize the federal and provincial governments to establish lotteries if they see fit to do so. Instead of the cavalier way the minister dealt with this matter last evening I should have preferred to hear convincing arguments, if they exist, in support of his proposition. The only explanation the minister gave, I believe, appears at page 7780 of *Hansard* where he is reported as having said:

> It seemed logical to the government that if the criminal law were to be withdrawn from lotteries managed by private organizations, charitable and religious, or by agricultural fairs, an option should also lie with the provincial government itself or with an agent of a provincial government, and, since this was being done, that the criminal law should be totally withdrawn in its application to the federal government in this area as well.

It was most illogical of the minister to talk about lotteries, raffles and bingoes conducted by charitable organizations and then make a transition in his argument and ask the house to legalize the entry by the federal and provincial governments into lotteries. Most of us know that when we buy raffle tickets or take part in various innocent games of chance we are really making contributions to charities. Added to our contribution is the extra excitement of knowing that someone, somewhere, will win a prize—very often one he does not need and does not want. But the excitement makes it easier to sell these raffle tickets. While these innocent games of chance cannot be construed as any form of crusade for the carrying out of charitable work, I doubt that we can stop them and I do not think it is wise to try. But saying that we are willing to allow charitable organizations, religious bodies and agricultural fairs to conduct small games of chance is totally different from saying that we will permit lotteries in general—

Mr. Mongrain: Will the hon. member permit a question? Is he convinced that the raffles conducted by charitable organizations are legal now? As they are now operated in Canada, do they come within the law?

Mr. Douglas (Nanaimo-Cowichan-The Islands): Mr. Speaker, I think it is pretty well conceded that many of them are not legal. I presume that is why the code is being liberalized, if I may be pardoned for using that word. We want to put a stop to a great deal of misunderstanding that has surrounded this question. The administration of the law affecting games of chance, lotteries and bingoes has been left almost exclusively with the provincial attorneys-general. In many cases they have simply shut their eyes to these small games of chance, especially where they have been convinced that they are being carried on for charitable purposes and that someone is not trying to make a quick profit or get rich quickly. I do not complain about liberalizing the Criminal Code to allow people, within proper limitations, to conduct raffles, bingoes and small games of chance. But saying that we will allow charitable organizations, religious bodies and agricultural affairs to conduct lotteries and bingoes is a far cry from saying that we must also give the federal and provincial governments the option of entering into lottery schemes.

• (3:10 p.m.)

What is the purpose in giving provincial governments and the federal government the power to operate lotteries? It is understandable in the case of a charitable organization. Its purpose is to try to get money and to do so on a voluntary basis. These organizations have no other way of raising funds except by donations from people interested in the cause they are seeking to promote. The government

is something entirely different. In our democracy the government is the constituted organization which carries on the business of the people. The government has ways of raising money by means of various forms of taxes. The government has access to the fields of taxation set out in the constitution of Canada.

Why does the government need the power to raise money by lotteries? Does it envisage that the provincial governments and the federal government itself are now going to seek to raise part of their revenue by lotteries? Will they endeavour to discharge some of their responsibilities not by taxation based on ability to pay but by means of lotteries, which is raising money on the basis of human credulity?

Mr. Woolliams: Will the hon. member answer a question?

Mr. Douglas (Nanaimo-Cowichan-The Islands): As soon as I finish this sentence. If the government is going to be fair, democratic and just, surely it ought to be endeavouring to raise its revenue on the basis of people's ability to pay, not on the basis of selling tickets to the most credulous. The hon. member wanted to ask a question?

Mr. Woolliams: I am not being critical, Mr. Speaker. I am most interested in what the hon. member is saying. I take it he is really against the kind of lottery being run in the city of Montreal. After all, cities are creatures of the jurisdiction of the province so far as their powers are concerned. That is what I think is being legalized here.

Mr. Douglas (Nanaimo-Cowichan-The Islands): Yes. I am suggesting that any level of government has at its disposal certain areas of taxation. If they are not adequate, then we need some readjustment in our constitutional apportionment of tax fields and sources of revenue. To substitute lotteries based on credulity for taxation based on ability to pay is to reverse the whole process of social justice. I do not know whether the minister has visited any of the countries that have state lotteries, but it is an education to do so. If you go to countries operating state lotteries and which receive a considerable portion of their revenue from that source, you will find that a major part of their revenue is coming from the poorest and most desperate people. These people probably have one hope in a million of striking it rich. They are spending money they can ill afford to buy tickets in state lotteries.

[Mr. Douglas (Nanaimo-Cowichan-The Islands).]

Surely that is not the basis on which we ought to be inviting the provinces or the federal government to finance the requirements of this country. If governments in Canada need more revenue, then that revenue ought to be collected from people on the basis of their ability to pay and according to the size of their income. It ought not to be obtained by appealing to the avarice of individuals or holding out hopes to people who have very little chance of improving their lot by buying lottery tickets. This is a complete reversal of the whole idea of fiscal policy in Canada.

There is nothing in the constitution about governments raising revenue by means of lotteries. The constitution sets out the various areas in which the respective levels of government may levy taxes. I admit readily that the municipalities and the provinces, whose responsibilities have grown whereas their access to sources of revenue has not grown, face very serious financial difficulties. To solve these difficulties we ought to re-allocate the tax fields or reassess the fields of jurisdiction for which the different levels of government are responsible. We are not going to solve our fiscal problems by allowing provinces to embark upon lotteries. In the long run it will be self-defeating. As more and more cities and provinces get into it, they will be taking in each other's washing. They will be selling tickets to each other in order to solve their municipal and provincial problems.

Mr. Turner (Ottawa-Carleton): It is a pretty unsavoury thought.

Mr. Dinsdale: It is a pretty dirty wash.

Mr. Douglas (Nanaimo-Cowichan-The Islands): I am really surprised that an administration which has talked so much about the just society, social justice and economic equity should now suggest that it is prepared to permit the governments of Canada, provincial and federal, to replenish their coffers by selling lottery tickets.

The explanation given by the minister for including the federal government is even more nebulous and irrational than the one for including the provinces. The minister said he had included the federal government because he wanted the bill to be symmetrical. That is not a very good reason. I can assure the minister he is more symmetrical than the bill.

The minister says that the government has no present intention of entering this field. I hope hon. members will take a look at the bill we are being asked to pass because not only does it state that the federal government will

have the right, if it desires, to establish a lottery but it will be able to do so by Order in Council without any reference to this house. If a provincial government wants to establish a lottery, it will be required to introduce legislation setting out the terms and conditions under which the lottery will be operated, who will be the agents to act for the government, and for what purpose the money will be used. All the details will be subject to debate and discussion. But if the federal government decides to set up a lottery it will not need to refer to parliament at all. It will be done simply by an Order in Council setting forth the terms and conditions, naming some person or group of persons to act for the government, and, presto, a full lottery will be in operation.

When I asked the minister about this last night, he said we will always have the right to deal with the matter by means of a motion of non-confidence in the house. Isn't that a marvellous concession! Parliament will not be permitted to examine any such proposal, amend it in any particular or, as my colleague points out, even discuss the details of what is a tax proposal. All parliament will be allowed to do is vote yes or no on whether it has confidence in the Order in Council which the government has passed. There are totalitarian régimes in the world where the members of the legislative bodies are strictly limited to saying yes or no, but I thought we had not reached that low level in Canada.

• (3:20 p.m.)

However, the minister is seriously telling us that he thinks it is all right for the federal government, by Order in Council if it so desires, to set up a lottery, to determine by Order in Council the terms and conditions of that lottery, how it will be operated, how much of the money will go into the federal treasury, how much will be paid out in prizes and the purposes for which the funds will be used, and parliament will have nothing to say about it except that it may be provided with an opportunity on an allotted day to move a motion of no confidence. This to me, Mr. Speaker, is preposterous. It is preposterous for a government that has talked so much about participatory democracy, about the need for involvement, about the value of dialogue and consensus, to say now that a plan can be introduced and that hon. members will have no opportunity to discuss it and amend it in any particular. All they will have will be an opportunity to deal with the matter by a vote of confidence or non-confidence in the government.

I hope that the Liberal members of the house who support the government will take a good look at this provision. I suggest it is a dangerous precedent. I suggest democracy means more than just having the right periodically to vote yes or no, and that if parliamentary democracy means anything it means playing a part in the process of formulating legislation. We have a process here whereby legislation is discussed on second reading and then sent to a committee where experts can be called, where discussion can be heard, where it can be amended and brought back to the house to go through report stage and third reading. But this is the thin edge of the wedge. We are sweeping all that aside and saying that by Order in Council so important a thing as a national lottery can be established and parliament will have nothing to say about it until after it has been established. To me this is shocking and scandalous.

When hon. members on the other side of the house look carefully at the implications of the precedent now being established by the Minister of Justice, I think they will join us in asking him to remove these provisions from the bill. I say that the press has a responsibility to tell the people of Canada what is in this legislation, not just the idea that the federal and provincial governments will have the right to set up state lotteries but also that the federal government will have the right to establish a state lottery without reference to parliament, that it will have the right to bypass parliament, that it will have the right to set up machinery to collect possibly millions of dollars and dispose of that money in whatever way it thinks best, to determine how much will be paid out in prizes and how much will be paid into the federal treasury or into whatever aspect of federal expenditures it decides, without referring the matter to parliament. If the Canadian people were made fully aware of this very serious innovation, and I suggest the press has a responsibility to make them aware of it, I believe they would speak out in no uncertain terms and say that this type of legislation ought not to be passed.

I make an appeal, even to those who are in agreement with the government about the advisability of government lotteries, provincial or federal, that if we are going to have such lotteries then at least the federal government should be on the same basis as the provincial governments. If the federal government is going to establish a lottery it

should be required to bring in legislation, submit that legislation to the house, have it examined by members of the house and by the appropriate standing committee, and have it dealt with as any other measure would be dealt with. What we are being asked to do here is to give the government a blank cheque, to say to the cabinet, "You can draft any kind of plan you like. You can completely reverse the process of fiscal policy and take from the many and give to the few, and you can do this without reference to parliament, without parliament having one word to say about it until after you have established the plan and it is in operation." And the only privilege which the Minister of Justice says that we will be allowed then is that on an allotted day we may say we like it or we do not like it. If that is democracy, then we are going down a very dangerous road toward the kind of totalitarianism that is all too common in other parts of the world.

Mr. Stanfield: I wish to ask the Minister of Justice a question. Is it his opinion—

Mr. Deputy Speaker: I am sorry to interrupt the Leader of the Opposition but under our Standing Orders my understanding is that the only way he can pose a question is if the Minister of Justice has the floor, and the minister has already spoken—unless, of course, there is unanimous consent. Is this agreed?

Some hon. Members: No.

• (3:30 p.m.)

[*Translation*]

Mr. René Matte (Champlain): Mr. Speaker, to assess the amendment now before us, it is important to analyse the reasons that have led the hon. member for Winnipeg North Centre (Mr. Knowles) to move it.

Under our present economic system, the taxpayer is called to depend exclusively on taxes to promote his welfare, and this brings us to make some particular remarks.

In principle, it is abnormal at this time to rely on the exploitation of some passions to obtain additional revenue, for the fact of exploiting the fondness of the public for gambling is, in my opinion, a tax on passion. Several bodies, among which the various religious denominations of this country, make it clear, from a moral standpoint, that we exploit the passion for gambling through lotteries.

[Mr. Douglas (Nanaimo-Cowichan-The Islands).]

In the present economic system, we endeavour by all available means to tax, surtax and over-overtax. However, there may be a more pleasant way of getting money out of the taxpayers' pockets in order to finance the general administration of the country. Therefore, the legalization of lotteries would be based on the reaction of the people.

I agree with the hon. member for Trois-Rivières (Mr. Mongrain) because I know that for many years provincial governments, and more particularly that of the province of Quebec, as well as municipalities have been asking that the Criminal Code be amended in order to enable provinces and municipalities to conduct lotteries.

If one agrees with the distinction I have just made, I think that the people would behave in the following way: they would back the legalization of lotteries not because it is good in itself but because in the present system different solutions must be found, and that lotteries may be acceptable.

It is only in view of those considerations that I say I do not entirely agree with the contents of the amendment proposed by the hon. member for Winnipeg North Centre.

This is proof that members of the Ralliement créditiste, are not afraid of freely expressing their opinions. In spite of the fact that our leader (Mr. Caouette) and the hon. member for Lotbinière (Mr. Fortin), have already declared themselves in favour of the amendment, none of us remains silent. We exert no control whatsoever on individual freedom and we are all free to express ourselves. Were all the other members as free as we are, especially on the government side, the administration of the country would be healthier, more efficient, and much more representative of the people. That is why, Mr. Speaker, we have requested that this bill be split.

One can readily agree to most of the clauses on this bill and still be compelled to vote against it because of some clauses forced upon us.

To come back to the amendment, Mr. Speaker, I do not agree with this particular part of it which tends to delete paragraphs (a) and (b). The first reads as follows:

Notwithstanding any of the provisions of this Part relating to gaming and betting, it shall be lawful,

(a) for the government of Canada to conduct and manage a lottery scheme in accordance with regulations made by the governor in council and for that purpose, for any person, in accordance with

such regulations to do anything described in any of paragraphs (a) to (f) of subsection (1) or subsection (4) of section 179;

Mr. Speaker, I am in favour of deleting that paragraph. I cannot see why the central government which has at its disposal far better means than lotteries, or, as the leader of the Ralliement créditiste termed it, the "national barbotte" would legalize gambling. It could use for instance the excellent means of the Bank of Canada to improve the purchasing power of the people. The government has really no need for lotteries. Deleting that paragraph would be perfectly all right and I therefore support that suggestion.

To my mind, this house would enhance its prestige by saying that it does not see why the federal government should assume certain rights in that field. Why? Because the amendment concerning lotteries was brought forth as a result of certain representations. Whose? Certainly not those of the federal government. They must therefore have been made by welfare groups, charitable organizations, various religious groups and public associations.

In fact, those bodies have been calling for the legalization of lotteries for several years. A little later, the municipalities and the provinces, especially that of Quebec have also asked that lotteries be legalized.

No representations have ever been made at the federal government level asking that it conduct and manage lotteries. I therefore do not see why we should accept that paragraph.

On the other hand, I accept paragraph (b) which would also be deleted through this amendment. I agree with it, Mr. Speaker, all the more so because of the present federalist concept which prevails, especially since the present right hon. Prime Minister (Mr. Trudeau) has come to power, whereby it seems that the provincial governments are to be considered merely as large municipalities and gigantic benevolent societies.

That is so true, Mr. Speaker, that we notice, as representatives of the people, that the majority of the requests which are made to us as members of parliament, concern various problems to be solved, most of which fall within the jurisdiction of the provinces.

• (3:40 p.m.)

Provinces have become enormous welfare societies within which there is a run on social welfare allowances. As a matter of fact, this run has become a real lottery and people are vying with one another to get one as soon as possible.

Provincial governments having become, according to the present federalist concept, enormous charitable societies, it is, therefore, almost normal in this crazy system in which we live, that we should avail ourselves of the necessary means to help the large and the small welfare societies solve their financial problems in organizing lotteries, in exploiting the passions of the mass and,—I say so again,—the gambling instinct by which people are possessed.

That is why we should recognize the merits of such a solution until it is understood that we should resort to more realistic means. But, for the time being, we are against the principle of lotteries.

I have been agreeably surprised a moment ago, to hear the hon. member for Trois-Rivières (Mr. Mongrain) say that he accepted some of the Social credit theories. If he could study them in depth, so as to understand them better, we would be even happier.

Mr. Mongrain: Mr. Speaker, on a question of privilege.

It is almost four years now since I came to this house and I keep harping away at that matter.

Mr. Matte: I hope there will be an ever increasing number of my colleagues willing to grapple with the Social Credit economic theories and that they will eventually put them in practice, even only as an experiment.

But we shall not adopt that way of thinking until we renounce tax and surtax as the sole means of administering the country. We shall have to find more palatable means to snatch away—not to say steal—the people's money.

I have nothing against that clause, provided paragraph (a) is deleted. Therefore, to a certain extent, I am in favour of the amendment. Nonetheless, I would like my reasons to be examined and understood, and I think that the real problems which led us to discuss lotteries should be taken into consideration.

I would go even further. I wonder why, for instance, the hon. member for Winnipeg North Centre (Mr. Knowles), of the New democratic party, which, as a rule, is in favour of any measure of socialization, does not support state lotteries. I would even go as far as wondering if it would not be possible, in order to make the pill easier to swallow for the taxpayers, to set up not only a voluntary

but a compulsory lottery. It could be interesting to collect an additional $2 from each taxpayer. Then, while paying taxes we would have a chance of winning $10,000, $100,000, $1,000,000, and this would be a little more pleasant.

I would go a little further than our good friends of the New Democratic party usually do. I would say that if the provincial government was conducting a lottery, it should make it compulsory, otherwise it would not pay.

That is what happened in Montreal when the mayor threatened to resign. Now, as the Montrealers could not take the risk of losing their mayor at a time when the economy was booming, they saw to it that the lottery regain its appeal and a few months later it is again showing a profit. In fact, a lottery is a rather precarious undertaking since we do not know exactly where we are going. This is why I say that if ever a provincial government decides to establish a lottery it would have to make it compulsory.

Mr. Speaker, within the present system, it is more tolerable to offer a small chance to the taxpayer in exchange for his taxes. Even if it is not everybody who wins in a lottery, deep down there is always the hope that someday one may be a winner.

If we are ready to accept such a solution, why not give serious consideration to some other means? One is always ready to look for revenue sources that are contrary to morality and logic, while one neglects to give thought to real remedies, that is to the reform of our present economic system.

That is evidence of the need for Créditiste members in the house and of the importance of the part they are playing here. We beg the house and the people to give consideration to effective ways of correcting our administrative system instead of thinking always of taxes and surtaxes. In other words, it is imperative that human development be promoted, and that is what we have been preaching for many years.

[*English*]

Hon. W. G. Dinsdale (Brandon-Souris): Mr. Speaker, I will be very brief in my contribution to this part of our consideration of the amendments to the Criminal Code. As this debate proceeds it becomes more and more strange and more difficult to comprehend or understand. I am supporting the amendment of the hon. member for Winnipeg North Centre (Mr. Knowles) because I think it gives the minister a good out from a very unhappy situation.

For the past several days we have found the state promoting gross indecency. As the result of further amendments in respect of the legalization of lotteries, both private and government, we now find the state promoting one of the seven deadly sins, avarice and greed. I do not think there has been any great public demand for this sort of thing, and I am at a loss to understand why the government is taking such a strong and stubborn initiative in respect of these matters.

We might speculate and say that the motivating principle behind these amendments to the code is to find a panacea to overcome the fiscal situation in which the government finds itself. This is not peculiar to the federal level of government; it applies also to other levels of government.

• (3:50 p.m.)

We have noted the strong protests against exorbitant taxation in the press of Ottawa during the past few days. In promoting the vice of avarice and greed by authorizing the state's indulgence in particular in lotteries, I suggest to the minister that he is dealing with a panacea that is a snare and a delusion. There is no substitute in public finance for the principle of fiscal responsibility. I was reading a commentary on the editorial page of the Ottawa *Citizen* by the editor of that journal, Mr. Christopher Young, who was reviewing the first year of the just society. In that commentary Mr. Young said that when the just society began it was faced with a fiscal crisis of extreme proportions. That was brought on, of course, by another Liberal administration which practised fiscal irresponsibility.

If the government is moving into the area of lotteries and gambling to get itself out of its dilemma, it is operating, of course, in the same never-never world as the compulsive alcoholic who takes just another drink to overcome the hangover from which he is suffering by reason of overindulgence. Obviously, as I have indicated, the government is very stubborn in these matters and is completely committed, it would seem, to the promoting of these aspects of irresponsibility in the Canadian body politic.

The amendment of the hon. member for Winnipeg North Centre gives the government at least half an out. It simply underlines a principle of government fiscal responsibility which makes it possible for the minister,

without losing any face whatsoever, to remove the government from the support of greed and avarice with respect to public finances.

This debate grows more weird, strange and confusing every day. On the one hand we have the state, with respect to gross indecency, explaining its stand on the ground that the state has no place in the bedrooms of the nation, and on the other hand we have the state saying it does have a place in the gambling dens of the nation. There is a fundamental inconsistency here that must considerably disturb the Minister of Justice. I hope the minister will accept the amendment and at least extract himself from the dilemma in which he finds himself with regard to these very basic and important moral issues.

I know the tendency is to criticize anyone who takes a stand on these issues as being antediluvian, a sort of social jingoist, if I may use that word, or someone suffering from what might be called a residual puritanism. These measures are put forward in terms of reform and progress. This is not a progressive step. This is the most retrogressive step that any government could take. Look at history. The problem of gambling is not new among mankind. Indeed, as I have already indicated, it is one of the seven deadly sins. The progress of the human family has been in the reverse direction; as mankind and his society became more enlightened and progressive, the vice of gambling was gradually abolished. One can follow the pattern throughout most of the western world.

It is governments which are confused about fiscal policy and lack social responsibility which have authorized state lotteries. I can refer, of course, to South American republics. Sometimes I think Canada is becoming more like a South American republic every day under this just society. State lotteries are a retrogressive step; they are a step back into a period when governments were less stable and less fiscally responsible. I urge the minister, because he is responsible for putting this bill through the house, to exert the authority that must be his and not take Canada back in the direction of official sponsorship by the state of the vice of gambling.

I could go on at some length on this matter, but I think the point has been made by many speakers. As a final word may I say that perhaps one of the worst aspects of the state's indulgence in the promotion of lotteries and gambling is the blow it strikes at genuine philanthrophy and charity. It permits the something for nothing philosophy. It militates against the war on poverty, because the people who tend to be caught up in the vicious grip of gambling are those who can least afford to be involved. It undermines the strength of human personality. It promotes greed and avarice, and it is compulsive like alcoholism.

I am sure that if we took a referendum on this matter the minister would find that the vast majority of Canadians are against the state's participation in gambling and lotteries. As the leader of the New Democratic party said just a moment ago, it is being provided for at the national level surreptitiously, so there is a double affront to the people of Canada. Surely the majority of Canadians have some rights and privileges. I hope the Minister of Justice will not carry the charade further and will accept a reasonable amendment which at least removes the state from this sort of promotion of social vice.

Mr. Mongrain: Mr. Speaker, would my hon. colleague allow a question?

Mr. Dinsdale: Certainly.

Mr. Mongrain: I am quite at a loss to follow the trend of his reasoning.

Mr. Dinsdale: I can understand that.

Mr. Mongrain: That is why I am asking him the question. The hon. member has told us about the seven deadly sins, among which are greed and avarice, and the state having to take these measures in order to help its fiscal situation. Am I right?

Mr. Dinsdale: You have it absolutely right.

• (4:00 p.m.)

Mr. Mongrain: How does the hon. member reconcile this train of thought with the fact that in this country, for as long as I can remember, churches of all denominations have organized raffles and bingoes which are, after all, games of pure luck?

Mr. Dinsdale: I think the hon. member missed the point of my contribution completely. We cannot deal with the vices of individuals or of organizations, because ours is a pluralistic society. As a member of parliament it is not my obligation to try to urge that the state legislate morality. Morality cannot be legislated. The point I was making was simply that the state should not promote immorality in this bill.

Mr. Gilbert: Would the hon. member permit another question? Is he aware of the statement yesterday by the Minister of Justice that it was not the intention of the federal government to conduct a lottery? If so, his argument that the government is proposing this amendment as a panacea to counteract the present monetary crisis has little or no strength.

Mr. Dinsdale: I think that one of the main evils, if I may use that word, of this legislation was pointed out by the Leader of the New Democratic party—

Mr. Turner (Ottawa-Carleton): There are some formidable members in that party.

Mr. Dinsdale: —and it is why I am doubly critical of the legislation. It was effectively pointed out by the Leader of the New Democratic party that the federal government is authorized to introduce a national lottery without reference to parliament, surreptitiously, by bureaucratic means, through an Order in Council. This fact intensifies my opposition to the bill.

Mr. Eldon M. Woolliams (Calgary North): Mr. Speaker, I will be brief because much has already been said on lotteries.

Mr. Deputy Speaker: Order, please. I think the hon. membear for Champlain is anxious to ask a question, provided it is the disposition of the hon. member for Brandon-Souris to accept it. However, I should like to caution hon. members against too long an extension of this practice on every speech.

[*Translation*]

Mr. René Matte (Champlain): Mr. Speaker, may I ask the hon. member, since he referred to the seven deadly sins whether or not, in his mind, the government is vindicating the seven deadly sins. He talked about lust yesterday; today, it is avarice.

[*English*]

Mr. Dinsdale: I am afraid the government will have to reply to that. I cannot speak for the government.

Mr. Woolliams: If I may, I should like to speak on lotteries for about five minutes. I think it is one subject that has not really been understood. In fact, I believe much of this bill has not been understood by the general public. The arguments we have heard this afternoon with regard to lotteries strengthen the argument which was made at the beginning of the debate on this bill that it should have been divided so that those hon. members who are in favour of certain portions but not in favour of others could express themselves in accordance with their conscience and the consciences of their constituents. That is the first point.

We have to differentiate between two principles with regard to lotteries. One concerns state control of lotteries operated by clubs and religious groups set up for charitable or religious purposes, which is an entirely different matter from a state controlled lottery. It means that a province may say to such groups through the Attorney General that this type of activity is good because it has a charitable or religious purpose. In regard to state controlled lotteries, I cannot envisage a provincial government needing consent for that because such a lottery would fall within their civil rights jurisdiction.

Here we are dealing with the criminal law and with matters of morals. The lotteries with which the house is concerned were referred to by the minister last night when he endeavoured to answer questions, as well as by my leader and the Leader of the New Democratic party. It was said that in a bill affecting the criminal law the state is given the right to set up a lottery without referring the matter to parliament. In other words, when parliament closes on June 27—and many of us hope it will close then—from that date to September or October when parliament meets again the government, provided this bill goes through, could pass an Order in Council implementing immediately without reference to parliament the right of the federal government to bring in a federal lottery and by that method collect the taxes of the land. In other words, they could almost start a new budget by lotteries.

In my opinion this is exactly the point which was made this afternoon by the Leader of the New Democratic party and which was made yesterday by the leader of our party. I do not know where all the members of my party stand in that regard because we intend to have a free vote on this bill. We believe in freedom so far as this matter is concerned. However, I can speak for some members of my party. Some of us are against any kind of gambling or lotteries, and I think the last speaker might be put into that category.

Mr. Dinsdale: That is right.

Mr. Woolliams: He agrees with me, so I have not misunderstood or misquoted him. However, some of us are not against state

controlled lotteries which are set up for charitable or religious purposes, or lotteries the proceeds of which go for scientific or medical research or for other purposes in which philanthropists believe. But on this side of the house the majority of the members question the right of the federal government to set up a state controlled lottery which might be used to raise the revenue of the country. This was the argument which was presented this afternoon by the Leader of the New Democratic party, and I am glad that it is catching on to some extent among the members of that party.

So there are two kinds of lotteries: Those that are under state control and which will be exempt from the code, and those that are run by provincial governments. If there are lotteries such as the one run by the city of Montreal, they would have to be legalized by the provinces because the cities are creatures of the provincial legislatures and their jurisdiction comes from a provincial act. In most of our provinces there are city acts which have been passed by the legislatures. So the powers of the cities, their jurisdictions and their constitutions are really under provincial statutes. This is why I rose to speak on this matter. These amendments are pretty complicated and I hope that when they are voted on what I have said will have clarified them.

I have one last thought on this matter. I and other members of my party have great respect for the hon. member for Brandon-Souris, but this is the way I see the argument. I do not have the statistics before me but a lady in Calgary collected many thousands of signatures—although many people do not know what they are signing when such petitions are brought to them. As a result of her research she found that perhaps $90 million is raised in Canada from the class of people to whom reference was made today, namely, those in the low income brackets, and that great amount goes out of the country to the Irish sweepstakes. If it is right to raise money in Canada for a purpose outside Canada, then perhaps it might be right to raise money here for the good of the people who live within our boundaries. We should give some thought to that point.

Some hon. Members: Hear, hear.

Mr. Woolliams: Of the $90 million for the Irish sweepstakes, which I am advised is a private corporation and not all that charitable, only $6 million finds its way back to Canada in prizes. If those figures are correct, $84 million goes out of the country. I got these figures from the lady in Calgary who did much research in that regard and who came to see the then minister of justice, now the Prime Minister (Mr. Trudeau), on this subject. There are lotteries in other countries, tickets for which are sold here.

There is a point here about which I have thought for years. As a member of the legal profession and a member of parliament I cannot believe that we should have a law which, as was said in Oliver Twist, is an ass, in other words, a law which cannot be enforced or endorsed. I am sure there is not a member of this house who, on hearing that Mr. Jones had won $150,000, would pick up the telephone and ask the Minister of Justice or the Attorney General to prosecute the man. If a person wins a sweepstake, accepting the winnings is just as illegal as buying the ticket. Yet there are never any prosecutions in such cases.

• (4:10 p.m.)

Having listened to the arguments that have been made on the other side of the house, I can only say that if we really believe the law is as it has been put forward by my distinguished friend we should pick up the telephone as citizens of Canada and ask for the prosecution of people like Mr. Jones who, having bought a ticket on the Irish sweepstakes and won $150,000, has told the newspapers that he is going to buy a new house for his son, educate his daughter, take his wife on her first trip and buy her a fur coat. If the law is as the minister outlined, then in our consciences and in our hearts we should enforce it. If we do not believe that this is the law, then surely we should accept lotteries for charitable, religious and other good purposes. But again I repeat that this is not an endorsement of the kind of lottery about which the minister is talking, namely, state-operated lotteries.

I must be fair with the minister. If the government were to pass an Order in Council to authorize a state lottery for the purpose of raising revenue I assume that the opposition in this house could move a vote of non-confidence in the government on returning from the recess, assuming the Order in Council was passed while parliament was not sitting, which is the way the Prime Minister (Mr. Trudeau) operates in regard to NATO and some other statements he has made.

The trouble with this sort of thing is that although it may be successful with minority

governments, today the Liberals are saying every day that they have a mandate, that they love each other like brothers and sisters and always vote together, that they always think alike. They are the only party in Canada that all think alike. All I can say in this regard is that when we all think alike there is no thinking. Certainly in regard to matters in the code such as we are discussing the Liberal party is the only party that, irrespective of its members' religious beliefs and consciences, puts every member into the same pot and declares they all hold the same traditions and spiritual convictions. To me this is beyond comprehension. I have often wondered what it would be like to be a Liberal for a short time and find out what goes on in these secret caucuses. Then I would discover how they are disciplined.

Mr. Mongrain: You would be surprised!

Mr. Woolliams: I sure would. Of course, the hon. member has been out of the caucus two or three times, so he has some experience.

Mr. Mongrain: Mr. Speaker, I must rise on a question of privilege. The hon. member is usually very honest with the house but I should like to make it plain that I have never left the federal Liberal caucus—never.

Mr. Woolliams: Well, Mr. Speaker, I would be the last to be offensive to my hon. friend. I only wondered because he did sit for a time as an independent. It seems he must have been a Liberal when the caucus met but an independent in the house. However, I accept his word in this regard.

When we come to vote, I would ask hon. members to consider the two different kinds of lotteries. First, there are those that are run for state purposes, controlled and operated by the state. Then there is the kind that is run under state control for charitable and religious purposes. Let us also consider those lotteries operated by other countries that are supported within this country. These are being endorsed every day as a result of non-enforcement of the law.

[*Translation*]

Hon. John N. Turner (Minister of Justice): There will be other opportunities.

Mr. Gilbert Rondeau (Shefford): Mr. Speaker, I know that the minister is looking forward to the defeat of several amendments that were moved.

[Mr. Woolliams.]

Mr. Turner: Mr. Speaker, I am still ready to listen to the golden voice of the hon. member.

Mr. Rondeau: Mr. Speaker, I thank the minister for his patience, for he will still require a lot of it. However, some arguments have already been set forth and others soon will be. It is extremely important that this be put on the official report of the House of Commons debates.

I have here what I could call "some portable facts" that I found very interesting and that I would like to put on the official report of the House of Commons debates. These facts will make it easier for us to study these amendments.

[*English*]

Slot machines are habitually rigged so that 40 to 80 per cent of all coins that go into the machine are retained by the owner.

After two and a half centuries of experience the British parliament outlawed lotteries in 1828.

The French government, after five years of public lotteries in the 1930's, abandoned the experiment. Only 3½ per cent of the money paid by the people for tickets reached the treasury.

Those are facts.

Senator Wiley of Wisconsin, in advising the new state of Alaska not to utilize gambling, said that every dollar raised from such sources means $5 spent on higher police costs, high court costs, higher penitentiary costs, higher relief costs.

The total income of Irish hospitals from the Irish sweepstakes, counting all money now gathered from Canada, the United States, Britain and elsewhere, amounts to about $4 million a year. This is less than 19 per cent of the money paid by those who bought genuine sweepstakes tickets. (The percentage is still smaller when one takes into account the enormous sums spent on counterfeit tickets.)

In Canada:

—Hospitals for acute disease alone require over $100 million annually;

—Hospital maintenance runs over $800 million annually;

—Construction and renovation costs another $100 million annually.

"The painful fact is that Canadian sweepstakes equal to that created by Ireland for 33 years would keep Canadian hospitals going only for four days, and not a cent toward new construction."

That statement appeared in the *Financial Post* of October 12, 1963.

No other single act could be as demoralizing to Canadian hospitals as turning from dependence on public taxes and enlightened philanthropy to the dubious resources of a lottery.

A royal commission in Britain has rightly said that no other mode of raising public money has proved "so burdensome, so pernicious and so unproductive".

[*Translation*]

Mr. Speaker, these few facts prove that this legislation that we are asked to approve will bring no real assistance to our charitable institutions, our schools and our hospitals. It is unfortunate to go as far as to want to legalize what they have been trying to legalize in other countries for three or even five centuries. They have given it up because it was thought that despite the few advantages that could be derived from lotteries, it would raise problems and increase governmental expenditures in the field of social welfare and the administration of justice.

It is a shame to see that through legislation we will push the public more and more towards vice.

The hon. member for Trois-Rivières (Mr. Mongrain) mentioned that many mayors have asked to conduct municipal lotteries. However, several municipal councils have passed resolutions asking the federal government to find other means of raising money.

I think the government should have the same attitude in respect of these resolutions already proposed by various municipalities. I could have several put on record.

These same municipalities have also suggested that the federal government use the Bank of Canada to take care of their financing.

In fact, the city of Granby, passed three years ago a resolution suggesting that the Bank of Canada be used to make money available to municipalities, school boards and public bodies. However, the federal government failed to act upon that resolution.

Why not start by enacting some measures that would help financially not just a few individuals, but also our municipalities and our school boards.

Whatever lotteries could bring to municipalities, hospitals, school boards or various organizations would be only a drop in the bucket as compared to their needs.

Why try in 1969 to legalize lotteries, when the government of Alberta tried, in 1935 to put money on the market, not paper money, but crédit money? And yet, the Prime Minister of the time, the Right Hon. William Lyon Mackenzie King, had promised, after the general elections of 1935, that he would authorize the Alberta government to apply the principles set forth during the election campaign of Mr. William Aberhart. It had been said that the federal government would create no restriction to prevent the government of Alberta from applying the principles the citizens of that province had voted for.

• (4:20 p.m.)

The federal government "will take his hands off". Those were the very words of the Prime Minister of the time. However, after the general elections of 1935, the federal government, as well as the Supreme Court, did everything to prevent the Alberta government from applying those principles.

It was not a lottery, nor some kind of hoax or fraud. It was something really serious and scientific. Why, then, was the government of Alberta not given the opportunity to apply those principles, since it was not a bunch of idiots who had been elected? Why were they not given the chance to carry out the wishes of Mr. William Aberhart?

Why pay attention to mayors when they ask that lotteries be put at the service of the provinces? Why not do what they also requested many times? The mayor of Thetford Mines, for instance, once laughed at a resolution passed by the Union of Municipalities asking precisely what the Créditistes have been requesting in the house for 30 years, that the Bank of Canada be used to finance public capital, in order to solve our present problems.

If lotteries were legalized, it would be an admission that there is not enough money in circulation. Despite lotteries, there will not be a penny more in circulation. Lotteries will not solve the problems of hospitals and will not replenish the funds of some religious organizations.

The creation of lotteries is an undeniable proof that our present economic system is unsound. It is not by allowing the provinces to legalize vice that we will settle our financial problems.

If we legalize vice to replenish the Treasury, why not apply the same absurd argument and legalize prostitution also? Why not, like other countries, legalize prostitution to bring money into the Treasury, if we must speculate on vice? Why not, for that matter, make money out of all vices? In that manner, we could replenish the Treasury with all the money that vice monopolizes now.

I have on hand several statements from authorized persons who have already given their views on what we are discussing presently.

First, lotteries will contribute to the exploitation of the poor. They will be lured with

illusory promises which will keep them hoping that they might become rich overnight.

The poor will be taken advantage of. They will be deluded into the belief they might get rich. There will be more and more victims.

Mr. Laniel: This is human nature.

Mr. Rondeau: This is taking advantage of human nature as the hon. member for Beauharnois (Mr. Laniel) remarked. We are not here to take advantage of the vices of people, but to protect them from them.

If last year we were deluded into believing that electing the Liberal party would help us find a solution to our problems, we soon found out that we had been entertaining illusions in that respect. Today, we want to establish a lottery; it is nothing more than an economic illusion.

At the same time, this is a wrong conception of morality, since we know by experience that wealthy peoples have lost their fortune by indulging in their vice: card playing or some other form of gambling. We have even seen people lose considerable amounts of money betting on cock-fights. Families who had been led to believe in illusory solutions were ruined. The purpose of lotteries is to take advantage of the vices and of the immorality of the people.

I have here another book entitled: *Lotteries, the Great Illusion*, written by Mr. E. M. Howse, in which he says, and I quote:

[*English*]

All the old arguments, discredited long since by past misery and corruption, are being marshalled again to promote this sordid device for paying our legitimate bills for hospitals, education and honourable philanthropy.

[*Translation*]

This means that to save hospitals, to help education and religious works, we are reduced to exploiting vice.

I have just said that the proceeds of lotteries could provide the various religious organizations or hospitals with an income that would enable them to operate four days more, according to the figures supplied to us.

[*English*]

In 1963 race track betters in Ontario alone poured into parimutuel machines $153,506,144—a total of $28,506,000 more than they took out in all their winnings . . .

The Irish sweepstakes annually take from Canadians several times what they return in prizes. (Counterfeit tickets take the gullible public for enormous extra amounts) . . .

It was said of the Bourbons of France, before the collapse of the ancien régime, that they forgot nothing and learned nothing. Proponents of lotteries as a means of supporting hospitals, education or the vast philanthropies of a democratic people, seem to outdo the Bourbons.

• (4:30 p.m.)

[*Translation*]

It is noteworthy, Mr. Speaker, that every country resorted to lotteries before going bankrupt. I believe that today, the fact that we want to legalize gambling in Canada is a premonitory sign of bankruptcy.

It is often said that life is a gamble that life is at the mercy of hazard.

[*English*]

"All life's a gamble." This is nonsense. What people mean is that life has risks. But there is a clear distinction between a gamble and merely a risk. Risk is a necessary element in life, an element to be intelligently reduced. One of the astronauts, when asked about the risks that he took, replied that he took no risk. He was right.

[*Translation*]

Mr. Speaker, I believe that we are on the point of legalizing risks. This bill which deals mostly with lotteries, threatens to lead the nation to moral decadence for which we will have to pay later.

It is clear that when vice is rampant and legalized, it is soon necessary to check its consequences. And the amount of money that we will have spent for this purpose will be far greater than what the government hopes to put at the disposal of religious organizations and provincial governments by allowing them to conduct lotteries.

If it is wished to help religious organizations, it should be ascertained that they approve of them themselves. As a matter of fact, I have in hand many documents that I do not have time to put on record, but which prove that even religious organizations are opposed to lotteries, because they prefer to respect their principles rather than to fill up their coffers.

A Baptist organization from Ontario and Quebec has passed the following resolution aiming at a special study of the historic background of lotteries:

Considering that approval of such provisions would be of assistance and accessory to a quick development of gambling in Canada;

Considering that lotteries appeal to the poor, who become the victims of an illusory hope regarding the solution of their problems;—

This organization firmly states its opposition to lotteries.

Now, Mr. Speaker, for these reasons, we believe that the paltry sums lotteries might bring to church organizations are not worth

endangering morals. Thousands of people who might trust such illusory solutions may gamble the welfare of their children, in the hope of becoming rich overnight. Advertising will sell them on the idea that such lotteries will allow their lifelong dreams to materialize in dazzling colour.

• (4:40 p.m.)

Mr. Gilles Marceau (Lapointe): Mr. Speaker, I wish to make a few remarks on the subject of lotteries.

Mr. Speaker, it seems that some people are made to build and others to destroy. I have the feeling that the government to which I belong falls in the category of the builders and I need not indicate who the destroyers are. We have just heard their remarks showing that they are to accept an opinion contrary to theirs. The worst is that they have not enough common sense to listen to those who intend to express their views as strongly as they do.

Some remarks are called for about lotteries, which through the ages have been seen in different lights. At times, their morality or their opportunity has been questioned, but finally their principle has apparently become accepted almost everywhere.

It would not be exaggerated, I think, to maintain that it is human to want sometimes to try one's luck.

Would I be going too far if I said that in life everything is in a way a lottery. Birth as well as success are the results of chance which sometimes changes completely the life of a man. An unexpected event, a road accident, in short a mere nothing can change the course of his life. Very often man's destiny is the product of chance.

Some sceptics will suggest that I fail to recognize the fundamental characteristics of man, namely will and intelligence, which permit him to make his way alone if he wants to. On the contrary, Mr. Speaker, I recognize these qualities as essential. I only say that sometimes they are not sufficient.

Moreover, for every human being gambling is an obsession. As I said, every man wants to try his luck. Betting is an ordinary thing, whether it be in sports or in speculations.

Ask anyone if from time to time he does not like to try his luck. If he replies no, take his word for it. If he says nothing, you can wonder.

Lotteries have their roots in man's age-old thirst for gambling. The first are reported to have existed in ancient Rome under Augustus and Nero. I admit that they had quite a simple form at that time: when games or circuses were being held, small tickets were dropped among the crowd; some of them had something written on them, for instance the words: a slave, a horse or an earthen pot, and others were blank. People hurried to pick them up, and those lucky enough to pick up one with an inscription could claim whatever was written on it.

The first organized lottery made its appearance in Italy in the fourteenth century.

Habits have not evolved much since then, Mr. Speaker, for what I have just said is derived from a speech delivered in 1934 by Hon. Athanase David, then Secretary of the Province of Quebec.

Mr. Speaker, the more times change, the more alike they are. People think today that a lottery would meet a need.

The best thing would be for Canadians to start saving their money or investing it, but some of them feel they can channel it into games of chance. I do not know how we could prevent them from doing so, but in any event millions of dollars are swallowed up by gambling and go abroad whereas they could be put to use in this country for our own people.

I think, Mr. Speaker, that this legislation will enable our modern society to go one step ahead.

I ask our friends of the Ralliement Créditiste to show enough common sense to join the majority of members in endorsing the principle of lotteries.

Mr. Henry Latulippe (Compton): Mr. Speaker, I should like to discuss the amendment moved by the hon. member for Winnipeg North Centre (Mr. Knowles). I am somewhat agreeable to it. I should like to say that we are not opposed to lotteries, in view of the circumstances but if our economic situation rated better, there would be no need for national, provincial, municipal or school barbottes.

Today reference is made to the legalization of lotteries in Canada and in the provinces especially because the provinces, the school boards, the municipalities, and the religious institutions can no longer pay off their tremendous debts.

I would say to the hon. member for Lapointe (Mr. Marceau) that the citizens who wish to buy tickets will have to go and

borrow the money because there is not one red cent which has not been borrowed free of interest. However, special taxes and rates empoverish the citizens.

Every time a citizen visits those barbottes he will have to borrow money, go into debt and pay back an interest ranging from 10 to 24 per cent to high finance which has the support of the hon. member for Lapointe and other members of this house, the Prime Minister, (Mr. Trudeau) the Leader of the Opposition (Mr. Stanfield) and all those who do not want to listen to reason.

Those who do not want to understand that money is but a tool for the use of man, are inhuman. Money is not a tool for the exploitation of man but they are using it as such and they become themselves exploiters of the nation.

This is the picture of the situation. When the hon. member for Lapointe tells us that we are off our rocker, that we want destruction and ruin, I ask him to tell us who has led this system to ruin?

Mr. Marceau: Mr. Speaker, on a point of order.

Mr. Latulippe: Who has led it to bankruptcy? Is it the Social Credit or this evil system?

Mr. Marceau: I raise a point of order, Mr. Speaker.

Mr. Speaker: Order, I am sorry to have to interrupt the hon. member for Compton in his flight of oratory but the hon. member for Lapointe raises the question of privilege.

Mr. Marceau: Mr. Speaker, I should like to remind my hon. friend that I never said he was out of his mind. I also wish to tell him that I would not go as far as that but if he himself wants to say he is, I do not want to prevent him from doing so.

Mr. Speaker: Order.

Mr. Marceau: I do not want him to ascribe to me—

Mr. Speaker: Order.

Mr. Marceau: —something I did not say.

Mr. Speaker: Order. There is no point of privilege here.

The hon. member for Compton has the floor and we will listen with pleasure to the remainder of his speech.

[Mr. Latulippe.]

Mr. Latulippe: Mr. Speaker, we are really the real builders of the nation. We are those who want to build upon the ruins of the present system, completely worn out by the extravagance of the old parties during many generations.

They were never willing to listen to reason. They never tried to understand the facts of life. They never wanted to recognize facts and apply solutions to enable a nation to develop itself adequately and freely in a country that abounds in resources. There is no lack of abundance nor of production, but of distribution and consumption, on account of the lack of purchasing power. That is one of the reasons why we are establishing barbottes of all kinds.

• (4:50 p.m.)

I apologize for using such a word, Mr. Speaker, but I have to use expressions of that kind in order to interest the hon. members.

Mr. Speaker, in reply to my hon. friend from Lapointe, I have here quotations from the Right Hon. Mackenzie King, who was Prime Minister of this country in 1935. He was a good Liberal, a man who had an understanding of business and a sense of responsibility, in short, someone who wanted to do something good for the nation. Unfortunately, those around him would not understand anything, they called him a bluffer and told him all kinds of unseemly things for he had more insight than they had. We have much respect for that illustrious Prime Minister whose opinions were sound and practical.

This is what he said:

> In a world where the priority of financial credit is every day more prevalent, it is easy to understand that the present system which grants to private interests the privilege and the monopoly of establishing credit has met and is still meeting with a strong opposition.

Several Liberals, at that time, were in disagreement with their Prime Minister.

For instance, commenting on the results of the general elections vote of October 1935, the new prime minister of the day, William Lyon MacKenzie King made the following statement:

> "The election is an endorsement of the Liberal view that credit is a public matter, not of interest to bankers only, but of direct concern to every citizen. It is a verdict against a privately owned and controlled central bank, and in favour of a properly constituted national bank to perform the functions of rediscount, and the control of currency issue considered in terms of public need. There can be no mistaking the demand for a restoration to the government of Canada of control over credit and currency issue."

There is no possible misunderstanding: it means asking to entrust to the government the control over credit and over money.

How is it then that the present Liberal government would disagree and refuse to acknowledge what the former prime minister said.

Mr. Speaker: Order. I wonder if I should interrupt the hon. member but may I remind him that we have now under consideration an amendment on the question of lotteries? I wonder whether this question, which to me seems rather limited, would allow the hon. member to criticize the monetary system of Canada.

I daresay he is going far beyond the limits of the motion we are now considering.

Mr. Latulippe: Mr. Speaker, it may be true that I am going beyond the limits of the motion under consideration but on the other hand this motion is surely related to our economic system.

If we have reached the point where we have to establish such lotteries, it is precisely because our economy is topsy-turvy, is day by day more unbalanced, and leads us to request the setting-up of lotteries to enable us to manage our business.

Lotteries are growing into a necessary financial means. I should point out at what the great men of that time, following the Liberal leader, have demonstrated to the government, to the people of Canada, and to the whole world and that is the necessity for reforms. He specifically pointed at them but no one, I believe, in his government ever understood him.

Today, we are claiming the same thing, and we are scorned by the Liberals.

Everything that is good remains good. We want to build our society, not destroy it. But the citizens do not have the required purchasing power to spend on "barbottes" and we are sure that the people who will gamble will have to find the money somewhere. Social welfare will have to step in to provide for the needs of families at the expense of the taxpayers who earn an honest living.

Mr. Speaker, we must point out the problems and what remedial measures should be taken to correct that degrading, disappointing and economically unhealthy situation.

We are not opposed to the present system, and we would not do away with it, for it is the best system in the world. But we do object to the abuses of the capitalistic system. And if we, elected by the people, do not assume our responsibilities with a view to correcting the awful abuses which corrupt this fundamentally good system, then we are responsible for them.

I could quote you Winston Churchill, who said that the monetary system—

Mr. Speaker: Order. Before the hon. member starts reading those quotations to the house, I should like to remind him, as I mentioned a moment ago, that the house is now dealing with an amendment on lotteries; the hon. member should limit his observations to that matter without discussing, for the benefit of the house and hon. members, the far more general topic of the Canadian monetary system.

Mr. Latulippe: Mr. Speaker, I thank you for calling me back to order. I may not be completely in order, but there were others who were not strictly in order. Mr. Speaker, you have more sympathy for some people than for others, but I shall comply with your decision.

I would like to know why they want to legalize lotteries, at the federal and the provincial level. Why are we discussing this ambiguous measure? It is supposed to settle the financial problems of the provinces, of the federal government and of the municipalities, burdened with unredeemable debts, which carry tremendous rates of interest. Lotteries are not a healthy proposition, for they cannot settle any problem.

The city of Montreal has not settled its problems, though it has a lottery. As a matter of fact, the federal government had to intervene and it will have to do so for a long time, for that city cannot repay its debts. Moreover, all municipalities are in the same position.

• (5:00 p.m.)

On the matter of lotteries, we intend to support the amendment, but we will vote against the bill, because it contains several immoral clauses and it has not been divided. The government has refused to divide this bill as asked by the opposition so that we could approve certain things which we find unnecessary, but that we call urgent, because they could be of assistance to a number of institutions in Canada. We would be in favour of lotteries but as there has been unwillingness to divide this bill and to comply with the will of the people and of the opposition, we will vote against this bill and therefore against lotteries.

If it is not too late, I ask the Minister of Justice (Mr. Turner) to divide this bill. We could then decide in favour of some provisions and against some others.

Mr. Speaker, we cannot decide in favour of this bill, although we shall vote in favour of the amendment. We feel, however that it makes sense. We want to help religious bodies and school boards wishing to conduct lotteries in order to pay their debts or to promote education, as they have no other means to do so.

Several other organizations could benefit by it.

Those who want a house would need lotteries, because they cannot afford to build a house and borrow money at a 10 per cent interest rate.

Mr. Speaker, due to all the consequences of the present disastrous administration, we have to resort to means that I would term illegal, because I believe lotteries are illegal. Indeed, it is not altogether legal to squeeze money out of the taxpayers by extraordinary means, on a few individuals' instigation in order to obtain the necessary money to finance various institutions.

On that point, Mr. Speaker, we could say many things.

For example, we might refer to the hospitals' financial problems, even though they are being subsidized by the provinces. The latter can no longer meet their obligations towards the hospitals, and the federal government does absolutely nothing to lower the interest rate in order to allow the hospitals to carry on their work.

Charity institutions are in the same boat. They need capital, and they are provided with money at a 10 per cent interest.

Municipalities do the same when urgent works have to be undertaken.

Many things are physically, if not financially possible. We should take the time needed to face facts and to ask ourselves frankly if we can finance all that is physically possible by other means, instead of amending the existing laws which now exploit the people. We are satisfied with talking of something else, wasting our time trying to impose lotteries and all sorts of systems which can in no way solve the problem.

Mr. Speaker, we are here to solve that problem. We are here to find solutions to the various problems of our system, to build, not only to destroy. The present system is most certainly not constructive, since the 10 per cent interest rate is destructive. That is robbery, and it has been the downfall of many economic organizations in Canada. Not one member of the Progressive Conservative party—

Mr. Speaker: I regret to interrupt the hon. member, but his time has expired.

[*English*]

The question is on the amendment by Mr. Knowles (Winnipeg North Centre). Is it the pleasure of the house to adopt the said motion? All those in favour will please say yea.

Some hon. Members: Yea.

Mr. Speaker: All those opposed will please say nay.

Some hon. Members: Nay.

Mr. Speaker: I declare the motion negatived on division.

Some hon. Members: Oh, no.

Mr. Speaker: Pursuant to Section 11 of Standing Order 75 the recorded division on the proposed motion stands deferred. The house will now proceed—

Mr. Knowles (Winnipeg North Centre): Mr. Speaker, may I rise on a point of order and invite the attention of the Minister of Justice and those who are acting as house leaders of the other parties. I am sure we all agree with Your Honour's decision to defer the taking of the recorded divisions on this and other amendments, but I wonder whether I may draw attention to the slight problem we are now running into.

If the debate on the other two amendments included in the first eleven is prolonged beyond tonight, hon. members will realize what this will mean. Tomorrow and Thursday we are to have a debate on a defence and external affairs matter. I presume the debate on the Criminal Code may continue on Friday, but one knows that attendance in the house on Friday is not always 100 per cent.

I wonder, therefore, whether there would not be general agreement in the house to take the votes on the matters that have been deferred at nine thirty o'clock tonight, whatever stage we may have reached? In other words, we could take the votes on those amendments that have been disposed of not later than 9.30 p.m. If amendments Nos. 11 and 9 have also been disposed of they could be voted on at that time. I am not trying to cut off the debate on the amendments that my

friends have proposed, No. 11 and No. 9, but perhaps in view of the broad debate we have had in respect of lotteries on amendment No. 10 the debate on the other two might be shortened.

The sum of my remarks is that we take the votes not later than 9.30 o'clock tonight in order that we may clear up what we have disposed of at that time.

Mr. Turner (Ottawa-Carleton): On the point of order, Mr. Speaker, the suggestion appears satisfactory to us at first blush. I assume that if we are left with two amendments which have not been concluded by 9.30 the hon. member suggests we group those with other amendments that Your Honour intends to group later for a series of votes.

[*Translation*]

Mr. Gérard Laprise (Abitibi): Mr. Speaker, I agree with the suggestion made by the hon. member for Winnipeg North Centre (Mr. Knowles) as far as amendment No. 8 is concerned.

With regard to amendments Nos. 9, 10 and 11, I do not agree for the reason that they refer to the same clauses of the bill.

According to indications you gave at the outset of the debate on bill C-150, those amendments would be debated as far as amendment No. 11. If we voted as suggested by the hon. member for Winnipeg North Centre, that might indicate a change in the speeches on amendments Nos. 9 and 11.

For the same reasons put forward with regard to amendments Nos. 3 and 4, we could agree to the proposition made by the hon. member for Winnipeg North Centre until we reach amendment No. 8.

[*English*]

Mr. McCleave: Mr. Speaker, in respect of the suggestion by the hon. member for Winnipeg North Centre, I think the more logical course would be for us to complete the debate on amendments 9 and 11 since amendments 10 and 11 fit logically together. At that point we should vote on everything. I understand the hon. member suggests that if at 9.30 this evening we have not completed the debate on amendments 9 and 11 we should hold any recorded votes that arise on amendments preceding No. 9 so we will keep everything in neat packages. This should commend itself to Your Honour as providing some protection to those members in the corner of the chamber to my left who moved other amendments or have not had the opportunity to speak on them, although the hon. member for Winnipeg North Centre has had this opportunity. I believe there should be a mixture of both common sense and democratic procedure adopted in respect of these votes.

Mr. Lewis: Mr. Speaker, I think the last remark of the hon. member who preceded me was not intended as a shot at the hon. member for Winnipeg North Centre, who made it very clear that he did not want to interfere with anyone's right to carry on the debate.

I rise mainly to bring out the following point in respect of this point of order, and I hope the hon. members who gave notice of amendments Nos. 9 and 11 will not take umbrage at what I am about to say. I have not taken part in the debate on amendment No. 10 regarding lotteries but I sat here much of yesterday listening to the debate, which I might add was very interesting.

• (5:10 p.m.)

Let me address myself particularly to the amendments of the members of the Creditiste Party and ask them whether this is a fair statement. I have noticed that the debate so far on amendment No. 10 has by no means always been limited to that amendment. Amendment No. 10 deals only with the deletion from the amendments to the Criminal Code of the reference to provincial and federal lotteries. A number of speeches were not at all limited to that question but dealt with the whole question of lotteries private and public, the whole ambit of legislation concerning lotteries, and the whole ambit of the amendments proposed to the Criminal Code concerning lotteries.

I am wondering, therefore, whether the hon. member for Abitibi, whose contribution to the house and whose sincerity I very much respect, and the other members of his party would not agree that having had this kind of discussion, wandering all over the question of lotteries, we could set ourselves a goal of ending the discussion on amendments Nos. 9, 10 and 11 by 9.30 this evening. If hon. members of the Creditiste party, or two or three of them, were to speak again on amendment No. 9 or 11, they would merely be repeating what they have already said on amendment No. 10. I have great respect for their ingenuity to say it in a different way, but it would in substance be repetition.

This is the fifth day of the report stage of this bill. There are some 40 amendments; I do not recall how many have been declared out of order and what combinations are being

made. But we are only on the ninth one; it is No. 10 but it is really the ninth because we dealt with No. 8 and went on to No. 10. This raises a pretty horrendous proposition.

When we reach the amendments with regard to abortion there will be a great deal of honest and sincere feeling on that subject which will require and should have many days of discussion. I repeat that since we have had last evening and this afternoon, and will continue to have some time this evening, on the question of lotteries, and since many speeches dealt with the entire subject rather than being limited to the narrow points of amendment No. 10, which the Chair presumably could have insisted upon but which in its usual wisdom it did not do. I wonder whether we could not agree to end the debate on amendments 9, 10 and 11 by 9.30 this evening.

Mr. Woolliams: Or before.

Mr. Lewis: Or before, but at least by 9.30, and take the votes on everything up to No. 11. I suggest this merely for the consideration of hon. members.

[*Translation*]

Mr. Réal Caouette (Témiscamingue): Mr. Speaker, according to the hon. member for York South (Mr. Lewis), we are bent on extending the debate. I want to make it clear that we intend to do so. It is as simple as that. We have no objection to a vote being taken on everything that has been discussed up to now, including the amendment of the hon. member for Winnipeg North Centre (Mr. Knowles).

However, I think that amendments Nos. 9 and 11 moved by the hon. member for Abitibi (Mr. Laprise) must also be discussed because we still have something to say, even though we may have to repeat in other terms what we already said, as the hon. member for York South remarked. We can express our argument differently, and we will surely use all our cleverness to stretch this debate.

[*English*]

Mr. Woolliams: Mr. Speaker, I shall be brief. We have now completed up to amendment No. 10 and are down to No. 11. I agree with the suggestion with one exception. Do not let us set the hour of 9.30. We should be able to complete this discussion long before that. But let us set a target of 9.30 at the latest with respect to lotteries. I agree that the debate has been useful, but everybody who has spoken and to whom I have listened has covered the whole subject in reference to all the amendments. They have not particularized.

In making this suggestion I am not trying to recommend any form of closure, but surely we should not set a target of 9.30. We have had a full discussion and we might, as reasonable people, be able to finish this matter as early as 5.30 or 8.30. I do not know why we have to say 9.30. Perhaps that is because it is near the closing hour. I think the suggestion made is a good one, but we should be able to complete discussion of this question before 9.30. We should be able to accomplish what we have to accomplish before that time. There are other points in this bill that I know many members want to talk about.

Mr. Knowles (Winnipeg North Centre): Mr. Speaker, I wonder whether I could now make the suggestion that at the dinner hour there be consultations among representatives of the parties to see if we can come to some agreement that will meet the wishes of all of us. I think there is a general desire to have some of the votes tonight, knowing that we cannot have them on Wednesday or Thursday and that there might not be a universal desire to have them on Friday.

Mr. Turner (Ottawa-Carleton): We will have our representative there, Mr. Speaker. Naturally we are in favour of any reasonable arrangement that can be made, but we want to reserve our position to see where we stand at 9.30.

Mr. Speaker: Order, please. Hon. members know that the original decision was that amendments 1 to 11 would be voted on together. That was the official decision arrived at after hearing the views of all hon. members. I would not think the Chair could change this position now, unless there is agreement on the part of all hon. members. I think the suggestion made by the hon. member for Winnipeg North Centre, and concurred in by other hon. members, is probably very valid but that no change should be made to the original decision unless there is some measure of agreement following the usual consultations among hon. members. I would therefore proceed at this point to put to the house the adjournment proceedings.

PROCEEDINGS ON ADJOURNMENT MOTION

SUBJECT MATTER OF QUESTIONS TO BE DEBATED

Mr. Speaker: It is my duty, pursuant to Standing Order 40, to inform the house that the questions to be raised at the time of adjournment tonight are the following: The hon. member for Vancouver-Kingsway (Mrs. MacInnis)—Combines—drugs—price fixing by B.C. pharmacists; the hon. member for Brandon-Souris (Mr. Dinsdale)—National Parks—alteration of land tenure principle.

GOVERNMENT ORDERS

CRIMINAL CODE

REPORT STAGE

The house resumed consideration of Bill C-150, to amend the Criminal Code, the Parole Act, the Penitentiary Act, the Prisons and Reformatories Act and to make certain consequential amendments to the Combines Investigation Act, the Customs Tariff and the National Defence Act, as reported (with amendments) from the Standing Committee on Justice and Legal Affairs.

• (5:20 p.m.)

[*Translation*]

Mr. Gérard Laprise (Abitibi) moved:

That Bill C-150, an act to amend the Criminal Code, the Parole Act, the Penitentiary Act, the Prisons and Reformatories Act and to make certain consequential amendments to the Combines Investigation Act, the Customs Tariff and the National Defence Act, be amended by deleting from clause 13 at lines 41 and 42, page 31, the words: "either alone or in conjunction with the government of another province"; and by deleting also at lines 44 and 45 the words: "in that province, or in that and such other province"

Mr. Speaker, I moved that amendment to clause 13 of Bill C-150 regarding lotteries in order to clear up some clauses of the bill.

However, I would have preferred to consider first amendment No. 9 whose effect would be to delete clauses 12 and 13 from Bill C-150. If the house had agreed to delete both clauses, the two other amendments on the same subject would have been unnecessary and we would therefore have avoided a few more hours of discussion on this subject.

For reasons I do not understand very well but that I accept, the Chair has steered us towards amendments Nos. 10 and 11 before reverting to amendment No. 9. During the few minutes allotted to me, I shall speak on clause 13 which deals with lotteries.

The amendment I am moving simply aims to correct subparagraph (b) of paragraph (1) of the new clause 179A which reads as follows:

Notwithstanding any of the provisions of this part relating to gaming and betting, it shall be lawful

(b) for the government of a province, either alone or in conjunction with the government of another province, to conduct and manage a lottery scheme in that province, or in that and such other province, in accordance with any law enacted by the legislature of that province and for that purpose for any person in accordance with such law to do anything described in any of paragraphs (a) to (f) of subsection (1) or subsection (4) of section 179;

Mr. Speaker, the purpose of the amendment I am moving is to delete certain words from this clause, which would now read as follows, and I quote:

—for the government of a province, to conduct and manage a lottery scheme, in accordance with any law enacted by the legislature of that province.

Then, the government of a province could conduct and manage a lottery scheme, as enacted by the amendment I am moving to clause 13 of Bill C-150.

Mr. Speaker, I first moved an amendment to delete clause 13 completely from Bill C-150, as well as clause 12 which deals with the same subject.

If I moved this amendment, it is because I do not know exactly what the law provides with regard to lotteries in Canada.

I am fairly well aware, however, of the manner in which it is applied in the province of Quebec. I believe that the latitude given by the Criminal Code, with regard to this matter, is wide enough to allow any charitable organization or agricultural fair to set up lotteries.

We also know that Mayor Drapeau has succeeded in organizing his own lottery, which seems quite legal to me, since those who have tried to prevent the city of Montreal from operating its lottery did not have much success.

Proceedings may have been held in Superior Courts to have the Montreal lottery declared illegal, but I think it is already too late and that a precedent has been established. Even if one succeeded in proving that the Montreal lottery is illegal, nothing could be done now, because the mayor of

Montreal could not be forced to take back the thousands of dollars he has distributed through his lottery, nor could he be forced to return to all those who purchased tickets the two dollars he received from each of them. He could not be forced either to dismiss all employees who run the lottery.

For all those reasons, Mr. Speaker, I believe there is nothing we can say against the lotteries now being operated in the province of Quebec and in Canada.

That is one of the reasons why I appprove the amendment moved by the hon. member for Winnipeg North Centre, even if I have not spoken in favour of it. I support the amendment because it simply deletes paragraphs (a) and (b) of clause 13 and leaves charitable organizations free to operate lotteries.

So, whether one is for or against clause 13, that will not have much effect on what presently takes place in Canada.

We are asked to amend the Criminal Code in order to legalize lotteries operated by the federal government, the provincial governments and the municipalities, for certain reasons.

But that has been going on for many years, on the pretext, for instance, of helping municipalities to carry out their administrative duties.

We are told that they could help hospitals to meet their obligations.

Those are not valid arguments, in my view, because there are other means, more efficient and much more equitable, of realizing the same objectives.

• (5:30 p.m.)

If the government has yielded to pressures, it was in order to satisfy the numerous requests made by the provinces. To obtain new fields of taxation, the provinces come to Ottawa, not once but two or three times a year.

Municipalities make pilgrimages to their capital city to get from the provincial government greater powers of taxation.

So, faced with reiterated representations from the various public bodies of the provinces, the government which is no longer willing or able to give such powers, now offers them this indirect form of taxing the Canadian citizen.

Mr. Speaker, I believe this method of disguised taxation is unfair because even a brief study of income tax will show that is entirely different.

Our fiscal system is based on two distinct sources of revenues: taxes on the income of individuals and corporations, and excise tax.

Mr. Speaker, I recognize the merits of the first method, but I deny those of the second, because it is used to levy indirect taxes, both on those who are unable to pay and those who can, while the personal income tax could be set up in such a way as to tax only those who can pay.

Mr. Speaker, when I say that I support an income tax system, I mean that we should leave the worker enough take-home pay to allow him to provide a decent living for his family. That is why we urge that the amount of non-taxable income be raised to $5,000 a year, at least, for married persons.

In my opinion, this way of imposing a disguised or voluntary tax is unjust, because it affects even those who cannot afford to pay taxes.

This new method of taxation is unjust and ineffective, because it is too unsteady a source of revenue. It is therefore surely impossible to use that means of taxation. If we want to allow municipalities to use that tax system—Mayor Drapeau of Montreal was in a position to realize it—no municipality will be able to prepare a reasonable budget based on revenues from a lottery.

This is why we cannot rely on receipts from lotteries to replenish municipal funds or help finance hospitals.

In my opinion, the lottery system is not valid, since changes to the tax structure should be made through adequate legislation based on the opinion of tax specialists, as is advocated by the Carter report and other official documents.

Mr. Speaker, if we are to develop a taxation system, I suggest we should proceed in an orthodox way so that people may know exactly where they stand. This is why I wanted clauses 12 and 13 to be deleted or clause 13 to be amended.

Another reason that made me bring this motion forward is that if a province is permitted to set up its own lottery system, another province cannot be denied that right. Can you imagine what would happen if all ten provinces decided to organize lotteries. It would be a mad competitive rush for the citizen's dollar. Provincial governments would be at each other's throats, and so would the inhabitants of the various provinces, who

would resent a neighbouring province reaching from across the border for their own resources. This would cause discord within Canada and would be another subject for the governments and citizens in the provinces to wrangle over.

This is why we think that the present act should not become more lenient.

I have another point to draw to the attention of the house. I have listened carefully to every speech since the beginning of this debate on lotteries and nobody raised that point.

I do not wish to venture into any intricacies, Mr. Speaker, but as far as the administration of the province of Quebec is concerned, I know it well enough to be aware of the greediness of some civil servants. Naturally, this does not apply to all of them, but I know that some civil servants are extremely greedy and this may lead to abuses in the administration and the conduct of a provincial lottery.

The same goes for municipalities. According to the *Maclean's* magazine, a gang of criminals in the United States earned $13,500 and $14,000 unlawfully.

Mr. Speaker, there is also the danger that the underworld could creep in, even without knowledge of a province or a municipality, to take over the giving of prizes.

We remember what happened not long ago at the Montreal Forum. It was discovered that, unknown to the management, the time-keeping system at hockey games had fallen into the hands of quite unscrupulous persons. It is a danger we could face.

The example of a social club which was for a quite worthwhile project is also quoted. The company involved received $100,000 for the administration, in addition to $69,000 in gifts, while the profits for charitable organizations only reached the sum of $30,000 for a 4-year period.

Mr. Speaker, the dangers arising from the administration of such indirect systems of taxation are very serious and the profits will be small in comparison with the money spent by the people.

Mr. Speaker, I think that it is unadvisable to bring in any amendment to the section on lotteries. Anyhow, I suggest to the house, in case amendment No. 9 is not carried, to take at least the trouble of considering amendment No. 11 to paragraph (b) now under discussion which would prevent any confusion should the provinces wish to avail themselves of that legislation. This in order to avoid disputes within provincial lottery systems.

Mr. Speaker, I do not intend at this stage to continue my comments on the matter. I know that the house is already acquainted with many views on the subject and I will be pleased to hear others which will be stated.

• (5:40 p.m.)

[*English*]

The Acting Speaker (Mr. Béchard): Is the house ready for the question?

[*Translation*]

Mr. André Fortin (Lotbinière): Mr. Speaker, I think I should speak on the motion of the hon. member for Abitibi (Mr. Laprise) to delete clauses 12 and 13 in the omnibus bill. These clauses, as we know, are intended to legalize national as well as provincial lotteries.

Mr. Speaker, I would not want to waste the time of the house, but I should like to put forward some arguments in support of the assertions of the hon. member for Abitibi.

Mr. Speaker, I think that the remarks of the hon. member for Abitibi a while ago, give cause for reflection to all members interested in the administration of our country and give us the opportunity to think about the establishment of a national lottery.

Mr. Speaker, I listened with interest this afternoon the comments of the hon. member for Trois-Rivières (Mr. Mongrain) and I am pleased to see that he considers several of our proposals as acceptable.

I hope, Mr. Speaker, that members will give more and more consideration to these proposals so as to come to some conclusion.

With regard to lotteries, I think the problem is rather complex. It has often been said since this debate started that the acknowledged purpose of a lottery was to supply an additional source of revenues tc the State.

To confirm such statements, I have here an article of *La Presse* dated January 20, 1968, which some members may have read. It is excellent and was written by Mr. André Béliveau. I quote:

> No doubt that the main quality of a lottery is that it can be a source of considerable revenues to the State.

Mr. Speaker, the reporter even thinks it his duty to recognize that ultimately the object of a national lottery is indeed to provide the State with additional revenues

So governments have here a financial, a monetary problem. And the reporter goes on to say:

—In its report tabled in December 1965, the royal commission on taxation whose chairman was Mr. Marcel Bélanger, roughly estimated the net revenue that would accrue to the State of Quebec at $10 million per annum. Although the Bélanger Commission considers that amount as a maximum, several proponents of the legalization of lotteries question it and point out that the New Hampshire lottery, established in 1934, even in its first year produced almost twice the amount that had been expected and that the receipts from the New Zealand lottery, created in 1961, exceed by 500 per cent the experts' forecasts.

Anyway, the $10 million foreseen by the Bélanger Commission would already represent 0.55 per cent of all the revenues the province of Quebec got in 1966. Although comparatively small at first sight, such extra returns are not negligible in a country in full expansion where needs are urgent in all sectors.

I think that document most interesting for whoever wants to know all that a lottery scheme entails.

Mr. Speaker, right now, let us say that we see no immorality in the establishment of a lottery. For my part, I see nothing moral or immoral in it.

A lottery is simply a financial scheme inviting people, according to the definition given, to buy tickets on which they hope to win a very attractive prize.

In my opinion, that financial scheme designed to get money out of the taxpayers' pockets is different from the taxation system. As the hon. member for Abitibi (Mr. Laprise) has said, the taxation system affects all the activities of our daily lives. If one buys some goods, he pays the sales tax, and if he produces something, he pays the production tax; the same thing goes as regards consumption, and so forth. At all times, the presence of the governments is felt. The taxes that are levied reduce our buying power.

• (5:50 p.m.)

This is one form of taxation because, in fact taxes are called by several names: surcharge, social development, and so on.

There is another way of getting money out of the pockets of the taxpayers, it is the income tax.

Minimums and maximums are imposed, tax rates are established and the product of labour is taxed. There are also other kinds of taxes and dues, of course, such as land tax, for instance.

[Mr. Fortin.]

Today we notice that our financial obligations are growing increasingly while our ability to pay back becomes increasingly limited. Thus because our resources are limited we have to realize that our financing and administrative system is inadequate. Within the administration, municipal as well as provincial or federal gaps develop which are difficult to fill. The municipalities are aware of it because they have commitments to meet and they do not have the money to do it.

This is one of the reasons why governments promise from one election to the next a reduction in taxes, and once in office nothing happens. No government has ever reduced taxes because obligations are increasing and economic expansion is conceived only on the basis of taxes. Therefore taxes can only but increase under this system.

Mr. Speaker, faced with this inability of the present financial system to reach its goal, several people interested in economic matters say that a lottery system might help us make ends meet. Lotteries, we are told, could bring in some money. What is the basis for saying that?

Mr. Speaker, those who favour lotteries claim that every year a fantastic, scandalous and unacceptable amount of Canadian capital goes abroad, and that if we had national, provincial or municipal lotteries, that money would stay in Canada.

This argument based on an economic nationalism is used, according to which Canadian capital should stay in Canada to foster its economic expansion. Statistics, ideas are put forth to try to prove that theory.

In the *La Presse* dated January 20, an article signed by André Béliveau was published under the title: *Un exode de* 150 *millions*, and I quote:

It is therefore not surprising, in those conditions, that Canadians also should have such an inclination to gambling. For there is much gambling in Canada. One of *Maclean's* writers, Alan Phillips, estimated in 1964 the total annual stake—legal and clandestine—of Canadians at close to $2 billion. As the only form of game under the control of the government is the race track pari-mutuel, it is difficult to get more accurate statistics.

It is estimated that the outflow of Canadian capital to some 70 countries which offer us their sweepstake tickets amounts to roughly $150 million a year.

Mr. Speaker, I admit that Canada loses fantastic amounts of money every year, money which goes to 70 countries where lotteries are legal. But, while agreeing with this argument, I do not feel that it is necessarily conclusive,

and that to check this outflow of money we should set up a lottery system.

When you want to control a flooding, you build a dam. You do not bring in more water, because it would not make sense.

Because of the outflow of capital, we should have our own lottery system. It would only be one more lottery. Indeed, if a state lottery were set up in Canada, under this omnibus bill introduced by the Minister of Justice and if the provinces and municipalities were to do likewise, would it be illegal for Canadians to participate in foreign lotteries?

If we do not make it illegal for Canadians to take part in foreign lotteries such as the Irish sweepstake for instance, Canadian capital will not only go abroad, but it will also go to the various provinces and the problem of the outflow of Canadian capital will not be solved.

To prevent such an outflow, we should raise barriers, instead of legalizing lotteries,—as we did for instance during the Kennedy round negotiations.

It would be one way, though possibly not the best, of solving the problem. So this is my suggestion: let us be consistent, Mr. Speaker and stop saying we need a state lottery system under the pretence that Canadian capital is going abroad. Such a suggestion does not make sense, it does not hold water.

That is why, Mr. Speaker, I am glad the hon. member for Abitibi (Mr. Laprise) has moved this motion tending to delete from the omnibus bill the clauses pertaining to lotteries, because, as any Canadian, I realize there is a flow of Canadian capital going abroad and also that this solution which is considered as sound, is not really effective and is unlikely to settle the problems of the municipalities, of the provinces and of federal government.

It matters little whether we shall set up 10 lotteries or just one, or whether we shall need 25 lotteries to meet our financial requirements. The basic problem goes deeper than that. We have ignored it for too long and, unfortunately, it is overlooked by too many people.

Mr. Speaker, I wish to tell the house that there is nothing wrong with a lottery system. I believe everybody likes an occasional bet. In my opinion there is nothing wrong with that, provided it is done honestly.

However, they should not try to convince us that without a lottery system there can be no public financing or that such a system stops the outflow of Canadian capital. In my opinion, those arguments do not wash from the economic point of view and we are just running around in circles.

Therefore, I deem it my duty—and I hope many members will do the same—to support the amendment moved by the hon. member for Abitibi.

I suggest that in the interest of Canada's economic growth we give it some serious thought.

[*English*]

The Acting Speaker (Mr. Béchard): Order. It being six o'clock, I do now leave the chair to resume the same at eight o'clock.

At six o'clock the house took recess.

AFTER RECESS

The house resumed at 8 p.m.

The Acting Speaker (Mr. Béchard): Is the house ready for the question?

[*Translation*]

The motion is on amendment No. 11 by Mr. Laprise amending section 13 of Bill C-150.

All those in favour will please say yea.

[*English*]

Some hon. Members: Yea.

The Acting Speaker (Mr. Béchard): All those opposed will please say nay.

Some hon. Members: Nay.

The Acting Speaker (Mr. Béchard): In my opinion the nays have it.

And more than five members having risen:

The Acting Speaker (Mr. Béchard): Pursuant to Standing Order 75(11) the vote on this amendment stands deferred.

[*Translation*]

We will now proceed with consideration of amendment No. 9 by Mr. Laprise.

Mr. Laprise moved:

That Bill C-150, an act to amend the Criminal Code, the Parole Act, the Penitentiary Act, the Prisons and Reformatories Act and to make certain consequential amendments to the Combines Investigation Act, the Customs Tariff and the National Defence Act, be amended by deleting therefrom clauses 12 and 13.

Mr. Speaker, I wish to deal now with amendment No. 9.

The purpose of this amendment, as I pointed out earlier, is to delete completely the new provisions concerning federal and provincial lotteries.

As I already explained, I am not against lotteries, but I believe those who wish to set up lotteries at the present time can do so. Certain municipalities, for instance, have done it. I already referred to the city of Montreal —I do not wish to stress the matter any further. We should leave it at that as far as the lotteries are concerned.

I note that certain charity organizations, social clubs, farm associations, agricultural fairs or local exhibitions may conduct bingos etc., in order to help certain sporting clubs. It is relatively easy at the present time, under the provisions of the Criminal Code, to resort to such means to help out organizations in need of additional funds to pursue their work during the year.

We know also that some catholic parishes have from time to time to conduct lotteries to pay the interest of their debts owing to the construction of churches, for instance. I do not know what goes on in protestant parishes, but as far as catholic parishes are concerned, to build a church, money must be borrowed and the church is thus paid for two or three times over. In order to pay the interest, during the year, raffles and parties must be organized to get some assistance and people may be entertained and practise charity at the same time.

Under the provisions of the Criminal Code those kinds of lotteries are legal. The amendment to the Criminal Code serves an altogether different purpose. It aims at enabling provinces, as well as the federal government, if needed, to conduct lotteries in order to finance Administration out of a concealed tax. The coffers must be filled, for not only are the funds inadequate, but the people are fed up; they pay enough taxes of all kinds, and they balk at each new tax which the government slaps on.

It seems as if, through that amendment, the governments of the different provinces as well as the federal government would be allowed to use an act to extend the tax system and turn lotteries into a hidden tax.

Mr. Speaker, I know that the government has some needs, that it has to meet heavy expenses, to finance public works, at the federal as well as provincial levels, but if the government wants it, it can use any means to reinforce its fiscal system.

[Mr. Laprise.]

I think the government should use, as some of my colleagues have suggested earlier today, a truly Canadian institution, namely the Bank of Canada, to finance public administration—I am not speaking of private business—at any level. Then the government would not have to pass regulations or measures such as we see here this evening to secure additional revenue to finance its administration.

For these reasons, Mr. Speaker, I suggest to delete from bill C-150 clauses 12 and 13, which deal with lotteries.

Mr. Speaker, we should consider this amendment, as well as amendments 11 and 10. I think they are similar. As we study them, we come to the conclusion that they recommend the status quo with regard to lotteries.

• (8:10 p.m.)

Mr. René Matte (Champlain): Mr. Speaker, towards the end of the afternoon I heard the hon. member for York South (Mr. Lewis) accusing us of making the same speeches over and over again.

Mr. Speaker, I was a teacher for 13 years before becoming a member of this house and I learned that when one has to deal with thick-headed people, with blockheads, one has to keep trying relentlessly and repeat oneself several times in order to be well understood. This is why we want to make sure we are well understood and we are stressing our views on bill C-150 generally and particularly on the amendments now before us, aiming to delete clauses 12 and 13 from the bill.

The hon. member for Abitibi (Mr. Laprise), who moved this amendment, has just given us some reasons justifying the deletion of those two clauses.

I have given my views on the subject of lotteries this afternoon when I said that I am not in favour of the establishment of a national lottery, but that considering the present system, we find ourselves nevertheless compelled to accept lotteries in order to replenish the funds of some organizations, and, in particular, those of the provincial governments or municipalities, as it is now being done in Montreal.

Some religious, social and charitable non profit organizations, manage in this way to collect funds to alleviate poverty and misery.

We are still convinced that the principle of lotteries is somewhat immoral, since we are staking on the passion and the taste for

gambling of the people. However, I admit that within some limits, one must give way to one's instincts and this gambling spirit which is linked to the desire to make a fast buck.

Therefore, if we want to replenish the public treasury by exploiting that passion, it is not desirable to that extent, but as has been repeated many times—and we take pleasure in doing so—as long as we do not cure that ill and administer the proper remedy, we will have to accept, whether we like it or not, these various palliatives which are an attempt to solve, in a way, the taxation problem.

I do say "settle in some way" since this morning, in the house, my colleague, the hon. member for Shefford (Mr. Rondeau), pointed out for a fact that lotteries organized in various countries have only succeeded in financing administrative costs of hospitals for three or four days. So, this is not a very interesting solution. If some consideration had been given to other means, we would not be facing such problems now. Should we favour lotteries or not? It is unfortunate that we have not been able to give serious consideration to other solutions to the financial problems.

And, as lotteries that we are asked to legallize, are generally held for the purpose of helping the under-privileged and various welfare institutions, the matter is directly related to the human being.

Instead of letting us debate such matters, the government should propose various economic solutions to be applied in order to avoid surtax, to help the poor as well as such organizations whose object is to protect human beings.

If we had to discuss that, it would be more interesting than to be kept in the dark and to have to wonder whether or not it would be advisable to legalize lotteries. It is not funny really to talk about rather unimportant and artificial things which offer no solution to the economic problems.

Heaven knows how often the Créditistes have put the finger on these problems these past years. And they also suggested true solutions. We must unfortunately realize that we are not taken seriously enough. But some day the reason behind the legalization of lotteries will be taken into consideration and it will be realized then that this was a big step forward. In the meantime, we are in the dark.

Where will the money to be invested in lotteries come from? Will it be a new form of credit? Where will the participants find the money? The hon. member for Compton (Mr. Latulippe) said this afternoon that some people are so eager to gamble that they would go as far as borrowing in order to be able to take part in lotteries. Well, then money is not fulfilling its true function which should be to serve the individual and help him achieve personal development.

Mr. Speaker, we are talking about lotteries, games of chance and I would like to indicate that I am more interested than usual in the hockey game, tonight, precisely because I have made a few bets.

• (8:20 p.m.)

Mr. Georges Valade (Sainte-Marie): Mr. Speaker, it is my duty to make a few comments on the amendment of the hon. member for Abitibi (Mr. Laprise) because it concerns lotteries, a subject I have been interested in for many years.

It is probably known, Mr. Speaker, that since 1951, I have advocated amendments to the Criminal Code, to legalize lotteries, both at the provincial and federal levels.

The motion of my colleague, the hon. member for Abitibi, intends to delete such amendment to the Criminal Code. I am somewhat surprised since, in the past, some of his leagues of the Ralliement Créditiste, in bills they introduced in the house, sort of plagiarized the one I myself proposed in past years for the establishment of a provincial lottery. I must say that I am somewhat disappointed, since it has taken the house more than 10 years of consultations, discussions, hesitations and studies of all kinds to finally arrive at a solution.

I would have been easy several years ago to make that amendment to the Criminal Code, in order to legalize lotteries if there had been less partisanship in this house on the matter, since most Canadians are in favour of it.

I remember having introduced in this house a few years ago a bill, the passage of which had been moved by a member of the New Democratic Party. Unfortunately, the bill was defeated because it was considered during the private members' hour and time ran out before it could be passed by the house. But on that occasion, all the hon. members supported my motion.

I am pleased, even if it is a little late that this house has listened to reason and has decided that the committee on justice and legal affairs should recommend the passage of

that legislation for the establishment of provincial lotteries and giving to the federal government the authority to act in that field.

Mr. Speaker, I should like to mention now that I had made a study and some inquiries myself. I had written to nearly all the Canadian mayors in order to inquire from the councillors as to whether the people of Canada were in favour of lotteries.

Contrary to what many may think, not a single province in Canada objected to the passing of such legislation.

In a province which I do not want to mention and which was the least in favour of the bill 67 per cent of its citizens approved the establishment of provincial lotteries in Canada.

In the province of Quebec, the figure was over 90 per cent while in Ontario it was over 80 per cent. Most people in all the provinces were agreeable to such a measure.

So we are respecting, I think, the will of the Canadian population which is asking us to legalize lotteries. I should like to emphasize that since the leader of the New Democratic party is against the legalization of lotteries. I would invite him to refer to the official report of the house where he will find that his own party had already recommended and moved the passing of that legislation.

Mr. Speaker, I feel that the lottery scheme is a must in the context of modern Canada. Anyone knows that every day millions of lottery tickets are sold in Canada. Lotteries have been established all over the world, in Jamaica, Ireland, Britain, New Zealand, Mexico, and so forth. Over 70 countries in the world have set up lottery schemes. I might point out that New Zealand has set up what is called a "Peewee" lottery, designed to provide the federal government with an indirect source of revenue.

In some cases, it is really an indirect tax, paid, all the same, on a voluntary basis. In that country, the lottery scheme has succeeded so well that the government had to increase the amounts of the prizes and reduce the price of tickets because it showed excess revenues.

Those are facts that the hon. members can readily check through relevant statistics.

Concerning that amendment to the omnibus bill, it remains to be seen whether, by means of the legislation, we shall prevent an outflow of millions of Canadian dollars abroad. According to Progressive Conservative quarters, they are estimated at $300 million. They serve for such purposes as welfare, social assistance or hospitalization, while we are in great need of them here in Canada.

I am surprised to hear the hon. member for Abitibi (Mr. Laprise) advocate the passage of a legislation depriving Canadian citizens of some benefits they would obtain without any levy of new taxes.

I regret that it took us so long to pass this legislation.

We are aware of one fact: the Mayor of Montreal, Mr. Jean Drapeau, has set up what he calls a voluntary tax, which is in fact a lottery. All this shows the hypocrisy of this government. By its indecision and its delays, it incited people to indulge in this hypocrisy, since a lottery has been simply established under the disguise of a voluntary tax. I want to point out the danger of a government which is not willing to meet the needs and the conditions of our time.

Should we have legalized lotteries a long time ago, we would not have induced the people to indulge in hyprocrisy openly and to scorn the law. As far as I am concerned, Mayor Drapeau's lottery is surely a lottery, and under section 179 of the Criminal Code, it is illegal. I do not want to dwell on this subject, because the matter is before the High Courts. Since this matter is *sub judice*, it would not be proper to discuss it here.

Mr. Speaker, some people across Canada have shown a very great interest in this matter.

Among others, a lady who had no other obligation left all her savings there. She spent several years to get thousands of signatures in favour of this bill. I am referring to Mrs. Mary English, whom I greatly admire. She travelled across Canada for many years to show the benefits that Canadians would derive from a lottery. Of course, she lost her last penny and the shirt off her back. She made great sacrifices and I am glad of this opportunity to pay a tribute to her. When Canadians really take an interest in public matters, they can accomplish great things for the good of Canada. I have looked into her work and this is why I feel I must speak of it.

It would be useless, Mr. Speaker, to elaborate further on the advantages of lottery and on the proposed amendment. I hope that as soon as the bill is passed in Parliament, the provincial governments will be able, through well-concerted measures, to avoid competition; a non-competitive position is what we are after, and this amendment

proves it. Of course, rumours are being circulated as to possible friction between the provinces. Besides, the legislation itself is, in parts, rather ambiguous. I think we should make certain corrections aiming to prevent prosecution, which would make the legislation ineffective, since the provinces will benefit from complete freedom in this field.

Mr. Speaker, I wish to say that I shall unavoidably vote in favour of every amendment aiming to legalize lottery. Unfortunately, it will not be possible for me, as for several members, to vote in favour of this legislation, since this amendment is part of a whole series.

Some of those amendments relate to homosexuality, others to abortion. Some reforms, however, are quite acceptable. However, I object to homosexuality and to abortion. I will be forced, on third reading, to vote against the legalization of lotteries. It is a contradiction to which we have been driven by the government. Many times, we asked the Minister of Justice (Mr. Turner) to try to understand the problem facing hon. members and to take a fair administrative decision.

Several hon. members want to vote for the legalization of lotteries and for penitentiary reforms.

Several accept the reform of the Criminal Code on firearms, but others are against abortion and homosexuality. To show the Canadian people that we object to those measures, we will be forced when the vote is taken on the amendments as a whole to vote against the legalization of lotteries and against penitentiary reform.

The Acting Speaker (Mr. Béchard): Order.

Mr. Valade: As for the amendments on firearms—

The Acting Speaker (Mr. Béchard): Order. I remind the hon. member that we are now considering the amendment moved by the hon. member for Abitibi (Mr. Laprise) which reads as follows:

—deleting therefrom clauses 12 and 13.

I do not think that the hon. member should now make the speech he will make on motion for third reading.

Mr. Valade: I respect your opinion, Mr. Speaker, and I recognize that you are justified in calling us to order. But I happen to be talking of that very amendment designed to eliminate from the bill omnibus the clause dealing with the legalization of lottery.

I intend to vote for the lotteries, like many of my colleagues, but it will be impossible to vote for such measures on third reading of the bill, since we are introducing a group of amendments among which some are acceptable, while others are not.

That is why Mr. Speaker, I am happy that the government proposed this legislation. Like several of my colleagues, I find it rather difficult to vote against this legislation at the third reading stage because by voting for the whole of the bill we would indicate that we approve provisions which we consider unacceptable, and yet, we are obliged to reject some which would like to adopt.

I take this opportunity to ask the government to revise its position, and the Minister of Justice to shed some light on the proposed legislation.

In all fairness, he should do it, because we, in the opposition, have no way of expressing our opinion clearly when comes voting time, and are thus obliged to do it at the time of the vote on the amendments.

• (8.30 p.m.)

Mr. Bernard F. Dumont (Frontenac): Mr. Speaker, when I heard the previous speaker state that the Montreal lottery is going well and bringing in tremendous revenues, I wondered whether he was defending his constituents, trying to make political hay or to make a statement on the amendment concerning lotteries.

Back in Montreal after a trip through Western Canada where I had seen Canadian people living more seriously perhaps than in Montreal, I wondered if such measures as the one before us were not meant to turn French Canadians in Quebec into people like those of ancient Rome, who were demanding bread and games. It is rather funny that a member for Montreal of the Quebec National Assembly proposed that Man and His World be made into a gambling casino. The previous speaker was in favour of gambling of this kind. I for one can speak about the seriousness of the people of Vancouver, Saskatoon, Regina, Edmonton that make them live the life we were living ourselves in the old days. We were living a simple country life and those people are reminding us that we should be less interested in gambling and consider the more serious side of things.

If the young people of today protest everyday, as they did at Sir George Williams University and elsewhere, and do such awful things, it is because they have lost confidence

in us, their parents, we who are proposing measures that bring nothing but opportunities for people to have fun.

If there are so few members present here this evening, it is because there is a great hockey game to watch on TV.

I am not against sport nor against moderate gambling, but when I see men as responsible as the administrators of the country, while we are discussing an amendment to the Criminal Code concerning lotteries, when we see—

The Acting Speaker (Mr. Béchard): Order. I would ask the hon. member to restrict his remarks to the amendment now under study.

Mr. Dumont: Thank you, Mr. Speaker, because I realize that the amendment is less important than the hockey game. Though I am 40, I am touched when I see people who are not more responsible, an attitude they have been taking since the beginning of the debate on the omnibus bill.

The Acting Speaker (Mr. Béchard): Order, I would ask the hon. member to be responsible and to discuss the amendment under study.

Mr. Dumont: There is an obvious lack of seriousness in this discussion of such an important amendment intended to prevent lotteries from proliferating in Canada.

In the province of Quebec several school boards and even several parish priests have asked in the past that bingos be allowed so that every parish might survive and many times those bingos were prohibited, preventing by the same token the financing of religious works.

Today the amendment under consideration would make it possible to continue these bingos in our parishes. That is why, as an exception, I would favour the amendment which would authorize lotteries so that certain religious orders might get the income they lack because of our inadequate monetary system.

Because of that illogical system crops are left to rot in the west and now they would have the people of Quebec enjoy ourselves more thanks to lotteries.

It is true, Mr. Speaker, that ancient Rome that asked for bread and games is coming back to life in our midst. We have the proof tonight that this very important discussion is not taken seriously mainly because the government will not express its views. The party in power would rather laugh and try to stop us from telling the truth in this house, the truth that the people in our ridings want us to tell. This is what we, of the Ralliement Créditiste, are doing; we approve this amendment to prevent lotteries from going too far.

An attempt has been made in Montreal to make it a city of pleasure, and I do not agree. I am no better Catholic than the Pope, but I would not like to face overwhelming temptations.

Mr. Speaker, as anybody else, when I see a beautiful woman or a place where one can get lots of fun, I feel tempted. If we have lotteries at will, what will be left of the dignity of Parliament? People will come and play cards behind the curtains, for there are people like me who do not smoke. If all those things are legalized, we shall take it easy with those swarming lotteries.

Personally, I object to that. I have a family of seven children and I do not want them to be subject to the temptation of all sorts of gambling games which will prolify tomorrow across Canada.

The people of Western Canada have shown us how dignified they are; why could we not follow their example?

They have preserved their sense of dignity, as I said earlier, because they have preserved the traditions we used to have in our families and parishes in Quebec. But we no more have them and to show us how little serious the Catholic French-Canadian nation is, gambling is offered to us. That is why I very much regret that we should not have had our say in drafting of this omnibus bill which tends to prevent lotteries from spreading everywhere. This amendment gives me serious second-thoughts. Actually, it is the fate of the next generation which is at stake. They will not endorse the frolics of our generation.

We should stick together in our effort, including the government members who are laughing from behind the curtains. But they refuse to state their opinion and to allow their constituents to realize what they really stand for. This is the moment of truth. The people should know where are the trustworthy. Where is the truth, where are the electoral funds which enable the government members to laugh at us and to approve, placidly and without uttering a word, an unacceptable bill.

A sensible amendment is being discussed and they laugh instead of talking seriously. They try to make fun of those who speak, but

the voice of truth comes out in the end and will finally reach the people.

• (8:40 p.m.)

Hon. Martial Asselin (Charlevoix): Mr. Speaker, last week when I dealt with the clause in the omnibus bill concerning homosexuality, I told the minister that this bill included acceptable provisions and how much I regretted to see him force certain members to toe the party line and vote against the bill. In fact the minister has refused since the outset of the debate to accept the proposal put forward by the opposition, namely to divide the bill into four parts, so as to enable members to vote on each part according to their conscience.

Tonight, we have before us an amendment dealing with lotteries. In fact, Mr. Speaker, I must say I am in favour of the provision of the omnibus bill dealing with lotteries. Its object is to legalize something which exists already in practice almost everywhere in Canada, and more particularly in the province of Quebec which I know better, and where lotteries, bingos, serve to finance our recreational activities and charitable organizations. In practice, we want to prevent charitable societies and organizations from being liable to criminal proceedings whenever they wish to raise funds in order to pursue their work. Therefore I am in favour of the lottery bill.

At this stage, Mr. Speaker, I should like to make a digression and say that this house has been hearing about lotteries for a long time. I believe that every year since 1958, a bill concerning lotteries was put on the order paper and the sponsor of such a measure was, in most cases, the member for Sainte-Marie (Mr. Valade) that I wish to congratulate tonight because in fact, he reaps the benefit of his work. The government is asking us to pass a measure designed to legalize lotteries and that is what the member for Sainte-Marie has been asking for since 1958.

Mr. Speaker, lotteries will allow Canadians to keep their money at home. How many Canadians win Irish sweepstake prizes every month or other prices in countries where lotteries are allowed? How many Canadians send money, reported to amount to millions of dollars, to foreign countries, to help their lotteries? The government should legalize lotteries here so that our Canadian money can stay at home and help charitable organizations, for instance, and the provinces to finance recreation which is not a luxury.

I do not agree with the previous speaker when he claims that we speak of nothing but gain and games, for I say that in a modern society organized recreation is a necessity, and we want lotteries to be legalized so that we can organize recreation.

Mr. Speaker, the bill the Minister of Justice (Mr. Turner) has put before us is excellent, and we should pass it. I would have voted for the legalization of lotteries, but unfortunately I shall have to vote against the bill for, as I said at the beginning the minister did not divide the bill in order that the members might decide, according to their conscience, on abortion, homosexuality, lotteries and firearms. The minister thus creates an illogical situation. I am in favour of lotteries, but I must vote against the omnibus bill because some parts of it seem to me unacceptable.

It will be difficult to enforce the provision relating to lotteries, Mr. Speaker. The federal government will allow the provinces to grant lottery licenses. But suppose the province of Quebec decided to use its right to conduct a provincial lottery and that the Attorneys-general of Ontario or of New Brunswick objected to a lottery being conducted in their province. What would be the position of the taxpayers of the other provinces who would come to Quebec to buy lottery tickets? Those people would come under the ambit of the Criminal Code, since the Attorney-general will be free to conduct or not in his province a lottery that the federal government will have legalized. In my opinion, the minister should, before preparing the provision relating to lotteries, have met the Attorneys-general of the provinces in order to know whether they agree upon that matter. I do not know if the minister was in the house, when I indicated my opposition a while ago. It is possible that the province of Quebec will decide to use the power given to it by the federal government to organize a lottery, and that the Attorneys-General of Ontario or New-Brunswick will refuse to do so in their territory.

I therefore ask the minister to enlighten us on that situation, so that we will know what would be the situation of a taxpayer of another province who would come to Quebec to take advantage of a law accepted by that province, since the federal government has given it the authority to establish a lottery.

That is a problem, Mr. Speaker, which I find difficult to resolve. I hope that when the minister has the opportunity to speak on that question he will agree to provide us with details, so that I will know if the citizens, if

the taxpayers of a province who do not have the right to take part in a lottery, because it will be illegal in their own province, will be punished or if they will be allowed to go and buy tickets in a province where a lottery is permitted, under the terms of the power given to it by the federal government.

I hope that the minister will help us out by giving details on that point. I also hope that he will tell us if he has discussed that question with the attorneys general of the other provinces and what conclusions that he will pass on to us the results of such discussions.

• (8:50 p.m.)

Mr. André Fortin (Lotbinière): Mr. Speaker, I admire the parliamentary leadership of the hon. member for Abitibi (Mr. Laprise) who tirelessly participated usefully in this debate, by trying through his amendments to improve this legislation.

The nefarious effects of this bill are being felt already. I wonder if members are aware that a homosexual club has already been opened in Montreal, although the bill has not been passed yet. It is the Gemini I Club, and it has already 4,000 members. Things are moving, Mr. Speaker! If some members want to get a membership card, they should call a gentleman by the name of Bédard, in Montreal.

Mr. Speaker, what will be the outcome of this bill when it is passed, if it already worries the people?

It is my duty to take part once again in this debate to support an amendment moved by the hon. member for Abitibi and which is designed to clarify the situation.

Mr. Speaker, I just listened to the hon. member for Charlevoix (Mr. Asselin) who, considering the innumerable lotteries which seem at first sight prohibited by the Criminal Code, is inclined to favour their legalization.

Mr. Speaker, in our opinion, those are not serious reasons militating in favour of this legislation, even if we do not object to the principle of lotteries, because there is nothing wrong with that. However, we are opposed to the motives for which this government has introduced this bill.

Everyone knows that radio or T.V. "quiz" are common nowadays. Just remember "La poule aux œufs d'or" and other similar games, which are disguised lotteries.

We could consider all the agricultural fairs, parish bingos, raffles organized by businesses, charitable organizations, churches and schools. I remember what that wonderful and great Liberal party organized during the 1965 elections, in order to attract votes.

Mr. Speaker, lotteries are widespread. However, it is interesting to note that under the terms of the Criminal Code, lotteries are forbidden in Canada. In fact, section 179 of the Criminal Code, adopted in 1893, considers lotteries as illegal and even provides for a two-year period of emprisonment for anyone taking part in the organization or in the management of a lottery.

I think of course, that this legislation is obsolete. However, I cannot believe that one would want to pass legislation under the pretence that one has lost control over its field of application. I cannot accept the argument this legislation makes it possible to keep our capital at home while at the same time we are competing with the English lotteries, and with the lotteries of 70 other countries, which allow Canadians to participate in them clandestinely.

Mr. Speaker, I do not think those are valid arguments.

The hon. member for Abitibi was telling us a few moments ago that bingos and lotteries for the benefit of churches do exist today. Why have we always tolerated such a situation in Canada? The law is not effective. Let us simply delete in paragraph (c) "for a charitable organization", because this is a fact. Lotteries do exist. Unless, of course, we provide more funds for our police forces so that they can exercise a stronger control. This situation is difficult to control because lotteries are being practised on a very high scale in Canada, whether it has to do with hockey games, quizzes, or fairs or the bingos I was referring to earlier.

Mr. Speaker, in this regard, I think that the amendment moved by the hon. member for Abitibi is valid, because it is in line with the present situation. It does not forbid anything more, but it merely allows charitable organizations to continue to benefit from the proceeds of some lotteries that they are allowed to conduct.

Mr. Speaker, the conduct of a lottery in Canada will not solve any financial difficulty; it will only skirt the problems, instead of meeting them head-on.

Governments imagine they will find there a gold mine that will enable them to finance their projects. They are wrong, and if they cling to that idea, it is because they are poor managers. No government should build its budget on a lottery, whether that lottery is

federal, provincial or local. The proof of this is all around us.

Nevertheless, it is true, Mr. Speaker, that a lottery, good in itself, is desirable and the present situation leads us to believe that not only could we tolerate this measure but, even pass it, in respect of charitable organizations which have no other financial means.

• (9:00 p.m.)

In conclusion, Mr. Speaker, I wish to indicate to the house that even if the hon. members admit lotteries in principle, whether they are held at the federal or the provincial level, they cannot cast a favourable vote on that point since thereby they would decide in favour of abortion, homosexuality and many other provisions that are unacceptable, at least to us, of the Ralliement Créditiste.

Even while trying to be consistent and recognizing the merit of lotteries, we cannot support such a legislation. The Minister of Justice (Mr. Turner) has known for a long time that we cannot support this bill since the Prime Minister (Mr. Trudeau) definitely refuses to have it split. He is the only one on the government side to insist on such a procedure.

We are therefore in a rather impossible situation. We can discuss and speak for hours on lotteries. However, when the time to vote will come, even members claiming to be in favour of lotteries will not be able to vote because they will have to vote at the same time for abortion, which is against their principles.

In short, Mr. Speaker, we are once more deluding ourselves with words, with illusions. There is no sense to that. As I said many times, this bill remains a stupid measure, which obliges us to repeat such nonsense for the very simple reason that the debate itself is not logical.

In my opinion, Mr. Speaker, we must be absolutely realistic and ask ourselves whether the legalization of lotteries would be beneficial to the Canadian people and solve financial problems. Then, we should take a stand.

As for us, even if we are puzzled about the value of a state lottery, we are in favour of lotteries organized for charitable purposes.

Mr. Speaker: Is the house ready for the question on the amendment of Mr. Laprise?

[*English*]

Is it the pleasure of the house to adopt the said motion? All those in favour will please say yea.

Some hon. Members: Yea.

Division

Mr. Speaker: All those opposed will please say nay.

Some hon. Members: Nay.

Mr. Speaker: In my opinion the nays have it.

And more than five members having risen:

Mr. Speaker: Before calling in the members I draw to the attention of hon. members that this motion is deferred until we have voted on previous motions numbered 3, 6, 7, 10, 11, and finally 9. Therefore, we will now call in hon. members for the purpose of voting on No. 3.

Mr. Knowles (Winnipeg North Centre): Mr. Speaker, may I rise briefly on a point of order. We will now be voting on the various amendments you have just identified. I wonder if Your Honour will say something in each case so that people reading *Hansard* will know what we are voting on. It might also be a good idea for hon. members to know what they are voting on.

Mr. Speaker: This is precisely the point I had in mind. I thought hon. members might be confused, and therefore before each vote is called the actual motion being voted on will be read to the house for the purpose of the division. Call in the members.

• (9:10 p.m.)

The question is on amendment No. 3 (Mr. Valade) which reads:

That Bill C-150, an act to amend the Criminal Code, the Parole Act, the Penitentiary Act, the Prisons and Reformatories Act and to make certain consequential amendments to the Combines Investigation Act, the Customs Tariff and the National Defence Act, be amended by deleting therefrom clause 7.

The house divided on amendment No. 3 (Mr. Valade) which was negatived on the following division:

YEAS

Messrs:

Alexander
Asselin
Baldwin
Bigg
Carter
Dinsdale
Dionne
Downey
Dumont
Flemming
Forrestall
Fortin
Gauthier
Godin
Grills
Gundlock
Hales
Harkness
Howe
Knowles (Norfolk-Haldimand)
Lambert (Edmonton West)
Laprise
Latulippe
MacEwan
MacInnis

Division

McCleave
McCutcheon
McGrath
McKinley
Marshall
Mazankowski
Monteith
Muir (Cape Breton-The Sydneys)
Muir (Lisgar)
Paproski
Peddle
Ricard
Rodrigue
Rondeau
Rynard
Scott
Simpson
Southam
Stanfield
Stewart (Marquette)
Thompson
Valade
Woolliams—48.

NAYS

Messrs:

Allmand
Anderson
Andras
Badanai
Barrett
Basford
Béchard
Benjamin
Benson
Blair
Blouin
Boulanger
Breau
Brewin
Broadbent
Brown
Buchanan
Burton
Cadieux (Labelle)
Cafik
Cantin
Chappell
Chrétien
Clermont
Cobbe
Comtois
Corbin
Côté (Richelieu)
Cullen
Danson
Deachman
Deakon
Douglas (Assiniboia)
Douglas (Nanaimo-Cowichan-The Islands)
Dubé
Émard
Fairweather
Forget
Foster
Francis
Gendron
Gervais
Gibson
Gilbert
Gillespie
Givens
Gleave
Gray
Groos
Guay (St. Boniface)
Guay (Lévis)
Guilbault
Haidasz
Harding
Hellyer
Honey
Hopkins
Howard (Okanagan Boundary)
Hymmen
Isabelle
Knowles (Winnipeg North Centre)
Laflamme
Laing
Lang
Laniel
Leblanc (Laurier)
LeBlanc (Rimouski)
Lefebvre
Legault
Lessard (LaSalle)
Lessard (Lac-Saint-Jean)
Lewis
MacDonald (Egmont)
Macdonald (Rosedale)
MacEachen
MacGuigan
MacInnis (Mrs.)
Macquarrie
McNulty
Mahoney
Major
Marceau
Marchand (Langelier)
Marchand (Kamloops-Cariboo)
Mather
Morison
Munro
Murphy
Noël
O'Connell
Orange
Orlikow
Osler
Pelletier
Penner
Pilon
Portelance
Pringle
Prud'homme
Reid
Richardson
Ritchie
Roberts
Rochon
Rock
Roy (Timmins)
Ryan
Saltsman
Schreyer
Skoberg
Smith (Saint-Jean)
Stafford
Stanbury
Stewart (Cochrane)
Stewart (Okanagan-Kootenay)
Sullivan
Thomas (Maisonneuve)
Thomson
Tolmie
Trudeau
Trudel
Turner (Ottawa-Carleton)
Wahn
Walker
Watson
Weatherhead
Whiting
Winch
Yanakis—129.

[Mr. Speaker.]

• (9:30 p.m.)

Mr. Speaker: I declare the motion lost.

Is it the wish of the house that we proceed with the subsequent amendments without the ringing of the bells?

Some hon. Members: Agreed.

Mr. Speaker: The question is on amendment No. 6 (Mr. Laprise), the text of which is printed at page 914 of *Votes and Proceedings* for Friday, April 18.

[*Translation*]

Mr. Laprise, seconded by Mr. Fortin, moved:

That Bill C-150, an act to amend the Criminal Code, the Parole Act, the Penitentiary Act, the Prisons and Reformatories Act and to make certain consequential amendments to the Combines Investigation Act, the Customs Tariff and the National Defence Act, be amended by deleting in clause 7 paragraph (b) of subsection (1) of the proposed new section 149A.

[*English*]

The house divided on amendment No. 6 (Mr. Laprise) which was negatived on the following division:

YEAS

Messrs:

Alexander
Asselin
Baldwin
Bigg
Carter
Dinsdale
Dionne
Downey
Dumont
Flemming
Forrestall
Fortin
Gauthier
Godin
Grills
Gundlock
Hales
Harkness
Howe
Knowles (Norfolk-Haldimand)
Lambert (Edmonton West)
Laprise
Latulippe
MacEwan
MacInnis
McCleave
McCutcheon
McGrath
McKinley
Marshall
Mazankowski
Monteith
Muir (Cape Breton-The Sydneys)
Muir (Lisgar)
Paproski
Peddle
Ricard
Rodrigue
Rondeau
Rynard
Scott
Simpson
Southam
Stanfield
Stewart (Marquette)
Thompson
Valade
Woolliams—48.

NAYS

Messrs:

Allmand
Anderson
Andras
Badanai
Barrett
Basford
Béchard
Benjamin
Benson
Blair
Blouin
Boulanger
Breau
Brewin
Broadbent
Brown
Buchanan
Burton
Cadieux (Labelle)
Cafik
Cantin
Chappell
Chrétien
Clermont
Cobbe
Comtois
Corbin
Côté (Richelieu)
Cullen
Danson
Deachman
Deakon
Douglas (Assiniboia)
Douglas (Nanaimo-Cowichan-The Islands)
Dubé
Émard
Fairweather
Forget
Foster
Francis
Gendron
Gervais
Gibson
Gilbert
Gillespie
Givens
Gleave
Gray
Groos
Guay (St. Boniface)
Guay (Lévis)
Guilbault
Haidasz
Harding
Hellyer
Honey
Hopkins
Howard (Okanagan Boundary)
Hymmen
Isabelle
Knowles (Winnipeg North Centre)
Laflamme
Laing
Lang
Laniel
Leblanc (Laurier)
LeBlanc (Rimouski)
Lefebvre
Legault
Lessard (LaSalle)
Lessard (Lac-Saint-Jean)
Lewis
MacDonald (Egmont)
Macdonald (Rosedale)
MacEachen
MacGuigan
MacInnis (Mrs.)
Macquarrie
McNulty
Mahoney
Major
Marceau
Marchand (Langelier)
Marchand (Kamloops-Cariboo)
Mather
Morison
Munro
Murphy
Noël
O'Connell
Orange
Orlikow
Osler
Pelletier
Penner
Pilon
Portelance
Pringle
Prud'homme
Reid
Richardson
Ritchie
Roberts
Rochon
Rock
Roy (Timmins)
Ryan
Saltsman
Schreyer
Skoberg
Smith (Saint-Jean)
Stafford
Stanbury
Stewart (Cochrane)
Stewart (Okanagan-Kootenay)
Sullivan
Thomas (Maisonneuve)
Thomson
Tolmie
Trudeau
Trudel
Turner (Ottawa-Carleton)
Wahn
Walker
Watson
Weatherhead
Whiting
Winch
Yanakis—129.

Division

• (9:40 p.m.)

Mr. Speaker: The question is now on amendment No. 7 (Mr. Woolliams), the text of which is printed at page 918 of *Votes and Proceedings* of Monday, April 21, as follows:

That Bill C-150, to amend the Criminal Code, the Parole Act, the Penitentiary Act, the Prisons and Reformatories Act and to make certain consequential amendments to the Combines Investigation Act, the Customs Tariff and the National Defence Act, be amended by inserting in clause 7, after the word "age" on line 9, page 24, the following words:

"except as to bestiality and carnal copulation with a beast".

The house divided on amendment No. 7 (Mr. Woolliams) which was negatived on the following division:

YEAS

Messrs:

Alexander
Asselin
Baldwin
Bigg
Carter
Dinsdale
Dionne
Downey
Dumont
Flemming
Forrestall
Fortin
Gauthier
Godin
Grills
Gundlock
Hales
Harkness
Howe
Knowles (Norfolk-Haldimand)
Lambert (Edmonton West)
Laprise
Latulippe
MacEwan
MacInnis
McCleave
McCutcheon
McGrath
McKinley
Marshall
Mazankowski
Monteith
Muir (Cape Breton-The Sydneys)
Muir (Lisgar)
Paproski
Peddle
Ricard
Ritchie
Rodrigue
Rondeau
Rynard
Scott
Simpson
Southam
Stanfield
Stewart (Marquette)
Thompson
Valade
Woolliams—49.

NAYS

Messrs:

Allmand
Anderson
Andras
Badanai
Barrett
Basford
Béchard
Benjamin
Benson
Blair
Blouin
Boulanger
Breau
Brewin
Broadbent
Brown
Buchanan
Burton
Cadieux (Labelle)
Cafik
Cantin
Chappell
Chrétien
Clermont
Cobbe
Comtois
Corbin
Côté (Richelieu)
Cullen
Danson
Deachman
Deakon

Division

Douglas (Assiniboia)
Douglas (Nanaimo-Cowichan-The Islands)
Dubé
Émard
Fairweather
Forget
Foster
Francis
Gendron
Gervais
Gibson
Gilbert
Gillespie
Givens
Gleave
Gray
Groos
Guay (St. Boniface)
Guay (Lévis)
Guilbault
Haidasz
Harding
Hellyer
Honey
Hopkins
Howard (Okanagan Boundary)
Hymmen
Isabelle
Knowles (Winnipeg North Centre)
Laflamme
Laing
Lang
Laniel
Leblanc (Laurier)
LeBlanc (Rimouski)
Lefebvre
Legault
Lessard (LaSalle)
Lessard (Lac-Saint-Jean)
Lewis
MacDonald (Egmont)
Macdonald (Rosedale)
MacEachen
MacGuigan
MacInnis
Macquarrie
McNulty
Mahoney
Major
Marceau
Marchand (Langelier)
Marchand (Kamloops-Cariboo)
Mather
Morison
Munro
Murphy
Noël
O'Connell
Orange
Orlikow
Osler
Pelletier
Penner
Pilon
Portelance
Pringle
Prud'homme
Reid
Richardson
Roberts
Rochon
Rock
Roy (Timmins)
Ryan
Saltsman
Schreyer
Skoberg
Smith (Saint-Jean)
Stafford
Stanbury
Stewart (Cochrane)
Stewart (Okanagan-Kootenay)
Sullivan
Thomas (Maisonneuve)
Thomson
Tolmie
Trudeau
Trudel
Turner (Ottawa-Carleton)
Wahn
Walker
Watson
Weatherhead
Whiting
Winch
Yanakis—128.

• (9:50 p.m.)

Mr. Speaker: I declare the motion lost. The question is now on amendment No. 10, the recorded division on which was deferred earlier this day. The hon. member for Winnipeg North Centre (Mr. Knowles), seconded by Mr. Lewis, moved the following amendment:

That Bill C-150, an act to amend the Criminal Code, the Parole Act, the Penitentiary Act, the Prisons and Reformatories Act and to make certain consequential amendments to the Combines Investigation Act, the Customs Tariff and the National Defence Act, be amended by deleting from clause 13 thereof paragraph (a) and paragraph (b) of subsection (1) of the proposed new section 179-A of the Criminal Code.

[Mr. Speaker.]

The house divided on amendment No. 10 (Mr. Knowles, Winnipeg North Centre) which was negatived on the following division:

YEAS

Messrs:

Alexander
Baldwin
Benjamin
Brewin
Broadbent
Burton
Dinsdale
Dionne
Douglas (Nanaimo-Cowichan-The Islands)
Downey
Dumont
Fairweather
Flemming
Forrestall
Fortin
Gauthier
Gilbert
Gleave
Godin
Grills
Gundlock
Hales
Howe
Knowles (Norfolk-Haldimand)
Knowles (Winnipeg North Centre)
Laprise
Latulippe
Lewis
MacDonald (Egmont)
MacEwan
MacInnis (Mrs.)
McCleave
Mazankowski
Monteith
Muir (Cape Breton-The Sydneys)
Muir (Lisgar)
Orlikow
Paproski
Peddle
Ritchie
Rodrigue
Rondeau
Rynard
Saltsman
Schreyer
Scott
Skoberg
Southam
Stanfield
Stewart (Marquette)
Thompson
Thomson
Winch
Woolliams—54.

NAYS

Messrs:

Allmand
Anderson
Andras
Asselin
Badanai
Barrett
Basford
Béchard
Benson
Bigg
Blair
Blouin
Boulanger
Breau
Brown
Buchanan
Cadieux (Labelle)
Cafik
Cantin
Carter
Chappell
Chrétien
Clermont
Cobbe
Comtois
Corbin
Côté (Richelieu)
Deachman
Douglas (Assiniboia)
Dubé
Émard
Forget
Foster
Francis
Gendron
Gervais
Gibson
Gillespie
Givens
Gray
Groos
Guay (St. Boniface)
Guay (Lévis)
Guilbault
Haidasz
Harding
Harkness
Hellyer
Honey
Hopkins
Howard (Okanagan Boundary)
Isabelle
Laflamme
Laing
Lambert (Edmonton West)
Lang
Laniel
Leblanc (Laurier)
LeBlanc (Rimouski)
Lefebvre
Legault

Lessard (LaSalle)
Lessard (Lac-Saint-Jean)
Macdonald (Rosedale)
MacEachen
MacGuigan
Macquarrie
McCutcheon
McGrath
McKinley
McNulty
Mahoney
Major
Marceau
Marchand (Langelier)
Marchand (Kamloops-Cariboo)
Marshall
Mather
Morison
Munro
Murphy
Noël
O'Connell
Orange
Pelletier
Penner
Pilon
Portelance
Pringle
Prud'homme
Reid
Ricard
Richardson
Roberts
Rochon
Rock
Roy (Timmins)
Ryan
Simpson
Smith (Saint-Jean)
Stafford
Stanbury
Stewart (Cochrane)
Stewart (Okanagan-Kootenay)
Sullivan
Thomas (Maisonneuve)
Thompson
Tolmie
Trudeau
Trudel
Turner (Ottawa-Carleton)
Valade
Wahn
Walker
Watson
Weatherhead
Whiting
Yanakis—118.

• (10:00 p.m.)

And the Clerk proceeding to announce the result of the vote:

An hon. Member: Get out.

Another hon. Member. You cannot come in.

Mr. Speaker: Order, please. I must bring to the attention of hon. members that they should neither leave the house nor come into the house during a vote.

I declare the motion lost. There is no difficulty about members coming in between the calling of the vote.

Mr. Monteith: We had better have the bell.

Mr. Speaker: The hon. member for Perth is asking that the bell be rung. Do hon. members want the bell?

Some hon. Members: No.

Mr. Speaker: Before calling in the members, I will put the motion.

[*Translation*]

The question is on amendment No. 11, which was deferred earlier today.

Mr. Laprise moved, seconded by Mr. Latulippe:

That Bill C-150, An Act to amend the Criminal Code, the Parole Act, the Penitentiary Act, the Prisons and Reformatories Act and to make certain consequential amendments to the Combines Investigation Act, the Customs Tariff and the National Defence Act, be amended by deleting in clause 13 the words "either alone or in conjunction with the government of another province," on lines 41 and 42 on page 31 and by deleting in clause 13 the words "in that province, or in that and such other province," on lines 44 and 45 on page 31.

[*English*]

Mr. Speaker: All those in favour of the said motion will please say yea.

Some hon. Members: Yea.

Mr. Speaker: All those opposed will please say nay.

Some hon. Members: Nay.

Mr. Speaker: In my opinion the nays have it.

And more than five members having risen:

Mr. Speaker: Call in the members.

The house divided on amendment No. 11 (Mr. Laprise) which has negatived on the following division:

YEAS

Messrs:

Brewin
Burton
Dinsdale
Dionne
Dumont
Flemming
Fortin
Gauthier
Godin
Laprise
Latulippe
MacDonald (Egmont)
Matte
Rodrigue
Rondeau
Rynard
Southam
Thompson—18.

NAYS

Messrs:

Alexander
Alkenbrack
Allmand
Anderson
Andras
Asselin
Badanai
Baldwin
Barrett
Basford
Béchard
Benjamin
Benson
Bigg
Blair
Blouin
Boulanger
Breau
Broadbent
Brown
Buchanan
Cadieux (Labelle)
Cafik
Cantin
Carter
Chappell
Chrétien
Clermont
Cobbe
Comtois
Corbin
Côté (Richelieu)
Cullen
Danson
Deachman
Deakon
Douglas (Assiniboia)
Douglas (Nanaimo-Cowichan-The Islands)
Dubé
Émard
Forget
Forrestall
Foster
Francis
Gendron
Gervais
Gibson
Gilbert
Gillespie
Givens
Gleave
Gray
Grills

Division

Groos
Guay (St. Boniface)
Guay (Lévis)
Guilbault
Gundlock
Haidasz
Hales
Harding
Harkness
Hellyer
Honey
Hopkins
Howard (Okanagan Boundary)
Howe
Hymmen
Isabelle
Knowles (Norfolk-Haldimand)
Knowles (Winnipeg North Centre)
Laflamme
Laing
Lambert (Edmonton West)
Lang
Laniel
Leblanc (Laurier)
LeBlanc (Rimouski)
Lefebvre
Legault
Lessard (LaSalle)
Lessard (Lac-Saint-Jean)
Lewis
Macdonald (Rosedale)
MacEachen
MacEwan
MacGuigan
MacInnis (Mrs.)
Macquarrie
McCleave
McCutcheon
McGrath
McKinley
McNulty
Mahoney
Major
Marceau
Marchand (Langelier)
Marchand (Kamloops-Cariboo)
Marshall
Mather
Mazankowski
Monteith
Muir (Cape Breton-The Sydneys)
Muir (Lisgar)
Munro
Murphy
Noël
O'Connell
Orange
Orlikow
Osler
Paproski
Peddle
Pelletier
Penner
Pilon
Portelance
Pringle
Prud'homme
Reid
Ricard
Richardson
Ritchie
Roberts
Rochon
Rock
Roy (Timmins)
Ryan
Saltsman
Schreyer
Scott
Simpson
Skoberg
Smith (Saint-Jean)
Stafford
Stanbury
Stanfield
Stewart (Cochrane)
Stewart (Marquette)
Stewart (Okanagan-Kootenay)
Sullivan
Thomas (Maisonneuve)
Thomson
Tolmie
Trudeau
Trudel
Turner (Ottawa-Carleton)
Valade
Wahn
Walker
Watson
Weatherhead
Whiting
Winch
Woolliams
Yanakis—157.

Mr. Speaker: I declare the motion lost. The question is now on amendment No. 9, the recorded division on which was deferred earlier this day.

[*Translation*]

Mr. Laprise moved, seconded by **Mr. Gauthier:**

That Bill C-150, an act to amend the Criminal Code, the Parole Act, the Penitentiary Act, the Prisons and Reformatories Act and to make certain consequential amendments to the Combines Investigation Act, the Customs Tariff and the National Defence Act, be amended by deleting therefrom clauses 12 and 13.

[*English*]

The house divided on amendment No. 9 (Mr. Laprise) which was negatived on the following division:

YEAS

Messrs:

Dinsdale
Dionne
Dumont
Flemming
Fortin
Gauthier
Godin
Laprise
Latulippe
MacDonald (Egmont)
Matte
Rodrigue
Rondeau
Southam
Thompson—15.

NAYS

Messrs:

Alexander
Alkenbrack
Allmand
Anderson
Andras
Asselin
Badanai
Baldwin
Barrett
Basford
Béchard
Benjamin
Benson
Bigg
Blair
Biouin
Boulanger
Breau
Brewin
Broadbent
Brown
Buchanan
Burton
Cadieux
Cafik
Cantin
Carter
Chappell
Chrétien
Clermont
Cobbe
Comtois
Corbin
Côté (Richelieu)
Cullen
Danson
Deachman
Deakon
Douglas (Assiniboia)
Douglas (Nanaimo-Cowichan-The Islands)
Dubé
Émard
Forget
Forrestall
Foster
Francis
Gendron
Gervais
Gibson
Gilbert
Gillespie
Givens
Gleave
Gray
Grills
Groos
Guay (St. Boniface)
Guay (Lévis)
Guilbault
Gundlock
Haidasz
Hales
Harding
Harkness
Hellyer
Honey
Hopkins
Howard (Okanagan Boundary)
Howe
Hymmen
Isabelle
Knowles (Norfolk-Haldimand)
Knowles (Winnipeg North Centre)
Laflamme
Laing
Lambert (Edmonton West)
Lang
Laniel
Leblanc (Laurier)
LeBlanc (Rimouski)
Lefebvre
Legault
Lessard (LaSalle)
Lessard (Lac-Saint-Jean)
Lewis
Macdonald (Rosedale)
MacEachen
MacEwan
MacGuigan
MacInnis (Mrs.)
Macquarrie
McCleave
McCutcheon

McGrath
McKinley
McNulty
Mahoney
Major
Marceau
Marchand (Kamloops-Cariboo)
Marchand (Langelier)
Marshall
Mather
Mazankowski
Monteith
Muir (Cape Breton-The Sydneys)
Muir (Lisgar)
Munro
Murphy
Noël
O'Connell
Orange
Orlikow
Osler
Paproski
Peddle
Pelletier
Penner
Pilon
Portelance
Pringle
Prud'homme
Reid
Ricard
Richardson
Ritchie
Roberts
Rochon
Rock
Roy (Timmins)
Ryan
Rynard
Saltsman
Schreyer
Scott
Simpson
Skoberg
Smith (Saint-Jean)
Stafford
Stanbury
Stanfield
Stewart (Cochrane)
Stewart (Marquette)
Stewart (Okanagan-Kootenay)
Sullivan
Thomas (Maisonneuve)
Thomson
Tolmie
Trudeau
Trudel
Turner (Ottawa-Carleton)
Valade
Wahn
Walker
Watson
Weatherhead
Whiting
Winch
Woolliams
Yanakis—160.

Mr. Speaker: I declare the motion lost.

Division

Mr. Baldwin: On a point of order, Mr. Speaker, I wonder whether at this time the government house leader would indicate when we will resume this debate. Secondly, there might be some disposition in the house not to proceed with the adjournment proceedings tonight. Thirdly, Your Honour might consider advising the Montreal forum that the score at the end of the game in the House of Commons tonight was: Lions, 6; Christians, no score.

Mr. Macdonald (Rosedale): We will resume this debate on Friday after the two-day debate on NATO. Perhaps the two hon. members on the "late show" tonight might be agreeable to suspending their questions until Thursday night.

Mr. McGrath: Mr. Speaker, I wonder whether the house leader would permit a question. Would the government consider, in view of the events of the last hour, bringing an electronic voting system into this House of Commons?

Some hon. Members: Hear, hear.

Mr. Speaker: It being after ten o'clock this house stands adjourned until two o'clock tomorrow afternoon.

It being ten minutes before 11 o'clock p.m. the house adjourned, without question put, pursuant to standing order.

TAB 11

Canada

Debates of the Senate

OFFICIAL REPORT
(HANSARD)

THE HONOURABLE JEAN-PAUL DESCHATELETS, P.C.
SPEAKER

1968-69

FIRST SESSION, TWENTY-EIGHTH PARLIAMENT
17-18 ELIZABETH II

VOLUME II

(January 21, 1969 to October 22, 1969)

Parliament was opened on September 12, 1968
and was prorogued on October 22, 1969

Queen's Printer for Canada, Ottawa, 1969

Hon. Mr. Grosart: In Ireland, in 1848. That was one year in which we did not have a rebellion in Canada: it had taken place ten years before, and some of Senator Flynn's ancestors—

Hon. Mr. Flynn: They probably were involved.

Hon. Mr. Grosart: D'Arcy McGee was a distinguished Irishman, and a member of the famous Young Ireland Party. I inquired at the time as to why Canada had not recognized this rather important and interesting historic site. After a good deal of research I found that apparently there is no instrumentality of the Canadian Government charged with the responsibility of in any way recognizing historic sites abroad, which have a very close connection in many ways with Canadian history.

Rather interestingly, Senator Haig mentioned two names—the Ross House in Manitoba, and the birthplace of Louis Riel and his grave across the river in St. Boniface, the inscription on which, as I remember from the last time I saw it, with simple eloquence, reads: "Louis Riel, Leader of the Provisional Government." The date, I think, was 1870.

Now, it so happens that Louis Riel was an Irishman. It may be a surprise to our distinguished Senator Gladstone, but originally the name was O'Rielly. Riel's grandfather was originally O'Rielly. I do not know where we would trace his ancestors in Ireland, but they were there.

I am sure many other searches could be made. Ross of Bladensburg was a very famous Irishman. It so happens that his birthplace and that of Sir William Johnston—Johnston of the Mohawks—are both within about six or seven miles of the D'Arcy McGee cottage on Carlingford Lough. It has a romantic Irish name of Radharc na Sléibhe, which is Gaelic for Mountain View, because it lies across the loch from the beautiful mountains of Mourne.

One can think of many other historic sites in Ireland, in the United Kingdom and elsewhere that have a very close connection with Canada. It seems to me that unless something is done we are going to lose all possibility of recognizing these historic sites or preserving what is left to them.

I am told, for example, that the famous warehouse along the Leffey, where D'Arcy McGee, Smith, O'Brien and others plotted the rebellion of '48, is still standing.

There may be different views as to the importance of that rebellion. There are always different views on rebellions. They were always unpopular with the establishment at the time but, generally, establishment is the first to put them in the history text books as something in which we should have national pride.

I therefore suggest, if my information is correct that we have no instrumentality for the recognition of these historic sites abroad, that perhaps consideration might be given to allowing this bill to go to a committee so that we could call before us the appropriate officials to see if this information is correct; secondly, to see if any action is contemplated to correct that situation; thirdly, if not, why not? I therefore respectfully suggest, if Senator Haig will agree—and I have not discussed this with him—that perhaps the bill should go to a committee so that we can discuss what seems to me to be an important subject.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

On motion of Hon. Mrs. Fergusson, bill referred to the Standing Senate Committee on Health, Welfare and Science.

CRIMINAL LAW AMENDMENT BILL, 1968-69

SECOND READING—DEBATE CONTINUED

The Senate resumed from Thursday, May 29, the adjourned debate on the motion of Hon. Mr. Phillips (Rigaud), for the second reading of Bill C-150, to amend the Criminal Code, the Parole Act, the Penitentiary Act, the Prisons and Reformatories Act and to make certain consequential amendments to the Combines Investigations Act, the Customs Tariff and the National Defence Act.

Hon. Mr. Carter: Honourable senators, with leave of the Senate, I defer to Senator Choquette and will follow him.

The Hon. the Speaker: Honourable senators, is it agreed that honourable Senator Choquette speak in honourable Senator Carter's place?

Hon. Senators: Agreed.

Hon. Lionel Choquette: Honourable senators, needless to say, I am grateful to Senator Carter for yielding his place at this stage of the debate. I intimated to him yesterday that I was rather disappointed not to be able

to go on last evening, because I shall be unavoidably absent from Ottawa for a period of six or seven days, and I have to leave early this afternoon. He has graciously made the gesture, to which you have kindly agreed.

Honourable senators, may I first congratulate honourable Senator Phillips (Rigaud) on his masterly explanation of the various clauses of this bill. We are all aware of his eminence as a counsel, and since he has been with us we have been made aware of his great qualities as a senator.

Hon. Senators: Hear, hear.

Hon. Mr. Choquette: The speech he made in introducing this motion, and the speeches he made in connection with the Supreme Court Act and the Estates Tax Act, have all given us more than a glimpse of his high qualities. Unfortunately, we shall shortly miss him among our numbers. This I am sure will be a matter of great regret to all his fellow senators.

We have lost others for similar reasons, including, for instance, Senator Hugessen, Senator Norman MacKenzie, who was in the gallery yesterday, and many others whose departure was a sad loss both to Parliament and to the country. Happily, we still have with us Senator Roebuck, who is the chairman of the very committee to which this bill is to be referred.

Hon. Mr. Roebuck: Thank you.

Hon. Senators: Hear, hear.

Hon. Mr. Choquette: Last Thursday afternoon Senator Joseph A. Sullivan spoke on this bill, and in his opening remarks he said:

> Honourable senators, in rising to participate in this debate I am fully aware of my limitations pertaining to the legal aspects of the bill. I am also fully aware that I am competent to deal with the moral, the scientific and the medical aspects of this legislation.

This the honourable senator has done in his usual brilliant, eloquent and competent way, and I am sure that all honourable senators who heard him on Thursday, or who have read his speech, will agree that his exposé will be of great value in the discussion of this bill.

Honourable senators, in the first place, may I register once again my dissatisfaction with omnibus bills of this character. My objection is not so much that the present bill amends widely varying provisions of the Criminal Code—I could perhaps stomach that—but it also amends five other acts. It would take an assiduous clerk or a Philadelphia lawyer to figure out what these amendments amount to in their totality. May I repeat the hope that when the revised statutes eventually appear the amendments will be presented in a more comprehensible and less omnibus fashion. May I suggest that a series of streamlined sports models rather than a single top-heavy omnibus would provide much better vehicles for the amendments to the statute laws of Canada in future. However, from the attention, or indeed the lack of it, that has been paid to my repeated suggestions in this regard, it looks as if a change of government will be necessary before any improvement is to be expected.

Hon. Mr. McDonald: That will take a long time.

Hon. Mr. Choquette: Having said that, I have a few other objections to make. First, there has been an unusually long gestation period for this bill. It has been thoroughly scrutinized by the House of Commons and its committees, but I am afraid that kind of scrutiny is no guarantee of excellence. In my opinion the bill should have originated in the usual way in the Senate. It is a non-money bill, and Criminal Code amendments have customarily been introduced in this house so that the Commons may have the advantage of the careful scrutiny which is regularly given to such measures by Senate committees. Moreover, we now have the recently constituted Standing Senate Committee on Legal and Constitutional Affairs, and in my view it is not too late to subject this omnibus legislation to the scrutiny of that committee.

Here again we have a bill which has no single principle, but has many principles. I intend to comment briefly on some of the main changes proposed, on the understanding that the bill will be referred to committee. In so doing may I emphasize that I am not speaking for any of my colleagues. There are questions of conscience involved here, and my fellow senators on this side are quite capable of speaking and voting as they see fit.

The particular subjects with which I wish to deal are lotteries, homosexuality and abortion. I have serious reservations and objections to the provisions of the omnibus bill in these areas. Because of this reaction on my part, I propose to vote against second reading of this bill regardless of what other senators may do. I say this reluctantly because many of the provisions in the bill have my support.

I am not at all satisfied that the Government should itself be authorized to conduct lotteries. It may be that there is a human instinct or tendency to gamble or even to regard life itself as a gamble. I have less objection to the legalization of lotteries by organizations, particularly religious and welfare organizations, but gambling in my view is not only a poor but perhaps the worst way in which to raise money for government purposes. It hits most heavily against the poor, against those who need a financial break and who are prepared to sacrifice therefor the food, shelter, clothing and general welfare of their families. This legislation would put the whole authority of the state on the side of lotteries, and the state would not only condone but would be authorized to operate them. The recent reaction in the United Kingdom against the transition of that country to a floating casino illustrates that control may be necessary for some time to come.

It will be noted that I have not based my argument as to lotteries on moral grounds, but upon social, economic and political grounds. By adopting this legislation in its present form, we would, I am afraid, risk the creation of a sort of Frankenstein's monster which we could not easily control.

Nor would I approve in its present form clause 7 of the bill in so far as it relates to any two persons, each of whom is 21 years of age or over, both of whom consent to the committing of the act. The high-sounding dictum that "the state has no place in the bedrooms of the nation" is not honoured, or is only slightly honoured in the legislation. If there are three or more persons in the bedroom, the dictum is inapplicable. If either of the two parties in the bedroom is under 21 years of age or is intimidated or defrauded or is feeble-minded or insane or an idiot or is an imbecile, the dictum is equally inapplicable. The exceptions clearly swallow up the rule which in the final analysis merely condones acts of homosexuality between consenting adults by making legal what is now illegal. There are those who claim that homosexuality is essentially a disease; others claim that it is an inherent propensity or deviation from the normal that cannot be helped. There are some who claim that it is immoral, and others that it is natural to the individuals who practice it. But this bill is not presented to us with the argument that homosexuality is socially desirable or acceptable or that it should be encouraged. Rather, we are told that it is repugnant to most but that it should be left to the individual consciences, and that this bill in no way condones or encourages homosexuality.

In my view this is sophistry in the extreme. To render legal something that is illegal is perhaps the ultimate in condonation and encouragement by the state. The passage of this bill cannot help but affect the thinking of our young people. They must conclude that what is proper conduct for consenting adults is not *per se* improper conduct for minors, and it is indeed the minors themselves and the marginal cases that most concern me.

It is bad enough for Canada to drift into a permissive or amoral society on its own without Parliament itself shoving it in that direction. Conventional morality changes from time to time, it is true, and natural law itself often has a variable content, but in this area I am sure Parliament is legislating far in advance of public opinion. If we pass this bill there will be an inevitable public reaction that will not reflect credit, particularly political credit, upon the Government. Let us hold the line somewhere.

I invite honourable senators to exercise their constitutional right to cast an independent vote on these matters and to refrain from weakening the moral fabric of our country or the solidarity of the family which lies at its base.

I now wish to say something about what has been termed "therapeutic abortion." I intend to speak at some length on this portion of the bill because I think it is by far the most important.

As I hope to convince you, honourable senators, the changes are not progressive but retrogressive, not liberal but libertine, not mature but premature, not the reasoned result of careful scrutiny and wise deliberation but the unreasoned prejudice of a deliberate disregard for facts and a carefree experiment in legal pluralism, not a forward step in the direction of greater freedom but a backward leap towards a disrespect for life and law in the body politic.

The issues we must face as legislators are clear, but they have been clouded in the public mind. These issues which we must face individually as senators and corporately as the Senate will test, once and for all, the credibility of this chamber's claim to be an essential organ of Parliament, as the chamber of sober second thought and careful scrutiny of all federal legislative measures proposed for our Canadian nation.

Honourable senators, if in a matter of such importance party lines prevail once again, as

Yes, honourable senators, it is a tragic irony which can be explained only by the fact that the Minister of Justice reigns, but the Prime Minister rules.

What other reasonable explanation exists for the action of the Minister of Justice in reintroducing this iniquitous piece of criminal legislation when at the same time the same Minister of Justice tells us concerning the Just Society the following, taken from the *Canadian Bar Journal*, (Vol. 12, No. 1, p. 7):

> Just as the shaping of all democratic values in the just society must not be the exclusive privilege of the few, but the inclusive right of all, so the law must not be the exclusive prerogative of the privileged, but the privileged right of all. All must have equal access to the law. If we are to speak of equality before the law, the law must protect all equally.

The Prime Minister rules in the Commons, honourable senators, but in the Senate the senators rule. Here the Prime Minister only reigns. This must be clear, because if the Senate reigns but the Prime Minister rules this chamber, then let us either abolish this chamber or remove from its jurisdiction all legislative competence. Let us become simply an investigative and advisory organ of the Commons or the cabinet—royal commissioners.

But until then, honourable senators, let us act courageously in the public interest. Let us practice what the Minister of Justice preaches. Let us do what the Minister of Justice not only has left undone but has actively undermined, namely, that the law protect all equally—the born and the unborn of this society. And therefore let us reject all legislation which legally enshrines the right to kill the innocent, and let us refuse to place above the law any citizen, including the physician.

Let us exercise our constitutional rights as Canadian senators, and let us fulfil our duties as civilized men. Let us translate the Just Society from the highflown level of political rhetoric to the pedestrian level of effective legal right.

Therefore, honourable senators, let us protect the unborn. Let us protect the unborn, intact or deformed. Let us protect the unborn, wanted or unwanted. Let us protect the unborn, illegitimate or high-born. Let us proclaim that we are for life and the preservation of life. Let us proclaim that we are for human rights and the Canadian Bill of Rights. Let us proclaim that any life is of infinite value, and that this value is not diminished by physical or mental defect or the circumstances of that life's beginning. Let us proclaim that this respect for life is the cornerstone of Canadian society. And, honourable senators, let us demonstrate by collective Senate action that our society is served best by a medical ethic and a legal system which hold this principle sacred.

Hon. Senators: Hear, hear.

Hon. Chesley W. Carter: Honourable senators, I do not profess to have anything very profound to contribute to this debate, and having listened to the three brilliant and learned speeches that have already been delivered, I take part in it with a great deal of trepidation.

My first reason for intervening in the debate is because it affords me an opportunity to unburden myself of some of the conflicting thoughts and emotions which I always have to contend with inside myself whenever I am faced with a bill such as C-150 with deep moral implications. I speak only for myself, but I realize that others in this chamber may feel as I do.

Before going further, honourable senators, I should like to compliment those who have preceded me on their eloquence and join with them in paying tribute to honourable Senator Phillips (Rigaud) for the masterly way in which he introduced the bill we have before us. He analysed the measure clearly and gave a lucid unemotional exposition of the issues involved. The sympathetic reasonableness with which he approached those issues, making full allowance for different approaches from people whose different backgrounds caused them to see this bill from opposing viewpoints, almost made further debate unnecessary.

As I listened to him, I could not but think that had he been able to make his presentation in the other place, the passage of Bill C-150 through that chamber would have been accomplished much more easily and quickly than was actually the case.

Bill C-150, as the sponsor has told us, is a very bulky document of 126 pages containing some 120 different clauses which are divided into seven parts. Of the 126 pages, however, only 26 are taken up by Parts II to VII inclusive; these parts amend the Parole Act, the Penitentiaries Act, the Prisons and Reformatories Act and include some other amendments which are merely of a consequential nature. These amendments are not controversial and are designed merely to update the

laws I have just mentioned and to bring them in line with the experience and needs of our time.

Part I, which amends the Criminal Code, takes up 100 pages and contains 93 clauses. But only five of them, namely clauses 6, 7, 13, 16 and 18, represent new laws or new concepts, and of these five, only three can be considered as controversial. These are clause 13, which deals with lotteries, clause 7 dealing with homosexuality, and clause 18 with therapeutic abortions.

I shall deal with lotteries first and in some detail for three reasons: First, because it is the least controversial; second, because it lends itself most easily to the arguments I plan to develop; and third, because these arguments apply also to the other two topics I have just mentioned.

Clause 13, which legalizes lotteries under certain prescribed conditions will, in my opinion, receive general acceptance throughout the country, although there will be strong objections to it from those who see it as opening the doors a bit wider to the vice of gambling as well as an endorsement of the principle on which gambling itself is based.

There is no doubt in my mind that gambling as a way of life is a vice. It is based on the principle of getting something for nothing, which from the moral standpoint is the very antithesis of the values on which our nation is founded and which must be upheld if we are to have a strong, just and free society in Canada.

On the other hand, gambling in its milder forms can be regarded as one of the cheapest forms of entertainment. The foursome at a bridge game who put up a quarter each and play to get as much of it back as possible are certainly harming no one and, at the same time, they are having much more fun for their quarter than they could possibly get any other way.

The raffling off at a village fair of a couple of hundred tickets at 10 cents each for a box of candy or some article worth $2 or $3, or the game of bingo where a person pays $1 entrance fee and can play all night, are certainly equally harmless. Those who participate can not only get a lot of fun, enjoyment and excitement at a very low price, but, at the same time they can make a financial contribution to church or school or some other worthy cause.

However, people can be addicted to gambling just as truly as they can become addicted to drugs and alcohol. I have seen people become bingo addicts. They start out at the cheap game I have just mentioned where, if they do not win, the most they can lose is a dollar a night, one or two nights a week. However, they do not stop there: the habit grows on them and they go on to bigger games where they play $1 or more a card, and it costs them $10 or $15 per night, or perhaps $20 to $30 a week, and that makes a mighty big hole in the week's earnings, particularly of the low wage-earner. As a result, wife and children have to go hungry and do without the necessities of life, in the same way as if the money had been spent on drugs or alcohol.

Last year, 1968, according to D.B.S. reports, Canadians spent $69.8 million on the race track. That figure excludes Quebec, except for the Blue Bonnets races. Comparable figures for 1966 and 1967 are $58.3 million and $60.7 million, respectively. The 1968 figure is 15 per cent higher than the previous year, which is quite a fast rate of growth.

An estimate of the total race track receipts for Canada, including an estimate of the total for Quebec, is approximately $77 million. That, of course, is for race track wagering alone. The total money spent on all forms of gambling in Canada is estimated in the hundreds of millions of dollars, from which it can be seen that gambling is relatively big business.

Furthermore, we cannot overlook the very close association between one form of gambling and another, and between gambling and other forms of crime and vice and the resulting costs to the taxpayer.

These considerations place legislators like ourselves on the horns of a dilemma. Our duty as legislators is to see that society as a whole is protected, to see that the rights of each individual are protected, and that one individual is protected from another and even from himself. That is the whole purpose of the law.

If no one wanted to gamble, there would be no problem and no law required; but people do want to gamble—some on a small scale for entertainment, others as a way of life, and still others as addicts because, due to some deficiency in their psychological make-up or in their upbringing, they have become slaves to the habit.

The real strength of any nation is the character of its people. To protect the nation and society, we must not only preserve this character but do all in our power to strengthen

it. Our dilemma is, how can we do this and, at the same time pass or sanction laws which from experience we know have the potential to erode and weaken the character of our people, thereby helping to undermine the very foundation on which our society rests?

As legislators we also have a duty and an obligation to give leadership to the people and to the society whose representatives we are. That includes moral leadership as well as political and other forms of leadership. How can we do this and at the same time pass or approve laws that embody principles which are contrary to the moral well-being of our society as a whole?

How can we be our brother's keeper and at the same time pass or approve laws which will make it easier for our weaker brothers to become slaves to a way of life that is bad for them and bring misery and hardship to their families?

In a free and democratic society, legislators are required to meet the needs and demands of the citizens to the fullest possible extent, but how can we reconcile this with our overriding obligation to protect the best interests of society as a whole? How, for example, can we draw the line between gambling as a harmless form of entertainment and gambling as a dangerous vice when, in each case, the principle is the same?

What is there to guide us as we seek answers to these questions? Some may say: "So what, life itself is a gamble." They may also claim that our free-enterprise economy is based on gambling. The capitalist risks his money and takes a chance on whether he will win a fair return or lose it altogether. On the surface, these arguments appear plausible because they do contain a small element of truth, but actually they are fallacious.

It is true that in some measure every person's life is influenced by circumstances and forces over which he has no control, and to that extent chance does play some role in the life of every person, but it certainly does not play the major role. Chance is only one of a large number of factors that affect a person's life.

The businessman who risks his money in a new venture is not trusting to blind chance alone. He is not gambling: he is taking a calculated risk which means that as far as possible, he has taken every step to eliminate chance and is exercising his best judgment that the remaining factors which are beyond his influence will operate in his favour or, at least, not operate against him. The real essence of gambling is to try to get something for nothing. The free enterpriser who risks his capital is not expecting something for nothing. He is expecting a return on his capital, for his labour, for his skill and for his judgment.

How then shall we solve our dilemma? One way would be to say to the people: You are looking to us for moral leadership. We know that gambling is bad. It is based on a principle that is bad for the individual and bad for society. If generally accepted, it will eventually weaken and erode the moral fibre of our people and lead to the destruction of our society. As your leaders, it is our duty to preserve our society and the values on which it is based. Therefore, we have decreed by law that "thou shalt not gamble."

If we do this, of course, we shall be immediately accused of imposing our own moral concepts and religious beliefs on others who do not accept them and who, as free citizens, endowed with free will, have every right to reject them.

Another way would be to say to the people that gambling basically is contrary to the values and principles on which our free democratic society is founded and sustained. Some forms of gambling are so dangerous that they cannot possibly be permitted.

On the other hand, some other forms such as games of chance, commonly known as lotteries, have a high entertainment value and, if indulged in moderately and on a small scale, are relatively harmless and can be even beneficial. They can provide a lot of fun, excitement and enjoyment at a relatively small cost. Therefore, while prohibiting the dangerous forms of gambling, we have nevertheless passed a law which will permit the relatively harmless forms to be indulged in legally, but in our law we have endeavoured to set boundaries which will prevent these harmless forms from becoming a menace to society.

This I think, is what the Government has tried to do in Bill C-150 and I am prepared to give it my support because I do not see any realistic alternative.

I am aware that the moralist will say you cannot play with fire without getting burned, and that if you open the door an inch now it will not be long before you will have to open it another inch, and still another, until it is wide open. There is a lot of truth in those statements, because once we discard a sound

principle, or even modify it, we no longer have a solid foundation on which to stand.

On the other hand, the great poet Milton made it clear that he had little regard for what he called "cloistered virtue," whereby people were good because they had no opportunity to be bad. Man was given free will, and there can be no moral growth without the exercise of that free will. Man must choose between good and evil. This means he must have the opportunity to choose because only by exercising his will and choosing the good, can he become morally strong.

What I have said about gambling in general and lotteries in particular applies with even greater force to homosexuality which is the subject of clause 7, and to therapeutic abortion which is dealt with in clause 18.

History teaches us that homosexuality is a sign of moral decay. The decay of all the great civilizations of the ancient world—Roman, Greek and Sumerian—was marked by a great increase in homosexuality. It is now becoming prevalent in our own civilization, and so much so that I have been told it has taken on the trappings of an international brotherhood with its own clubs, and its own means of communication and identification.

It is easy to feel sorry for these poor unfortunates. It is easy to make excuses for them, and regard their illness as a result of a defect in the chromosomes of the parent cells from which they developed. On the other hand, this kind of sex deviation can be cured. I have personally met some who have been cured. The cure, however, very often depends upon the will to be cured.

How can we best deal with this kind of problem? Certainly, treating them as criminals and locking them up is not much of a solution. On the other hand, we cannot blind ourselves to the fact that, when all its aspects are considered, homosexuality is evil and a terrible danger to our society.

The problem is how can we best reconcile the human compassion, which we rightly feel for these unfortunate individuals, with our solemn duty to protect our society from the destructive impact which history over and over again has proven to result from sex deviation and perversion.

As in the case of gambling, Bill C-150 separates the problem into two parts and gives legal consent to that part of the problem which can be considered as relatively harmless to society while, at the same time, prohibiting with heavy penalties the perversion of minors and similar acts which are definitely dangerous to individuals as well as to society as a whole.

Is this the best solution? Is it the right solution? I do not really know. I think it is better than the old solution which rendered the people involved subject to blackmail, thereby making them security risks and potential traitors to their country. On the other hand, it is another step along the road of permissiveness, and who can tell when the next step will be taken or where it will lead.

I come now to therapeutic abortion, which to me is the most perplexing subject of all. Here we come face to face with the very concept of man himself.

Our free democratic society is based on the concept that man is a created being. The communist society which is dedicated to destroying our way of life is based on the concept that man is merely an animal. In clause 18 of Bill C-150, we have a direct confrontation between the two and we have to make a choice. If the unborn child is merely animal tissue, then abortion is neither a sin nor a crime any more than the excision of a lung or a kidney which is also composed of living cells. It boils down then to the question as to when does man become a created being. When does he become a living soul? Is it the moment he is born, or the moment he is conceived? Is a child merely animal tissue until the moment of birth, or is he not?

We have all seen children who were born prematurely but who grew up to be healthy men and women. If a child is deliberately killed on the day after birth, it is a crime—infanticide or murder. Is the crime so much different if the child is deliberately killed the day before birth, or a week before, or six months before? When one life has to be sacrificed, on what basis can a choice be made between the life of the mother and the life of the child? Probably no questions have caused as much soul-searching in Canada in recent weeks as these.

I have not seen any satisfactory answers to these questions. Clergy, theologians, and heads of churches do not seem to agree among themselves as to what the answers are. The answers vary with different religious teachings and different moral concepts concerning the nature of man. Whatever course is taken will appear to favour one set of moral concepts and one set of religious teachings over the others, and as legislators we lay

TAB 12

BRITISH COLUMBIA

637

APPROVED AND ORDERED MAR. 20.1980

Lieutenant-Governor

EXECUTIVE COUNCIL CHAMBERS, VICTORIA MAR. 20.1980

On the recommendation of the undersigned, the Lieutenant-Governor, by and with the advice and consent of the Executive Council, orders that approval is given for the Minister to enter into agreements in the attached forms.

PROVINCIAL SECRETARY AND MINISTER OF GOVERNMENT SERVICES

W. R. Bennett

PRESIDING MEMBER OF THE EXECUTIVE COUNCIL

(This part is for administrative purposes and is not part of the Order.)

Authority under which Order is made:

Act and section Lotteries Act - section 5

Other (specify)

Statutory authority checked by Elizabeth King Elizabeth King
(Signature and typed or printed name of Legal Officer)

(English Version)

Agreement made as of 1 January 1980 among:

Her Majesty the Queen in Right of Alberta
("Alberta"),

Her Majesty the Queen in Right of British Columbia
("British Columbia"),

Her Majesty the Queen in Right of Manitoba
("Manitoba")

Her Majesty the Queen in Right of New Brunswick
("New Brunswick"),

Her Majesty the Queen in Right of Newfoundland
("Newfoundland"),

Her Majesty the Queen in Right of Nova Scotia
("Nova Scotia"),

Her Majesty the Queen in Right of Ontario
("Ontario"),

Her Majesty the Queen in Right of Prince Edward Island
("Prince Edward Island"),

Her Majesty the Queen in Right of Quebec
("Quebec"),

Her Majesty the Queen in Right of Saskatchewan
("Saskatchewan").

(collectively the "Shareholders")

- and -

Interprovincial Lottery Corporation
("I.L.C."),

- and -

Western Canada Lottery Foundation,

Ontario Lottery Corporation,

Societe des loteries et courses du Quebec,

Atlantic Lottery Corporation

(collectively the "Regional Marketing Organizations")

The Shareholders own ILC which operates lotteries for them through the Regional Marketing Organizations. The Shareholders entered into an agreement with Her Majesty in right of Canada ("Canada") in which Canada agreed to cease conducting and managing lottery schemes and agreed to windup Loto Canada ("Loto Agreement"). A copy of the Loto Agreement is attached as Appendix A. The Shareholders have agreed that the payments required under paragraph 3 of the Loto Agreement ("Loto Instalments") will be made in the manner hereinafter provided.

In consideration of the premises and their mutual covenants herein contained the parties agree as follows:

1. Appointment of ILC as Agent

The Shareholders appoint ILC and ILC agrees to act as their agent to make the Loto Instalments at the times and in the amounts required by the Loto Agreement.

2. Funding

The Shareholders through the Regional Marketing Organizations will provide ILC with the funds necessary to pay the Loto Instalments. Each of the Regional Marketing Organizations will contribute to the Loto Instalments in the same proportion as it contributes to ILC's expenses

for fixed prizes, the proportion for any given Loto Instalments being the same as its proportion for fixed prizes for the nearest corresponding period.

3. Withdrawal

The obligations of each Shareholder under this agreement to contribute its proportionate share to the Loto Instalments remains in effect so long as the Loto Agreement remains in effect. If a Shareholder ceases to be a shareholder of ILC or ceases to participate in or restricts the sale of tickets it shall pay directly to Canada a share of each subsequent Loto Instalment based on the proportion that the population of the province which the Shareholder represents bears to the total population of Canada based on the latest available Statscan statistics and the amount of the Loto Instalments payable by ILC as agent for the other Shareholders shall be reduced accordingly.

4. Indemnity

The Shareholders and each of them agree to indemnify and hold harmless ILC from any loss or damage it may suffer by reason of acting as agent under this agreement.

5. Counterparts

This agreement may be executed in several counterparts, whether in English or in French, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same agreement.

In witness whereof each of the parties has executed this agreement by persons duly authorized in that behalf.

Alberta _____

British Columbia _____

Manitoba _____

New Brunswick _____

Newfoundland _____

Nova Scotia _____

Ontario _____

Prince Edward Island

Quebec _____

Saskatchewan _____

Interprovincial Lottery Corporation _____ c/s

Western Canada Lottery Foundation _____ c/s

Ontario Lottery Corporation _____ c/s

Société des loteries et courses du Québec _____ c/s

Atlantic Lottery Corporation _____ c/s

August 23, 1979

My Dear Minister:

On behalf of the Government of Canada, we are pleased to confirm the agreement reached at the August 21st meeting in Ottawa, the principal terms of which are as follows:

1) The Government of Canada, through its agent Loto Canada Inc., will withdraw from the sale of lottery tickets, effective December 31, 1979.

2) The Government of Canada will cause Loto Canada Inc. to be wound up after December 31, 1979, under the Canada Business Corporations Act, as quickly as legal, financial and administrative requirements permit.

3) On and after January 1, 1980, the Provinces will jointly remit annually to the Government of Canada the sum of twenty-four (24) million dollars payable in quarterly instalments of six (6) million dollars and adjustments, commencing April 1st, 1980. The Provinces shall agree among themselves as to the proportion to be paid by each province. Each quarterly instalment shall be adjusted as to reflect the effects of inflation, utilizing the consumer price index as the standard of measurement and 1979 as the base year.

.../2

4) In view of the fact that this agreement is expected to result in increased earnings for provincial lotteries:

a) the Provinces of Alberta, Manitoba and Quebec will assume responsibility for any Government of Canada share (estimated to be thirteen and one-half (13.5) million dollars) of the costs relating to the expansion, upgrading and renovation of the NHL arenas in Edmonton, Winnipeg and Quebec City. These provinces agree to joint press releases between themselves and the Government of Canada reflecting the foregoing.

b) The Province of Ontario agrees not to request financial assistance from the Government of Canada in respect of the Royal Ontario Museum.

5) On or before October 1, 1979, the Provinces of Ontario and Quebec will each remit the sum of $2,595,675.85 owed to Loto Canada Inc. under the Loto Select memorandum of understanding dated October 5th, 1978.

6) This agreement may only be terminated with the unanimous consent of the Provinces and the Government of Canada.

TAB 13

HOUSE OF COMMONS DEBATES

OFFICIAL REPORT

FIRST SESSION—THIRTY-THIRD PARLIAMENT

34 Elizabeth II

VOLUME VI, 1985

COMPRISING THE PERIOD FROM THE TWENTY-EIGHT DAY OF OCTOBER, 1985
TO THE TWENTIETH DAY OF DECEMBER, 1985

INDEX ISSUED IN A SEPARATE VOLUME

Published under authority of the Speaker of the House of Commons by the Queen's Printer for Canada

Available from Canadian Government Publishing Centre, Supply and Services Canada, Ottawa, Canada K1A 0S9.

5. What is the cost per year charged to individual residents of Prescott for post office boxes and what are the reasons for this charge?

Hon. Michel Côté (Minister of Consumer and Corporate Affairs and Canada Post): The Canada Post Corporation informs me as follows:

1. No street letter boxes have recently been removed from the Town of Prescott, Ontario.

(a), (b), (c) and (d) However, nine street letter boxes were removed from the Town of Prescott in December, 1983 as part of a continuous process of review which had resulted in the adoption in 1982 of an Ontario Region Cost Reduction Plan. Street letter boxes are not normally provided in communities not served by letter carriers.

2. Notices informing the public were placed on all boxes three weeks prior to removal.

3. Re-installation of boxes at this time would be inappropriate.

4. The residents of Prescott and its environs are served by one of the following modes of delivery: general delivery, lock box or rural route delivery. The three modes of delivery now employed are the most cost effective and are adequate ones to serve this and other similar communities.

5. The rate structure that the Corporation applied to post office box customers in Prescott is identical to that in the rest of Canada since a universal rate is in effect. The fee charged for a box is dependent on two factors: the size of the box rented, and the type of alternate service available to the customer renting the box.

The Corporation's rates are as follows:

		Category of Customers	
Box Size	Dimensions of Box	Customers with Access to Delivery by Letter Carrier, Rural Route, Group Box, and Mail Courrier Service	All Other Customers
A	127mm • 87.3mm	$25.40	$ 6.74
B	127mm • 138mm	$50.88	$13.48
C	127mm • 290.5mm	$76.32	$20.22
D	266.6mm • 290.5mm	$96.46	$33.71

[*English*]

Mr. Speaker: The questions as enumerated by the Parliamentary Secretary have been answered.

Mr. Lewis: Mr. Speaker. I ask that the remaining questions be allowed to stand.

Some Hon. Members: Agreed.

* * *

MOTIONS FOR PAPERS

Mr. Doug Lewis (Parliamentary Secretary to President of the Treasury Board): Mr. Speaker, I ask that all motions for the production of papers be allowed to stand.

Mr. Speaker: Is that agreed?

Criminal Code

Some Hon. Members: Agreed.

GOVERNMENT ORDERS

[*English*]

CRIMINAL CODE

AMENDMENT RESPECTING LOTTERIES

Hon. John C. Crosbie (Minister of Justice and Attorney General of Canada) moved that Bill C-81, an Act to amend the Criminal Code (lotteries), be read the second time and referred to a legislative committee.

Hon. Ray Hnatyshyn (President of the Privy Council): Mr. Speaker, there have been consultations between the Parties and I think you will find a disposition to allow the following motion to be brought forward by unanimous consent, presented and passed without debate. The motion is as follows:

That, notwithstanding any Standing or Special Order of this House, when the Order of the Day for the second reading and reference to a legislative committee of Bill C-81, an Act to amend the Criminal Code (lotteries), is called and is disposed of this day, it shall stand referred to a Committee of the whole; and

Provided that not later than the end of the time provided for the consideration of Government Business this day, the Speaker shall interrupt, if necessary, any proceedings then before the House and shall put forthwith, and successively without further debate or amendment, all questions necessary to dispose of the then remaining stages of the said Bill.

• (1520)

Mr. Deans: Mr. Speaker, I just want to say on behalf of my colleagues that we will, of course, give the necessary unanimous consent. However, I must confess that I would prefer us to have arranged among ourselves that the Bill be disposed of during the course of the day. I do not think it is necessary all the time for us to formalize these arrangements in a motion. I hope that among the three House Leaders we will be able to reach some understanding to allow legislation to be dealt with, without the necessity of a motion being put to the House.

Mr. Hnatyshyn: Mr. Speaker, my dilemma is simply this. The House Leader the Official Opposition (Mr. Gray) prefers that I give prior notice in writing with respect to understandings we reach as far as possible.

Mr. Deans: All right.

Mr. Hnatyshyn: On the other hand, the Hon. Member for Hamilton Mountain (Mr. Deans) prefers the more informal procedure. I am equally friendly with both House Leaders and I am going to try and be Solomon-like in this dilemma and try to do my best to get a consensus.

Mr. Gauthier: Mr. Speaker, since I feel somewhat aimed at in the remarks—

Mr. Deans: No.

Mr. Gauthier: —of the President of the Privy Council (Mr. Hnatyshyn), I would point out that it is understandable that I cannot always be on top of all these issues because I do not attend the meetings of House Leaders. However, I am often called to give my agreement to these things. I do not do that

unless I know what I am talking about. I did consult with the President of the Privy Council before and I agreed to this procedure today.

Mr. Speaker: I take it there is unanimous consent for the introduction of the motion.

The House has heard the terms of the motion. Is it the pleasure of the House to adopt the motion?

Some Hon. Members: Agreed.

Amendment (Mr. Hnatyshyn) agreed to.

Mr. Speaker: Mr. Jelinek, for Mr. Crosbie, moves that Bill C-81, an Act to amend the Criminal Code (lotteries), be read the second time and, by unanimous consent, referred to Committee of the Whole.

Hon. Otto Jelinek (Minister of State (Fitness and Amateur Sport) and Minister of State (Multiculturalism)): Mr. Speaker, I am pleased on behalf of the Government of Canada to make a few comments on Bill C-81, an Act to amend the Criminal Code regarding lotteries. It was just over one year ago that I began negotiations with provincial lottery Ministers, asking them to contribute $100 million towards this Government's commitment to the 1988 Winter Olympics in Calgary. In return I proposed, on behalf of the Government of Canada, that we would amend the Criminal Code, which would in effect put into legislation the 1979 lottery agreement giving the provinces sole jurisdiction over lotteries and other specific gaming operations. I am happy to announce again that on June 3, 1985, the federal and provincial Governments concluded and signed an agreement incorporating the $100 million funding. The Bill we are discussing today is the result of that agreement.

The provisions in the Code are very complex, perhaps as complex as some tax statutes. At times their meaning must be discovered with the help of lawyers or the courts. For years uncertainties in the law have existed. This resulted in the launching of law suits by each Government over the proper interpretation of the present law, and the rights and responsibilities of each level of Government concerning the operation of lotteries and other gaming activities. These legal battles led to ill feeling between federal and provincial Governments, and diverted public resources to needless court battles. When this Government took office, it decided to put an end to unproductive federal-provincial wrangling and embark upon a course of action which would achieve mutual agreement among the two levels of Government for the public benefit.

One of the provisions of the June agreement provided for consultation with the provincial Ministers responsible for justice. Since that time, officials of the Department of Justice and their provincial counterparts have consulted each other concerning other changes to the Criminal Code consistent with the substance of the proposals contained in the agreement. The negotiations concerning funding for the Calgary Olympics provided an opportunity for achieving mutual federal-provincial reconciliation of these outstanding legal issues. Therefore, the agreement included proposals for both out of court settlement of outstanding federal-provincial litigation, and clarification of the legal rights, powers and responsibilities of each level of Government.

I would like at this time to detail for the benefit of the House the exact nature of the amendments proposed in the Bill which would achieve that clear clarification I justs mentioned. The repeal of Section 188.1 of the Criminal Code would end the legal authority of the federal Government, and the Governments of one or more provinces which have entered into an agreement jointly with the federal Government, to operate and manage sports pool betting. As the House knows, one of the first Acts of this Government when it took power was to dismantle the administrative structure of the Canadian Sports Pool Corporation. You will recall that this corporation was at that time losing some $1.5 million a week of taxpayers' money, not to mention creating a federal-provincial irritant which went way beyond the scope of already existing irritants between the two levels of Government. The present amendment would legally kill the ability of the federal Government to restart the operation of federal sports pools by any new Crown corporation.

As I mentioned, in 1979 the then Conservative Government agreed with the provinces that it would no longer operate federal lotteries. However, that agreement was not put into legislation. The proposed repeal of Section 190(1)(*a*) of the Criminal Code now would go further in preventing the federal Government from restarting the operation of federal lotteries. These two amendments would thereby remove the legal authority for the federal Government to operate sports pools, lotteries and other gaming activities. Such activities would only be permitted under direct provincial management and control, or under the operation of other persons such as boards of fairs or religious or charitable organizations, in accordance with a licence issued by the province. That, of course, is already taking place in a number of our provinces. Furthermore, this Bill would extend the privileges that agricultural fairs enjoy now to include any fair or exhibition with regard to the running of games. In other words, this Bill is legislating what is already in effect so far as the laws of the provinces are concerned, as well as putting into legislation the 1979 agreement between the federal and provincial Governments.

For many years Canadian companies have been highly regarded for their expertise in matters related to technology and printing. One of the amendments in this Bill will include the expansion of that expertise because it has been sought world-wide. This Bill now permit Canadian companies to export materials related to lotteries and gaming, thus adding another dimension to our export package.

• (1530)

For many years as well the definition of lotteries has been a contentious point. This Bill fully clarifies the term "lottery" in a clear and concise manner. In addition, the proposed amendments in this Bill clarify what types of lotteries and gaming activities the provinces may operate and conduct.

I think it is clear from what I have said that this Bill clarifies a number of uncertainties that existed within the law. In addition, it gives a clear legislative recognition to past and present provincial activities, and also puts some very clear restrictions and bounds on what is and what is not permissible. Accordingly, given the state of the current law and the juducial interpretion of it, the proposed Bill does not promote an expansion of gambling. I think it is very important for Members to understand that this Bill does not promote the expansion of gambling, but rather sets some realistic and clear standards of what is permissible.

In summary, Mr. Speaker, this Bill is long overdue. It certainly spells out in black and white a much clearer picture of lotteries and associated games in Canada and transfers to the provinces the lottery rights, which was the intention of the Progressive Conservative Government in 1979.

I would like to add my thanks to all of those who participated for eight or nine months in the very long and tough negotiations in order to bring the agreement to a conclusion in June. This agreement will provide the federal Government with $100 million of non-tax revenues from the provinces. It will eliminate the irritant which existed between the provinces and the federal Government and has, therefore, opened the door to creating much better federal-provincial co-operation in other areas. I would particularly like to thank all the people in the Department of Justice who worked from the federal standpoint. Most important, I would like to thank the provincial Ministers responsible for lotteries for making this Bill a reality.

Mr. Sergio Marchi (York West): Mr. Speaker, I am pleased to participate in the debate on Bill C-81. I learned only a few minutes ago about the business of the House this afternoon.

To put the Bill in context, let me say that I believe it evolved from the sports pool lottery which was in operation during the previous administration. That particular mechanism to generate funds for the Calgary Winter Olympics was a noble one because it recognized the need to generate enough funds to make the Olympic Games a success. When we talk of the Olympic Games we are talking about an international event in which the world-wide sporting community will be involved. Therefore, it is important that the Olympic Games be a success.

The previous Government committed itself to a contribution of some $200 million. I am pleased that the present Minister has been able to secure $100 million from the provincial Governments as well as set up a coin program which will generate between $30 million and $50 million.

There are a number of important factors that are generated by this particular piece of legislation which the Minister failed to address. First, he had given us a commitment that the provinces would be contributing upward of half of the $200 million commitment. At the time the promise was made it was an unqualified commitment that the provincial Governments would consider it as part of their mandate to participate with the federal Government in staging this international event. Now we learn that that support is qualified, that the provincial Governments want something in return for the portion that they will donate to the Olympics rather than saying that as provinces they have an obligation to work in partnership with the federal Government to help stage the Winter Olympics in Calgary. Their support was dependent upon the piece of legislation which is before the House today. Is it fair and proper that the right to run lotteries or maintain mechanisms to generate funds for sporting activities should be given to the provinces without any assurance that the moneys generated by the provincial Governments will be directed back into the sports field?

Another thing which the Minister failed to outline was how the remaining portion of the $200 million will be financed. As I mentioned at the outset, we have approximately, depending upon the figures used, $130 to $140 million of the $200 million commitment. There has been no information forthcoming from the present Minister since his appointment in September as to how the shortfall will be picked up. There is no firm commitment on how much money will be generated by the coin program and, therefore, Canadians, those organizing the Olympics and the athletes themselves, do not know how or if the rest of the moneys will be raised.

There is also very little information, if you put aside the previous argument, on how the $100 million to be contributed by the provincial Governments will be shared. Canadians from the various provinces are asking themselves how the split of the $100 million will be arranged. That is an important consideration when one realizes that some provinces are not in a position to contribute on a proportional basis. I would have appreciated it if the Minister had taken the opportunity to elaborate on the splitting up of the provincial contributions. I think it is unfair for a have-not province, if I may use that term, to contribute the same proportional amount as Alberta or Ontario would contribute.

As I mentioned at the outset, I do not completely agree with the concept of removing the lottery business from the federal domain and saying that it is only for the provinces. I believe that the present Minister shares my feelings on that. In the Calgary *Herald* of September 20 he is quoted as saying, in relation to the sports pool program: "We need to come up with a different funding system and that will be a priority". I think that is very important, Mr. Speaker. When the Minister and the Government talk about eliminating a program, about modifying a piece of legislation and about the federal Government abandoning on area, then it is incumbent upon them to say also what will be replacing that system.

In this case sports organizations and interests that have used sports pools to generate funds for sporting activities and are seeing the rights to those pools given to the provinces without any guarantee that funds will be pumped back into the federal sports scene will want to know where they are left. Quite often when Governments tighten the purse strings, as the Government has done, it is inevitable that sportings and cultural activities take a beating and experience very severe financial

restraints. The sporting community ought not to be treated in that fashion. If we are going to delegate away an element that generated funds for the sparting community, it has a right to know with what that element will be replaced. The Minister has an obligation to say that we are abandoning the sports pool and replacing it with another mechanism which it is felt will in fact address the needs of the sporting community. It was the same case in 1979 when the then Prime Minister made an agreement with the provinces to abandon the lotteries field and give a monopoly to the provinces. Was that a fair deal?

● (1540)

I am not suggesting that we should be at war with the provinces, but if we are looking at the sporting constituency, as the Minister obviously should, then we should be speaking for that constituency. In 1979 the federal Government gave away the lottery area which was generating moneys, some of which was to be used in the sporting community. The Government gave away a $200 million plus industry in return for a simple $35 million share. The loser in that deal is the sporting community.

The idea of a lottery or a sports pool is not foreign nor very difficult to understand within the sporting community. Quite often there are Members in the House of Commons who shun lotteries and question whether they are really a hidden tax on individuals who play lotteries the most. They say that some studies have shown that the people who use lotteries the most tend to be in a lower or moderate income bracket.

However, the Canadian Olympic Association has clearly been on the record as endorsing the former sports pool corporation and endorsing lotteries as a way of generating funds for the Canadian Olympic Association. It is also a concept that is not foreign to other countries when considering ways of generating funds for amateur and professional sporting activities. The sports pool or lottery at the federal level which helped to support federal sports initiatives was not totally unique in this country. Many countries in the world have mechanisms which may not be called lotteries or sports pools but which are similar to our lotteries and are used to generate funds for sporting activities.

The sports community in this country is suffering from a lack of financial resources. I cannot think of any better example of that severe financial handicap facing sports organizations than our national soccer team. Last September, the Canadian soccer team qualified for the World Cup soccer tournament for the very first time in Canadian history. They have been attempting to reach the international finals for 28 years and finally, last September, the Canadian soccer team was able to fulfil that very impressive and nationalistic goal.

There was great applause and much back-slapping and congratulations for the men and women who made that victory possible. However, let us look at the condition facing the national soccer team and its players now. I was shocked to read in the Toronto *Corriere Canadese* newspaper, the reality of the national soccer team and its players. It was pointed out in that article that the captain of the soccer team and his family as well as seven other colleagues and families of the seventeen member team were living on unemployment insurance. They did not have a full-time job because they had to train and there were no training funds available, to date, for these players and coaches.

That condition is an embarrassment and should not exist. Yet they do not receive any money. I am told that the only money forthcoming will not be until January when the official training period begins for the national soccer team. The amount of money to be given to the 17 players and coaches is still to be determined. It will largely depend on the generosity of the private sector.

Moreover, it was also reported in that article that part of the team is training in Vancouver and the remaining portion is training in Toronto. Our national soccer team will be playing against the best teams that the world has to offer. It will be in Mexico being watched by the world. Yet part of the team is training in Vancouver while the remaining portion must train in Toronto. The reason for that is that we do not have the necessary funds to bring all the players and coaches together at the same time on the same field. The players are probably not questioning this publicly because they are likely playing from the heart right now. However, if they are honest with their feelings I am sure that they and other Canadians are asking how they can compete against the best teams in the world when their team cannot even be on the same field in order to train together.

I believe that is unfair. I suggest that other teams in the world that will convene in Mexico are receiving not only moral support but financial support from their Governments at all levels. They are receiving financial support both directly and indirectly.

Mr. Jelinek: Mr. Speaker, I rise on a point of order. I believe that we are discussing Criminal Code amendments. I have listened with interest to the typical misinformation coming from the Hon. Member for York West (Mr. Marchi), but I am wondering whether it should be noted that we are discussing Criminal Code amendments as proposed in the Bill.

Mr. Deputy Speaker: The Hon. Member for York West (Mr. Marchi) has the floor.

Mr. Marchi: Mr. Speaker, that is not a point of order. During his speech the Minister stated that this Bill certainly had its roots in the previous sports lottery Bill. The purpose of the sports lottery was to aid sports and I am talking about sports. It is one thing for the Minister to be defensive but he should get up on a proper point of order.

I am not misinforming the House of Commons because the information which I shared with Members in the House is true. Perhaps he should check with the captain of the national soccer team. We will then see who is misinforming and misleading the House.

Mr. Mantha: What about the hockey team?

Mr. Marchi: The Hon. Member for Nipissing (Mr. Mantha) asks about the hockey team. We all know that Moe is a great hockey player but we are talking about soccer at the moment.

Before the Minister rose on his point of order, I was about to say that other countries are supporting their national teams. They do this directly through the funding of national sports federations and also indirectly through lotteries. Some of the proceeds from these lotteries are channelled into the sporting community.

The problem with our present system is that the sporting federations are not permitted to give moneys to teams which may be classified as professional. I believe we should adopt a more progressive, moderate and contemporary approach in dealing with our teams and athletes because, frankly, the situation facing our national soccer team, as a refletion of what is happening to other bodies in this country, is undignified.

The Canadian Broadcasting Corporation is supposed to televise 42 of the 50 games to take place in Mexico. It will televise all three Canadian games in the first round. In order to perform well, we cannot simply rely on the good heart of the soccer players. We must rally behind the sporting community and this team in particular, and while providing that moral support we must also recognize that they must be trained properly in order to be competitive with the other countries.

• (1550)

Let us not take a back seat to anyone. Let us go to Mexico and expect to do well on the field. Let us go with the other teams from other countries and let us not be a laughing stock or an embarrassment in the way we treat our players and teams. Not many countries, even those less well off, treat their players and teams in the kind of a degrading manner.

I highlight that in trying to illustrate to this House and the Minister that the whole concept of federal lotteries and a federal sports pool should not be shunned or cast off quickly to appease provincial Governments. Yes, we should be at peace with our provincial Governments but we should also be doing things that will fulfil, be effective and positive for the national will. If there is a national will to see a national sports mechanism that will function and do honour to our athletes, then we need to fulfil it whether or not the provincial Governments like it. There is no guarantee in this legislation that moneys generated now or in the future to aid sports organizations and national sports teams will be fulfilled. That is the irony of this Bill. That is the irony of this Minister who is speaking on behalf of his colleague, the Minister of Justice (Mr. Crosbie). It is fine to look at the Bill from a legal point of view, but the Minister of State for Fitness and Amateur Sport (Mr. Jelinek) also has a sports constituency to defend. He should be defending the principles that are not in this Bill but should be.

The Government has said: "We are getting out of the lottery business and out of the sports pool business. We are shipping that business to the provincial Governments and they will be happy". That is not good enough, Mr. Speaker. The Minister of Justice can get up and do that because he may not be sensitive to the intricacies of the sporting community but the Minister of Sports should be sensitive and probably is because he comes from that milieu. Therefore, I am somewhat surprised that the sporting community has been abandoned in the lotteries debate. We should not simply see the lotteries as evil and dark things. If they are run properly and if they can generate funds that can be donated to sports organizations without draining the Treasury, what is wrong with that? Around the world we see sports organizations benefiting from the resources that can be drawn upon from sports pools or lotteries.

We should be relooking and rethinking, although it might be a touch too late, at what this Government is doing. There should be a commitment at least from the provinces that, if they are to run the lotteries, some of the moneys intended to assist the sporting community will still be met. I have my doubts about that, Mr. Speaker. It is an unfortunate circumstance for our sporting community. It might be a victory in the Government's eyes for federal-provincial relations but I think that, to a certain degree, it is a cop-out to regional or provincial whims at the detriment of what should be a central and a national vision in this legislation.

We should be thinking not only about the Olympics in Calgary—which this Party, this Parliament and every single Member will rally around and do everything to make it the best Olympics ever—but also we should be talking philosophically about the move we have just made. Just because there has been a unanimous agreement to send this Bill forth in one day we should not laugh it off because there are serious repercussions and a philosophical bent undermining it. A national lottery, sports pool, or call it what you will, to aid sports groups and national professional teams is not wrong.

I hope somehow we can derive commitments from provincial Governments. They will now have a virtual monopoly on the lottery business. If the federal Government says it is wrong to be in the lottery business, why is it right for the provincial Government to be in the lottery business? If you disagree with lotteries, let us make lotteries illegal. We are saying somehow that lotteries are wrong, yet provincial Governments are able to run them.

There are some very serious inconsistencies in the Bill which displease me and I am sure they displease the sporting community. It was hopeful that some guarantee of funds, if lotteries are to exist and be permitted in Canada, would be made. That is not the case here, and I regret it very much.

Mr. Ernie Epp (Thunder Bay-Nipigon): Mr. Speaker, it is a privilege to join in the debate on this Bill. It is a privilege because the critic in my caucus for fitness and amateur sport, to which this Bill relates, is my colleague, the Hon. Member for Thunder Bay-Atikokan (Mr. Angus). Illness has confined my friend to his home in the riding. Consequently, this afternoon, as the person in our caucus who spoke to the sports pool wind-up Bill a year ago less two days, I have the opportunity to speak for our caucus as the first speaker with regard to this

Bill which makes certain amendments to the Criminal Code to legislate and set in statute form the consequences of agreements which the Conservative Government reached. These were initially arrived at in 1979, and the Conservatives chose to implement them as soon as they formed the Government in late summer, 1984.

In speaking to this Bill, Mr. Speaker, I will be taking a stance of support for the Bill. I do that in a carefully defined way because it expresses support for the principle that the federal Government is removed from gaming activity in Canada. By this change in the statute law, the Government declares that it will not embark on any endeavours like Loto Canada, which was authorized in the mid-1970s, and the sports pool Bill, which was undertaken in 1982-83. That action, of removing the federal Government from gaming activity, is supported by members of my caucus who regard it as a desirable action.

I recognize that the clauses before us in Bill C-81 provide for other gaming activities to continue in Canada, particularly those in which the provinces, through a number of lottery corporations, are now largely embarked upon. That those clauses are in the Bill gives me considerable cause for unease.

Support for the Bill is partial. The Bill reprints sections of the Criminal Code which are not being changed. The fact that they are in the Bill is the focus for the unease I am expressing.

I want to say something about this matter of gaming and lotteries on which the Government of Canada allowed the provinces to embark and which the Canadian Government in 1978-79 attempted to get into more actively in trying to establish Loto Canada and later the sports pool.

The fact that the Canadian Government was prepared to consider gambling money as a support for fitness and amateur sport activities, for cultural activities and conceivably even for the funding of medical research, gave all Canadians concern about morality. The social implications of this Government action gave very real cause for concern.

● (1600)

I suggest that these are all important areas of activity. I think we would concede that immediately. I doubt whether there is a person in the country who would doubt the importance of medical research. There are people who would have varying assessments of the importance of cultural activity or, for that matter, of fitness and amateur sport, but I would expect most Canadians to place a fairly high value upon these activities. Given that there is this agreement among Canadians about the importance of such endeavours, it is my conviction and that of my colleagues that those activities deserve to be supported by the consolidated revenues of the country and by a proper tax system. Governments should not, in any way, shape or form, be involved in supporting these endeavours by calling upon non-tax revenues.

Given that kind of position, the Government is putting before us today, as it put before us in the sports pool wind-up Bill, a Bill that is only to be supported because of its half-way nature. What one wanted, in fact, was for the Government to concede that gaming is not a good thing, and to ensure that the provinces as well got out of the activity and that the provincial Governments and the federal Government used a sound tax system to generate the revenues to support these important endeavours.

It may be worth saying, in some expansion on that, that this point deserves to be underscored for fitness and amateur sport. I suspect that there are people who regard that as, in some way, a luxurious activity. I am not sure whether I am finding the right words for it, but they do not regard it as an important thing in the mainstream of our life with which Government should be directly involved. They do not appreciate the importance of supporting amateur sport properly and ensuring in our fitness programs that Canadians use their leisure well. The Government has a real stake, which certainly extends to the health of the participants and to the increasing health of the Canadian public. It actually exceeds that and involves the well-being, far beyond physical health, of the Canadian population. Given the importance that one can place on the Ministry of State for Fitness and Amateur Sport, it is all the more important that both aspects of that Ministry be properly supported. It is imperative that the consolidated revenues of the country be adequately called upon to support all these activities.

For that reason, the decision of the Governments, at either level, federally or provincially, to call upon gaming revenues or the results of lotteries to support these activities creates a sense of their own improper evaluation of these activities and represents something to which I am deeply opposed. I think that feeling is shared by all members of my caucus.

The fact of the matter is that others, including Ministers of the present Government, feel quite the same way. Perhaps I could drop back for a moment and note that when I spoke on November 8, 1984, I used a statement by one of the venerable members of my Party, who was then the Hon. Member for Winnipeg North Centre, Mr. Knowles, whom we have the pleasure of seeing at the Table frequently in the chair which he now holds by action of the last Parliament. I quoted the following statement of Mr. Knowles:

> It is because we believe that physical fitness, amateur sport and recreation are important aspects of Canadian life that we think they should be financed out of general taxation and, therefore, paid for on the basis of the ability to pay.
>
> We do not believe that aspects of life as important as physical fitness, amateur sport and recreation should be financed by gambling, which calls on the poor to pay for it, instead of taxation which is levied according to ability to pay.

That admirable statement from 1976 was echoed in the most impressive way by the Hon. Member for Halton, the present Minister of State for Fitness and Amateur Sport (Mr. Jelinek). Speaking on the sports pool Bill three years ago, he said:

> At the outset, I would like to say that this sports pool is nothing more than an indirect taxation by devious ways and means. It is an underhanded way of collecting money from the Canadian public because the Government has failed in its responsibility time and time again to collect it by normal means.

He added to that admirable statement of principle, to which I hold myself, the following observation:

As a former athlete I support anything which can be done to help amateur athletes in this country. But certainly not by establishing the phoney, sleazy programs the Government is talking about which would be taking advantage primarily of the poor people of this nation, and then misleading them with false and misleading advertising.

That, too, is clearly expressed and admirable. I hold to every word of that. Surely the Minister of State for Fitness and Amateur Sport, in introducing the Bill this afternoon for debate on second reading, would agree that it is only acceptable as a half-way measure. We should be involved with getting the provincial Governments out of these activities and with ending the spreading of lottery mania across the country, particularly ending the advertising of lotteries on our television screens and on the billboards of the nation designed to arouse in Canadians hopes which are very rarely fulfilled for anyone.

I want to say something about the matter of lotteries and their continuance at the provincial level because of this half-way measure in amending the Criminal Code. We should in fact be getting out of the business altogether, at least at the provincial level as well as the federal level. The provincial Government of Ontario recently changed and, as a result, opened windows and doors and produced papers of various sorts. It has provided us with some studies on gambling which are of considerable interest.

Of course there has been discussion in recent years as to who are the participants in gambling. The Hon. Member for York West (Mr. Marchi) alluded to some by suggesting that it was Canadians of lower income, the poor, pure and simple, and middle-income Canadians who tended to be the buyers of lottery tickets. The extent to which some of these people purchased lottery tickets leaves one suspecting that the consequence is a reduction of standard of life for them, in the almost always vain hope that they can somehow get out of the circumstances in which they are caught and get on to the rich life which they seek. The reports which were done for the Lottery Corporation in the Province of Ontario certainly underscored that reality. In one case they indicated that in fact it was groups of Ontarians of the sort I have been describing who tended to be the larger purchasers of lottery tickets.

Another study suggested that lottery ticket buyers were more poorly regarded by the public than they should be, and that an advertising campaign was in order to improve the image of those who were gambling. I do not know whether in fact those studies were behind the advertising campaigns to which we have all been exposed and to which I alluded earlier.

I should like to refer to two of the advertising campaigns in this province. There was the "Home, James" series, if I can call it that, which pandered to all kinds of desires for luxurious acquisition by our fellow citizens. The other campaign focused on a druggist in a particularly homey store, an aunt and her niece and the young clerk who works in the drugstore. Those two campaigns were designed to improve the image of the lottery buyer.

● (1610)

Enormous amounts of money have been spent on those advertising campaigns for television time and billboards. A great deal of money was spent on the series this summer that encouraged us all to continue buying lottery tickets while on vacation. All of these campaigns were designed to encourage our fellow citizens to gamble with the conviction that they are going to strike it rich and break out of their poverty and that they would finally enjoy all that their hearts had desired for years.

That kind of advertising is designed to drive people into a never-never land. The possibilities of winning a lottery are extraordinarily low in most cases. There is in fact much more chance of being struck by lightning, and in fact even being struck by lightning a couple of times, than there is of winning a lottery, according to statisticians. Given the small number of people who win, it arouses false hopes to appeal to people to buy tickets in the hope that they will be able to enjoy the kind of life that is held out to them in that series of advertisements.

The fact that advertisers believe that listeners are susceptible to these appeals says a great deal about the circumstances in which many of our fellow citizens are caught. I think we might as well recognize that for some years now, the lives of many Canadians have been lives of depression. During the high interest days of the early 1980s and even earlier, many Canadians were unemployed, caught on social assistance and found themselves without any significant meaningful place in society beyond what they were able to create in family and with friends and community. Given that sense of the hopelessness of breaking out and getting ahead, even for those who were employed in low-paying jobs with very little hope, it is understandable that an advertising appeal that suggests the possibility of prosperity, affluence and luxury would have some appeal to our fellow citizens.

There is something almost diabolical about the fact that the Government helped to create the depressing situation in which Canadians found themselves while at the same time pandering to them by advertising campaigns designed to suggest to them that there was a possibility of getting out of this depression by buying lottery tickets. A social illness is developing and Governments are playing a large part in supporting this. Unfortunately, this Bill which gives the provinces the monopoly on lotteries does nothing to end that.

At the time when Governments are very sensitive to the privacy of citizens, there has been very little protest about one of the most curious features of the lottery system, which is that winners effectively forfeit their privacy and anonymity. They stand revealed before the nation as suddenly wealthy people. There has been very little protest about the demand of the lottery associations that winners identify themselves and stand before television cameras revealed as the sudden possessors of half a million, a million, or in very few cases several million dollars. That particular violation of the privacy of people who have attempted by buying lottery tickets to break out of their straitened circumstances seems to me a curious contradiction on the part of Governments that are so concerned about the privacy of individual Canadians.

My comments on the effect gambling has had on our society and the social malaise to which it relates are, it seems to me, of

very great importance. It is a matter to be regretted by any Government that is really concerned about achieving the kind of social order and public policy to which I and my colleagues are committed.

There is another aspect to the matter of what gambling fosters in citizens which is worth considering. We recognize that the use of lottery moneys for public purposes including fitness and amateur sport is designed to compensate for the Government's unwillingness to use consolidated revenues for that purpose. In looking to consolidated revenues as a basis for supporting these important activities, we do in fact want those revenues to be based on a sound system of taxation.

I do not think it is all that much of a novelty any longer to suggest that the tax system of Canada has become badly imbalanced to the detriment of just the people who tend to buy the most lottery tickets. The federal tax system and, because the provincial system largely rests on the federal system, the provincial tax system as well are oriented toward the taxation of individuals and small businesses. It is of course on middle-income Canadians that the income tax system draws first. As well, poor and middle-income Canadians are hit with sales and excise taxes.

The fact is that the burden of taxation has shifted in a most remarkable way from the balance between corporate and individual income tax and the genuinely progressive individual income tax system that existed a quarter of a century ago to a system that puts an incredible burden on individual Canadians, most of whom are poor or middle-income earners. It is because we have such a tax system that the Government finds itself with the deficit it has. This Government and the preceding Liberal Governments did not have the courage or the good sense to realize that the tax system had to be brought back into balance for the good health of the country. It is for that reason that the Government believes it does not have the revenues necessary to support activities such as fitness and amateur sport through consolidated revenues. It is for that reason that the Government, which has placed this heavy burden on invididual Canadians, ends up supporting gaming activities which end up placing one more burden on poor and middle-income Canadians.

As a consequence of the policy mistakes made in the early 1970s by the Liberal Government, largely supported by the Conservative Party in opposition, people now think that the provinces have to depend on lottery income which, through negotiations, is extorted from the provinces by the federal Government for use in supporting things like the Calgary Olympic effort. It is that combination of policies and social ills to which this Bill relates. Unfortunately, as I said earlier, it goes only half-way toward actually dealing with a problem by taking the federal Government out of gaming activities.

Regarding the Bill itself, I note that certain other changes have been made to it. I would like to recognize the importance of those changes by modifying somewhat what I have just been saying in a broadly general way about gaming in this country. It seems to me that there is a limited place at the community level for raffles and similar activities. It may be a break from the principles which I have been broadly spelling out. I have an uneasy feeling that it may be the case when it is suggested that school children are encouraged to sell tickets to some event or another, or when churches are involved in bingos, or for that matter the bingo business generally, which is used for all types of secular practices as well in many of our community. In saying that that sort of activity ought to be tolerated, we are in fact making something of a concession to the vice which I have been suggesting that gambling is. I think that is probably true in principle. However, I am prepared to concede that a little bit of this might go on.

● (1620)

I personally faced the question of these principles and the potential contradiction when the Lottario draw took place in my riding in the Town of Nipigon late last summer. Very soon thereafter the Nipigon fall fishing derby took place in the same community and concluded with a draw for the entry prize. In the case of the Lottario draw, given what I had said in November 1984 about gaming, there was no doubt in my mind that I was not going to take part in the draw in Nipigon even if it meant missing a fine chance of receiving television publicity. It simply would have been a contradiction of my principles to do that. On the other hand, to attend the concluding hours of the Nipigon fall fishing derby and to accept the honour of drawing the ticket for the entry prize was something that I was prepared to do. I note here that the largest prize of the three drawn was for $100, which I think is relevant to two of the changes to Section 190 of the Criminal Code which this Bill includes.

As the Minister has already noted, one of the changes is to extend to fishing gatherings the permission which agricultural fairs have had for many years to include something in the way of lotteries in their operations. Clearly, that sort of expansion would easily erase any legal doubts which there may have been about the Nipigon event, not that I think there were any.

The second change to the Criminal Code is with respect to an increase in the prize which a lottery operator in a community may receive. This is an increase to $500 from $100 and an increase in the ticket price from 50 cents to $2. I suppose both of these changes simply recognize the effect of inflation over the years. It strikes me that they are immediately relevant to the organizers in Nipigon who will now be able to increase the size of the first prize at the Nipigon fall fishing derby.

These matters of gambling activities, raffles and so forth at the local level are ones which I wanted to mention because it seems to me that we might tolerate in these cases what I have described as an evil in other cases. At the same time, we realize that the consequences of a provincial activity in these areas are, in fact, very great; and the way in which gambling revenues are drawn upon by the provincial and federal Governments for social purposes really smacks of poor public policy.

I must say that on one additional aspect to which the Minister referred I find myself somewhat repelled by the suggestion that Canada has developed expertise in the area of lottery operations which it can make available to others. The

way in which lotteries have expanded in the country since the change to the Criminal Code in 1969 is something of which I disapprove, as all Members will realize by now. To think that as a consequence of that change we are now skilled in the production of various materials which can be exported seems to me to be a most objectionable argument for the legislation which is before us. In fact, it seems to me to contradict what the Hon. Member for Halton (Mr. Jelinek) said in 1983 in describing the ills of gambling activity when he referred to sleazy operations and so on. It seems to me to be quite contradictory for him to advocate in the House at this time that the results of this activity could be usefully sold to others. Surely we should not be involved in perpetrating upon others the material of this particular wrong which we are working upon ourselves.

Given the nature of my support for the Bill, a support which relates to the fact that it takes the federal Government out of gambling activity, I might say that the critical comments of the Hon. Member for York West (Mr. Marchi) with respect to the Government giving up this area are comments which I would entirely share if I regarded the activity under discussion here as a legitimate activity. As I said last fall, when one is giving away the store it should not be too difficult to arrive at an agreement with the recipients of it. If one surrenders a potential chunk of an operation to those who are already well established in the business, it should not really be difficult to arrive at an agreement. All of that is of course to say that this particular 1979 agreement involves a curious complex—at least when Conservatives are in opposition—of moral disapproval and desire for better relations with the provincial Governments. When the Conservatives formed the Government the moral disapproval was abandoned. They focused primarily on good, co-operative federalism and then on giving away the shop. As a result, they are left with a limited negotiating power when they turn to the provinces to obtain somewhat more. Of course, I am talking about something more of the filthy lucre which is involved in this. I shall abandon the particular point I have made here which the Hon. Member for York West has already expanded upon quite properly. I will leave that particular argument to him and take up what the Conservatives, now in government, have quite abandoned. I speak of the recognition of the social and moral consequences of gambling and the conviction that there should be an investigation of this whole matter.

This brings me to one of the other quotations which I incorporated in my comments of November 8, 1984 when I noted that the Hon. Member for Provencher (Mr. Epp), the present Minister of National Health and Welfare, speaking on November 18, 1982 made a statement which I fully endorse. Given the presence of a different Minister in the House today, I suppose I shall have to direct the statement to him. The Hon. Member for Provencher said:

> I suggest to the Minister that he seriously consider setting up an all-party Committee to study the subject of lotteries and what they mean to the Canadian public, both in the immediate and long term, before this Bill is passed.

Criminal Code

The agreement among the House Leaders with respect to this particular Bill precludes me from actually insisting on anything such as that. However, it seems to the me that Ministers of the Crown who have expressed themselves very strongly as Opposition Members in quite principled, moral terms with which I heartily concur might take that suggestion from November 18, 1982 to heart and set about striking such an all-Party committee and authorize that committee to call witnesses, invite briefs and seriously consider the effects of gambling on the country.

• (1630)

It is something over 15 years since the Criminal Code was amended in 1969 to allow gambling on the large scale it is now. Almost into the sixteenth year now, we might very usefully have such a consideration of the question by a committee to find out what Canadians think about the advisability of such an endeavour. If Hon. Members, now Ministers of the Crown, really believe the principles they espoused in 1982 and 1983, I have no doubt they will in fact give us such an opportunity to determine what the effect of gambling is.

I will not say anything about what they feel now because this is after all an open question to which they have the opportunity of responding and demonstrating their social good sense and moral principles. I earnestly call upon Hon. Members to take such a stand and give us the opportunity to determine whether we should in fact at some early point have a further revision of the Criminal Code to strike out the power which it has now. Clause 3 with respect to Section 190 of the Act states as follows:

> Notwithstanding any of the provisions of this Part relating to gaming and betting, it is lawful (*a*) for the Government of a province, either alone or in conjunction with the Government of another province, to conduct and manage a lottery scheme in that province, or in that and the other province, in accordance with any law enacted by the legislature of that province—

We might very usefully have a special committee of the House of Commons to consider whether we should in fact repeal that clause as well and remove gambling from the national scene, as it were, where it has been allowed to grow and to proliferate. Let us remove it from that scene and get ourselves back to something of the moral sense which Canadians used to feel, which in fact has been the motive of members of my own caucus, past and present, and Members of the Conservative Party when it was in opposition.

I appreciate this opportunity to conclude the matter which I had the opportunity of beginning on November 8, 1984.

Mr. Deputy Speaker: Is the House ready for the question?

Some Hon. Members: Question.

Motion agreed to, Bill read the second time and, by unanimous consent, the House went into Committee thereon, Mr. Danis in the chair.

The Chairman: Order. House in Committee of the Whole on Bill C-81, an Act to amend the Criminal Code (lotteries).

Criminal Code

Mr. Jelinek: Mr. Chairman, I rise not to expound on the positive actions of the Bill, which I have already done and of which there are many. However, my hon. friend, the hon. Member for York West, when he responded to my comments earlier, was allowed to ramble on about matters which I felt were somewhat unrelated to the Bill. You will recall, Mr. Chairman, that I rose on a point of order to bring this to the Speaker's attention but the Hon. Member was allowed to continue debate. I must, therefore, stand in my place now and respond in kind to the misinterpretation and misleading statements put by the Hon. Member.

I am somewhat surprised because I have very often let the Hon. Member know that I have been disturbed that he has never put any questions to me in Question Period, or at other times when a response can be forthcoming. He seems to hide behind statements and press releases where a response to correct these misinterpretations can be forthcoming. When the Hon. Member is quite certain, as he was a few moments ago, that a response is impossible, then misleading words gush out of the Hon. Member's mouth like a flushed broken toilet. I know that the Hon. Member thought that there could not be a response because he was on his way out of the Chamber just a few moments ago. I did not want to speak behind his back and that is why I indicated to him across the floor to please stay. I would rather make my comments to his face than behind his back, which is his own practice.

The Hon. Member talked about this piece of legislation, Bill C-81, and he referred to the "noble" Sports Pool Corporation initiated by the previous Liberal Government. That "noble" Sports Pool Corporation not only went against an agreement between the federal Government and the provinces, thereby creating a major federal-provincial irritant, but it cost the Canadian taxpayers $1.5 million a week. However, the Liberal Government continued to run the Sports Pool Corporation. It went on and on. If this Government had not been formed when it was, the Sports Pool lottery would probably still be in place and would still be losing 1.5 million tax dollars a week.

That is the reason, my colleague, the Minister of National Health and Welfare and I, as one of the first steps of this Government last September, closed down the Sports Pool so that we could restore the co-operative spirit in federal and provincial relations and save the taxpayers the millions of dollars which otherwise would have been lost.

The Hon. Member for York West said that he was disturbed that Bill C-81 did not spell out how the $100 million, which was the agreement signed last June 3, split the take, so to speak, from the provinces to the federal Government. I really have to scratch my head in wonder because nearly everything said by the Hon. Member is misleading—although I do not believe he is doing it intentionally. I just think he is totally misinformed. If the Hon. Member knew anything at all about what we were talking about, he would know it is the responsibility, as spelled out in the agreement of the Interprovincial Lottery Corporation to divide the profits and, therefore, the payments to the federal Government, according to the sales and profits of each province. It is not for the federal Government to dictate to the provinces, telling them how to divide the loot, so to speak, as the Liberal Government used to do. It is up to the provinces themselves to decide as to how it is going to be done. If the Hon. Member would do his homework, he would find it is explained in the agreement which was signed between myself and the provincial lottery Ministers involved.

The Hon. Member also said that the Sports Pool was established to create funding for the Calgary Olympic Games. That is right, and it lost $45 million. The Liberals did not know how to run the country and they did not know how to run a lottery. It was probably the first Government in the history of the world which established a lottery and lost $1.5 million a week. Can you imagine that, Mr. Chairman?

Then the Hon. Member has the audacity to stand in his place, believing that no one will respond, and say: "If the Conservatives would close the Sports Pool down, how come they did not replace it with some other fund-raising event?" We closed it down in order to save the money. I, as Minister responsible for Fitness and Amateur Sport, went to the private sector and I am happy to report to the Hon. Member that in the last 12 months we have raised in the tens of millions of dollars of new funds from the private sector which are geared toward our young kids in amateur sports in this country. That is what we have done.

• (1640)

Then he went on to say we had given away the shop to the provinces. In fact, we are saving tax dollars. In return for a portion of lottery profits we promised the provinces that they would have the lottery rights. That portion amounts to $35 million a year. That amount is tied to the CPI which rises every year, although fortunately under a Conservative Government it will not rise as quickly because inflation will be less than it would be under the Liberals. As well, I was able to sign an agreement with the provinces for an additional $100 million in return for this Bill. The Hon. Member forgot to talk about that.

Mr. Gauthier: Stick to the Bill.

Mr. Jelinek: The Hon. Member says: "Stick to the Bill". Where was he when his back-bencher was talking about soccer?

Mr. Gauthier: Mr. Chairman, if the Minister wants to use his 20 minutes to make a partisan speech, he is quite welcome to do it. However, we will have to make the same kind of reply. I would warn him that he does not have the reputation of being very objective in his Bills. How about addressing Clause 1 which is before us right now?

Mr. Jelinek: Mr. Chairman, I am surprised at the audacity of the Member. Obviously he was not here when the Hon. Member for York West—

Mr. Gauthier: I was here.

Mr. Jelinek: —was speaking about soccer. I am responding to the matters brought up by his back-bencher.

Mr. Gauthier: You will have a chance on third reading to speak to that.

Mr. Jelinek: We now come to the final point of misrepresentation and misleading information from the Hon. Member for York West. That concerns the World Cup Soccer Team from Canada. He thought there would be no response. He said that this Conservative Government is not funding the World Cup Soccer Team. Do you know why we are not in a position to do so? It was the Liberal Government which created the rules and regulations in the Ministry of Fitness and Amateur Sport which would not allow us to fund professional teams. However, I have news for the Hon. Member. I am going to change those antiquated rules and regulations. The Hon. Member can talk to officials in Sports Canada who will agree with me when I say it is the rules prescribed by the previous Liberal Government which will not allow me to fund the tremendous success of our World Cup Soccer Team. As a former Olympian and member of Canada's Sports Hall of Fame, which I hope some day the Hon. Member for York West will join me in, I understand what it means for a Canadian soccer team to make it to the World Cup for the first time in our history. I know the benefits which will come back to Canada as a result. There are 2 billion people around the world who watch the World Cup championships. When a Canadian team is there it will mean a lot for Canada by way of advertising, tourism and in many other ways. It is for that reason that I am in the process of changing the antiquated Liberal rules and regulations put in place many years ago. We will change them in such a way that we, along with the private sector, will be able to support the World Cup team as they head for Mexico next year.

I just wanted to make certain that the Hon. Member stayed in the House to hear me out. I wish he would not hide behind statements which no one can respond to. I wish he would not hide behind press releases which espouse misinformation beyond explanation. I wish he would from time to time stand up in the House and have the courage to ask me straightforward questions which I would be very happy to answer.

Mr. Gauthier: You are never here.

Mr. Jelinek: The only time he has done that is when I was not here, when I was speaking as the Minister responsible for Multiculturalism to an Italian community group. He picks that day to ask me a question. However, if you counted the number of days I am here in Question Period and compare them to the number of days he was here I will win 10 out of 10.

Mr. Marchi: Mr. Chairman, just in case there are any viewers who did not turn off their television sets when the Minister got up to speak, I want to say that I am shocked and amazed that this individual is a Minister of the Crown. Notwithstanding his background, he used language and style and class befitting a rock. I am surprised he would get up in his place and speak in the manner he did. He alleged that this particular individual is misleading the House and is afraid to stand up, that he runs away and hides behind press releases. I am surprised that this comes from a so-called veteran of the House. He does not impress anyone, let alone his own back-benchers.

If he wants to talk about misleading statements, he should look at what he just said and then take a good long look at himself in the mirror. If we look at the Official Opposition questions of the Minister of State for Multiculturalism and the Minister of State for Fitness and Amateur Sport, we have asked—largely through my efforts and I am not boasting because I am the critic of the two portfolios—more questions and make more statements under Standing Order 22 then the Tories did in four years in Opposition. I challenge the Minister to get up on his feet once again, if he has the courage, and challenge those statistics. We have asked more questions, made more statements and debated the issues much longer than the Government Party did in the four years it was in Opposition.

He also talked about misleading information concerning the Canadian Soccer Team. The information I gave was not misleading. It was the reality. Then he has the audacity to say that somehow we cannot give money to this soccer team as professional players because the legislation or rules do not permit us to do that. Yet this Government is dismantling everything that is good on the basis of a whim. Therefore, I am quite surprised, shocked in fact, that he stands up and suggests the things he does in this manner. When I was speaking from my place I was speaking to the sports constituency and trying to tie that into this legislation. The Minister was trying to play lawyer, which he is not, and forgetting about the sports constituency he is responsible to. That is the issue. It is not a question of a Member being afraid to face the things he has just said because I will stay here all night.

• (1650)

It is not a question of running away and hiding behind press releases because had he been here last Friday I would have asked him the question that I asked his colleague, the Secretary of State, who then answered that there is no statement and no Minister. I would love to have an entire Question Period on multiculturalism and sports. I would like to extend the Question Period by an hour if the governing Party would agree. We are not scared to discuss the issues. We are not scared to show the Canadian people the reality of the Government, and in particular the reality of this Minister because there are deficiencies in both of his portfolios. If we are to do something as Parliamentarians, it is to better those two portfolios which the Minister represents. I, as only one Member of Parliament, am attempting to do my best, as is my Party, to do that very thing. For the Minister to suggest that a Party or a Member is running away, is scared, or is misreprsenting and misleading does him no justice. It does not do him justice as a Parliamentarian because what he says is wrong, and most importantly, it does not do him any justice as the Minister of State for Multiculturalism and the Minister of State for

Fitness and Amateur Sport because people want him to address the issues rather than make his friends on the backbenches laugh because it is close to five o'clock. Let us talk fact and reality. We are prepared to continue as long as the Minister wants to.

I would like to return to this particular piece of legislation as it relates to the winter Olympic Games. The Minister talked about me suggesting that the provinces should split the lotteries in a certain way. That is not what I was saying and the Minister knows it. I was addressing the point that the provincial Governments have agreed, on a qualified basis, to give over $100 million to the Olympic Games in Calgary. I do not agree with the qualifications, but the $100 million is fine. I asked how the $100 million would be split among the provinces rather than how they are going to split the lottery profits that they will make through their grand monopoly. Is Alberta going to pay the same as Nova Scotia? Is Ontario going to pay the same as Newfoundland? Well, the Minister has now left the Chamber. Who is running away from the truth, Mr. Speaker?

Mr. Gagliano: He is hiding.

Mr. Marchi: The Minister is quoted in the Calgary *Herald* of September 20 as saying: "I will come up with a different funding system. This will be a priority for me". When the Minister comes back here, if he has the courage, he can tell the House and this Member what funding system he will be replacing the sports pool or lottery business with. What is the alternative? What can sports organizations expect in terms of generating funds for them? I would also like to ask the Minister whether there is any guarantee that the lottery funds generated by the provinces are going to be channeled into the federal fitness and amateur sports world. Is there a guarantee that we do not know about? Is there a guarantee from the provinces that some of the money will be pumped into sports once again rather than allowing the provinces to use it for a variety of things?

It is just like transfer payments for education which do not get spent on education, Mr. Speaker. That is not right or fair. If moneys are designated to be used in a particular domain, they should be used for those purposes. I would like to know if there are guarantees in place that the moneys generated by the provincial lotteries will be used for sports. If there are not, then the Minister is not defending his portfolio at all.

I would also like to ask the Minister about his personal opinion or preferences on lotteries. We sometimes hear conflicting stories from that side of the House. They say that the federal Government should not be involved in lotteries and that the Liberal Government was wrong to have been so involved. They say that lotteries are a tax on the poor and moderate income earners of the country. Yet, on the other hand, they are prepared to say that it is okay for the provinces to do it. What kind of double-talk is that? You are either in favour of it or against it. I would like to know what the Minister's personal preferences are with regard to the lottery issue.

We want to know a lot of things, Mr. Speaker. Canadians want answers. We want to know how the Minister is going to pick up the shortfall from the Calgary Winter Olympic Games. His Government committed itself to donating $200 million. There is going to be a shortfall of anywhere between $50 million and $70 million. I would like to know, as would all Canadians and athletes, where that money is going to come from. Those are just some of the questions that this side of the House, and particularly this Member as critic, would like to have answer for. I am going to stay in my place and hope that the Minister does not run away but, instead, gives us some answers.

Mr. Jelinek: Mr. Chairman, I am glad that I finally got the Hon. Member to ask some proper questions. Most of them were answered in my initial remarks on Bill C-81, which is what we are supposed to be discussing. He got riled up, of course, because I responded to his accusations and misinterpretations in his earlier comments. He is, again, misinformed.

Mr. Gauthier: Answer the questions for God's sake.

Mr. Jelinek: I would like to invite the Hon. Member to my office some day to teach him a little bit about what goes on in both of my ministries. Then he would perhaps be a little more informed in putting questions. He asked, for example, whether I can guarantee him that the $100 million from the provinces for which I made a deal will be directed toward amateur sport. He should be congratulating me for being able to make a deal for $100 million in return for this piece of legislation.

Mr. Gauthier: We don't trust you.

Mr. Jelinek: The answer to his question is no.

Mr. Gauthier: There you go.

Mr. Jelinek: The Hon. Member for Ottawa-Vanier says: "There you go". Sergio is right because I am saying that the money is not going to be directed to amateur sports. No it will not. If the Member was informed properly he would know that this money will go toward the funding of the Calgary Olympic Games. I can guarantee him that.

Some Hon. Members: Hear, hear!

Mr. Jelinek: Mr. Chairman, I will not stay on my feet longer. I think that we have made an agreement to pass this Bill through all stages today.

Mr. Marchi: No, no. We'll keep going.

Mr. Hovdebo: That was before you started talking.

Mr. Jelinek: Now the NDP is getting riled and I haven't even started to attack them.

The Chairman: The Hon. Member for Ottawa-Vanier on a point of order.

Mr. Gauthier: Mr. Chairman, I think the Minister is all mixed up again. We go until six o'clock tonight so we will have

another hour of the great entertainment which he is putting forth.

Mr. Epp (Thunder Bay-Nipigon): Mr. Chairman, I am a little riled up, I suppose, as my friend in the Official Opposition has observed, because we had an agreement and it seems to me that the spirit of it has been violated. It seems to me, Mr. Chairman, that we should return to the issue. For those purposes, I would like to put some comments on the record about Clause 1 of the Bill which is a general one. I would like to quote from page 26875 of *Hansard* of June 28, 1983, the words of the Hon. Member for Halton. He said:

Mr. Speaker, I would just like to make a few comments on Bill C-95 in respect to the sports pool and motion No. 4 moved by my colleague in respect to the Auditor General taking over the accountability of this sports pool program. In fact, I would hope that Parliament would see fit to study the possibility of the Auditor General being accountable to this House for all Government agencies and Crown corporations, and therefore to the Canadian public.

At the outset, I would like to say that this sports pool is nothing more than an indirect taxation by devious ways and means. It is an underhanded way of collecting money from the Canadian public because the Government has failed in its responsibility time and time again to collect it by normal means. I would like to mention three examples of the devious ways in which this Government has handled the situation from the outset. On June 26, 1981 I asked a question of the then Minister responsible for fitness and amateur sport, and I will quote my whole question because it puts this whole sports pool into perspective. I said:

● (1700)

Madam Speaker, my question is directed to the minister of fitness and amateur sport. When the original Olympic lottery was introduced in order to defray the costs of the Montreal Olympics, the Liberal Government at that time gave Canadians and the House its assurances that no further lotteries or gambling operations would be initiated.

That promise, as the Minister knows, has already been broken. It has now come to my attention that the Minister is well on his way to extending federal gambling programs to what is known as all-sports betting, in other words, reducing the Government to the status of bookies for betting on hockey games, football games and so on. Without once again copping out by giving a stock answer blaming the previous Government, can the minister confirm or deny whether his Government is contemplating such action?

The Member for Halton then said:

The Minister's response was:

I would inform the Hon. Member that the Government has no such plans. We do not contemplate any such scheme as the Hon. Member has mentioned.

Three days later, Mr. Speaker, I produced a sample of a sports pool ticket in this House and showed it to the Minister. He had to agree that they were studying some form of gambling operation but he was not sure whether that was it and he in fact had not seen that ticket. So the Minister was either deliberately misleading the House three days earlier, or he was totally ignorant of what went on in his own Department.

To show you the devious ways and means this Government has used to handle this situation from the beginning, less than three months later, on September 14, that same Minister announced very proudly that the federal Government, the Liberals, were going to introduce a sports pool betting scheme along the lines I suggested he was planning less than three months earlier when he denied it. That is why I call it devious ways and means.

Point number two, Mr. Speaker, is advertising. We have talked about the cost of advertising sports pools and gambling operations by this Government, but there is also misleading advertising. I take you back to December 6, 1976, when I informed the then Minister of Consumer and Corporate Affairs, Mr. Abbott, that the ads for Loto Canada at that time were so misleading that a Canadian is twice as likely to be hit by lightning than he is to win $1 million in that gambling operation. The Minister said that he agreed there was excessive and misleading use of advertising. He said it was exaggerated optimism. He also said that he did not plan to get tough about the ads even though he considered them inappropriate, unfair and in bad taste. He said that while he did not think the ads were misleading, they tend to raise expectations in the public mind which are unjustified. He was then removed from that position and we never heard any further about any changes made in that regard. Again, an example of devious ways and means of promoting federal gambling operations.

A third point, which is probably the most important and comes to the root of this whole problem, is that lottery operations were agreed to by Parliament to defray the cost of the Montreal Olympics in 1976. There was a lot of debate about this and we received all kinds of assurances from the Liberal Government that once those costs were defrayed there would no longer be any attempt by the Liberal administration or Parliament to bring in gambling operations under sports pools or lotteries or any such nonsense. Those were outright lies by the Government at that time because, as you know, Mr. Speaker, the lottery defrayed the cost of the Montreal Olympics but then the name was changed to Loto Canada and the rest is history.

When Hon. Members opposite say that we on this side do not care about helping the arts and amateur athletes, that is the furthest from the truth. As a former athlete I support anything which can be done to help amateur athletes in this country. But certainly not by establishing the phoney, sleazy programs the Government is talking about which would be taking advantage primarily of the poor people of this nation, and then misleading them with false and misleading advertising.

There are other ways to help amateur athletes in this country other than through lotteries and sports pools or indeed even large Government grants. First we should try to expand sponsorship by the private sector of amateur sports programs and the arts. We could expand the development fees which the NHL is now paying towards the development of junior hockey players. That makes sense. But we are not going far enough. What about figure skaters, as I once was? I spent all my time learning that sport in this country. Today the federal Government is subsidizing Sports Canada, rightly so, for the development of figure skaters and other sports, but then the cream of the figure skaters are taken away for foreign professional ice shows which do not give anything back to the taxpayer in this country to develop figure skaters. Surely there is a golden opportunity for this Parliament to go to the Ice Capades, Holiday on Ice and Ice Follies and say that every time they hire one of our skaters trained here in Canada, surely they must pay something back. The same thing is true in tennis and other professional sports.

That is an eminently sound idea which I would encourage the present Minister to pursue. The Member concludes:

These are just some of the ways and means of correcting the existing problem, whether it is on an ongoing basis for fitness and amateur sports, or specifically, as Motion No. 3 stated, that there should be funding for the Calgary Olympics.

In closing, Mr. Speaker—

This is where these comments really come to the point:

—I just want to reiterate my total opposition to any type of lottery or sports pool.

Well said. If only the Bill did that, instead of stopping on the federal side.

I think it is degrading, downgrading and certainly not in the spirit of athletic sports and the Olympics.

Well said again, I would say.

If I had more time I could expand on the many recommendations available to this Parliament and the Government in order to assist the arts and amateur sports in general.

Thank you for allowing me to place these words on the record, many of them sound words and some which I would dispute.

Mr. Jelinek: Mr. Chairman, my only comment is that having heard my words repeated by Mr. Epp in the House today as I sat on this side, I can only say that I made one hell of a speech then.

Criminal Code

Mr. Marchi: Mr. Chairman, Otto talks about running away. After my hon. friend from the NDP spoke for 20 minutes, the Hon. Minister got up to say he likes the speech which he gave. Talk about courage, Mr. Chairman.

I also want to cite some quotes from the Hon. Minister. In describing the gaming operations, the Minister said in the Ottawa *Citizen* on September 21 that: "The operations are a tax on the poor and perhaps an immoral way of raising taxes, whatever the Government". What is his and his Government's view of the lottery business? When he describes it as a tax on the poor and a way of immorally raising taxes, does he not believe that that principle holds true whether it is the federal or provincial Government that is involved in the gaming operation?

I have another quote from the Ottawa *Citizen* of September 18, 1984. The Minister stated that: "A different form of gaming operation could continue after that— "referring to the dismantling of the Sports Pool:" —because clearly we have to keep our commitment to the Calgary Olympics and we will". Why is the Hon. Minister wasting the time of the House by saying that lotteries are evil and the federal Government should not be involved in them while, on the other hand, he is quoted as saying that gaming operations, sports pools or lottery mechanisms could in fact be established to raise the funds?

The Minister is obviously sending conflicting statements. On the one hand he states that it is immoral to be in the lottery business, yet he signs a monopoly in the lottery business over to the provincial Governments. He said that the previous administration was wrong in operating the sports pool and using the lottery business as a way of generating funds for sports teams. However, he is quoted as saying that once he has dismantled that pool he could perhaps begin another.

This leads me to my third question. If the former sports pool or another gaming operation was in fact making money that would help sports teams, would the Minister be in favour of such a mechanism? Would he be prepared to give it away to the provinces?

• (1710)

Mr. Jelinek: Mr. Chairman, first when my friend made reference to the speech that Mr. Epp from the New Democratic Party made and I did not respond to it, it was because he read my speech from a few years ago and he did not ask for a comment nor did he ask me any questions on it. I wanted to stand up and say that I thought the words Mr. Epp read were words of wisdom on amateur sport.

Mr. Gauthier: Mr. Chairman, I rise on a point of order. I hate doing this to the Minister but he has been here long enough to know that we must refer to Members not by name but by constituency. The Minister has referred to Members by name. I know he is not here very often but let me remind him that he should follow the rules and refer to Members by their constituencies and not by their personal names.

The Chairman: The Hon. Member for Ottawa Vanier is correct. I am sure the Minister is aware of the rule.

Mr. Hawkes: Mr. Chairman, the normal practice in parliamentary standing committees and legislative committees is to refer to Members by name. We are in Committee of the Whole. Is the rule different for Committee of the Whole?

The Chairman: Yes. I ask the Minister to refer to Members by their constituencies which I am sure he will.

Mr. Jelinek: Mr. Chairman, I apologize to the Member for Ottawa-Vanier. That is the first thing he has said that is correct today.

Mr. Gauthier: Stick around. I can teach you a few things.

Mr. Jelinek: I will refer to my friend as the Hon. Member for York West. In addressing his concern about my not responding to the Hon. Member for Thunder Bay-Nipigon, it is because he did not ask a question nor for a comment. I just commented on the words he read which were from my own speech.

The Hon. Member asked a couple of questions. I will take them in reverse order. He asked why we closed down the Sports Pool Corporation.

Mr. Marchi: No, I didn't.

Mr. Jelinek: He asked why we did not continue to practice the policy of the Liberal administration. I said already in this debate today on three or four occasions that besides the fact the Sports Pool was losing $1.5 million of taxpayers' money a week, it was also a federal-provincial irritant. Therefore, we felt it was wise to close it down.

It is true that while we were considering this, in answer to a question from a reporter at the time—I am talking now about 13 months ago—whether there were other options other than closing down, I said—and I cannot make a comment as to what was quoted in the newspaper—

Mr. Gauthier: Have you changed your mind since then?

Mr. Jelinek: I never change my mind. I said that officials of the Sports Pool Corporation said it could be revised in such a way as to be a money-making operation.

Finally, the Hon. Member asked for my personal views on lotteries. As a Minister of the Crown, my personal views are irrelevant. The views of the federal Government of the Day are that lotteries belong under provincial jurisdiction. Therefore, we have acted accordingly.

Mr. Marchi: Mr. Chairman, the Minister is certainly correct about one thing, that all his views are irrelevant.

The Hon. Minister said that in my preceding question I asked why the Government dismantled the Sports Pool. I did not ask that question. My question was specific. If that Sports Pool, or any other sports pool or lottery, was making dollars, money that would be going to aid sports organizations, would

the Minister and the Government have dismantled that mechanism?

Mr. Jelinek: Mr. Chairman, first, the question is a hypothetical one. The Corporation was not making money. I could sit down right now and feel satisfied that I have answered the question but I will not sit down. We made a commitment with the provinces in 1979 that we were going to hand over, in return for $35 million a year, the lotteries to provincial jurisdiction. That is what we said in 1979. That is what we did in 1984 and what we have concluded doing today.

Mr. Marchi: Mr. Chairman, the Member talked about courage, yet we do not see any courage toward letting Canadians know how the Minister and the Government will be doing things.

If we take the example of the Sports Pool and the lotteries, a method not new to other countries to help sports organizations, if we were to create that type of mechanism and atmosphere and we were making enough funds to help the sports organizations, would he be in favour of that?

Does the Minister agree or disagree with the Canadian Olympic Association which has gone on record in the debate of June 1984 and since then that it is in favour of a sports pool and lottery concept as a way of complementing any funds from the national Government to help sports organizations? Is the Minister agreeing or disagreeing with the Canadian Olympic Association in that regard?

Mr. Jelinek: Mr. Chairman, in answer to the first part of the Member's question, which was a repeat of a question he put earlier, this time let me say his question is hypothetical. He is asking if it would have or would not have. The question is hypothetical and it does not require an answer.

As to the second part of the question, I have always considered ways and means of raising additional funds for amateur sport and how best we can go about doing that. I have concluded that the best way is to approach the private sector in a co-operative and a business-like fashion. I am very pleased to tell the Hon. Member today that I will be making a comprehensive announcement in that regard within the next few months.

In the meantime, I should let the Hon. Member know, as I said earlier, but I want to underline the fact that because of the position I have taken over the last 14 months, amateur sports has received in Canada tens of millions of new dollars from the private sector as a result of the challenge that I put out. I am delighted that the private sector has responded and responded effectively and well for the benefit of amateur sport in Canada.

Mr. Marchi: Mr. Chairman, the Minister of State for Fitness and Amateur Sport gives the impression that since he took the office of Minister he has been responsible solely for the corporate sponsorship or dollars flowing from the private sector. He should know and point out clearly, especially since he comes from the sports milieu, that the corporate sector has always picked up a good share of costs of sporting activities whether skiing, hockey, basketball or what have you. No one is denying that. I do not think it is incumbent upon any individual Member of this House to say it is because I am there that all the corporate sponsorships have been coming through the pipeline. I have talked to a number of individuals in Toronto organizing on behalf of sports and interfacing with the business community. They are quite taken aback that somehow this Minister is claiming that victory for himself and the Government.

We all know that in the past, in the present and I am sure it will continue in the future that the corporate sector will interface with Government, not only in sports, but in a wide scope of Government areas. We should encourage that. We are looking also for something a little more tangible.

The Minister in his statements and in recent accounts in the newspaper said that once we dismantle this aspect, we will be bringing in another scheme to take the place of sports bodies resources. I would like to know where that scheme is. Can he illuminate this House as to his plans? He failed to answer my other question. Does he agree or disagree with the Canadian Olympic Association which favours sports lotteries and sports pools in order to raise funds for the Olympics?

• (1720)

Mr. Jelinek: Mr. Chairman, the Canadian Olympic Association is free to do what it wants in respect of lotteries or any other fund-raising venues. The policy position of the Government is that lotteries are the responsibility of and fall under the jurisdiction of the provinces.

With regard to the private sector, it is true that there has been in the past private sector contribution to amateur sport. Amateur sport is very thankful for that, as am I.

When we assumed office just over a year ago, private sector contributions to amateur sport, in round figures, were something like 20 per cent of the total and federal Government contributions were 80 per cent. I am pleased to say that I approached the private sector on an ad hoc basis and talked consistently and constantly about trying to get more private sector involvement in amateur sport. There is a great return to the private sector. I am also a businessman, and I know from a business point of view that a corporation will not invest in anything unless there is some return. We saw the tremendous success of Canadian athletes at the Los Angeles Olympics. Stars were born. The names of amateur athletes became household words. As a result, we suddenly had a very good product to market, a product which had to be marketed in a co-ordinated fashion.

We have been working on a co-ordinated marketing strategy for past months. As I have pointed out to the Hon. Member, I hope to be announcing it in the next few months. It will be a co-ordinated effort to build upon the success which has already taken place with the private sector. It will involve a more professional, business-like and co-ordinated approach to the private sector on behalf of and in conjunction with the sports governing bodies.

I should let the Hon. Member know that this is not a new idea. There have been studies done in the past. The most recent one was in 1983. A task force was formed and sent across the country to study ways and means of improving private sector involvement in amateur sport. That task force came back with specific recommendations. It indicated that by 1984, last year, if its recommendations were put in place, the funding could be on a 50-50 basis; in other words, 50 per cent from the federal Government and 50 per cent from the private sector.

In an attempt to educate the Hon. Member a little, unfortunately they did not receive the political support needed to go ahead with those proposals. They did not receive political support from the Government of the day which happened to be the Liberal Government. Had they received that support, we would already have a much higher level of corporate support and a mutually beneficial agreement between sports governing bodies and amateur sport organizations.

I am not taking credit for suddenly thinking up a new scheme of going to the private sector and saying: "This is a great, new idea". The idea is not a new one. What I am doing is providing political support, encouragement and leadership, to make certain that we can form an entity to work with the sports governing bodies and with the private sector for the benefit of amateur sport and for the benefit of taxpayers.

We are all committed to improving goals and programs and to enlarging upon the support of all amateur sports. Hopefully that will be the case with professional sports, where applicable, such as the World Cup team. We cannot continually go to the taxpayer and say: "You have to give us more". We cannot do that, and the Government will not do that. There is not a bottomless barrel of money to dig into. The Liberal Governments of the past continually dug into bottomless barrels of money, putting the country further and further into debt. We are not doing that. I will be reducing, hopefully over the next few years, federal Government support, perhaps minimally. At the same time I will be ensuring the ability to raise additional funds in such a way that we give the necessary tools to the athletes, coaches and officials. I, as Minister of State for Fitness and Amateur Sport, will not let down the World Cup team. I will certainly not let down the amateur sports body, including athletes, coaches, officials and everyone associated with them.

In fact, the Hon. Member may know, if he has been following what I have been doing, that I have just expanded and changed the funding criteria in such a way as to expand our support to domestic sports at a higher participation level. In the past the Government only supported, through Fitness and Amateur Sport, high-performance, elite athletes who were working toward winning international medals in the world championships and Olympic Games. That is very important. We will not take away anything from high-performance athletes. We will continue to support them, even to a greater extent than they were in the past. However, under my leadership, we will expand the support program so that we encourage sports governing bodies to get more Canadians to participate in amateur sport. That will do two things. First, with an expanded and broader base for amateur sport participation in the country, we will obviously have more athletes to pick from. If we have a broader base, we will have more athletes from which to choose to develop into the high-performance area. Second, and more important, if we have more Canadians participating in amateur sport, we will have a fitter nation. As a result, hopefully, in the longer term we could start reducing some of the increases in health costs which skyrocketed under a Liberal administration to over $30 billion, not million, per year. I believe, in all sincerity, that enhanced fitness programs and expanded amateur sports opportunities, particularly for our youth and others, can be used as a form of preventive medicine, among other things, to reach the type of goals about which I have been talking.

Mr. Hawkes: Mr. Speaker, I will not take up much time of the committee. Hon. Members will know that I am a Member of Parliament from Calgary, Alberta, the home of the 1988 Winter Olympics. The people of Calgary and the volunteers who are working on the Olympics are becoming more and more excited and better and better trained. We are looking forward to the opportunity to put on a show for the entire world. It will make all Canadians prouder of our country than perhaps they are today. I pay tribute to the Minister for personally contributing to that success.

Today we have seen an example of his skills as a bargainer. He has dealt with the Provinces of Canada in the true spirit of Canadian Confederation. He has helped them reach an agreement to provide some of the funding for the Winter Olympics so that they will truly be a national event in which all provinces have participated. It strikes at the heart of the wisdom of the sew Government. Instead of dictating to the provinces what must be, it is possible under true Confederation to work with the provinces. When the federal Government and the provinces are pulling together, there are very, very positive consequences.

I urge all Hon. Members of the House to give quick and speedy passage to this particular piece of legislation. I thank Hon. Members for granting me the time of the committee and I wish the Minister well in his further work. I know that it will continue to be of the same high quality, with the same high quality results.

• (1730)

Mr. Marchi: Mr. Chairman, I think the Hon. Member for Calgary West forgot to mention that that was a paid political announcement by the Progressive Conservative Party of Canada. Because it is an issue that transcends partisanship, there is no question in the minds of Members on either side of the House that everyone in the country is anxiously awaiting the Calgary Olympics. I think the Government, the Opposition and all Canadians should do all that they can to ensure that the Olympics are going to be the success that we all want them to be. That is a given and that certainly is something apart from this particular piece of legislation.

Just before he made his closing remarks, the Minister spoke a very important mouthful. He mentioned the fact that he hopes and wants to reduce federal funding for sports organizations. That strikes me as being very odd. That is very different from what Ministers of the Crown should be advocating for their particular portfolios. It is like the Minister of National Health and Welfare who, several months ago, defended the deindexation of senior citizens' pensions. In fact, the Minister of National health and Welfare was trying to be the Minister of Finance, forgetting that senior citizens fall within his Ministerial jurisdiction. The Minister of National Health and Welfare should not pretend to be the Minister of Finance. The former Minister of the Environment made wild cuts in her budget including cuts to wildlife services. She should not be walking around proudly telling us that. The Ministers should defend their own particular Ministerial jurisdictions.

Sports organizations are no exception. Rather than defending and fighting tooth and nail to have funding restored at least to the same level it was before, the Minister is prepared and hopes to reduce funding. This is much like the Government talking about the importance of multiculturalism while at the same time reducing the budget of this small Department by nearly 9 per cent. That Department absorbed the biggest budgetary cut of any Department on Parliament Hill. Yet the Government says it is serious about multiculturalism. It cannot suck and whistle at the same time. At least most of us cannot.

I would simply draw to the attention of the Minister that I asked specifically if he or the Government were against lotteries because in 1979 when the Conservative Party governed for a very brief time, the Conservative Government made a deal regarding the lotteries that in part funded sports organizations. At the time the lottery industry was a $200 million industry. Now it is an industry worth upwards of $300 million. The Conservative Government gave that away for an assurance of $35 million. That is Tory mathematics. If the Tories agree with lotteries as a way of complementing financial resources given by the federal Government, how can they say that that is good negotiating?

Tories cannot always hide behind the argument that they want to have good federal-provincial relations. We should and we do have good federal-provincial relations. However, we should not compromise ourselves either. We should not sell ourselves short. That is exactly what the Government of 1979 did. If this Tory Government is prepared to say that it is against lotteries and sports pools because, as the Minister of State for Fitness and Amateur Sport has already said, it believes it is a tax on the poor and an immoral way of raising taxes regardless of levels of Government, and if the federal Government were to eliminate lotteries, then I could respect and appreciate the Government's position. However, the Minister has been quoted as saying that he will look at another gaming operation. If he is not prepared to say that the Government is against lotteries but still gives them to the provincial domain, then what does that say about that Minister who is supposed to be protecting his jurisdiction? If he does not mind lotteries, why would he want to give them away when a good part of the funds generated would help the very people he is supposed to represent?

Therefore, I would ask the Minister, if he is in favour of lotteries and if he is prepared to give the provinces the monopoly on lotteries, will he give the House and more importantly the sporting community his assurance that he will try to fight for the interests of the sporting community and negotiate with the individual provinces so that some of those funds can be used for the original purposes for which they were meant; namely, assistance to sports federations and organizations, be they amateur or professional?

Mr. Jelinek: Mr. Chairman, the Hon. Member is getting boring. He has posed the same question four or five times. I have made the position of the Government abundantly clear. The position of the Government is that lotteries fall under the jurisdiction of the provinces. I cannot make it any clear than that.

While talking about this Bill which deals with Criminal Code amendments, the Hon. Member started to talk about multiculuralism. Yes, I am the Minister responsible for multiculturalism. Since he spoke about it, I can as well. Another example of the Hon. Member's misinformation is that the total budget for multiculturalism this year is slightly higher than it was last year. The Hon. Member once made a statement indicating that the budget for multiculturalism was reduced. It has not been reduced. The facts speak for themselves.

Mr. Marchi: The Estimates are for reductions.

Mr. Jelinek: I do not have the figures in front of me but I would be very happy to provide them to the Hon. Member. The budget for multiculturalism, under a Conservative Government, is slightly higher than it was under the previous Liberal administration.

As far as supporting and fighting for amateur sport is concerned, for goodness sake, I do not believe that amateur sport has ever had a Minister who has fought harder to try to get more for its community than this Minister. I am confident that I have done so. Amateur sports organizations are not suffering as a result of less money. They are all receiving more money because of the extra effort the Government has made in leading and encouraging the private sector to help us build on top of what the Government provides to amateur sport. I will never let amateur sports organizations suffer while I am the Minister responsible for Fitness and Amateur Sport.

In order for me to return to debating this Bill, I must say that when I was able to sign the agreement of June 3 of this year which resulted in the Bill we are debating today, I received congratulatory letters from the President of the Canadian Olympic Association. I received congratulations from the Olympic Organizing Committee in Calgary for having done something that the Liberals were unable to do. I do not blame the Liberals because there were about six or seven Ministers in this position within a period of two or three years. That Ministry became a joke. It was known as a revolving-door Ministry. Therefore, I cannot blame the

individuals who were in my position prior to me for failing to do a job on behalf of amateur sport. I received congratulations from the sports governing bodies and I received thanks for the support I have given them.

When I made my initial remarks regarding this Bill, I spoke in a very sincere, honest and quiet manner.

Mr. Gauthier: And partisan manner.

Mr. Jelinek: I did not get partisan at all. The Hon. Member for Ottawa-Vanier is—

Mr. Gauthier: If you would shut up and sit down, for God's sake, we could get to the Bill.

Mr. Jelinek: If he would have been here, he would have known that there was nothing partisan about the comments I made earlier.

Mr. Gauthier: You are the most patronizing Minister we have ever had, for goodness sake. Quit blowing your own horn.

Mr. Jelinek: The partisan comments came when the Hon. Member for York West started attacking me thinking that I would not respond to him. After he started attacking me with misinformation and misleading statistics, then of course I rose to respond in kind.

I am delighted that I am able to be here on behalf of the Government of Canada to bring this Bill before the House, a Bill based on a $100 million agreement with the provinces, a Bill which will assist and benefit the Calgary Olympics. As my friend, the Hon. Member for Calgary West pointed out, they will be the best Winter Olympics in the history of the Olympic Games. That does not just come from myself and from those of us closely associated with it. It comes from the great individuals within the Olympic organizing committee. I refer to the President, Frank King, the Chairman, members of the committee, the private sector which has become involved, the provincial Government which is one of the partners, the City of Calgary and its Mayor. All of these individuals in conjunction with the federal Government have worked in harmony and unity to ensure that the Olympic Games will, in fact, be the best ever.

● (1740)

I am pleased to announce to the Hon. Member that when Juan Antonio Samaranch, the President of the Canadian Olympic Association, was in Calgary not too long ago to review the progress with respect to the development of the games site he said that it appears that the Calgary Games will be the best ever in the Olympic movement.

Mr. Epp (Thunder Bay-Nipigon): My concern this afternoon has been with the Bill as it relates to the Criminal Code changes involving gambling. At the conclusion of my initial comments I raised some questions about the principled stance which the Minister has taken in the past regarding gambling. It was interesting to hear the Minister come close to clarifying the question I left hanging in the exchange between himself and the Hon. Member for York West. I would like to put this question to him. Given the high moral ground he adopted in 1983 when he spoke so strongly against the use of gambling funds for sports purposes, am I correct in understanding that he has abandoned that stance? He is very good at bandying about terms such as misleading and so on, which are only in order because he does not add the word "deliberately", although I am sure he thinks that. Someone who adopts this high moral ground is, I believe, a fit person to answer a question which is not at all hypothetical but which focuses on the realities of the situation. How far down has the Minister slid in abandoning the principles which he espoused in the summer of 1983? How acceptable is gambling now after all he has said about misleading advertising, sleazy methods and the dependence upon winnings raised from the poor of the country? Has the Minister given up all of that?

Mr. Jelinek: Mr. Chairman, I find it humorous that the Hon. Member says that he now knows what I am thinking. To show him my consistency with respect to my position on lotteries I will repeat what I have said six times today. The position of the Government of Canada is that lotteries fall within provincial jurisdiction. When the Hon. Member talks about my saying some years ago that there was misleading advertising, and I brought the question up to Mr. Abbott, who I believe was the then Minister responsible for Consumer and Corporate Affairs, does the Hon. Member wish to know what the public answer was from Mr. Abbott?

Mr. Epp (Thunder Bay-Nipigon): Not particularly. I am interested in your position.

Mr. Jelinek: I will tell the Hon. Member anyway. The then Minister thought I was right. He thought that the advertising was misleading and he took steps to change it.

Mr. Epp (Thunder Bay-Nipigon): That does not speak for your position.

Mr. Marchi: Mr. Chairman, we are not getting very many real answers to some very real questions. As my hon. friend has mentioned, these are questions which the sporting community would like to have answered. It is fine for the Minister to say that he has received congratulatory notes from the Olympic Association and from sports federations. That is great. In fact, it is almost to be expected. I will bet Hon. Members that during the time in which the previous Government was in office it received congratulatory notes from a good many parties. However, that is beside the point.

Since the Minister failed to answer the question with respect to lotteries falling within provincial jurisdiction I will touch upon the matter. Lotteries have a history of helping sporting organizations. I would like to ask the Minister why lotteries should belong in the provincial domain. I want to know the reasons. He said that they belong to the provincial Governments and I would like to know why. Since they help sporting organizations why can they not be within the federal domain? The Minister gives us many good reasons as to why these should belong within the provincial domain. Based on the

tremendous co-operation which the Minister has received from his provincial counterparts, will he ensure the sporting constituency of the country that he will go to the provinces to obtain the moneys which those lotteries will be generating and give them to the sporting organizations and federations of the country? Will he give the sporting community that guarantee? This is a very specific question which begs a very specific answer.

Mr. Jelinek: The very specific answer is that some of those funds are already being diverted to the sports governing bodies, as the Hon. Member well knows. One-half of the $35 million which comes in goes toward the sports governing bodies of the country.

In answer to his initial question regarding lotteries, I have consistently answered the question. I do not know what the Hon. Member is trying to get at when he says that I have not answered his questions. This Government believes it is within the jurisdiction of the provincial Governments. Historically, that goes back to the development of the first Olympic Lottery. The Hon. Member for Thunder Bay-Nipigon read into the record part of a speech I made some time ago. The House accepted a temporary Olympic Lottery to defer the costs of the 1976 Olympic Games in Montreal. At that time, with the support of all three Parties, the House agreed that it would be a temporary lottery called the Olympic Lottery and that the federal Government would not get into the lottery business. Of course, we were misled by the Liberal Government. No sooner did we pay off the federal Government's share of the Olympic deficit in Montreal the Liberal Government changed the name of the Olympic Lottery to Loto Canada. An Hon. Member from Montreal points out that the deficit has never been paid off. That is true.

The Hon. Member for Thunder Bay-Nipigon has already read word for word what I said about the subject in the House some years ago. At that time the House unanimously agreed that lotteries were not meant to be part of the federal jurisdiction. When we took ofice in 1979 we signed an agreement with the provinces giving them the right to run lotteries. This was in return for a certain sum of money which now amounts to over $35 million a year. Much of the money which the provinces keep goes toward the development of amateur sports in those particular provinces. Today, under my leadership, no one can say that they are receiving less money in terms of what they receive from federal Government contributions and the private sector. In fact, what they must say is that there is more money available for amateur sports today than there was ever before and that fewer tax dollars are being used for this purpose.

• (1750)

Mr. Marchi: The Minister goes back to the deal of 1979 where again, according to Tory mathematics, he exchanges some $300 million in return for $35 million and then he says that half of that $35 million would be used for sports. Of the greater share of the moneys which are being generated by the lotteries across the country, can the Minister provide us with some figures as to what the provincial Governments are spending on sports? Does the Minister really have a control over what the provincial Governments dedicate to the sports area? The Minister laughs but it is important because the provincial Governments, from those lotteries, have more moneys at their disposal to put into sports than the federal Government. Therefore, it would be incumbent on the Minister, and logical, if the Minister knew how the greater share of the moneys were being spent.

Would the Minister be prepared to give us statistics or numbers as a way of assuring Canadians, and the sporting community, that, yes, now that he has given away the lotteries to the provincial Governments, those Governments are in fact putting the moneys into the same areas as would this Government if it controlled the lotteries?

Mr. Jelinek: Mr. Chairman, I did not laugh. I was smiling because the questioning by the Hon. Member is becoming more ridiculous all the time. The Hon. Member is now suggesting that we should have control over what the provinces do with their lottery process. That is the type of Liberal confrontation which existed in the past. That is not what exists now. There is no confrontation existing between this federal Government and the provincial Government.

Surely the Hon. Member is not suggesting that this Government should dictate to the provinces as to how they should spend their revenues, whether from taxes or from lotteries, for goodness sake. I cannot believe that the Hon. Member would even pose such a question.

With respect to statistics of how much of those funds generated from provincial lotteries go toward amateur sports, I believe that is public knowledge in each individual province.

Mr. Marchi: Mr. Chairman, I do not think it is an illegitimate question whatsoever. If the Minister was prepared to stand up on his feet and courageously say that he and his Government are against lotteries, I could respect and appreciate that. However, if we have a money-making mechanism which is to be used to aid sports organizations, that is to be used to take away some of the pressures on our federal coffers, and if the mechanism is doing that, surely to God, that is positive. However, in taking that mechanism, as a federal Minister, and giving it to the provinces, as is now being done, is the Minister suggesting that somehow he is a good Sports Minister? Is the Minister trying to suggest to me that that is in good defence of his Sports Ministry? The Minister cannot rise in this House as the Minister of State for Fitness and Amateur Sport and say that he is taking a mechanism, which is in part going to help sports, and giving it to the provinces, and then say, "I don't know what is going to happen. I cannot tell the sports people how to run their business in the individual provinces."

The Minister sure can, for goodness sake, tell the provinces in a kindly way if he is afraid to bruise some of his Conservative colleagues at the provincial level. He should try in the best way possible to get those moneys going into the sports coffers where they went before.

Criminal Code

If the Minister enjoys the co-operation of his provincial colleagues, then why is he scared to go to the provinces and tell them, "We gave you a $300 million, $400 million industry. We are getting in return $35 million. Can you try, please, to help the sports organizations which would have received that if we hadn't given it to you?" But the Minister will not be responsible. He tells us he gave it to the provinces, he does not know what the statistics are, and to go and check for ourselves.

I ask the Minister if that is responsibility to his sports jurisdiction. I think not. I am not telling the Minister to go out and do war with the provinces but, for goodness sake, if he is prepared to take a sports-generating funding mechanism and give it to the provinces, then why can he not go to the provinces and try to get some guarantees? If the Minister is not prepared to do that, he should not give away the mechanism.

Mr. Jelinek: Mr. Chairman, the Hon. Member talks about me giving away the shop to the provinces. This Bill does not deal with giving the provinces anything. This Bill deals with getting $100 million from the provinces, for which I was responsible. That is what this Bill we are discussing today is all about. Why does the Hon. Member keep saying I am giving the shop away to the provinces when the Bill we are discussing—at least, we are supposed to be, Mr. Chairman, with all due respect—is a Bill which is part of an agreement whereby I raised on behalf of the Government of Canada $100 million? That money is from the provinces in return for this Bill. That is what this Bill is all about.

I believe a disease which is shared by all Hon. Members of the Liberal Party is that they forget that the citizens of a province are also citizens of Canada. Why is the Hon. Member trying to break up the jurisdictions? If we are going to give to the provinces, does that mean it is going to disappear from the borders of Canada? Does the Hon. Member not consider that there are citizens of other provinces other than the one he lives in? We are all citizens of this country. Members of this Party and this Government believe that the citizens of British Columbia, Alberta, Prince Edward Island or any other province, are also citizens of Canada.

Mr. Della Noce: Quebec.

Mr. Jelinek: Yes, Quebec. I will go through all of them: Saskatchewan, Manitoba, New Brunswick, Nova Scotia and the Territories.

Mr. Della Noce: And Quebec.

Mr. Jelinek: And Quebec, the Yukon, and Ontario. I had forgotten Ontario, and I am from Ontario.

On a serious note, the point which the Hon. Member is trying to make is a point the Liberal Government tried to make, and that is, if you give to the provinces, it disappears, and Canadians do not benefit. I do not believe that. I believe that when we give to the provinces—although that is not what we are discussing today; we are discussing something the provinces are giving us, which is $100 million—it is still money which is to provide for all of Canada. It is to provide for all Canadians. It is to provide for the benefit of Canadians in the field of amateur sports, in fitness, in health reductions, medicine, the arts and in the whole spectrum of our society. This Party stands united with the provinces.

We have created a new spirit of co-operation between the federal Government and the provinces. It is a spirit which never existed under the Trudeau Liberals. I believe that the attitude which has been expressed today by the Hon. Member for York West, and by other Hon. Members on the Liberal side, even without Mr. Trudeau around, would still not change. Those Hon. Members would still try to dictate to the provinces. They would still try to be the confrontationalists. That is inbred in their blood. That is what the Liberals are all about. They are all about splitting the country apart, putting region against region, province against province, the rich against the poor. That is the problem with the Liberal administration.

I believe that the steps we have taken today, and in the past 14 months, are the best steps that the federal Government has taken in many years, and economic statistics prove it.

The Chairman: Pursuant to the order made earlier this day, it is my duty to interrupt these proceedings and to put to the House the necessary motion to dispose of the remaining stages of Bill C-81.

Clauses 1 to 4 inclusive agreed to.

Title agreed to.

Bill reported, read the third time and passed.

Mr. Deputy Speaker: It being 6.02 p.m., the House stands adjourned until tomorrow at 11 a.m. pursuant to Standing Order 3(1).

The House adjourned at 6.02 p.m.

TAB 14

CANADA

DEBATES OF THE SENATE

OFFICIAL REPORT

(HANSARD)

THE HONOURABLE GUY CHARBONNEAU
SPEAKER

1984-85-86
FIRST SESSION, THIRTY-THIRD PARLIAMENT
33-34-35 ELIZABETH II

VOLUME II

(September 17, 1985 to February 20, 1986)

Parliament was opened on November 5, 1984

and was prorogued on August 28, 1986

Queen's Printer for Canada, Ottawa

They will stay within our confederation regardless of any transient opinion which might be expressed.

Senator Sinclair: Including that of the Prime Minister?

Senator Frith: A well-chosen adjective, I must say.

Senator Flynn: A very low blow. Undistinguished. Rubbish.

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Duff Roblin (Leader of the Government): Honourable senators, I have no delayed answers, but, in order to return the chamber to its usual calm and equable frame of mind, I can say that I will have some answers tomorrow.

• (1450)

INTERNATIONAL TERRORISM

SEIZURE OF EGYPTIAN AIRCRAFT—EXPRESSION OF OUTRAGE—EXPRESSION OF CONDOLENCES—NOTICE OF MOTION

Leave having been given to revert to Notices of Motions:

Hon. H. A. Olson: Honourable senators, I give notice that on Wednesday, November 27, 1985, I will move:

> That the Senate express its shock and outrage at the recent terrorist attack on the Egyptian aircraft and urge that an international effort be made to strengthen security measures at airports to reduce the risk of this happening in future; and
>
> That the Senate express sincere condolences to the families of all the victims.

CRIMINAL CODE

BILL TO AMEND (LOTTERIES)—SECOND READING—DEBATE ADJOURNED

Hon. Nathan Nurgitz moved the second reading of Bill C-81, to amend the Criminal Code (lotteries).

He said: Honourable senators, in June of 1985 the federal and provincial governments concluded an agreement concerning funding for the 1988 Winter Olympics that are to be held in Calgary, Alberta. Part of that agreement included proposals to amend the Criminal Code in order to clarify the law concerning lotteries and other permitted gaming activities. The bill which has now been introduced in this house is in furtherance of that agreement, as well as proposing a number of additional amendments that arose out of subsequent federal-provincial negotiations.

Currently, under the Criminal Code, all lottery, gaming and betting activities are illegal in Canada unless specifically allowed. However, there exist a number of statutory exceptions. Two of these exceptions concern, first, the operation of sports pools by the federal government and, second, the operation of lottery schemes and games of chance by either the federal or provincial governments and the licensing by the provinces of lottery schemes and games of chance that are operated by other persons, such as charitable or religious organizations.

These provisions in the Code are very complex—as complex as tax statutes, I might suggest—and at times their meaning must be discovered with the help of lawyers, if not the courts. For years there have existed uncertainties in the law. This has resulted in the launching of lawsuits in court by each government over the proper interpretation of the present law and the rights and responsibilities of each level of government concerning the operation of lotteries and other gaming activities.

Honourable senators may recall, respecting the last federal government lottery program when our colleague, Senator Perrault, was the minister responsible for fitness and amateur sport, that the Quebec government brought injunction proceedings against the federal government with respect to a program brought in after a previous agreement. I raise this matter only to indicate some of the litigation it generated and not to get into the rights and wrongs of the case.

These legal battles led to ill feeling, I regret to say, between the federal and provincial governments, and diverted public resources to needless court battles. When this government took office it decided to put an end to unproductive federal-provincial wrangling and decided to embark upon a course of action that would achieve mutual agreement between the two levels of government for the public benefit.

The negotiations concerning funding for the Calgary Olympics provided an opportunity for achieving mutual federal-provincial reconciliation of these outstanding legal issues. Therefore, the agreement concluded last spring included proposals for both the out-of-court settlement of outstanding federal-provincial litigation in this area and the clarification of the legal rights, powers and responsibilities of each level of government.

I would like to detail, for the benefit of honourable senators, the exact nature of the amendments proposed in the bill that would achieve that clarification.

The repeal of section 188.1 of the Criminal Code would end the legal authority of the federal government, and the governments of one or more provinces which have entered into an agreement jointly with the federal government, to operate and manage sports pool betting. As honourable senators know, one of the first acts of the government when it took power was to kill and dismantle the administrative structure of the Canadian Sports Pool Corporation.

Senator Frith: Kill and dismantle?

Senator Nurgitz: Kill, dismantle and step on it.

Senator Frith: Catch the fish before you clean it.

Senator Flynn: That is quite noble.

Senator Frith: That is what I am saying.

Senator Nurgitz: In any event, this amendment would forever take away from the federal government the ability to start an unsuccessful casino operation; that is, that the authority to do it would be gone so that there would be no question as to

whether or not it could be done well. It could not be done at all.

In 1979, during the brief period of the Conservative government, agreement was reached with the provinces—

Senator Flynn: "Brief", he did not say "sweet".

Senator Frith: Fairly sweet and very brief.

Senator Roblin: A lot can happen in nine months.

Senator Nurgitz: The then Conservative government agreed with the provinces that it would no longer operate federal lotteries. The proposed repeal of paragraph (1)(a) of section 190 of the Criminal Code would go further and statutorily prevent the federal government from restarting the operation of federal lotteries.

Honourable senators, these two amendments would thereby remove the legal authority for the operation of sports pools, lotteries and other gaming activities under federal jurisdiction. Such activities would only be permitted under direct provincial management and control or under the operation of other persons, such as boards of fairs or religious or charitable organizations, in accordance with a licence issued by any given province, if the province decided to have such legislation.

The proposed amendments in the bill would also clarify provincial licensing powers and would provide greater provincial control over accountability by operators in order to ensure that permitted gaming activities are properly regulated. For example, the amendment to subsection 190(2) provides that the terms and conditions of a licence issued by the provincial government may be imposed not only by the provincial government but by the provincial legislature, as well. While a series of amendments to paragraphs (1)(a) to (f) of the current section 190 would permit any person, for the purpose of the operation of, or participation in, a lottery scheme to do anything required for such purpose, the new subsection (3) of section 190 would create new and broad offences in respect of persons who do anything that is not authorized by or pursuant to the Criminal Code. The maximum punishment for an offence proceeded with by way of indictment would render a person liable to imprisonment for up to two years.

The proposed amendments contained in this bill also clarify what types of lotteries and gaming activities the provinces, and those persons acting under a provincial licence, may operate and conduct.

● (1500)

For example, the new paragraph 1(b) of section 190 would treat lotteries and other games of chance that are conducted by charitable or religious organizations at bazaars in the same manner as lotteries and games operated by the same organizations that are not conducted at bazaars.

Monetary limits currently exist in the Criminal Code in respect of both the amount permitted to be paid to play a game and the value of the prizes awarded at lotteries and games conducted at bazaars. The amendment would remove the monetary limits and would treat equally all charitable or religious lotteries and games. This will permit the provinces to set their own monetary limits.

The restrictive monetary limits with respect to lotteries and games of chance that are operated under provincial licence by persons at public places of amusement would, however, remain in the Criminal Code, since these lotteries or games could be operated for private profit.

The current statutory limit of a $100 prize limit and a limit of 50 cents that could be paid to play a lottery or a game were set in 1969. Due to inflation over the years, it is proposed to increase these limits to $500 for prizes and $2 for amounts permitted to be paid in order to play a lottery or game.

The new paragraph (1)(c) of section 190 would extend to the board of any fair or exhibition approved by the province the ability to conduct and manage a lottery scheme under a provincial licence.

At present, only agricultural fairs or exhibitions may be licensed. The current law, therefore, discriminates in favour of agricultural fairs and against other produce or industry fairs, such as those concerning fishing or lumbering, for example.

Surely, if agricultural fairs can operate lotteries and games of chance, then fishery fairs, such as lobster festivals, should be able to conduct similar activities.

It should be noted that not any type of fair would be permitted to obtain a licence. Rather, only those fairs or exhibitions designated and approved by the province would be able to obtain a licence.

Hon. Royce Frith (Deputy Leader of the Opposition): Did you say fishery and *lumbering* fairs?

Senator Nurgitz: Yes. Under the current Criminal Code, the only permitted type of fair is an agricultural fair. Under the amendments contained in Bill C-81, there will no longer be that restriction.

Senator Frith: The proposed subsection 189(3.1) sets out the definition of "fair or exhibition"; it reads:

> (3.1) For the purposes of this section, "fair or exhibition" means an event where agricultural or fishing products are presented or where activities relating to agriculture or fishing take place.

Senator Nurgitz: And I have added lumbering. I take your point.

Senator Frith: I do not see any reason why lumbering fairs should not be included. I simply do not see where it so states in the bill.

Senator Nurgitz: I am advised by the Deputy Leader of the Government that lumbering is a form of agriculture.

Senator Doody: Great big plants.

Senator Nurgitz: They just grow thicker and longer than the usual agricultural product.

Senator Frith: Tossing the caber at the Caledonian games, I suppose, could constitute a "lumbering" activity.

Senator Nurgitz: A series of amendments to section 190 would also permit provincial governments and approved fair or exhibition boards to operate a wheel of fortune. Currently, only licensed charitable or religious organizations and persons at a public place of amusement may operate wheels of fortune.

Since all of these activities would be subject to either direct provincial operation or provincial licensing control, there is no need to maintain the current discrimination.

I would also like to point out that the new paragraph 1(h) of section 190 would amend the present subsection (4.1) of section 190 to permit the manufacture and export of gaming and betting equipment to any place where it is lawful to use such equipment, or where a legal structure exists for the approval of the use of such equipment.

The current subsection 190(4.1) only refers to lottery tickets and cards and does not permit exports out of Canada. A number of Canadian companies that invent and devise lottery schemes and manufacture lottery tickets and other gaming material have achieved international respect for the quality of the products used in Canadian lotteries and games. The present law, however, prevents these companies from exporting the products of this Canadian expertise. The proposed amendment would permit Canadian companies to compete equally with companies of other nations in the international marketplace.

Subsection (5) of section 190 at present defines "lottery scheme" to include a game, and section 179 defines "game" to mean "a game of chance or mixed chance and skill".

This vague definition of "lottery scheme" has produced a number of legal disputes, both in and out of court, as to what types of gaming activities are legal under the banner of "lottery scheme."

Recent judicial interpretation has given the concept a very broad meaning. Combined with the *non obstante* clause in the opening words of section 190, this judicial interpretation could open up the scope of permissible gambling by provinces and licensed persons within provinces to include a broad range of betting and gambling activities, including the betting on the outcome of all sorts of events, whether athletic or otherwise. While the provinces have not chosen to jump fully into this area in any large way, it is certainly thought that proper legal limits should be established, with guidelines put in place in each province as to what is and what is not considered acceptable.

The proposed amendments would clearly provide in the legislation the authority for provincially operated or licensed activities that have been or are currently being undertaken. Clear legislative authority would be given to the provinces to operate, or to license the operation of, lotteries and other games of chance that involve betting, pool selling and pool system betting. This conduct is currently permitted under judicial interpretations of the present law.

In fact, some provinces are actually in the casino business. By way of example, the provinces of Manitoba and Alberta, on a given number of days in a year, permit the operation of gambling casinos. As a result, in such cities as Edmonton, Calgary and Winnipeg, we have casinos operated by the province, with the proceeds going, in part, to charitable organizations.

In the city of Winnipeg, for example, these casinos are conducted at the Winnipeg Convention Centre and involve such activities as blackjack, roulette and a lottery ticket scheme that is equivalent to slot machines.

Senator Frith: And these casinos are run by the provincial government?

Senator Nurgitz: They are run by the provincial government, yes. There is no magic to the system. In the case of the province of Manitoba, the Province takes 20 per cent of the take, with a charity or charities named to receive the remaining 80 per cent.

The amendments would, however, create some additional limits to those that currently exist in the law. The operation or licensing of certain types of activities would be prohibited. For example, the operation of a dice game, three-card monte, punch board and coin table would continue to be prohibited as under the present law.

In addition, the proposals would not permit the provinces or licensed organizations to conduct bookmaking, pool selling, or the making or recording of any types of bets, including pool or pari-mutuel betting on any race or fight or on a single sporting event or athletic contest.

Therefore, lawful lotteries or gaming activities operated or licensed by the provinces would be restricted to the results or outcomes of a combination of at least two or more sporting events or athletic contests, or to the outcome of any other contingency or contingencies, such as the drawing of numbers or cards, the spinning of wheels, et cetera.

The bill also proposes restrictions in respect of lotteries or other games of chance that are operated through computers, video devices or other machines that amount to "slot machines" within the meaning of that term in the Criminal Code. Only provincial governments themselves would be permitted to operate such devices. The provinces would not be able to license the operation of such devices by other persons.

Lastly, the amendments contained in Bill C-81 would ensure that the only provisions in the Criminal Code that would permit pari-mutuel betting on horse racing are those contained in section 188 of the Criminal Code of Canada. This section provides that the regulation of horse racing is, and remains, a federal responsibility.

I think it is clear from what I have said that the bill clarifies a number of uncertainties in the law. Additionally, it gives clear legislative recognition to past and present provincial activities while at the same time putting in place some very clear restrictions and bounds as to what is and what is not permissible.

Given the state of the current law and judicial interpretation of it, the proposed amendments, when viewed correctly, do not promote an expansion of gambling; rather, they set some realistic and clear standards of what is permissible. In some

cases, the amendments even restrict the scope of the current law.

It is only because the law has finally been spelled out in black and white that some honourable senators may have gained the impression that this bill promotes the expansion of gambling. By clearly setting out what is permissible, it is hoped that the reverse may well be true as well; that is, that the prohibitions are clearly defined.

Honourable senators, I urge passage of this bill.

On motion of Senator Perrault, debate adjourned.

• (1510)

SEEDS ACT
CANADA GRAIN ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. R. James Balfour moved the second reading of Bill C-64, to amend the Seeds Act and the Canada Grain Act.

He said: Honourable senators, this bill contains long overdue amendments to the Seeds Act. A good deal has happened in the seed industry since the last time major amendments were made to the act, as far back as 1959. The industry has doubled in size during the past eight years, both in terms of acreage and authorized establishments. It now generates about $350 million annually in sales, including domestic and export markets.

This bill will help ensure that farmers get what they pay for and that the owners of seed varieties are engaged in fair competition.

One of the key elements of the bill is that it will provide greater authority under the Seeds Act to protect against false advertising and to strengthen the seed licensing system.

For some years now seed associations have been expressing concern about distorted or even false advertising of seed varieties. The amendments to the Seeds Act before us will ensure that if the privatization trend continues, there will be effective regulation of the quality and sales of seed in this country.

These amendments will halt false or distorted advertising practices by providing for the disclosure of certain information when seed is advertised, and by prohibiting the use of variety names when the seed is not pedigreed.

By strengthening our licensing system now, we will be guaranteeing against any possible introduction of inferior varieties in the future.

The penalties proposed in the bill for violation of the act are much tougher. The maximum penalty on summary conviction will be raised from $2,000 to $25,000, and on indictment will be at judicial discretion. This new level is a much more effective deterrent.

I am in full agreement with tougher provisions because they send a clear signal to the seed industry and to producers that this government is serious about maintaining a high standard of seed quality in this country.

[Senator Nurgitz.]

The bill will also extend the time limit for instituting proceedings by way of summary conviction, allowing more time for proper investigation of complaints and for the institution of legal proceedings.

I wish to make note of the bonding provisions in the bill, because it is an important aspect of quality control in Canada's seed industry. Under the current system, all imported seed is held in bond while it is tested to ensure that quality requirements are met.

This bill will transfer bonding authority, through the Seeds Act, from the jurisdiction of Customs and Excise to Agriculture Canada.

Finally, I would like to draw the attention of honourable senators to the role of the Canadian Seed Growers Association in the administration of this act. With the exception of seed potatoes, the Seed Growers Association is the official seed pedigreeing agency in Canada. The members of this organization can take a great deal of the credit for establishing standards to ensure varietal purity of crops.

I am pleased to see that the bill proposes to establish clearly the role of the Canadian Seed Growers Association in the Seeds Act. Like many of the other measures contained in the bill, this particular provision is long overdue.

I noted that consultations with the provinces and seed associations occurred prior to the introduction of this bill. As a result, I understand that there is widespread support for it. Therefore I am urging all honourable senators to support this important legislation.

Hon. Royce Frith (Deputy Leader of the Opposition): May I ask the sponsor a question? I presume that this bill has nothing to do with plant breeders' rights.

Senator Balfour: No.

On motion of Senator Frith, for Senator Sparrow, debate adjourned.

CUSTOMS BILL

SECOND READING—DEBATE ADJOURNED

Hon. R. James Balfour moved the second reading of Bill C-59, respecting Customs.

He said: Honourable senators, this bill is an important and much-needed piece of legislation, and one which has broad support among those who will be affected by its provisions.

Some honourable senators may not be aware that the current Customs Act was one of the very first legislative initiatives of Canada's first Parliament in 1867. It is now 118 years old, and although it has been substantially amended over the years, today it is badly out of date and largely incompatible with modern business practice and transportation and travel conditions.

It became clear some time ago that further amendment and tinkering with the present law was no longer sufficient. A completely new Customs Act was needed which would eliminate the obsolete and inconsistent provisions of the current act;

TAB 15

First Session
Thirty-third Parliament, 1984-85

SENATE OF CANADA

Proceedings of the Standing Senate Committee on

Legal and Constitutional Affairs

Chairman:
The Honourable JOAN NEIMAN

Tuesday, November 26, 1985
Wednesday, November 27, 1985
Thursday, November 28, 1985

Issue No. 29

Eleventh proceedings on:

The subject-matter of Bill C-46, "An Act to amend the Divorce Act"; Bill C-47 "An Act respecting the Divorce and Corollary Relief Act"; and Bill C-48, "Family Orders Enforcement Assistance Act".

AND

First proceedings on:

Bill C-81, "An Act to amend the Criminal Code (lotteries)".

INCLUDING

Reports of the Committee on the subject-matter of Bill C-46, C-47 and C-48.

APPEARING

(on Bill C-81)
The Honourable Otto Jelinek, P.C., M.P.

WITNESSES:
(See back cover)

Première session de la
trente-troisième législature, 1984-1985

SÉNAT DU CANADA

Délibérations du Comité sénatorial permanent des

Affaires juridiques et constitutionnelles

Président:
L'honorable JOAN NEIMAN

Le mardi 26 novembre 1985
Le mercredi 27 novembre 1985
Le jeudi 28 novembre 1985

Fascicule nº 29

Onzième fascicule concernant:

La teneur des projets de loi C-46, «Loi modifiant la Loi sur le divorce»; C-47, «Loi concernant le divorce et les mesures accessoires»; et C-48, «Loi d'aide à l'exécution des ordonnances familiales».

ET

Premier fascicule concernant:

Le projet de loi C-81, «Loi modifiant le Code criminel (loteries)».

Y COMPRIS

Les Rapports du Comité sur la teneur des projets de loi C-46, C-47 et C-48

COMPARAÎT

(sur le projet de loi C-81)
L'honorable Otto Jelinek, c.p., député

TÉMOINS:
(Voir à l'endos)

28305—1

EVIDENCE

Ottawa, Thursday, November 28, 1985

[*Text*]

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-81, to amend the Criminal Code (lotteries), met this day at 9:00 a.m. to give consideration to the bill.

Senator Joan Neiman (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us this morning the Honourable Otto Jelinek, Minister of State for Fitness and Amateur Sport, who will be speaking to us on Bill C-81, to amend the Criminal Code (lotteries).

The minister is under some considerable time pressures this morning. I do apologize to him for the fact that we are starting late. The minister will have to leave at 9:45 a.m. in order to make another appointment. If there are still outstanding questions at that point, he will return at a later date.

I understand you have an opening statement, Mr. Minister.

The Honourable Otto Jelinek, Minister of State (Fitness and Amateur Sport): Thank you, Madam Chairman. Before getting to my opening statement, I should like to introduce the two officials accompanying me this morning. Mr. Donald Piragoff, Counsel, Criminal Law Policy and Amendments Section, Department of Justice, has worked on this measure from the very beginning. Also with me is Mr. Allan Higdon, my Legislative Assistant.

Madam Chairman, at the outset, I should like to make a few comments on Bill C-81, to amend the Criminal Code (lotteries).

It was just over a year ago that I began negotiations with the provincial ministers responsible for lotteries, during the course of which I proposed that the provinces contribute $100 million toward this government's commitment to the Calgary Olympics in return for certain amendments to the Criminal Code in respect of lotteries.

On June 3, 1985, negotiations were concluded, with an agreement signed between the federal and provincial governments incorporating the $100 million funding for the Calgary Olympics. Bill C-81 flows from that agreement.

Because of the complexity and somewhat ambiguous nature of the provisions of the criminal code regarding lotteries, numerous lawsuits were launched some years ago. Both the federal and provincial governments were involved in the business of lotteries. There followed lawsuits as between the federal and provincial governments to try to determine whose right and responsibility it was to oversee the various aspects of lotteries and other gaming operations.

These legal battles led to ill feelings as between the provinces and Ottawa and diverted public resources to needless court battles.

When the present government took office, it decided to put an end to this unproductive federal-provincial wrangling and

TÉMOIGNAGES

Ottawa, le jeudi 28 novembre 1985

[*Traduction*]

Le Comité sénatorial permanent des affaires juridiques et constitutionnelles, auquel a été déféré le projet de loi C-81, Loi modifiant le Code criminel (loteries), se réunit aujourd'hui à 9 heures pour examiner le projet de loi.

Le sénateur Joan Neiman (*présidente*) occupe le fauteuil.

La présidente: Honorables sénateurs, nous avons devant nous ce matin l'honorable Otto Jelinek, ministre d'État (Condition physique et Sport amateur), qui nous parlera du projet de loi C-81, Loi modifiant le Code criminel (loteries).

Le ministre est passablement pressé par le temps ce matin. Je m'excuse auprès de loi de ce que nous commencions tard. Il devra partir à 9 h 45 parce qu'il a un autre rendez-vous. S'il reste des questions à ce moment, il reviendra à une date ultérieure.

Je crois comprendre que vous avez une déclaration préliminaire, monsieur le ministre.

L'honorable Otto Jelinek, ministre d'État (Condition physique et Sport amateur): Merci, madame la présidente. Avant de faire ma déclaration préliminaire, j'aimerais vous présenter les deux hauts fonctionnaires qui m'accompagnent ce matin. M. Donald Piragoff, avocat à la Section de la politique et de la modification du droit en matière pénale du ministère de la Justice, s'occupe de cette mesure législative depuis le début. M'accompagne également, M. Allan Higdon, mon adjoint législatif.

Madame la présidente, au départ, j'aimerais faire quelques observations sur le projet de loi C-81, Loi modifiant le Code criminel (loteries).

Il y a un peu plus d'un an que j'ai entamé les négociations avec les ministres provinciaux responsables des loteries, négociations au cours desquelles j'ai proposé que les provinces fournissent au gouvernement fédéral 100 millions de dollars pour les Olympiques de Calgary contre certaines modifications du Code criminel.

Le 3 juin 1985, les négociations se sont terminées par un accord entre les gouvernements fédéral et provinciaux aux termes duquel les provinces verseront une contribution de 100 millions de dollars aux Olympiques de Calgary. Le projet de loi C-81 découle de cet accord.

A cause de la complexité et du caractère quelque peu ambigu des dispositions du Code criminel concernant les loteries, de nombreuses poursuites ont été intentées il y a quelques années. Les gouvernements fédéral et provinciaux intervenaient dans ce secteur. Il y a eu des poursuites entre les deux pour essayer de déterminer qui avait le droit et la responsabilité de surveiller les divers aspects des loteries et autres activités de jeux.

Ces batailles juridiques ont envenimé le climat entre les provinces et Ottawa et ont coûté inutilement cher au Trésor public.

Lorsque le gouvernement actuel est arrivé au pouvoir, il a décidé de mettre un terme à ces disputes fédérales-provinciales

[*Text*]

start relations between the federal and provincial governments on a new course. As a result of the Lotteries Agreement signed in June of 1985, extensive negotiations and consultations were conducted between officials of the Department of Justice and their provincial counterparts, with the proposed amendments to the Criminal Code contained in Bill C-81 subsequently arrived at. Part of the Lotteries Agreement was agreement to drop the lawsuits that had been launched by both the federal and provincial governments.

For the benefit of your committee, I should like to take a moment or two to explain the exact nature of these proposed amendments.

As this committee well knows, one of the first acts of this government on taking office was to dismantle the administrative structure of the Canadian Sports Pool Corporation. Honourable senators will recall that at that time this particular corporation was losing some $1.5 million a week. This was a substantial loss for the taxpayers of this country. As well, it created a federal-provincial irritant which went well beyond the level of other irritants existing as between the two levels of government.

The repeal of section 188.1 of the Criminal Code, as contained in this bill, would legally kill the ability of the federal government to restart the operation of a federal sports pool by any new crown corporation. The repeal of section 190(1)(a) legislates the lottery agreement arrived at in 1979, an agreement which prohibits the federal government from being involved in the operation of lotteries or sport pools.

In effect, then, the operation of sport pools, lotteries, and other gaming activities would only be permitted under direct provincial management and control, or under the operation of other persons, such as boards of fairs, or religious or charitable organizations, in accordance with a licence issued by the province.

That, of course, Madam Chairman, is something that is already taking place in a number of the provinces. Furthermore, Bill C-81 would extend the privileges which agricultural fairs enjoy now to any fair or exhibition in respect of the running of games.

It is clear that Bill C-81 clarifies a number of uncertainties that exist in the law as it now stands. In addition, it gives clear legislative recognition to past and present provincial activities in this area, and as well puts some very clear restrictions and bounds on what is and what is not permissible.

It is importnt that the committee understands that this bill does not promote the expansion of gambling; rather, it sets some realistic and clear standards of what is and what is not permissible. In other words, it puts into legislation the provincial *status quo* in respect of lotteries, removing the federal government from any gaming operations.

Bill C-81 spells out in black and white a much clearer picture of lotteries and associated games in Canada. It transfers to the provinces the right to lotteries, which was the intention of the 1979 agreement. The agreement that was signed in June of 1985 is a major step in the right direction.

[*Traduction*]

improductives et d'établir de nouveaux rapports entre les deux niveaux de gouvernement. A la suite de l'accord sur les loteries signé en 1985, des hauts fonctionnaires du ministère de la Justice et leurs homologues provinciaux ont tenu de longues négociations et consultations qui ont finalement mené aux propositions de modifications du Code criminel contenues dans le projet de loi C-81. Dans le cadre de l'accord sur les loteries, on s'est entendu pour laisser tomber les poursuites qui avaient été intentées par les gouvernements fédéral et provinciaux.

J'aimerais prendre quelques minutes pour expliquer au comité la nature exacte de ces projets de modification.

Comme le comité le sait bien, l'une des premières mesures prises par le gouvernement actuel à son arrivée au pouvoir a été de dissoudre la Société canadienne des paris sportifs. Les honorables sénateurs se souviendront qu'à cette époque, cette société perdait environ 1,5 million de dollars par semaine. C'était de lourdes pertes pour les contribuables de notre pays. De plus, elle était pour le gouvernement fédéral et les provinces une source d'irritation qui allait bien au-delà des autres sujets de mécontentement entre les deux niveaux de gouvernement.

L'abrogation de l'article 188.1 du Code criminel, que propose le projet de loi, empêcherait légalement le gouvernement fédéral de remettre sur pied une autre société d'État pour l'exploitation de paris sportifs. L'abrogation de l'alinéa 190(1)*a*) donne force de loi à l'accord sur les loteries conclu en 1979, lequel interdit au gouvernement fédéral de participer à l'exploitation de loteries ou de paris sportifs.

Les paris sportifs, les loteries et autres activités de jeux ne seraient tolérés que sous la direction et le contrôle directs des gouvernements provinciaux et ne pourraient être exploités que par des particuliers, des organisations comme les conseils de foire, des organismes religieux ou des sociétés de bienfaisance, conformément à une licence délivrée par la province.

Évidemment, madame la présidente, cela se fait déjà dans un certain nombre de provinces. De plus, en ce qui concerne l'exploitation de jeux, le projet de loi C-81 accorderait à toute foire ou exposition les privilèges dont jouissent actuellement les foires agricoles.

Il est clair que le projet de loi C-81 dissipe un certain nombre d'incertitudes qui existent dans les règles de droit actuelles. En outre, il sanctionne dans un texte législatif les activités provinciales actuelles et passées dans ce domaine et établit des restrictions et des limites très nettes par rapport à ce qui est permises à ce qui ne l'est pas.

Il importe que le comité comprenne que ce projet de loi ne favorise pas l'expansion des jeux, mais établit plutôt des normes claires et réalistes concernant ce qui est permis et ce qui ne l'est pas. Autrement dit, il entérine le statu quo en ce qui concerne les provinces et les loteries et empêche le gouvernement fédéral de participer à toute entreprise de jeux.

Le projet de loi C-81 établit noir sur blanc les règles en matière de loteries et autres jeux au Canada. Il transfert aux provinces le droit d'exploiter des loteries, comme le voulait l'accord de 1979. L'accord qui a été signé en juin 1985 représente un pas important dans la bonne direction.

[*Text*]

In essence, the federal government, in 1979, in a legal agreement, assigned to the provinces what it is now proposed to be legislated. Following the agreement of 1979, the federal government got into the sports pool business, in effect breaking that agreement. In addition to losing $1.5 million a week, the federal government's involvement in the sports pool business breached the 1979 federal-provincial agreement on lotteries.

When I went to the provinces, hat in hand, requesting their participation in the Calgary Olympics to the tune of $100 million, I agreed to put to bed once and for all the 1979 agreement. I agreed to put into legislation the provincial rights set out in that agreement, and basically, Madam Chairman, that is the purpose behind Bill C-81.

If there are questions of a general nature, I shall be more than pleased to try to answer them. If they are of a technical nature, I shall ask my officials to participate in the discussion.

The Chairman: Thank you, Mr. Minister. Senator Nurgitz will be the lead-off questioner.

Senator Nurgitz: Mr. Minister, Senator Perrault, in participating in the debate on the motion for the second reading of this bill in the Senate, raised the concern that certain provinces may become mini Nevadas. He is concerned that the amendments to the Criminal Code set out in Bill C-81 will permit casinos of some magnitude to be opened.

Would you care to comment on that?

Mr. Jelinek: I can assure the committee that that will not flow from these amendments. These amendments simply put into legislation the *status quo*.

Honourable senators will be aware that in the Province of Alberta, as one example, casinos are operated under provincial licence. In that instance, the casinos move from location to location, with the proceeds therefrom going to charitable organizations.

That is something that has been accepted by the federal government for years, and it is not something that is in any way affected by Bill C-81. Bill C-81 simply prohibits the federal government from participating in sport pools and lotteries in the future. That is the essence of it.

I understand that the view was expressed during debate on this measure in the Senate, the view was expressed that this was a giveaway.

The federal government, under the 1979 agreement, gave to the provinces the right to run lotteries, and that was in return for $25 million a year, tied to the CPI. As a result, the income now received by the federal government from lotteries is in the neighbourhood of $35 million.

We were able to take that a step further by obtaining the additional $100 million in funding for the Calgary Olympics.

To my mind, it is not a bad deal for the federal government. Certainly, when one considers that the Sports Pool Corporation is being closed down in the process, a corporation that was losing $1.5 million a week, I do not think one would consider

[*Traduction*]

Pour l'essentiel, le gouvernement fédéral a, dans l'accord signé en 1979, assigné légalement aux provinces ce qui est maintenant proposé dans le projet de loi. Par la suite, le gouvernement fédéral s'est lancé dans les paris sportifs, contrevenant ainsi aux conditions de l'accord. Non seulement il perdait 1.5 million de dollars par semaine, mais il enfreignait l'accord fédéral-provincial sur les loteries conclu en 1979.

Lorsque je suis allé dans les provinces, pour leur demander humblement de verser une contribution de 100 millions de dollars aux Olympiques de Calgary, j'ai accepté de donner force une fois pour toutes à l'accord de 1979. J'ai accepté d'inscrire dans une loi les droits des provinces énoncés dans cet accord, et fondamentalement, madame la présidente, tel est l'objet du projet de loi C-81.

S'il y a des questions d'ordre général, j'essaierai volontiers d'y répondre. Pour les questions techniques, je demanderai à mes fonctionnaires de participer à la discussion.

La présidente: Merci, monsieur le ministre. Le sénateur Nurgitz commencera l'interrogatoire.

Le sénateur Nurgitz: Monsieur le ministre, lorsque le sénateur Perrault a participé au débat sur la motion portant deuxième lecture de ce projet de loi au Sénat, il s'est dit inquiet que certaines provinces ne puissent devenir de petits Nevadas. Il craint que les modifications du Code criminel énoncées dans le projet de loi C-81 ne permettent l'ouverture de casinos d'une certaine importance.

Auriez-vous l'obligeance de nous donner votre point de vue à cet égard?

M. Jelinek: Je peux assurer le comité que ces modifications n'auront pas de telles répercussions. Elles ne font que donner force de loi au statu quo.

Les honorables sénateurs savent qu'en Alberta, par exemple, les casinos sont exploités sous licence provinciale. Ils se déplacent d'un endroit à l'autre et les recettes vont à des sociétés de bienfaisance.

C'est accepté par le gouvernement fédéral depuis des années et ce n'est nullement touché par le projet de loi C-81. Celui-ci interdit simplement au gouvernement fédéral de participer dorénavant aux paris sportifs et aux loteries. C'en est l'essentiel.

Je crois comprendre qu'au cours du débat qui a eu lieu au Sénat au sujet de cette mesure, certains ont affirmé que c'était un joli cadeau.

Le gouvernement fédéral a, aux termes de l'accord de 1979, accordé aux provinces le droit d'exploiter des loteries contre le versement de 25 millions de dollars par an, compte tenu de l'IPC. Ainsi, il tire maintenant de ces loteries environ 35 millions de dollars.

Nous sommes également en mesure, par ce moyen, d'obtenir les 100 millions supplémentaires pour les Olympiques de Calgary.

À mon sens, ce n'est pas une mauvaise affaire pour le gouvernement fédéral. Quand on considère que la Société des paris sportifs se trouve dissoute en même temps, alors qu'elle perdait 1,5 million de dollars par semaine, je ne pense pas qu'on puisse

[*Text*]

the agreement behind Bill C-81 a giveaway; rather, it represents good fiscal responsibility.

Senator Nurgitz: We have been told that the new agreement, together with Bill C-81, will bring to an end the pending lawsuits in respect of lotteries as between the federal and provincial governments.

Have those lawsuits in fact been abandoned?

Mr. Jelinek: It is my understanding that the lawsuits launched by the federal government have now been dropped. It is my further understanding that those lawsuits launched by the provincial governments will soon be dropped.

I shall ask Mr. Piragoff to respond to that in more detail.

Mr. Donald Piragoff, Counsel, Criminal Law Policy and Amendments Section, Department of Justice: Madam Chairman, one of the terms of the agreement provides that the federal government cease its litigation within two weeks of the signing of the agreement, with the provinces withdrawing their respective suits once the amendments to the Criminal Code in respect of lotteries were proclaimed into force.

The Chairman: What provinces were involved in these lawsuits?

Mr. Piragoff: There was a major piece of litigation between the Government of Canada and the Loto Quebec Corporation. In addition, certain of the provinces were involved in litigation arising out of the sports pool, in particular in respect of the appointment of selling agents.

Some of the agents were facing legal problems in the provinces in respect of their ability to sell tickets, and the federal government was becoming involved in support of those agents.

Senator Nurgitz: What is the status of the lawsuit that was commenced by organized baseball — it was organized baseball or the National Hockey League, or both — with respect to the 1980 or 1981 sports pool?

Mr. Piragoff: I am not able to comment on the nature of that litigation because I was not involved. It would be imprudent of me to guess at the status. I could ascertain the information and provide it to the Senate.

Mr. Jelinek: If I may add to that, it is my understanding that both the National Hockey League and the baseball league, when we were in discussions with the provinces, came to me and made it very clear that should the federal government get out of the sports pool, then they would be dropping their law suits. Whether that has happened yet or not I am not sure, but as Mr. Piragoff said he will be looking into it.

Senator Stanbury: We always hesitate to get into partisan matters in the Senate, but, when your statement is framed as it is, was I think it is important for you to know that there are at least some of us who believe that the reason you had to go hand in hand was the actions of the 1979 government rather than the actions of the governments that bracketed that government.

The question that concerns me now is partly based back that far, but I do not see anything in this bill which would remedy it. Having given the responsibility for lotteries to the provinces,

[*Traduction*]

dire que le projet de loi C-81 représente un cadeau; c'est plutôt une bonne responsabilité fiscale.

Le sénateur Nurgitz: On nous a dit que le nouvel accord ainsi que le projet de loi C-81 mettront un terme aux poursuites en suspens entre le gouvernement fédéral et les provinces au sujet des loteries.

A-t-on laissé tomber ces poursuites?

M. Jelinek: Je crois comprendre que le gouvernement fédéral a laissé tomber les poursuites qu'il avait intentées. Je pense aussi que les gouvernements provinciaux en feront bientôt autant.

Je demanderai à M. Piragoff de donner plus de détails à ce sujet.

M. Donald Piragoff, avocat à la Section de la politique et de la modification du droit en matière pénale du ministère de la Justice: Madame la présidente, l'accord prévoit entre autres que le gouvernement fédéral mettra un terme à ses poursuites dans les deux semaines qui suivront la date de la signature de l'accord et que les provinces retireront les leurs une fois adoptées les modifications du Code criminel concernant les loteries.

La présidente: Ces poursuites concernaient quelles provinces?

M. Piragoff: Il y avait un important litige entre le gouvernement du Canada et la Société Loto-Québec. De plus, certaines provinces étaient parties à un litige concernant des paris sportifs notamment la nomination des agents de vente.

Certains d'entre eux avaient des problèmes avec la justice dans les provinces quant à leur capacité de vendre des billets et le gouvernement fédéral était intervenu pour les appuyer.

Le sénateur Nurgitz: Qu'en est-il des poursuites intentées par le baseball organisé—c'était le baseball organisé ou la Ligue nationale de hockey, ou les deux—au sujet des paris sportifs de 1980 ou de 1981?

M. Piragoff: Je ne puis me prononcer sur la nature de ce litige, car je ne m'en suis pas occupé. Il serait imprudent de ma part d'essayer de dire où l'affaire en est. Je pourrais le vérifier et fournir ces renseignements au Sénat.

M. Jelinek: Je pourrais ajouter qu'à l'époque de nos discussions avec les provinces, la ligue nationale de hockey et la ligue de baseball m'ont dit clairement qu'elles laisseraient tomber leurs poursuites si le gouvernement fédéral se retirait des paris sportifs. Je ne sais pas si elles l'ont déjà fait, mais comme l'a dit M. Piragoff, il examinera la question.

Le sénateur Stanbury: Nous hésitons toujours à aborder au Sénat des questions partisanes, mais étant donné le contexte de votre déclaration, il est important, je crois, que, vous sachiez, que, de l'avis d'au moins une partie d'entre nous, si vous avez dû aller main dans la main, c'est à cause des mesures prises par le gouvernement de 1979 et non à cause de celles des gouvernements qui l'encadraient.

La question qui me préoccupe maintenant remonte à cette époque, mais je ne vois rien dans ce projet de loi qui y remédierait. Après leur avoir confié aux provinces la responsabilité des

[*Text*]

we have made it possible for them to set up competing operations which really are not in the best interests of Canada as a whole. I am wondering whether there is not something that we could be doing to avoid the possibility of the provinces getting into the kind of competition that they sometimes get into with tax relief to industries they want to attract and so on.

Mr. Jelinek: In response to the first part of your statement, it was not just a question of the 1979 agreement from the previous Conservative government; it was a question of trying to save the continuing $1.5 million per week loss that was taking place on a weekly basis when the new government was formed.

In response to the main thrust of your question, the provinces had the right to do what they are doing now prior to these amendments. In other words, it is the *status quo*. They could have competed and, in fact, were competing before this agreement and before these amendments. These amendments are not passed yet and we are waiting for you to pass them, obviously. Whatever the provinces are doing in the field of lotteries, they will be allowed to do exactly the same in the future. It is not for us, I believe, to interfere within the provincial jurisdictions.

The point I am trying to make, Madam Chairman and honourable senators, is that this piece of legislation simply legislates and puts into law the *status quo* that the provinces already enjoy.

Senator Stanbury: I appreciate that point and I am just concerned that we have not done anything to cure what I regard as a very unfortunate weakness in the system.

The other problem is that we have had some indication from the Attorneys General that there has been consultation with provincial governments with the ministers who have responsibility for lotteries and perhaps for sports but really not with the Attorneys General. We are probably going to have to get evidence from some of the Attorneys General as to some of the concerns they have expressed privately to us. Could you comment on the consultation that took place? You seem to indicate that there was an agreement and that one of the terms of the agreement was that these amendments would be passed and that that was the wish of the Attorneys General rather than the desire of the present federal government. That does not seem to ring true with comments that we have been getting from Attorneys General.

Mr. Jelinek: I want to make it absolutely clear that when the negotiations were going on between the federal government and the provinces—and those negotiations lasted approximately nine to ten months—that it was not simply between myself and the ministers responsible for lotteries, although the ministers were the key negotiators in the agreement. It was between governments as a whole. Therefore, any decisions that were made had to be passed by cabinet of each of the provinces and, of course, also by the federal government.

I can assure you that the provincial ministers responsible for lotteries had to consult with the Attorneys General just as I

[*Traduction*]

loteries, nous leur permettons de mettre sur pied des entreprises concurrentielles qui vraiment ne servent pas les intérêts du Canada dans son ensemble. Je me demande si l'on pourrait faire quelque chose pour empêcher que les provinces ne se lancent dans le type de concurrence qu'elles exercent parfois en accordant, par exemple, des allègements fiscaux à certaines industries pour les attirer, etc.

M. Jelinek: Pour répondre à la première partie de votre énoncé, la question ne se résumait pas à l'accord de 1979 conclu par le gouvernement conservateur antérieur; il s'agissait aussi de mettre un terme aux pertes de 1,5 million de dollars par semaine qu'on enregistrait à l'époque où le nouveau gouvernement a été formé.

Pour répondre à l'essentiel de votre question, les provinces avaient le droit de faire ce qu'elles font maintenant avant la présentation de ces modifications. Autrement dit, c'est le statu quo. Elles auraient pu se livrer concurrence et le faisaient effectivement avant cet accord et avant ces modifications. Ces dernières n'ont pas encore été adoptées et nous attendons que vous le fassiez, évidemment. Quelle que soit la ligne de conduite des provinces dans le domaine des loteries, elles pourront continuer de la poursuivre. Il ne nous appartient pas, je crois, de nous immiscer dans les sphères de compétence des provinces.

Ce que j'essaie de faire valoir, madame la présidente et honorables sénateurs, c'est que ce projet de loi donne simplement force de loi au statu quo existant dans les provinces.

Le sénateur Stanbury: Je comprends bien, mais je m'inquiète simplement de ce que nous ne fassions rien pour pallier ce que je considère comme une faiblesse très regrettable du système.

L'autre problème, c'est que d'après les ministres de la Justice des provinces, on a consulté les ministres responsables des loteries et peut-être des sports mais pas eux. Nous devrons probablement entendre certains ministres de la Justice pour qu'ils nous fassent part des préoccupations qu'ils nous ont exprimées en privé. Pourriez-vous nous parler de la consultation qui a eu lieu? Vous semblez laisser entendre qu'il y avait un accord qui prévoyait entre autres que ces modifications seraient adoptées et que c'était le vœu des ministres de la Justice plutôt que du gouvernement fédéral actuel. Il ne semble pas que ce soit vrai d'après les observations que nous ont transmises les ministres de la Justice.

M. Jelinek: Je tiens à préciser qu'à l'époque des négociations entre le gouvernement fédéral et les provinces—qui ont duré neuf ou dix mois—ce n'était pas simplement entre moi et les ministres responsables des loteries, quoique les ministres aient été les principaux négociateurs. C'était des négociations entre gouvernements. Toute décision devait donc être prise par le cabinet de chaque gouvernement provincial et, évidemment, par celui du gouvernement fédéral.

Je puis vous assurer que les ministres provinciaux responsables des loteries ont dû consulter les ministres de la Justice de

[*Text*]

had to consult with the Minister of Justice and his officials. In fact, there was consultation between the Department of Justice and the Attorneys General both prior to the signing of the agreement and subsequently.

I understand that the Attorney General of Ontario now has second thoughts, but let us be realistic about it, because it is a new government. This Attorney General was not in place when the agreement was signed. However, the agreement of June is a binding agreement. It is an agreement that is signed between the Government of Canada and the ten provinces and not just some ministers responsible for sports or lotteries. It was signed legally between the Government of Canada and the ten provincial governments. Therefore, as far as I am concerned, it is a legal and binding document. Having said that, we want to satisfy the Attorney General of Ontario.

I sent one of my assistants to Toronto yesterday to meet with his officials to try to explain in detail how we formulated and worked towards the process of finalizing the agreement and developing these amendments.

The Minister of Justice has just written a five-page letter to Mr. Scott, the Attorney General of Ontario, explaining to him in detail the situation. I have offered my time to Mr. Scott as well to try to explain to him how the process was developed and how we finally came to the agreement that was signed in June.

I think the process was very clear-cut and fairly arrived at by all parties. When I signed the agreement, I thought I would be applauded for being able to receive $100 million of non-taxable revenue dollars from the Interprovincial Lottery Corporation representing all the provinces towards the staging of the Olympics in Calgary which is going to be a major event beneficial to all provinces, to all Canadians and to Canada as a whole.

Senator Stanbury: I would not want to suggest for a moment that we are not delighted that the funds were raised for the Calgary Olympics. What we are concerned about is whether we, as the people of Canada, paid too high a price to help you go hand in hand to get that benefit?

Mr. Jelinek: Senator, may I ask you a question? What price did we pay? We received $100 million for something that we gave the provinces in 1979.

Senator Stanbury: That is precisely why I am asking these questions. Did we pay too high a price in what we have done in legislation to make it possible?

While you are satisfied with the process you have followed, is it perhaps fair to say that any attorney general, in looking at it in retrospect as a new attorney general, might feel that the normal process of amending the Criminal Code was not followed. The normal process is to go through the offices of the Minister of Justice and the attorneys general with the other ministers being involved in a peripheral way instead of, in this case, the ministers with responsibility for lotteries doing the negotiating with the Attorneys General involved. Therefore, it

[*Traduction*]

leur province tout comme j'ai dû consulter le ministre de la Justice du gouvernement fédéral et ses hauts fonctionnaires. En fait, il y a eu une consultation entre le ministère fédéral et les ministres provinciaux de la Justice avant la signature de l'accord et après.

Je crois comprendre que le ministre de la Justice de l'Ontario a réfléchi à la question, mais soyons réalistes à ce sujet, car nous avons affaire à un nouveau gouvernement. Le ministre de la Justice actuel n'était pas en fonction quand l'accord a été signé. Toutefois, l'accord de juin est irrévocable. Il a été signé par le gouvernement du Canada et les provinces et par seulement pas certains ministres responsables des sports ou des loteries. Il a été légalement signé par le gouvernement du Canada et les dix gouvernements provinciaux. En ce qui me concerne, c'est donc un document légal irrévocable. Cela dit, nous voulons donner satisfaction au ministre de la Justice de l'Ontario.

J'ai envoyé hier un de mes assistants à Toronto pour qu'il y rencontre ses fonctionnaires afin de leur expliquer en détail comment nous avons formulé l'accord, comment nous y avons mis la dernière main et comment nous avons élaboré ces modifications.

Le ministre fédéral de la Justice vient d'écrire une lettre de cinq pages à M. Scott, ministre de la Justice de l'Ontario, pour lui expliquer en détail la situation. J'ai également offert à M. Scott d'essayer de lui expliquer comment le processus a été mis au point et comment nous en sommes finalement venus à l'accord qui a été signé en juin.

Je pense que le processus était bien délimité et que toutes les parties ont eu leur mot à dire. Lorsque j'ai signé l'accord, je pensais qu'on m'aurait félicité d'être parvenu à obtenir 100 millions de dollars non imposables de la Société de loterie interprovinciale, qui représente toutes les provinces dans l'organisation des olympiques qui auront lieu à Calgary et qui profiteront à toutes les provinces, à tous les Canadiens et au Canada dans son ensemble.

Le sénateur Stanbury: Je ne voudrais nullement laisser entendre que nous ne sommes pas enchantés de ce que des fonds aient été recueillis pour les olympiques de Calgary. Mais nous nous demandons si, en tant que Canadiens, nous ne payons pas un peu cher pour vous aider à obtenir cet avantage?

M. Jelinek: Sénateur, puis-je vous poser une question? Qu'avons-nous payé? Nous avons reçu 100 millions de dollars pour quelque chose que nous avons accordé aux provinces en 1979.

Le sénateur Stanbury: C'est précisément pourquoi je pose ces questions. Ce que nous avons fait par voie législative pour rendre la chose possible représente-t-il un prix trop élevé?

Bien que vous soyez satisfait du processus que vous avez suivi, il serait peut-être juste de dire qu'un ministre de la Justice qui considère la question rétrospectivement parce qu'il vient d'être nommé estimera peut-être qu'on n'a pas suivi le processus normal de la modification du Code criminel. Le processus habituel consiste à passer par les bureaux des ministres fédéral et provinciaux de la Justice et de faire intervenir aussi les autres ministres, plutôt que de charger les ministres responsables des loteries de mener les négociations avec les ministres

[*Text*]

is a different process so I think it, at least, makes us understand why there might be some concern.

Mr. Jelinek: The provincial attorneys general had the recommendations for these amendments before them for their consideration well before the agreement was signed. In fact, the deputy attorneys general had a meeting in Montreal on May 1 where this matter was on their agenda. It is not a question of bypassing the provincial attorneys general, because they were involved. Mr. Scott obviously is a new attorney general, and you probably know something that the rest of us do not know if you are suggesting that there are other attorneys general that will come on the scene but we will have to wait and see.

Senator Stanbury: Thank you for the clarification.

Senator Robichaud: You have stated that the present legislation has been introduced to legalize the *status quo*. Does that mean that the *status quo* contains an element of illegality or uncertainty?

Mr. Jelinek: If there is a law that states that the provinces are allowed to do what they are doing, then it is not illegal. I am assuming that.

Senator Robichaud: Is there a law?

Mr. Jelinek: Perhaps Mr. Piragoff can answer that question.

Mr. Piragoff: Presently the Criminal Code provides that a number of gaming opportunities or activities may be undertaken by provincial governments directly or under licence of provincial governments.

The Chairman: What section is that?

Mr. Piragoff: Section 190 of the Criminal Code, Madam Chairman.

The provision uses a very broad concept of a lottery scheme which means a game. A game can include a game of chance or mixed chances in skill. The legal interpretation of those words has given the concept a very broad meaning. Accordingly, various games that are played in Alberta or Manitoba in casinos, which are government operated in Manitoba, and which are government licensed in Alberta, for example, will include various types of gaming activities such as "blackjack" or spinning "crown and anchor." Those types of activities are games. Under the current interpretation of the section, those activities are legal.

The Loto Quebec Corporation was operating a few years ago a sportspool type of game on hockey games. The Quebec Court of Appeal said that under the present law it was legal for that corporation to run the Hockey Select Game, which involved picking the winners of a series of games. Some of the games were given and in others you had to pick the winners. I cannot remember the umber of games where you had to pick. So under the present law a number of activities were legal and the judicial interptretation was very broad. It opened the door for a number of other types of games and activities which the provinces had not yet jumped into, but it was possible for the

[*Traduction*]

de la justice intéressés, comme ce fut le cas. C'est donc un processus différent, et du moins, il nous fait comprendre pourquoi cela peut soulever certaines préoccupations.

M. Jelinek: Les ministres de la Justice des provinces ont reçu les recommandations relatives aux modifications bien avant la signature de l'accord. En fait, le 1er mai, les sous-ministres de la Justice ont tenu à Montréal une réunion au cours de laquelle cette question était à l'ordre du jour. Il ne s'agissait pas de reléguer au second plan les ministres de la Justice des provinces puisqu'ils participaient au processus. M. Scott est un nouveau ministre de la Justice, et vous savez probablement quelque chose que le reste d'entre nous ignore si vous laissez entendre que d'autres ministres de la Justice interviendront, mais il faut attendre.

Le sénateur Stanbury: Merci de vos éclaircissements.

Le sénateur Robichaud: Vous avez déclaré que le projet de loi a été présenté pour légaliser le statu quo. Cela veut-il dire que le statu quo contient un élément d'illégalité ou d'incertitude?

M. Jelinek: Si une loi établit que les provinces sont autorisées à faire ce qu'elles font maintenant, alors il n'est pas illégal. C'est ce que je présume.

Le sénateur Robichaud: Y a-t-il une loi?

M. Jelinek: M. Piragoff pourrait peut-être répondre à cette question.

M. Piragoff: Actuellement, le Code criminel stipule qu'un certain nombre d'activités de jeu peuvent être menées par les gouvernements des provinces directement ou en vertu d'une licence provinciale.

Le président: De quel article s'agit-il?

M. Piragoff: De l'article 190 du Code criminel, madame la présidente.

Cette disposition repose sur une définition très vaste de l'expression «système de loterie, qui comprend un jeu. Par jeu, on entend soit un jeu de hasard ou un jeu combinant le hasard et l'adresse. L'interprétation juridique de ces termes a donné à cette notion une signification très large. En conséquence, au nombre des jeux auxquels on peut jouer dans les casinos en Alberta ou au Manitoba on trouve notamment le 21 ou la roue de fortune. En Alberta, le gouvernement délivre des permis d'exploitation des casinos tandis qu'au Manitoba, c'est le gouvernement lui-même qui les exploite. Ce genre d'activités entrent dans la définition de jeu. Or, selon l'interprétation actuelle de cet article, ces activités sont légales.

Il y a quelques années, la Société Loto-Québec offrait des paris sportifs sur les matchs de hockey. La Cour d'appel du Québec a statué qu'en vertu de la loi actuelle, cette société pouvait légalement offrir la loterie Hockey Select qui supposait le choix des gagnants d'une série de matchs de hockey. Le résultat de certains matchs était donné mais pour d'autres, vous deviez choisir les gagnants. Je ne me souviens plus pour combien de matchs il fallait choisir. Ainsi, en vertu de la loi actuelle, un certain nombre d'activités étaient légales et assujetties à une interprétation juridique très vaste, ce qui a incité les provinces à se lancer dans des domaines qu'elles n'avaient

[*Text*]

provinces to move into those areas. This bill would give recognition to the activities which the provinces are presently undertaking and would put some limits on what they can do in future.

Mr. Jelinek: Perhaps I should give you some of the background. During the negotiations there were representations from some provinces to broaden the scope of gambling activities within the provinces, and I will not get into the specifics. The Department of Justice, under the Honourable John Crosbie, would not give me the authority to go further than what they were already doing by law. That is where I had a tough time, because my hands were tied and the provinces were saying, "What the hell are you giving us in return for the $100 million?" Of course, the answer was nothing. Basically what this piece of legislation does is forbid the federal government to get into the lottery business. It does not provide a broader scope in gaming operations for the provinces.

I must leave in five minutes, but I would like to make one final pitch. The agreement with the provinces for the $100 million is based on this legislation passing prior to the end of this year. I feel that it would be a very negative situation, not only for the federal government but for the provincial governments, if the agreement made last June and provided for in this piece of legislation did not pass by the end of this year. I reiterate my offer, Madam Chairman, to this committee to come back any time for further questioning and for as long as you need me.

Senator Robichaud: Was it a condition, *sine qua non* that this legislation be passed this year or it would be dropped?

Senator Stanbury: Could we have a copy of that agreement?

Mr. Jelinek: Sure.

The Chairman: Do you have a copy with you?

Mr. Jelinek: I don't have it here, but, of course, you can have a copy. It is a public document.

As to the honourable senator's question, Mr. Piragoff tells me that the provinces could argue that we are in breach of the contract. If they wanted to, they could make the contract null and void. Is that correct?

Mr. Piragoff: They could sue us for breach of contract. There is a clause in the agreement which provides that the government use its best efforts to pass the amendments as soon as possible and in any event no later than December 31, 1985.

The Chairman: What was the purpose of putting the particular date on it?

Mr. Jelinek: During the course of the negotiations, it was indicated that they wanted to have the agreement signed as soon as possible. On the other hand, I would like it to come into effect as soon as possible so that we could receive some of the funds from the provinces. We are already disbursing funds toward the construction of facilities in Calgary and we are in dire need of the provincial funds from the lotteries. Of course,

[*Traduction*]

pas encore touché jusque là. Le présent projet de loi reconnaîtrait les activités dans lesquelles les provinces sont déjà engagées et établirait certaines limites sur ce qu'elles pourront faire à l'avenir.

M. Jelinek: Peut-être devrais-je vous donner une idée de la situation. Au cours des négociations, certaines provinces ont exercé des pressions pour que soit élargie le champ des activités de jeu permises dans leur juridiction. Je n'entrerai pas dans les détails. Or, le ministère de la Justice, sous la direction de l'honorable John Crosbie, se refusait à m'accorder le pouvoir d'élargir leur champ de compétence au-delà de ce que leur permettait déjà la loi. J'étais donc dans une situation difficile. D'une part, j'avais les mains liées et d'autre part, les provinces se plaignaient—avec raison d'ailleurs—que nous ne leur donnions rien en échange de leur contribution de 100 millions. Essentiellement, la mesure législative à l'étude interdit au gouvernement fédéral d'exploiter des loteries. Elle n'élargit pas le champ des opérations de jeu des provinces.

Je dois partir dans cinq minutes, mais je tiens à présenter un dernier argument. L'entente de 100 millions avec les provinces repose sur une condition: que la mesure soit adoptée avant la fin de cette année. Je crois qu'il serait très mauvais, non seulement pour le gouvernement fédéral mais aussi pour les gouvernements provinciaux, que l'entente conclue en juin dernier et concrétisée dans cette mesure ne soit pas adoptée d'ici la fin de l'année. Madame le président, je réitère mon offre au comité de revenir à une autre occasion pour répondre à d'autres questions et venir en aide au comité de façon générale.

Le sénateur Robichaud: Etait-ce une condition *sine qua non* que cette mesure soit adoptée cette année ou est-il possible qu'elle soit abandonnée?

Le sénateur Stanbury: Pourrions-nous avoir une copie de cet accord?

M. Jelinek: Bien sûr.

Le président: En avez-vous un exemplaire avec vous?

M. Jelinek: Non, mais vous pouvez certes en avoir une copie. C'est un document public.

Pour répondre à la question de l'honorable sénateur, M. Piragoff m'avise que les provinces pourraient nous accuser de rupture de contrat. Si elles le voulaient, elles pourraient annuler le contrat. N'est-ce pas?

M. Piragoff: Elles pourraient effectivement nous poursuivre pour rupture de contrat. L'entente renferme une clause dans laquelle le gouvernement s'engage à faire tout en son pouvoir pour adopter les amendements le plus tôt possible et, de toute façon, au plus tard le 31 décembre 1985.

Le président: Pourquoi avoir fixé cette date en particulier?

M. Jelinek: Au cours des négociations, les provinces ont fait savoir qu'elles voulaient que l'entente soit signée le plus rapidement possible. Pour ma part, je tiens aussi à ce qu'elle entre en vigueur le plus tôt possible afin que nous puissions recevoir certains fonds des provinces. Nous injectons déjà des fonds dans la construction d'installations à Calgary et nous avons grandement besoin des fonds provinciaux tirés des loteries. Bien

[*Text*]

we will not be receiving any of those funds until all aspects of the agreement have been satisfied, and the remaining aspect of the agreement is the passing of this legislation.

Senator Lewis: Then is the agreement illegal at the present time because this legislation has not been passed?

Mr. Jelinek: The agreement is not concluded.

Mr. Piragoff: The agreement is a legal contract.

Senator Lewis: For legal purposes?

Mr. Piragoff: If the legislation is not passed, it means that a condition of the agreement has not been fulfilled. It would be broken.

Senator Buckwold: Before the minister leaves, I would like to get clear in my own mind the financial implications. The previous government made an agreement that they received $25 million per year from the provinces for the giving away of any rights to lotteries that they might have federally. In this new agreement the government wants $100 million from the provinces.

Mr. Jelinek: In addition.

Senator Buckwold: In addition to the $25 million?

Mr. Jelinek: And tied to the CPI.

Senator Buckwold: Yes, and as a result, you are getting $35 million?

Mr. Jelinek: That is correct.

Senator Buckwold: Will you continue to get the $35 million?

Mr. Jelinek: That is correct. The provinces will then contribute $100 million.

Senator Buckwold: How will they do that? Over the years until the 1988 games?

Mr. Jelinek: According to the agreement there are three equal payments starting at the end of this year and going to the end of 1988. The distribution of the funds is in accordance with the sales or profits of the provinces as determined by the Interprovincial Lottery Corporation, which is a corporation set up to run the lotteries for the provinces.

Going back to Senator Stanbury's question about competition between the provinces, this Interprovincial Lottery Corporation will work on behalf of all ten provinces.

Senator Buckwold: How is this shared among the provinces? I gather that it is on the basis of the profits they earn from the lotteries which they run provincially?

Mr. Jelinek: That is correct.

Senator Buckwold: So it is not done on a per capita basis?

Mr. Jelinek: No. The federal government will not interfere in their decisions as to which province gives how much. That will be decided by the Interprovincial Lottery Corporation based on the sales and profits of the lotteries.

Senator Buckwold: Does the same arrangement apply for the $25 million or $35 million?

[*Traduction*]

entendu, il n'est pas question que nous recevions un sou avant que toutes les questions entourant l'entente soient réglées, la dernière étant l'adoption de ce projet de loi.

Le sénateur Lewis: Ainsi, l'entente est illégale à l'heure actuelle parce que la mesure n'a pas été adoptée?

M. Jelinek: L'entente n'est pas conclue.

M. Piragoff: Cette entente est un contrat légal.

Le sénateur Lewis: Comment ça légal?

M. Piragoff: Si la mesure n'est pas adoptée, cela signifie qu'une condition de l'entente n'a pas été respectée. Elle serait donc rompue.

Le sénateur Buckwold: Avant que le ministre parte, je voudrais être sûr que je comprends bien les implications financières de cette affaire. Le gouvernement précédent s'était entendu pour troquer les droits qu'il pouvait avoir d'exploiter les loteries au niveau fédéral contre 25 millions de dollars par année des provinces. En vertu de cette nouvelle entente, le gouvernement réclame 100 millions des provinces.

M. Jelinek: En plus.

Le sénateur Buckwold: En plus des 25 millions?

M. Jelinek: Oui et ils sont liés à l'indice des prix à la consommation.

Le sénateur Buckwold: C'est-à-dire qu'en fait vous obtenez 35 millions?

M. Jelinek: C'est exact.

Le sénateur Buckwold: Et vous continuerez d'obtenir 35 millions?

M. Jelinek: Précisément. Les provinces contribueront donc 100 millions.

Le sénateur Buckwold: Comment cette contribution sera-t-elle ventilée au cours des années jusqu'aux Jeux de 1988?

M. Jelinek: Aux termes de l'entente, trois paiements égaux sont prévus à compter de la fin de cette année jusqu'à la fin de 1988. La répartition des fonds se fait en fonction des ventes ou bénéfices de la province, déterminée par la Société interprovinciale de loterie. Il s'agit d'une société créée pour diriger les loteries pour le compte des provinces.

Pour en revenir à la question du sénateur Stanbury au sujet de la concurrence entre les provinces, cette société travaillera pour le compte des dix provinces.

Le sénateur Buckwold: Comment le fardeau est-il partagé entre les provinces? Je suppose que c'est sur la base des bénéfices tirés des loteries qu'elles exploitent?

M. Jelinek: C'est exact.

Le sénateur Buckwold: Il ne s'agit donc pas d'un calcul per capita?

M. Jelinek: Non. Le gouvernement fédéral n'interviendra pas pour dire combien telle province doit donner. Cette décision incombera à la Société interprovinciale de loterie dont le calcul sera fondé sur les ventes et bénéfices tirés des loteries.

Le sénateur Buckwold: Le même arrangement s'applique-t-il aux 25 ou 35 millions?

[*Text*]

Mr. Jelinek: It is the same thing.

Senator Buckwold: My last question does not have very much to do with the federal government. There is a proliferation of bingo establishments in my province of Saskatchewan. Are they covered in any way by the Criminal Code? What is happening is that private operators, in my opinion, are violating the original intent of bingo by getting non-profit organizations to sponsor bingo, which then goes on afternoon and night, six days a week, and they are trying to hold games seven days a week. The organizations end up getting very little and, from what I gather, the owners of the parlours are doing very well. Is that strictly under provincial legislation?

Mr. Jelinek: I shall ask Mr. Piragoff to answer your question because I am not in a position to do so, but before he does, I would ask to be excused. I would close by saying that if we are to be strictly non-partisan on this issue—which, I think, is what we should be—we must remember that this legislation makes legal an agreement which was signed in 1979 and which takes the federal government out of the gaming operations in return for what is now $35 million a year based on the CPI to go on indefinitely. It is not a bad return. Plus, there is the additional $100 million to be paid out over the next three years toward the staging of the Calgary Olympics. We must not forget the fact that the provinces are made up of Canadians in the same way as the federal government. We are talking about the same people and the same citizens. It is not as if it was "them" against "us". It was felt, rightly or wrongly, that the jurisdiction of the lotteries belongs to the provinces. It is already a fait accompli, and it was a question of getting an additional $100 million and legislating into effect a legal document that was signed in 1979.

So I plead with you, Madam Chairman and senators, to deal with this piece of legislation as quickly as possible. Again, I apologize for having to leave early and indicate once more that I am prepared to come back at any time.

The Chairman: Thank you, Mr. Minister. It is quite likely that we will ask you to come back, because the meeting has been somewhat shortened.

Mr. Piragoff: Because bingo is considered a game, it is within the definition of the lottery scheme under the Criminal Code and, therefore, governed by the Criminal Code, which provides that it may be operated pursuant to licences issued by the provincial governments. Therefore, it is up to each province to regulate bingo games and to issue licences. With respect to the situation in the Province of Saskatchewan, I understand that Manitoba had a similar situation. The provincial government there tightened the regulations to control the bingo hall situation.

The Chairman: The minister made the statement this morning, and I believe he said this to the House of Commons as well, that the bill will kill the ability of the federal government to operate lotteries and sports pools. Is that part of the agreement we hope to see shortly?

[*Traduction*]

M. Jelinek: Oui.

Le sénateur Buckwold: Ma dernière question n'a pas grand chose à voir avec le gouvernement fédéral. Il y a une multitude de salles de bingo dans ma province, la Saskatchewan. Sont-elles visées d'une façon quelconque par le Code criminel? A mon avis, les exploitants privés se trouvent à violer l'intention première de ce jeu en sollicitant le concours d'organismes à but non lucratif pour organiser des parties de bingo l'après-midi et le soir, six jours par semaine, en cherchant même à en organiser sept jours par semaine. Les organismes parrains ne touchent finalement que très peu et, d'après ce que je comprends, les propriétaires des salles eux, s'en tirent très bien. Cette question est-elle uniquement du ressort des provinces?

M. Jelinek: Je demanderai à M. Piragoff de répondre à votre question, parce que je ne suis pas en mesure de le faire moi-même, mais avant de lui céder la parole, je vous demanderais de m'excuser. Je terminerai en disant que, si nous voulons nous en tenir à des considérations non partisanes, ce que nous devrions faire, je crois, il faut se rappeler que ce projet de loi légalise un accord signé en 1979 en vertu duquel le gouvernement fédéral se retire des sociétés de jeu, en échange d'un montant annuel égal actuellement, selon l'IPC, à 35 millions de dollars et ce pour une période indéterminée. Ce n'est pas trop mal. Il y a aussi 100 millions de dollars de plus à verser pendant les trois prochaines années en vue de la tenue des jeux olympiques à Calgary. Il ne faut pas oublier que les provinces sont composées des mêmes Canadiens que ceux que représente le gouvernement fédéral. Nous avons affaire à la même population et aux mêmes citoyens. Les uns ne s'opposent pas aux autres. On a jugé, à tort ou à raison, que les loteries étaient du ressort des provinces. C'est déjà une affaire résolue et il s'agissait en fait d'aller chercher 100 millions de dollars de plus et de donner force de loi à un acte authentique signé en 1979.

Je vous prie donc, madame le président et sénateurs, de régler la question de ce projet de loi le plus vite possible. Je m'excuse encore d'avoir à partir dès maintenant et je vous rappelle que je suis prêt à revenir témoigner quand il vous plaira.

Le président: Merci, monsieur le ministre. Il est fort probable que nous vous demanderons de revenir étant donné que la séance doit être quelque peu écourtée.

M. Piragoff: Étant donné que le bingo est considéré comme un jeu, il entre dans la définition des loteries inscrite dans le Code criminel et, par conséquent, il est régi par le Code qui stipule que ce jeu peut être exploité conformément à des permis délivrés par les gouvernements provinciaux. Il appartient donc à chaque province de réglementer les jeux de bingo et de délivrer des permis. Pour ce qui est de la situation qui règne dans la province de la Saskatchewan, je crois comprendre qu'elle est semblable à celle qui existe au Manitoba. Dans cette province, le gouvernement a renforcé la réglementation pour pouvoir contrôler les activités des salles de bingo.

Le président: Le ministre a déclaré ce matin, et je crois qu'il a fait la même déclaration devant la Chambre des communes, que le projet de loi retirera au gouvernement fédéral sa capacité d'exploiter les loteries et les paris sportifs. Est-ce un des éléments de l'accord que nous espérons conclure sous peu?

[*Text*]

Yesterday Senator Nurgitz, prompted by concern over what was really involved in that kind of statement or the purported intent of the legislation, suggested that, if it appeared that criminal activities were involved around what was being permitted by this legislation, the federal government would be perfectly free to enact further provisions in the Criminal Code to prevent it. Am I quoting you correctly, Senator Nurgitz?

Senator Nurgitz: No, you are not. What I said yesterday in response to Senator Perrault, who was agonizing over the amendment to the Code that says that the federal government will never be involved in lotteries again, was that, if the situation arose, the federal government would simply amend the Code and put itself back into the lotteries field. I did not get into the legal question of crime.

The Chairman: Is that at variance with the type of statement that the minister made this morning and has made previously? Is that the view of the department?

Mr. Piragoff: No, Madam Chairman. Let me go back to the 1979 agreement. The law was not changed in 1979. Under the law as it then existed, the Government of Canada could operate lotteries any time it wished. By agreement with the provinces, it chose not to operate lotteries. Bill C-81, if passed, will remove the authority of the federal government to run lottery schemes and sport pools. Under the new legislation, the federal government would not even have the power to set up a crown agency or corporation to run lotteries or sport pools.

While the agreement entered into can bind the Government of Canada, it cannot bind the Parliament of Canada. The Parliament of Canada can only be bound by the Charter of Rights and Freedoms and the Constitution. It is therefore always open to any future Parliament to change the law in respect of lotteries. A future Parliament could return to the federal government all of the powers that are proposed to be taken away from it by virtue of Bill C-81, and could very well do so.

The Chairman: Without the agreement of the provinces? Or would it be in breach of the present agreement if it were to do so?

Mr. Piragoff: Parliament is not a party to the agreement. One cannot make an agreement with the Parliament of Canada. Parliament is free to do as it wishes. Whether or not the government could be held to the agreement is another question entirely. I am unable to give an answer as to the likelihood of how long this agreement will last. Clearly, there is nothing to prevent Parliament from introducing amendments in years to come that would return to the federal government the powers that are proposed to be taken away from it pursuant to Bill C-81.

The Chairman: I take it you are saying that Parliament, in the event that it chose not to pass this bill, could not be held to be in breach of the agreement.

Mr. Piragoff: Parliament is not a party to the agreement. Only the Government of Canada and the governments of the provinces are parties to the agreement.

[*Traduction*]

Hier, le sénateur Nurgitz, désireux de connaître l'incidence de cette déclaration ou l'intention du projet de loi, a demandé si, dans l'éventualité où des activités criminelles étaient liées aux manifestations autorisées par la loi, le gouvernement fédéral allait être parfaitement libre d'ajouter des dispositions au code criminel pour les interdire. Est-ce que je cite bien vos propos, sénateur Nurgitz?

Le sénateur Nurgitz: Non. J'ai dit hier, en réponse au sénateur Perrault, qui s'inquiétait de l'amendement du Code qui stipule que le gouvernement fédéral ne s'occupera plus des loteries, que si la situation l'exigeait, le gouvernement fédéral n'aurait qu'à modifier le Code pour reprendre le contrôle des loteries. Je n'ai pas pas parlé des activités criminelles.

Le président: Est-ce différent de la déclaration que le ministre a faite ce matin et plus tôt auparavant? Est-ce l'avis du ministère?

M. Piragoff: Non, madame le président. Permettez-moi de revenir sur l'accord de 1979. La loi n'a pas été modifiée en 1979. En vertu de la loi en vigueur à cette époque, le gouvernement du Canada pouvait exploiter des loteries à son gré. D'un commun accord avec les provinces, il a choisi de ne pas le faire. Le projet de loi C-81, s'il est adopté, privera le gouvernement fédéral du pouvoir d'exploiter des loteries et des paris sportifs. En vertu du nouveau projet de loi, le gouvernement fédéral n'aurait même pas le pouvoir d'établir une agence ou une société de la Couronne pour l'exploitation de loteries ou de paris sportifs.

Si l'accord conclu engage le gouvernement du Canada, il n'engage pas le Parlement du Canada. Le Parlement du Canada ne peut être lié que par la Charte des droits et libertés et par la Constitution. Il est donc toujours loisible à tout futur gouvernement de changer la loi concernant les loteries. Un éventuel Parlement pourrait toujours remettre au gouvernement fédéral tous les pouvoirs que le projet de loi C-81 propose de lui retirer et serait tout à fait en droit de le faire.

Le président: Sans le consentement des provinces? Ou porterait-il atteinte au présent accord, s'il le faisait?

M. Piragoff: Le Parlement n'est pas partie à l'accord. Personne ne peut conclure un accord avec le Parlement du Canada. Le Parlement est libre d'agir comme il l'entend. Que le gouvernement soit tenu ou non de respecter l'accord est une toute autre question. Je suis incapable de dire pendant combien de temps l'accord sera en vigueur. Évidemment, rien n'empêche le Parlement de présenter dans les années à venir des amendements visant à rendre au gouvernement fédéral les pouvoirs qu'on propose de lui retirer en vertu du projet de loi C-81.

Le président: Je suppose que, d'après vous, dans l'éventualité où le Parlement déciderait de ne pas adopter le projet de loi, on ne pourrait considérer qu'il a porté atteinte à l'accord.

M. Piragoff: Le Parlement n'est pas partie à l'accord. Seuls le gouvernement du Canada et les gouvernements des provinces le sont.

[*Text*]

Senator Stanbury: Parliament was not bound by the 1979 agreement, and so certainly it could not bind subsequent Parliaments. There is therefore nothing to bind the Government of Canada to the agreement until such time as this bill is passed.

Mr. Piragoff: I am not sure that I follow your comments, Senator Stanbury.

Senator Stanbury: I think I have answered my own question. As you say, Parliament is never a party to an agreement. I was about to say that a given Parliament could only bind that particular Parliament; that it could not bind subsequent Parliaments. Therefore, the 1979 Parliament, even if it had bound itself, could not have bound subsequent Parliaments.

The easy answer is that Parliament cannot be bound in any event.

Senator Lewis: Is there anything in the federal-provincial agreement which calls for these amendments to be implemented within a certain time period? In other words, if these amendments are not implemented within a given time period, the agreement would be null and void.

Mr. Piragoff: There is no clause which specifies what the outcome shall be should the agreement be breached by any party.

Senator Stanbury: The minister said that part of the agreement was that these amendments be implemented by December 31 next. I take it that that had nothing to do with the 1979 agreement.

Mr. Piragoff: That is right.

Senator Stanbury: That relates strictly to the agreement calling for $100 million in funding for the Calgary Olympics.

Mr. Piragoff: That is correct, the agreement signed in June of 1985.

The Chairman: Can we get an explanation as to why the funds from these lotteries are not directed, except in the case of charitable organizations, where obviously they would have to be directed?

It seems to me that the conduct of a lottery — and this, I think, is a concern of the Ontario government — does not include a direction of the funds derived therefrom, specifically into sport activities, cultural activities, medical research, or any of the other areas, and that is something that I think was part of the original intent of these lottery schemes when they were first established.

It seems to me that each province is free to set up as many different money-making schemes as it wishes, with the money being used totally as that province wishes.

Is that the understanding of the federal government, and is that the spirit in which this most recent agreement was reached with the provinces; that is, with the provinces left completely unfettered in terms of how the money is not only raised but spent?

Mr. Piragoff: I cannot comment on the intent of the negotiators. I was not privy to all of the negotiations.

[*Traduction*]

Le sénateur Stanbury: Le Parlement n'était pas lié par l'accord de 1979 et ne pouvait sûrement pas engager les Parlements ultérieurs. Par conséquent, rien ne peut lier le gouvernement du Canada à l'accord tant que le projet de loi n'est pas adopté.

M. Piragoff: Je ne suis pas sûr de saisir vos propos, sénateur Stanbury.

Le sénateur Stanbury: Je pense que j'ai moi-même répondu à ma question. Comme vous le dites, le Parlement n'est jamais partie à un accord. J'allais dire qu'un Parlement donné ne pouvait engager que lui-même, et pas les Parlements ultérieurs. Par conséquent, le Parlement de 1979, même s'il s'engageait lui-même, ne pourrait engager les Parlements à venir.

En fait, c'est bien simple, quoiqu'il arrive, le Parlement ne peut être lié.

Le sénateur Lewis: Y a-t-il des dispositions dans l'accord fédéral-provincial qui exigent que ces amendements soient adoptés dans un certain délai? Autrement dit, s'ils n'étaient pas apportés dans un délai donné, l'accord deviendrait-il nul et non avenu?

M. Piragoff: Aucune disposition ne précise ce qu'il adviendrait si l'accord devait être rompu par l'une des parties.

Le sénateur Stanbury: Le ministre a déclaré que l'accord prévoyait entre autres que les amendements soient adoptés d'ici le 31 décembre prochain. J'imagine qu'il n'était pas du tout question de l'accord de 1979.

M. Piragoff: C'est exact.

Le sénateur Stanbury: Il est uniquement question de l'entente prévoyant des fonds de financement de 100 millions de dollars pour les Jeux olympiques de Calgary.

M. Piragoff: C'est exact, il s'agit de l'accord signé en juin 1985.

Le président: Peut-on nous expliquer pourquoi les fonds recueillis par ces loteries ne sont pas versés, sauf dans le cas des organismes de charité, là où de toute évidence ils devraient l'être?

A mon avis, l'exploitation d'une loterie, et je pense que c'est justement un sujet de préoccupation pour le gouvernement de l'Ontario, ne prévoit pas expressément que les fonds qu'elle procure doivent être versés à des activités sportives ou culturelles, à la recherche médicale ou à toute autre discipline, alors qu'il me semble que cette particularité faisait partie de l'intention originale des loteries quand elles ont été instaurées.

Il me semble comprendre que chaque province est libre de mettre sur pied autant d'opérations lucratives qu'elle le désire et d'utiliser les fonds exactement comme elle l'entend.

Est-ce bien ce que conçoit le gouvernement fédéral et est-ce dans cet esprit que le dernier accord a été conclu avec les provinces? Autrement dit, accorde-t-on aux provinces toute la latitude voulue tant pour ce qui est de la façon de recueillir les fonds que pour ce qui est de la façon de les dépenser?

M. Piragoff: Je ne peux me prononcer sur l'intention des négociateurs. Je ne suis pas au courant de toutes les négociations.

[*Text*]

I can, however, say what the current law is. Under the current law, and the law as it will be amended by this bill, the provinces are free to do with the money as they wish.

Let me now deal with the Sports Pool Corporation. While the Criminal Code did not limit how the federal government was to spend that money, the Sports Pool Corporation Act, which was the act which set up the corporation to run the sports pool, did place limits on the use of the moneys raised. As I understand it, any moneys raised were to be used for sports promotion, medical research purposes, and the like.

But that was a separate act of Parliament. There is nothing in the Criminal Code which restricts how the provincial governments are to distribute the proceeds from lotteries. The provincial governments themselves, however, either by way of legislation or regulation, are free to determine how such proceeds are to be distributed.

The Chairman: I have some concern with that. As you say, it will now be within the domain of the provincial jurisdiction.

Are there any other questions?

Senator Buckwold: I am just wondering what relationship the legislation setting up the Sports Pool has to this, in the sense that the Sports Pool is now no longer operational. What do the provinces now do with the proceeds raised?

Mr. Piragoff: The agreement deals with the payments aspect. Certainly there are some provisions in respect of payments. Unfortunately, I do not have the precise details in that regard. I apologize.

The Chairman: Do you think it will be possible for the committee to get copies of the agreement? The committee members should have the opportunity of examining it.

The Minister of Justice will be before the committee on a series of matters Tuesday next and we might take that opportunity, in the event that there are further questions with respect to these amendments, to put additional questions to the minister.

Mr. Piragoff: We will see that copies of the agreement are forwarded to the committee.

The Chairman: In that event, we will advise the Minister of Justice that questions on the agreement and the amendments contained in Bill C-81 may well be on the agenda for that meeting.

Do honourable senators have additional questions at this point?

Senator Buckwold: I have one of a general nature, Madam Chairman.

You have spoken of the iterprovincial organization established in respect of lotteries. Presumably, this organization is comprised of representatives from the various provinces and meets to discuss a variety of matters, including, perhaps, how much each province earns and how payments are allocated, and whatnot.

[*Traduction*]

Je peux toutefois préciser ce que la loi actuelle prévoit. Conformément à la loi actuelle et à la loi telle qu'elle sera modifiée par le présent projet de loi, les provinces sont libres d'utiliser les fonds à leur guise.

Permettez-moi de parler de la Société des paris sportifs. Alors que le Code criminel ne limite en rien la façon dont le gouvernement fédéral entend dépenser ses fonds, la Loi sur la Société des paris sportifs, qui crée la société chargée d'exploiter les paris sportifs, impose des limites quant à l'utilisation des fonds recueillis. D'après moi, les fonds recueillis devaient servir à la promotion du sport, à la recherche médicale et à d'autres objectifs du genre.

Mais il s'agit d'une autre loi. Rien dans le Code criminel ne limite la façon dont les gouvernements provinciaux peuvent distribuer les recettes des loteries. Toutefois, ils sont libres de déterminer, soit par des lois soit par des règlements, la façon dont ces recettes seront distribuées.

Le président: J'ai certaines inquiétudes à ce sujet. Comme vous dites, la question sera maintenant du ressort des provinces.

Y a-t-il d'autres questions?

Le sénateur Buckwold: Je me demande simplement qu'est-ce que la loi créant la Société des paris sportifs a à voir là-dedans, étant donné qu'elle n'existe plus. Que font les provinces maintenant avec les fonds recueillis?

M. Piragoff: L'accord vise les paiements. Il y a sûrement des dispositions au sujet des paiements. Malheureusement, je ne connais pas les précisions à ce sujet. Je m'en excuse.

Le président: Pensez-vous que le comité pourrait obtenir copie de l'accord? Les membres du comité devraient avoir la possibilité de l'étudier.

Le ministre de la Justice doit comparaître devant le comité pour discuter d'une foule de questions mardi prochain et nous pourrions profiter de l'occasion pour l'interroger, dans l'éventualité où des préoccupations susciteraient au sujet de ces modifications.

M. Piragoff: Nous verrons à ce que des exemplaires de l'accord soient envoyés au comité.

Le président: Dans ce cas, nous informerons le ministre de la Justice que des questions concernant l'accord et les modifications prévues dans le projet de loi C-81 seront au programme de cette séance.

Les honorables sénateurs ont-ils d'autres questions à poser à ce sujet?

Le sénateur Buckwold: J'ai une question générale à poser, Madame le président.

Vous avez parlé de l'organisme interprovincial chargé de s'occuper des loteries. Vraisemblablement, cet organisme est composé de représentants des différentes provinces qui se réunissent pour discuter de toutes sortes de questions et peut-être de la façon dont les provinces recueillent et distribuent les fonds.

[*Text*]

Does this organization have any control over the number of lotteries that may be established in any given province? Or is it within the prerogative of the respective provinces to set up as many lotteries as they may wish?

Mr. Piragoff: I am unsure as to the powers of the interprovincial corporation, Senator Buckwold. It is a corporation that has been created by the provincial governments. I am not sure what its powers are or even of its relationship to each of the provincial governments.

The Chairman: It would appear that there are no further questions, gentlemen. On behalf of the committee, I want to thank you for your assistance.

I can advise the committee that Inspector John Wilson, of the Criminal Intelligence Agency of the Province of Ontario, wishes to appear before the Committee in respect of Bill C-81.

As well, I have had some intimation from the Government of the Province of Ontario that it may wish to make representations. Certainly, some concerns have been expressed by the Province of Ontario in respect of the process, and as well there were a couple of substantive concerns expressed.

I was pleased to hear the minister say that the Minister of Justice has replied to the Attorney General of Ontario in respect of his concerns, and it is possible that all of those concerns will be allayed by that commuication. In any event, we will await events on that front.

In the meantime, I think we should try to schedule the appearances of the police associations. Some of these associations have expressed a great concern that they had not been consulted in relation to this process.

Senator Robertson: Would they not have been consulted by their respective provincial governments?

The Chairman: One would assume that they would have been. Other than the Province of Ontario, we have not had any replies from the various provincial jurisdictions. It may be that some of the provinces did a more thorough job than others in terms of consulting with the various provincial organizations.

Senator Robertson: That would seem to be the logical process.

The Chairman: Yes, one would think so.

Senator Stanbury: Madam Chairman, have we, as a matter of course, advised the provincial Attorneys General that we are dealing with this legislation and requesting their input?

The Chairman: Yes. To this point, we have had no official reply from any one of them.

As Senator Nurgitz has said, and as has been pointed out by the minister, Bill C-81 is the result of the federal-provincial agreement entered into in June of 1985. One, therefore, has to assume that the provinces are satisfied with it. In any event, our practice has been to advise all provincial Attorneys General of matters that affect the provinces and to invite their input.

I am sure we will have some reply by early next week, and hopefully before we meet with the Minister of Justice on Tuesday next.

[*Traduction*]

Cet organisme exerce-t-il un contrôle sur le nombre des loteries qui peuvent être créées dans une province donnée? Chaque province est-elle libre de mettre sur pied autant de loteries qu'elle le désire.

M. Piragoff: Je ne connais pas avec précision les pouvoirs de l'organisme interprovincial, sénateur Buckwold. Il a été créé par les gouvernements provinciaux. Je ne connais pas bien ses pouvoirs ni même ses liens avec chacun des gouvernements provinciaux.

Le président: Il semblerait qu'il n'y a plus de question, messieurs. Au nom du comité, je tiens à vous remercier de votre présence parmi nous.

J'informe le comité que l'inspecteur John Wilson du Criminal Intelligence Agency de la province de l'Ontario désire venir témoigner devant le comité au sujet du projet de loi C-81.

J'ai aussi été pressenti par le gouvernement de la province de l'Ontario qui aimerait se prononcer à ce sujet. Des inquiétudes ont été formulées par la province de l'Ontario, dont une ou deux assez importantes.

J'ai été heureux d'entendre le ministre indiquer que le ministre de la Justice avait répondu au Procureur général de l'Ontario à ce sujet et que cette communication pourrait résoudre tous les points soulevés. Quoiqu'il en soit, nous attendons la suite des événements.

Dans l'intervalle, je pense que nous devrions fixer la date de comparution des associations policières. Certaines d'entre elles sont fort contrariées de ne pas avoir été consultées sur la question.

Le sénateur Robertson: N'auraient-elles pas été consultées par chacun des gouvernements provinciaux?

Le président: On pourrait présumer que oui. À part le cas de la province de l'Ontario, nous n'avons rien reçu des autres administrations provinciales. Certaines provinces ont peut-être consulté les différents organismes provinciaux de façon plus systématique que d'autres.

Le sénateur Robertson: C'est la façon logique de procéder, il me semble.

Le président: Oui, il me semble.

Le sénateur Stanbury: Madame le Président, avons-nous informé les Procureurs généraux des provinces que nous étudions ce projet de loi et leur avons-nous demandé de nous faire part de leurs observations?

Le président: A ce jour, nous n'avons reçu aucune réponse officielle d'aucun d'entre eux.

Comme le sénateur Nurgitz l'a dit, et comme le ministre l'a indiqué, le projet de loi C-81 découle de l'accord fédéral-provincial conclu en juin 1985. Il faut donc présumer que les provinces en sont satisfaites. Quoi qu'il en soit, nous avons pour habitude d'informer tous les Procureurs généraux des questions qui touchent leur province et de les inviter à se prononcer.

Je suis sûre que nous aurons des réponses d'ici le début de la semaine prochaine et, avant notre rencontre avec le ministre de la Justice, mardi prochain.

[*Text*]

As honourable senators are aware, Bill C-81 consists of amendments to rather senstive sections of the Criminal Code. Mr. Jelinek, in introducing this measure in the House of Commons, pointed out that the bill involves extremely complex provisions of the Criminal Code. That being so, I think it warrants further consideration on our part.

We will go ahead and schedule the appearances of the Criminal Intelligence Agency for Ontario.

Senator Nurgitz: Do I understand that that agency was to speak in opposition to the bill?

The Chairman: I am not sure what the position of that agency is. The indiciation was that the bill legalizes gambling to some extent, and in that respect they have some concern.

At this point, the committee will go into an *in camera* session.

The committee continued *in camera*.

[*Traduction*]

Comme les honorables sénateurs le savent, le projet de loi C-81 prévoit la modification d'articles assez critiques du Code criminel. Quand il a présenté le projet de loi à la Chambre des communes, M. Jelinek a souligné que le projet de loi touchait des dispositions très complexes du Code criminel. A ce titre, je pense qu'il exige un examen approfondi de notre part.

Nous allons fixer les dates de comparution du Criminal Intelligence Agency de l'Ontario.

Le sénateur Nurgitz: Dois-je comprendre que ce service conteste le projet de loi?

Le président: Je ne connais pas avec précision sa position. Il a indiqué avoir certaines réserves sur le fait que le projet de loi légalise jusqu'à un certain point le jeu.

Le comité tiendra maintenant une séance à huis clos.

Le comité poursuit ses travaux à huis clos.

TAB 16

First Session
Thirty-third Parliament, 1984-85

SENATE OF CANADA

Proceedings of the Standing Senate Committee on

Legal and Constitutional Affairs

Chairman:
The Honourable JOAN NEIMAN

Tuesday, December 3, 1985

Issue No. 30

Second proceedings on:

The Examination of Bill C-81, "An Act to amend the Criminal Code (lotteries)"

Complete proceedings on:

The Examination of Bill C-78. "An Act to amend the Governor General's Act, the Governor General's Retiring Annuity Act, the Salaries Act and the Judges Act"

First proceedings on:

The Examination of Bill C-49, "An Act to amend the Criminal Code (prostitution)"

Twelfth proceedings on:

The Examination of the subject-matters of Bill C-46, "An Act to amend the Divorce Act"; Bill C-47 "An Act respecting the Divorce and Corollary Relief Act"; AND Bill C-48. "Family Orders Enforcement Assistance Act"

INCLUDING:

Reports of the Committee on Bill C-78

APPEARING:

The Honourable John C. Crosbie, P.C., M.P.

WITNESSES:
(See back cover)

Première session de la
trente-troisième législature, 1984-1985

SÉNAT DU CANADA

Délibérations du Comité sénatorial permanent des

Affaires juridiques et constitutionnelles

Présidente:
L'honorable JOAN NEIMAN

Le mardi 3 décembre 1985

Fascicule nº 30

Deuxième fascicule concernant:

L'étude du projet de loi C-81, «Loi modifiant le Code criminel (loteries)»

Seul et unique fascicule concernant:

L'étude du projet de loi C-78, «Loi modifiant la Loi sur le gouverneur général, la Loi sur la pension de retraite du gouneur général, la Loi sur les traitements et la Loi sur les juges»

Premier fascicule concernant:

L'étude du projet de loi C-49, «Loi modifiant le Code criminel (prostitution)»

Douzième fascicule concernant:

L'étude de la teneur des projets de loi C-46, «Loi modifiant la Loi sur le divorce»; C-47, «Loi concernant le divorce et les mesures accessoires»; ET C-48, «Loi d'aide à l'exécution des ordonnances familiales»

Y COMPRIS:

Le Rapport du Comité sur le projet de loi C-78

COMPARAÎT:

L'honorable John C. Crosbie, c.p., député

TÉMOINS:
(Voir à l'endos)

28309-1

EVIDENCE

Ottawa, Tuesday, December 3, 1985

[*Text*]

The Standing Senate Committee on Legal and Constitutional Affairs, to which were referred Bill C-81, to amend the Criminal Code (lotteries), Bill C-78, to amend the Governor General's Act, the Governor General's Retiring Annuity Act, the Salaries Act and the Judges Act, and Bill C-49, to amend the Criminal Code (prostitution), met this day at 6 p.m. to give consideration to the bills and to give consideration to the subject matter of Bill C-46, to amend the Divorce Act, Bill C-47, respecting the Divorce and Corollary Relief Act, and Bill C-48, the Family Orders Enforcement Assistance Act.

Senator Joan Neiman (*Chairman*) in the Chair.

The Chairman: Honourable senators, you have undoubtedly heard the bell in the other place. It is a 15-minute bell calling for a vote; so the minister has been delayed.

Until he arrives, I thought it might be as well for us to take a look at Bill C-81, to amend the Criminal Code (lotteries) because Mr. Richardd Mosley of the Department of Justice, who has been following this bill on behalf of the minister, is here and he is prepared to answer some questions with regard to background or factual matters with respect to that bill.

When the minister arrives, we will consider the bills that we have before us in the order that is preferable to the minister.

Senator Stanbury, would you like to start the questioning?

Senator Stanbury: Yes. Mr. Mosley, I must confess I have so much material here that I am a little lost tonight, we are hoping to cover so much this evening with the minister. However, perhaps we might get a little clarification from you. Mr. Jelinek was here the other day and we got into a discussion about the kind of consultation that went on with the attorneys general. He said quite frankly that the main persons with whom he had consultations and a responsibility to consult in the provinces were his counterparts, the people who had responsibility for lotteries in the provinces, but that he was satisfied that the attorneys general had also been consulted, and he talked about some meetings. I am not sure that I have any detail of those meetings, other than one that took place, apparently, in Montreal some time in May. I am wondering if you can elucidate the question of consultation with the Attorneys General and what the extent of that consultation was.

Mr. Richard Mosley, General Counsel, Criminal Law Policy and Amendments Section, Department of Justice: Certainly. Madam Chairman, the process of discussions between the Department of Justice and the provincial attorneys general in respect of the amendments to the code began with a meeting of federal and provincial deputy ministers responsible for criminal justice which was held in Montreal on May 2 of this

TÉMOIGNAGES

Ottawa, le mardi 3 décembre 1985

[*Traduction*]

Le Comité sénatorial permanent des affaires juridiques et constitutionnelles se réunit ce jour même à 18 heures pour étudier le projet de loi C-46, modifiant la Loi sur le divorce, le projet de loi C-47 concernant la Loi sur le divorce et les mesures accessoires, le projet de loi C-48, Loi d'aide à l'exécution des ordonnances familiales, le projet de loi C-78, modifiant la Loi sur le gouverneur général, la Loi sur la pension de retraite du gouverneur général, la Loi sur les traitements et la Loi sur les juges, ainsi que le projet de loi C-81 modifiant le Code criminel (loteries).

Le sénateur Joan Neiman (*présidente*) préside la séance.

La présidente: Honorables sénateurs, vous avez certainement entendu sonner la cloche de l'autre côté. Cette sonnerie d'appel de 15 minutes signifie la tenue d'un vote, ce qui explique le retard du ministre.

En l'attendant, je pense qu'il serait bon de se pencher sur le projet de loi C-81 modifiant le Code criminel (loteries) puisque nous avons ici même M. Richard Mosley du ministère de la Justice, qui a suivi ce projet de loi au nom du ministre. Je crois qu'il est prêt à répondre à vos questions sur ce projet de loi.

Dès l'arrivée du ministre, nous étudierons les projets de loi que nous avons devant nous dans l'ordre que préférera le ministre.

Sénateur Stanbury, voulez-vous commencer à poser des questions?

Le sénateur Stanbury: Certainement. Monsieur Mosley, je dois vous avouer que j'ai tellement de documents devant moi ce soir que je suis un peu perdu. Nous espérons en effet aborder énormément de choses ce soir avec le ministre. Peut-être pourrais-je auparavant obtenir certaines explications de votre part. M. Jelinek était présent l'autre jour et nous nous sommes lancés dans une discussion sur le genre de consultations ayant eu lieu avec les procureurs généraux. Il a indiqué très franchement que les principales personnes avec lesquelles il avait eu des consultations et qu'il se doit de consulter dans les provinces, étaient ses homologues, c'est-à-dire en fait les personnes responsables des loteries dans les provinces. Il a toutefois ajouté qu'il était convaincu que les procureurs généraux avaient eux aussi été consultés, puis il a parlé de certaines réunions. Je ne suis pas certain de posséder les détails de ces réunions, si ce n'est de celle qui a eu lieu apparemment à Montréal dans le courant du mois de mai. Je me demande si vous pourriez éclaircir la question des consultations qui ont eu lieu avec les gouverneurs généraux et nous dire également sur quoi elles ont porté.

M. Richard Mosley, avocat général, Section de la politique et de la modification du droit en matière pénale, ministère de la Justice: Certainement. Madame la présidente, les discussions qui ont eu lieu entre le ministère de la Justice et les procureurs généraux des provinces en ce qui a trait aux amendements au Code ont commencé dans le cadre d'une réunion des sous-ministres fédéral et provinciaux responsables de la justice

[*Text*]

year. At that time, we tabled a draft agreement which had been worked up by Mr. Jelinek's staff and representatives of the provincial departments responsible for lotteries, and of the Interprovincial Lotteries Corporation, and with which at that point we had had a hand with respect to the code amendments and some discussion as to the other terms of the agreement relating to the litigation that was under way at that time.

Proposals came as a bit of a surprise to most of the provincial attorneys general who, to our understanding, up to that point, had not been included in the discussions with the provincial ministers responsible for lotteries. We followed that meeting with a further meeting of officials at my level, the level of the directors within the respective departments, in Halifax on June 5 and 6. That meeting following, however, the signing on June 3 of the agreement which contained the draft amendments to the code which appear in the document identified as Schedule A which has been circulated to you.

Following that, there was an exchange of correspondence in which we solicited suggestions from the provincial departments for further changes to the amendments in accordance with the term of the agreement signed on the 3rd, which called for further consultations with the provincial attorneys general, and, as a result, we made some further changes to the proposed amendments. They do not reflect exactly what is contained in Schedule A, but correspond in substance to what appears in that document. The further amendments were proposed by several provinces to accommodate their interests. For example, the inclusion of fisheries fairs was proposed by the maritime provinces, since there was an exception in the code dealing with agricultural fairs, and that would provide the opportunity for fisheries fairs in the maritimes to conduct games of chance.

Following that exchange of correspondence, several of the proposals made by the provinces were incorporated in the draft legislation that was tabled in the house. There was a further discussion in mid-November. That followed the introduction of the bill, and followed a notice that had gone out to each of the provincial attorneys general concurrent in time with the introduction of the bill as to the form that the bill would take.

Senator Stanbury: If I understand you correctly, that meeting on May 2 in Montreal involved simply a matter of tabling the agreement at that point, is that correct?

Mr. Mosley: That was essentially it. It was tabled; we explained how we viewed the amendments that were being proposed.

Senator Stanbury: Was there a long discussion at that time?

Mr. Mosley: There was a discussion primarily on the question of process. The substance of the amendments was not gone into, to any great extent.

Senator Stanbury: So the follow-up meeting that you spoke of was in June?

Mr. Mosley: That is correct.

[*Traduction*]

criminelle, le 2 mai de cette année à Montréal. A cette époque, nous avions présenté un projet d'entente élaboré par le personnel de M. Jelinek et des représentants des ministères provinciaux responsables des loteries et de la Société interprovinciale des loteries, laquelle avait eu alors des discussions avec nous sur les autres dispositions de l'entente relativement au contentieux en cours à cette époque, et nous avait apporté son aide en ce qui a trait aux amendements au Code.

Les propositions ont quelque peu surpris la plupart des procureurs généraux provinciaux qui, à ce que nous croyons, n'avaient pas alors été inclus dans les discussions avec les ministres provinciaux responsables des loteries. Cette réunion fut suivie d'une autre de hauts fonctionnaires de mon niveau, du niveau des directeurs des ministères respectifs, à Halifax les 5 et 6 juin. Toutefois, cette réunion avait été précédée le 3 juin de la signature de l'entente qui contenait les projets d'amendements au Code et qui se trouve dans le document intitulé Annexe A qui vous a été remis.

Il y eut ensuite un échange de lettres dans lesquelles nous demandions aux ministères provinciaux de faire des suggestions pour apporter d'autres changements aux amendements conformément aux dispositions de l'entente signée le 3, laquelle prévoyait d'autres réunions de consultations avec les procureurs généraux des provinces, et c'est ainsi que nous avons apporté d'autres changements aux amendements proposés. Ils ne traduisent pas exactement ce qui est indiqué à l'Annexe A, mais leur substance correspond néanmoins aux informations dudit document. Les amendements supplémentaires furent proposés par plusieurs provinces afin de tenir compte de leurs intérêts. Par exemple, les provinces maritimes ont proposé d'inclure les foires des produits de la pêche puisque le Code comporte une exception en ce qui a trait aux foires agricoles. Les foires des produits de la pêche des provinces maritimes auraient ainsi la possibilité d'organiser des jeux de hasard.

A la suite de cet échange de correspondance, plusieurs des propositions avancées par les provinces furent insérées au projet de loi présenté devant la Chambre. D'autres discussions eurent lieu vers la mi-novembre après la présentation du projet de loi et après l'envoi d'un avis à chacun des procureurs généraux provinciaux sur le mode de présentation du projet de loi en même temps que le projet de loi était présenté.

Le sénateur Stanbury: Si je vous comprends bien, cette réunion du 2 mai qui eut lieu à Montréal portait simplement sur le dépôt de l'entente, n'est-ce pas?

M. Mosley: C'est essentiellement cela. L'entente a été déposée après quoi nous avons expliqué la façon dont nous envisagions les amendements proposés.

Le sénateur Stanbury: La discussion fut-elle longue?

M. Mosley: Une discussion eut lieu principalement sur le procédé. Il n'a pas été question de la substance même des amendements.

Le sénateur Stanbury: Ainsi, la réunion qui suivit à propos de laquelle vous avez fait allusion eut lieu en juin?

M. Mosley: C'est exact.

[*Text*]

Senator Stanbury: That was where the substance of the Criminal Code amendments was discussed?

Mr. Mosley: That is correct, although I should add that there was also a considerable discussion at that time on process, as well.

Senator Stanbury: You mentioned that the amendments in Bill C-81 are substantially the same as those in Schedule A?

Mr. Mosley: Yes.

Senator Stanbury: Would you be kind enough to draw our attention to areas where there is a difference of more than just wording?

Mr. Mosley: Quite frankly, senator, that presents me with a problem. I was not prepared to do that this evening, but I would be happy to deliver to the committee a summary of each of the changes from the schedule that appear in the bill within a day or two.

Sentor Stanbury: I think that might be helpful. I am speaking of the draft amendments to the Criminal Code which were attached as Schedule A to the agreement with the provinces, and how that compares with the amendments which actually appear in Bill C-81.

Mr. Mosley: Yes. If I could perhaps explain. Some of the changes were simply to accommodate the preferences of the legislative draft persons within the department. The Schedule A does not reflect their work, so Bill C-81 is, of course, a legislative draft based on Schedule A, but there were some further changes of a substantive nature that were made primarily, as I say, to accommodate the wishes of those provinces that had indicated that they wanted further amendments.

Senator Stanbury: I think that is all I have for the moment on that subject.

The Chairman: Mr. Mosley, I wonder if I could simply have a clarification, following Senator Stanbury's question. I see immediately that there is one addition here to the bill itself which does not appear in Schedule A, and that is the exception for fairs. Can you explain what the process was by which that was put in, if it is not in the actual agreement, and what does it intend?

Mr. Mosley: Are you referring to paragraph (c)?

The Chairman: I am referring to the exemption for fairs under clause 2 right at the beginning of the bill, subparagraph (3). I have not had a chance to read the schedule in detail but I do not think that is in here.

Mr. Mosley: My recollection is that that was simply to clarify the meaning of one of the provisions of the schedule but I would have to go over it in some detail and to review our file on that point to ascertain exactly where the particular amendment came from.

The Chairman: I do not think we have copies of the Criminal Code before us and I wonder if you can say what that sec-

[*Traduction*]

Le sénateur Stanbury: Il s'agit de la réunion au cours de laquelle il fut question de l'essentiel des amendements au Code criminel, n'est-ce pas?

M. Mosley: En effet. Je dois toutefois ajouter qu'une très longue discussion eut également lieu à ce moment sur le procédé.

Le sénateur Stanbury: Vous avez indiqué que les amendements au projet de loi C-81 sont sensiblement les mêmes que ceux de l'Annexe A?

M. Mosley: Effectivement.

Le sénateur Stanbury: Pourriez-vous attirer notre attention sur les secteurs où les divergences ont porté sur autre chose que la rédaction?

M. Mosley: À vous dire vrai, cela me pose un problème. En effet, je ne me suis pas préparé à répondre à une telle question ce soir, mais je pourrais néanmoins remettre au comité un résumé de chacun des changements à partir de l'annexe publiée dans le projet de loi d'ici une journée ou deux.

Le sénateur Stanbury: Je pense que cela pourrait nous être utile. Je veux parler des projets d'amendements au Code criminel qui sont joints à l'Annexe A de l'entente avec les provinces, et de la façon dont ils supportent la comparaison avec les amendements que l'on trouve dans le projet de loi C-81.

M. Mosley: Si vous me permettez d'apporter des explications, j'ajouterais que certains des changements ont été faits tout simplement afin de tenir compte des préférences du personnel du ministère préposé à la rédaction des projets de loi. L'Annexe A n'est pas représentative de leur travail, c'est pourquoi le projet de loi C-81 est bien entendu un projet de loi reposant sur l'Annexe A. D'autres changements de fond furent apportés principalement, comme je l'ai dit, pour tenir compte des désirs des provinces qui avaient indiqué vouloir d'autres amendements.

Le sénateur Stanbury: Je pense que c'est tout ce que j'ai à vous demander sur ce sujet pour le moment.

La présidente: Monsieur Mosley, pourrais-je avoir une autre explication suite à la question posée par le sénateur Stanbury. Je vois qu'il y a ici une addition au projet de loi lui-même qui ne paraît pas à l'Annexe A, je veux parler de l'exception faite pour les foires. Pourriez-vous expliquer comment on s'y est pris pour l'incorporer si cela ne figure pas dans le texte même de l'entente et ce que cela signifie?

M. Mosley: Faites-vous allusion à l'alinéa (c)?

La présidente: Je veux parler de «l'exemption des foires» à la disposition 2 tout au début du projet de loi au sous-alinéa (3). Je n'ai pas encore eu la possibilité de lire l'annexe dans le détail, mais je ne pense pas que cela y figure.

M. Mosley: Si ma mémoire est bonne, il s'agissait tout simplement de donner la signification d'une des dispositions de l'annexe, mais il faudrait que j'examine notre dossier pour être certain de l'origine de cet amendement particulier.

La présidente: Je ne pense pas que nous ayons devant nous des exemplaires du Code criminel et je me demande si vous pouvez dire ce que cette section a l'intention de légiférer? Il y

[*Text*]

tion intends to legislate? Subsection 189(3) of the act is repealed, and this is the proposed substitution.

Mr. Mosley: It is repeal and substitution and I think it is simply for purposes of clarification. Referring to the code, the words "the board of an annual fair" and the words "that" and the words "or exhibition" which are underlined are added to the existing provision 189, subection 3 as it is in the code at present. It is simply for clarification. As it reads now the words are "do not apply to an agricultural fair or exhibition." There was concern expressed as to the meaning of "agriculture" and whether it included fairs, which, as I indicated, were to promote fishery products—fairs, which may not be strictly speaking agricultural in nature but are run on an annual basis by reputable organizations within a province. The change was made to accommodate that concern, which, again was expressed on the part of certain of the provinces.

The Chairman: Mr. Mosley, you mentioned at both of your meetings there was considerable discussion about process. Could you enlighten us a bit more about that? Was there objection to the process by which these changes were proposed and agreed upon? As you know, we have had some indication that one of the provinces feels that there has not been enough consultation. I wonder if that feeling had been shared at the time by any of the other provinces or if there were objections expressed to the extent of the consultations.

Mr. Mosley: I think it is fair to say that there was a general feeling that the process which had been followed left something to be desired, and the fact that the persons most directly concerned with both the enactment of the Criminal Code and its enforcement within the provinces had not been more directly concerned with the discussions up to that point. That was a feeling which was shared both by officials within the Department of Justice and officials within the provincial Ministries of the Attorney General. It arose inadvertently through oversight on the part of those officials concerned with the discussions to that point at both the federal and the provincial level.

My provincial colleagues, I think, would agree with me that the provincial departments concerned had not consulted with the provincial attorneys general and, as a result, the provincial attorneys general were first apprised of the substance of the amendments when we brought them to their attention. As a result, the process was the subject of considerable discussion in the course of our meetings. The sentiments expressed in those meetings were shared by everyone participating in them. However, I might add that there certainly was no consensus from the provincial representatives that the merits or the substance of the amendments were objectionable. Quite to the contrary, our understanding of the positions of most of the provinces is that they most certainly want these amendments to go through and want the bill to pass. I think it is clear that there remains a residue of concern about the form and the process that was followed.

Senator Stanbury: The minister mentioned that he had responded to the concern of the Attorney General of Ontario, Mr. Scott, in a longer letter. Have we heard from Mr. Scott as

[*Traduction*]

a une partie d'une loi abrogée, 189(3) et il s'agit du remplacement proposé.

M. Mosley: Elle est abrogée et remplacée, et je pense que c'est simplement pour donner des précisions. A propos du Code, les mots «le conseil d'une foire annuelle», «ce» et «ou exposition», qui sont soulignés sont ajoutés à la disposition 189, paragraphe 3 tel que cela est indiqué dans le Code à l'heure actuelle. Il s'agit tout simplement d'une explication. La rédaction est actuellement la suivante: «ne concerne pas une foire ou exposition agricole.» Certains ont été préoccupés par la signification du mot «agricole», à savoir s'il inclut les foires qui, comme je l'ai déjà dit sont destinées à promouvoir les produits de la pêche, foires qui ne sont peut-être pas, à proprement parler, agricoles mais qui sont organisées tous les ans par des organismes réputés d'une province. Ce changement a été effectué afin de tenir compte des inquiétudes de certaines provinces.

La présidente: Monsieur Mosley, vous avez fait allusion au cours de vos deux réunions à une très longue discussion sur le procédé. Pourriez-vous nous en dire davantage? S'est-on opposé au procédé utilisé pour proposer et accepter ces changements? Comme vous le savez, on nous a laissé entendre que l'une des provinces est d'avis qu'il n'y a pas eu suffisamment de réunions de consultations. Je me demande si ce sentiment a été partagé par l'une des autres provinces ou bien si l'on s'est opposé à la portée des consultations.

M. Mosley: Je dois dire que l'impression d'ensemble a été que le procédé suivi a laissé à désirer. Par ailleurs, les personnes les plus touchées par la promulgation du Code criminel et sa mise en application dans les provinces n'avaient pas directement pris part aux discussions jusqu'alors. Il s'agit là d'un sentiment partagé aussi bien par les représentants du ministère de la Justice que par ceux des bureaux des procureurs généraux des provinces. C'est par hasard que l'on en prit connaissance à la suite d'un oubli de la part des hauts fonctionnaires intéressés par les discussions jusqu'alors au niveau fédéral comme au niveau provincial.

Je crois que mes collègues provinciaux seront d'accord avec moi pour dire que les ministères provinciaux concernés n'avaient pas consulté les procureurs généraux provinciaux, c'est pourquoi ceux-ci ne prirent connaissance du fond des amendements que lorsque nous attirâmes leur attention dessus. C'est pourquoi, le procédé fit l'objet de très longues discussions lors de nos réunions. Les sentiments exprimés au cours de ces réunions furent partagés par tous ceux qui y prirent part. Je dois toutefois ajouter qu'il n'y a certainement pas eu accord de la part des représentants provinciaux pour reconnaître que le bien-fondé ou la substance des amendements était inadmissible. Bien au contraire, nous avons compris que la plupart des provinces désiraient que de tels amendements soient adoptés et qu'il en soit de même pour le projet de loi. Je pense qu'il reste certaines préoccupations quant à la présentation et au procédé suivi.

Le sénateur Stanbury: Le ministre a indiqué qu'il avait écrit une longue lettre au procureur général de l'Ontario, M. Scott, pour dissiper ses craintes. M. Scott nous a-t-il indiqué s'il avait reçu cette lettre et si celle-ci lui convenait?

[*Text*]

to whether he has received that letter and whether that has satisfied his concerns?

The Chairman: I think that the Minister, Mr. Jelinek, said that the Minister of Justice had responded. Am I correct in that understanding?

Mr. Mosley: That is correct.

The Chairman: It was the Minister of Justice who responded. He did have a copy of the letter of the response with him the other day and I gather that it had just gone out so that I do not know when the Attorney General of Ontario would have received it. I have heard nothing in response to that.

Senator Stanbury: I am not sure how we handled it. We are aware that there were concerns and that there has been a response to those concerns, but we are not aware how the response has been received. I am sure that Mr. Mosley cannot comment on that.

Mr. Mosley: Other than to say that you will be hearing tomorrow from a representative of the Attorney General of Ontario on that subject and that gentleman is present this evening.

Senator Frith: Will there be any other provincial input?

The Chairman: We do not know as yet.

Senator Frith: Have we invited it?

The Chairman: Yes, we did. We sent telexes to all attorneys general of the provinces and I do not think I have had any reply except from the province of Ontario to date.

I wonder if I could ask one further question. Mr. Jelinek, during the course of his statement the other day said this, and I am reading from the blues:

> It is important that the committee understand that this bill does not promote the expansion of gambling; rather it sets some realistic and clear standards of what is and what is not permissible.

I see that the minister has just arrived.

Hon. John C. Crosbie, P.C., Q.C., Minister of Justice and Attorney General of Canada: I apologize for being late, Madam Chairman, but, as honourable senators will know, there was a vote in the House of Commons.

The Chairman: That is quite understandable, Mr. Minister. Honourable senators, I think we will first deal with Bill C-78, to amend the Governor General's Act, the Governor General's Retiring Annuity Act, the Salaries Act and the Judges Act. If you have a brief presentation to make, Mr. Crosbie, by all means proceed.

Mr. Crosbie: As honourable senators are aware, this is a composite bill that proposes to increase the salaries of the Governor General, the Lieutenant Governors and the federally appointed judiciary. I suppose that I do not need to go into too

[*Traduction*]

La présidente: Je pense que le ministre, M. Jelinek, a dit que le ministre de la Justice avait répondu. Ai-je raison?

M. Mosley: Absolument.

La présidente: C'est le ministre de la Justice qui a répondu. Il avait en sa possession un exemplaire de la lettre de la réponse l'autre jour, et je pense qu'elle venait tout juste d'être envoyée, c'est pourquoi je ne sais pas quand le procureur général de l'Ontario l'a reçue. Je n'en sais pas plus à ce sujet.

Le sénateur Stanbury: Je ne sais pas trop comment nous avons traité cette affaire. Nous savons très bien que des craintes ont été exprimées et que ces dernières ont provoqué une réaction, mais nous ne savons pas comment cette réaction a été accueillie. Je suis certain que M. Mosley ne peut rien dire à ce sujet.

M. Mosley: Tout ce que je peux dire, c'est que demain vous avez la possibilité d'entendre un représentant du procureur général de l'Ontario qui se prononcera sur cette question, et que cette personne est par ailleurs présente ce soir.

Le sénateur Frith: Les provinces auront-elles l'occasion de prendre davantage part au procédé?

La présidente: Nous ne le savons pas pour le moment.

Le sénateur Frith: Avons-nous fait des suggestions en ce sens?

La présidente: Oui. Nous avons en effet envoyé des télex à tous les procureurs généraux des provinces, et je ne pense pas avoir reçu de réponse pour le moment, si ce n'est de la province de l'Ontario.

Je me demande si je pourrais poser une autre question. M. Jelinek a déclaré l'autre jour, et je lis ses déclarations:

> Il importe que le comité comprenne que ce projet de loi ne préconise aucunement l'expansion des jeux de hasard, mais qu'il fixe certaines normes réalistes et non ambiguës sur ce qui est et n'est pas autorisé.

Je m'aperçois que le ministre vient d'entrer.

L'honorable John C. Crosbie, C.P., député, ministre de la Justice et procureur général du Canada: Je vous prie de bien vouloir excuser mon retard, Madame la présidente, mais comme le savent les honorables sénateurs il y avait un vote à la Chambre des communes.

La présidente: Vous êtes tout à fait excusé, Monsieur le ministre. Honorables sénateurs, nous allons d'abord étudier le projet de loi C-78 modifiant la Loi sur le gouverneur général, la Loi sur la pension de retraite du gouverneur général, la Loi sur les traitements et la Loi sur les juges. Monsieur Crosbie, si vous avez un bref exposé à faire, je vous en prie allez-y.

M. Crosbie: Les honorables sénateurs ne sont pas sans savoir qu'il s'agit d'un projet de loi complexe qui propose une augmentation du traitement du gouverneur général, des lieutenants gouverneurs et des magistrats nommés par le gouverne-

[*Text*]

I believe that Bill C-48 is a balanced approach to meet the problem of support default and missing children. You suggest that there will be need to evaluate the impact and effectiveness of this bill. The preliminary for such an evaluation by the Department of Justice has already begun. We intend to discharge our responsibility to ensure that this legislation accomplishes the goal that we intend without adverse side effects. We do not think it is necessary to amend the bill to provide for evaluation by a parliamentary committee as you suggested. That would be an extraordinary provision and I can assure you that we are planning an evaluation of the legislation now so I do not think it is necessary.

Thank you, Madam Chairman, for your valuable work on these bills. We share your concerns and your report reinforces the need to have those concerns.

The Chairman: Thank you, Mr. Minister. We appreciate your comments and the fact that you have been persuaded to accept at least a couple of our recommendations. We were certainly helped in our consideration of these bills by the advice and information that we received from Mr. Chrétien, and we hope that the recommendations and comments we have made so far proved useful. I do not think we have to say anything more about this tonight as we will wait to see how the bill comes to us in the next few weeks.

Mr. Crosbie: I hope that you will have it in time to enact it before Christmas, if you think it is worth enacting.

The Chairman: I am sure we shall, thank you.

Honourable senators, could we revert to Bill C-81, the amendments to the Criminal Code with respect to lotteries. Are there questions that any honourable senator wishes to put to the minister?

Senator Frith: It seems to me, Madam Chairman, that we do have some concerns that we raised with Mr. Mosley about the question of consultation. Have the present governments in the provinces been sufficiently consulted in this regard? Mr. Mosley and the Chairman have told the committee members that we are going to hear from someone from the Ontario attorney general's department. We have received no response from ny of the other provinces. Mr. Crosbie, can you give us any information on whether the present governments and attorneys general in the provinces are statisfied with this bill?

Mr. Crosbie: There were extensive consultations with the provinces carried out by Mr. Jelinek, the Minister of State (Fitness and Amateur Sport). He really carried the ball in terms of dealing with provincial ministers that were involved in that particular area. An agreement was entered into with the provinces.

Senator Frith: We have that agreement.

Mr. Crosbie: Subsequent to that, we did have brought to our attention some concerns of several of the attorneys general.

[*Traduction*]

Je suis persuadé que le projet de loi C-48 constitue un bon moyen de régler le problème du non-paiement des pensions alimentaires et celui des enfants disparus. Vous suggérez qu'il faudrait évaluer les répercussions et l'efficacité de ce projet de loi. Les travaux préliminaires d'une telle évaluation de la part du ministère de la Justice ont déjà commencé. Nous avons l'intention de nous acquitter de notre responsabilité afin de nous assurer que cette loi atteint l'objectif qui est le nôtre sans effets négatifs. Nous ne jugeons pas nécessaire d'amender le projet de loi pour prévoir une évaluation de la part d'un comité parlementaire comme vous le suggérez. Il s'agirait-là de dispositions extraordinaires, et je peux vous assurer que nous prévoyons une évaluation de la loi dès maintenant.

Je vous remercie, Madame la présidente, de votre travail précieux sur ces projets de loi. Sachez que nous partagerons vos préoccupations.

La présidente: Je vous remercie, Monsieur le ministre. Nous faisons grand cas de vos observations et du fait que vous avez été persuadé d'accepter au moins quelques-unes de nos recommandations. Nous avons été aidés dans l'étude de ces projets de loi par les conseils et les renseignements que nous avons reçus de M. Chrétien, et nous espérons que les recommandations et obvervations que nous avons faites seront utiles. Je ne pense pas qu'il faille en dire davantage ce soir. Attendons maintenant de voir comment le projet de loi nous sera présenté dans les semaines qui viennent.

M. Crosbie: J'espère que vous l'aurez en temps voulu pour le promulguer avant Noël, bien entendu si vous jugez qu'il vaille la peine d'être promulgué.

La présidente: Je suis certaine que nous l'aurons, je vous remercie.

Reprenons maintenant le projet de loi C-81, soit les amendements au Code criminel en ce qui a trait aux loteries. Désirez-vous poser des questions au ministre?

Le sénateur Frith: Madame la présidente, nos éprouvons certaines craintes que nous avons soulevées auprès de M. Mosley à propos de la question des consultations. Les gouvernements provinciaux actuels ont-ils été suffisamment consultés? M. Mosley et la présidente ont fait savoir aux membres du comité que nous allions entendre quelqu'un venant du bureau du procureur général de l'Ontario. Nous n'avons pas reçu de réponse des autres provinces. M. Crosbie, pouvez-vous nous donner quelques renseignements quant à savoir si les gouvernements actuels et les procureurs généraux des provinces sont satisfaits de ce projet de loi?

M. Crosbie: Il y a eu de très longues réunions de consultations avec les provinces dirigées par M. Jelinek, ministre d'État (Condition physique et Sport amateur). Il a mené les discussions avec les ministres provinciaux et une entente a été réglée avec les provinces.

Le sénateur Frith: Nous avons cette entente.

M. Crosbie: Après cela, on a porté à notre attention les préoccupations de plusieurs procureurs généraux. Toutefois,

[*Text*]

However, all of the provincial governments are bound. They all entered into an agreement on it.

If I remember correctly, with respect to the province of Ontario I had a letter from Mr. Scott raising that issue. I wrote him back on November 27. Perhaps it would be in order to table those letters. I do not mind doing so, but before you make it public, perhaps you would ask Mr. Scott if it is all right with him.

The Chairman: Certainly.

Mr. Crosbie: Mr. Mosley tells me that Mr. Scott has a representative here and that it is all right to make the letter public.

He did express some concerns in this letter. He asked about the process by which the proposed amendments came into being. He expressed some concerns about law enforcement agencies in terms of increasing the number of lotteries, and so on. In my reply, we try to outline exactly what has been done in the bill and to deal with the points raised. We were in an advisory role in late April, when we became more involved.

I suppose that the best thing to do would be to table his letter and my reply. Mine is a four and a half page reply to a two page letter, so honourable senators, can see that I was trying to pull the wool over his eyes, I suppose. I was quite interested when I read my reply because I had not realized the sublety of everything that has been going on in that area, I must admit. It is a very technical area.

Senator Frith: Madam Chairman, I think that the committee should read those two letters and that they will help us understand the progress to date on this issue. Naturally, it is possible that we might wish to ask the minister to return on these matters. This might be a good time to say that this committee has recorded how much it appreciates his co-operation. He comes very readily as a witness before this committee and is always very helpful. I would not wish to impose upon him by asking him to come back. Perhaps it will not be necessary. However, I do not think we can proceed much further without having read this correspondence.

Mr. Crosbie: Has Mr. Jelinek appeared before this committee?

The Chairman: Yes, he appeared last week but did not really deal with the concerns we might have in this regard.

Mr. Crosbie: My only problem is one involving a time constraint in terms of carrying out the agreement. I will be gone for a few days on my ceaseless battle to overcome impaired drivers in this country. I will travel over the next six or eight days to bring this message across Canada, but I am sure that if the committee has any questions, Mr. Mosley or others from the department will do their best to answer them.

Senator Frith: That is true. This letter was drafted for you, was it not, Mr. Minister?

[*Traduction*]

tous les gouvernements provinciaux sont liés et ont signé une entente.

Si mes souvenirs sont exacts, en ce qui a trait à la province de l'Ontario, j'ai reçu une lettre de M. Scott soulevant cette question. Je lui ai répondu le 27 novembre. Peut-être faudrait-il déposer ces lettres. Toutefois, avant de les rendre publiques, peut-être pourriez-vous demander à M. Scott si cela lui convient.

La présidente: Certainement.

M. Crosbie: M. Mosley me dit que M. Scott a un représentant ici-même et qu'il ne voit aucune objection à publier cette lettre.

Il a exprimé certaines craintes dans cette lettre. Il a posé des questions sur la méthode selon laquelle les amendements proposés ont été adoptés. Il s'est également préoccupé des organismes chargés de veiller à l'exécution de la loi, à propos notamment de l'augmentation du nombre de loteries, etc. Dans ma réponse, j'essaye de préciser exactement ce qui a été fait dans le projet de loi et de traiter des points soulevés. Nous occupions un rôle de conseiller fin avril, époque où nous avons pris une plus grande part dans ce dossier.

Je pense que le mieux est de présenter sa lettre et ma réponse. Ma réponse est une lettre de quatre pages et demie, la lettre de M. Scott en faisait deux. Les honorables sénateurs penseront peut-être que j'ai essayé de jouer un tour. J'ai été très intéressé lorsque j'ai lu ma réponse, car je dois admettre que je ne m'étais pas aperçu de la subtilité de tout ce qui se passe dans ce domaine très technique.

Le sénateur Frith: Madame la présidente, je pense que les membres du comité devraient lire cette lettre, ce qui nous aiderait à comprendre les progrès réalisés à ce jour. Il est bien entendu possible que nous demandions au ministre de revenir pour s'expliquer sur ces points. Je crois que le moment est venu de dire que notre comité apprécie énormément sa collaboration. Il s'est présenté devant le comité à titre de témoin et a toujours été très serviable. Je ne voudrais pas le forcer à revenir, peut-être que cela ne sera pas nécessaire. Toutefois, je ne pense pas que nous puissions aller plus loin sans avoir lu ces lettres.

M. Crosbie: M. Jelinek s'est-il présenté devant le comité?

La présidente: Oui, la semaine dernière, mais il n'a pas vraiment parlé des préoccupations que nous pourrions avoir à ce sujet.

M. Crosbie: Mon seul problème est une question de temps en ce qui a trait à l'exécution de l'entente. Je vais m'absenter pendant quelques jours pour reprendre ma lutte éternelle contre l'alcoolisme au volant. Je vais donc voyager au cours des six ou huit prochains jours pour porter ce message à travers le pays. Je suis certain que si le comité a des questions à poser, M. Mosley ou d'autres personnes du ministère pourront y répondre.

Le sénateur Frith: En effet. Cette lettre a été rédigée pour vous, n'est-ce pas, Monsieur le ministre?

[*Text*]

Mr. Crosbie: Yes, I do not have the knowledge to draft something like that.

Senator Frith: I was not implying that, but perhaps Mr. Mosley drafted it.

Mr. Mosley: The primary draftsperson is an officer in my section who is accompanying the minister on his tour, unfortunately.

Mr. Crosbie: Mr. Mosley, however, is familiar with the issues.

Mr. Mosley: I should be able to respond to any questions honourable senators might have.

The Chairman: We will call Mr. Mosley back, then. That might be the best solution at the moment.

In the meantime, I will circulate copies of these letters, honourable senators. I have one question that I should like to put to Mr. Crrosbie. It has to do with a statement made by Mr. Jelinek in his appearance last week. The statement was to this effect: It is important that the committee understand that this bill does not promote the expansion of gambling; rather, it sets some realistic and clear standards of what is and what is not permissible.

I understand that the effect of this bill, at lest in the opinion of some people, would be to permit all provinces, as they chose, to set up full scale gambling casinos. There are only a few games of chance that are prohibited, but, apart from that, each province would be quite free to set up its own gambling operations or to authorize other people to do so on its behalf. I am simply concerned, from a social point of view as well as from a police enforcement point of view. Is this bill really imposing restrictions or is it simply opening the doors to gambling in each province?

Senator Frith: We could have cities like Atlantic City and Nevada.

The Chairman: That is right, one such city in each province. The problem I see is that if one province, and I understand that the province of Quebec is interested at the moment, were to set up gambling facilities, we might almost take it for granted that each other province is going to want to develop the same facilities, to hold on to its tourist trade, if nothing else.

Senator Frith: It would enhance its revenue on the basis of the share of the take, as well.

The Chairman: I am just wondering what we are permitting here?

Senator Stanbury: Madam Chairman, could I just supplement the question so that the minister could tackle the whole thing at once? The other problem that I saw was that there was no apparent control over the disposal of the proceeds of the gambling. Charities, of course, will have to spend any money they raise in accordance with the laws related to charitable institutions. As far as anybody else is concerned, however, there is no control over where the proceeds will go.

[*Traduction*]

M. Crosbie: Effectivement, je ne me souviens pas d'avoir rédigé quelque chose de ce genre.

Le sénateur Frith: Ce n'est pas ce que j'ai voulu dire; j'ai voulu laisser entendre que c'est peut-être M. Mosley qui l'a rédigée.

M. Mosley: Malheureusement, la personne qui l'a rédigée est un agent de ma section qui accompagne le ministre lors de son déplacement.

M. Crosbie: Il me semble que M. Mosley est au courant de la situation.

M. Mosley: Je devrais être en mesure de répondre à vos questions.

La présidente: Dans ce cas-ci, nous convoquerons M. Mosley. Je pense que c'est la meilleure solution à l'heure actuelle.

En attendant, je vais distribuer des exemplaires de ces lettres aux honorables sénateurs. J'aimerais toutefois poser une question à M. Crosbie. Elle porte sur une déclaration faite par M. Jelinek la semaine dernière, à savoir qu'il est important que le comité comprenne que ce projet de loi ne favorise aucunement l'expansion des jeux de hasard, mais qu'il s'agit plutôt d'établir des normes réalistes et bien précises sur ce qui est et n'est pas autorisé.

Je crois savoir que ce projet de loi, tout au moins d'après certaines personnes, permettrait à toutes les provinces, si elles le désirent, d'ouvrir des casinos. Quelques jeux de hasard seulement sont interdits mais à part cela, chaque province serait libre d'organiser ses propres casinos ou d'autoriser d'autres personnes à le faire en son nom. Je suis simplement préoccupée d'un point de vue social de même que du point de vue de la mise en application des lois par la police. Ce projet de loi impose-t-il véritablement des restrictions ou bien ouvre-t-il tout simplement les portes grandes ouvertes aux jeux de hasard dans chaque province?

Le sénateur Frith: Nous pourrions avoir des villes du genre d'Atlantic City ou d'autres au Nevada.

La présidente: C'est exact, une ville de ce genre dans chaque province. A mon avis, le problème vient du fait que si une province, et je crois savoir que la province de Québec est intéressée à l'heure actuelle, décidait d'ouvrir des casinos, nous pourrions être certains que toutes les autres provinces voudraient faire de même, tout au moins pour attirer les touristes chez elles.

Le sénateur Frith: Cela augmenterait également leurs recettes grâce au pourcentage qu'elles prélèveront.

La présidente: Je me demande tout simplement ce que nous sommes en train d'autoriser?

Le sénateur Stanbury: Madame la présidente, pourrais-je ajouter une question afin que le ministre s'attaque à l'ensemble du problème? A mon avis, il n'y a pas de contrôle apparent de la façon dont les produits des jeux seront utilisés. Bien entendu, les œuvres de bienfaisance devront dépenser toutes les sommes ainsi gagnées conformément aux lois régissant ces établissements. Pour tous les autres, il n'y a aucun contrôle sur ces produits.

[*Text*]

Mr. Crosbie: I will try to deal with your question. Actually, the letter to Attorney General Scott tries to deal with this. It is the burden of the letter that we are narrowing the scope of activities that could take place. We are clarifying it; we are proposing restrictions. We are not really broadening what can be done. It clarifies a number of uncertainties in the law. You will see the argument here in this letter that I am tabling. The letter goes on to add that three of the areas in which the bill actually does broaden the scope of the present law were the result of proposals made by provincial departments for the Attorney General during the post-agreement consultations that occurred in the summer of '85.

The bill does not impose gainliness or associated costs to the provinces. It is merely implementing a nature. It is up to each province to determine what type of gaming activities that are to be permitted.

I think that the letter is my answer to what you are getting at, senator, to know whether it would be satisfactory or not. If not, then our experts will try to satisfy it.

The Chairman: With respect to Senator Stanbury's question, again I wonder whether it would not have been desirable to have restricted the disposal of the proceeds in some way if provincial governments are getting into this. I can appreciate that provincial governments probably did not want to be so constrained once they are given the power here. I just have some concerns about that.

Mr. Crosbie: It is my understanding that the proceeds will go either to the province or to a charitable activity. I don't think that the proceeds will go to any other. Anyway, if you want to pursue that further, I guess the best thing is for Mr. Mosley and the department to try to explicate the situation.

Senator Frith: We will hear from the Ontario people tomorrow too.

The Chairman: Yes. I think that is about all that we can usefully accomplish tonight, honourable senators.

Mr. Minister, again I thank you for taking the time to come and deal with these various matters. It has been very helpful.

Mr. Crosbie: Thank you very much.

The committee adjourned.

[*Traduction*]

M. Crosbie: Je vais essayer de répondre à votre question. En fait, la lettre au Procureur général Scott essaye d'y répondre. Comme elle l'indique, nous limitons les activités qui pourraient avoir lieu. Nous proposons certaines restrictions. Nous clarifions un certain nombre d'incertitudes dans la loi. Nous n'essayons pas vraiment d'élargir ce qui peut être fait. Vous vous en rendrez compte dans la lettre que je dépose. Cette lettre précise que trois des secteurs dans lesquels le projet de loi élargit la portée de la loi actuelle, sont le résultat de propositions avancées par les bureaux provinciaux des procureurs généraux au cours des consultations qui ont suivi la signature de l'entente à l'été 1985.

Le projet de loi n'impose aucun coût annexe aux provinces. C'est en effet à chaque province de déterminer le genre de jeux qui peuvent être autorisés.

Je pense que dans ma lettre vous trouverez la réponse à ce que vous voulez savoir. Si vous n'êtes pas satisfait, alors nos experts essaieront de vous répondre.

La présidente: En ce qui a trait à la question du sénateur Stanbury, je me demande une fois de plus s'il n'aurait pas été souhaitable d'imposer des restrictions quant à la façon de disposer des produits si les gouvernements provinciaux s'en mêlent. Je suis consciente du fait que les administrations provinciales ne veulent probablement pas être aussi limitées dès lors qu'elles ont reçu les pouvoirs. Je désire simplement exprimer certaines craintes.

M. Crosbie: Je crois savoir que les produits des jeux iront soit à la province, soit à une œuvre de bienfaisance. Je ne pense pas qu'ils iront ailleurs. De toute façon, je pense que si vous désirez en savoir davantage, le mieux serait que M. Mosley et le ministère essayent d'expliquer la situation.

Le sénateur Frith: Nous entendrons les personnes de l'Ontario demain.

La présidente: C'est exact. Je pense que c'est à peu près tout ce que nous pouvons faire de façon utile ce soir.

Monsieur le ministre, je tiens à vous remercier une fois de plus de vous être présenté devant nous et de nous avoir parlé de ces projets de loi. Votre collaboration a été très utile.

M. Crosbie: Je vous remercie beaucoup.

Le comité lève la séance.

TAB 17

First Session
Thirty-third Parliament, 1984-85

Première session de la
trente-troisième législature, 1984-1985

SENATE OF CANADA

SÉNAT DU CANADA

Proceedings of the Standing Senate Committee on

Délibérations du Comité sénatorial permanent des

Legal and, Constitutional Affairs

Affaires juridiques et constitutionnelles

Chairman:
The Honourable JOAN NEIMAN

Présidente:
L'honorable JOAN NEIMAN

Wednesday, December 4, 1985

Le mercredi 4 décembre 1985

Issue No. 31

Third proceedings on:

The Examination of Bill C-81, "An Act to amend the Criminal Code (lotteries)"

Fascicule nº 31

Troisième fascicule concernant:

L'étude du projet de loi C-81, «Loi modifiant le Code criminel (loteries)».

WITNESSES:
(See back cover)

TÉMOINS:
(Voir à l'endos)

28311—1

EVIDENCE

Ottawa, Wednesday, December 4, 1985

[*Text*]

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-81, to amend the Criminal Code (lotteries), met this day at 8 p.m. to give consideration to the bill.

Senator Joan Neiman (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have with us this evening Mr. Howard Morton of the Ministry of the Attorney General, and accompanying Mr. Morton are a number of representatives of the Criminal Intelligence Service for the Province of Ontario.

In the interests of being able to hear from these witnesses fully and completely, we have arranged that each will be given the opportunity of making their presentation to the committee, with all questions and discussions deferred until the presentation has been made.

For the most part, the presentation will be for the record. The committee, however, will proceed "in camera" for the purpose of hearing additional information with respect to this matter.

Mr. Morton, I would ask you to introduce those accompanying you.

Mr. Howard F. Morton, Q.C., Director, Crown Law Office—Criminal, Ministry of the Attorney General: Thank you, Madam Chairman. Perhaps I could introduce to you Chief Basse, the Chairman of the Ontario Criminal Intelligence Service, and have him introduce the balance of his delegation.

I should point out that I am with the Ontario Ministry of the Attorney General, whereas these other gentlemen are with various other organizations, organizations to which Chief Basse will make reference in his introductory remarks.

Mr. H.V.L. Basse, Chief of Police, Waterloo Regional Police Force: Madam Chairman and Honourable senators, we appear before you this evening as representatives of the Ontario Association of Chiefs of Police and the Criminal Intelligence Service of Ontario. We are neither a self interest group nor a political group. It is for that reason that Mr. Morton and I draw a distinction between our two presentations.

Our submission to the committee is aimed at maintaining a high quality level of law and order in Ontario and to ensure that organized crime does not flourish. Whatever we say, Madam Chairman, is intended to be in the interest of the public that we serve.

The Ontario Association of Chiefs of Police is dedicated to the improvement of law enforcement and the quality of life within our community. We represent 129 police forces in the Province of Ontario, including the largest and the smallest. The Criminal Intelligence Service is dedicated to the fight against organized crime and represents 31 of the major police forces in the Province of Ontario, including the Ontario Provincial Police, the Metropolitan Toronto Police Force, and "A"

TÉMOIGNAGES

Ottawa, le mercredi 4 décembre 1985

[*Traduction*]

Le Comité sénatorial permanent des Affaires juridiques et constitutionnelles, auquel a été référé le projet de loi C-81, modifiant le Code criminel (loterie) se réunit aujourd'hui à 18 heures pour étudier ledit projet de loi.

Le sénateur Joan Neiman (*présidente*) occupe le fauteuil.

Le président: Honorables sénateurs, nous accueillons ce soir M. Howard Morton du ministère du Procureur général; il est accompagné d'un certain nombre de représentants du Service de renseignements criminels de la province de l'Ontario.

Afin de recevoir la déposition complète de ces témoins, nous avons prévu que chacun d'entre eux exposerait son mémoire au Comité, et que toutes les questions et discussions seraient différées jusqu'à la fin de leurs exposés.

La plus grande partie de ces exposés sera consignée aux délibérations. Toutefois, le Comité siégera à *huis clos* pour recueillir d'autres renseignements sur ce sujet.

Monsieur Morton, voulez-vous présenter ceux qui vous accompagnent ce soir.

M. Howard F. Morton, C.R., directeur, Services juridiques de la Couronne—Affaires criminelles, ministère du Procureur général: Merci, madame la présidente. Permettez-moi de vous présenter le chef Basse, directeur du Service de renseignements criminels de l'Ontario, qui, à son tour, vous présentera les autres membres de sa délégation.

Je vous signale que je suis du ministère du Procureur général de l'Ontario, tandis que les autres personnes relèvent de divers organismes, que le chef Basse vous présentera.

M. H. V. L. Basse, chef de police, Force policière régionale de Waterloo: Madame la présidente, honorables sénateurs, nous sommes ici ce soir en qualité de représentants de l'Association des chefs de police de l'Ontario ainsi que du Service de renseignements criminels de l'Ontario. Nous ne sommes ni un groupe d'intérêt ni un groupe politique. C'est pourquoi M. Morton et moi-même faisons une distinction entre nos deux mémoires.

Notre mémoire vise à maintenir l'ordre public à un haut niveau dans l'Ontario, et à veiller à ce que le crime organisé n'y prospère pas. Tout ce que nous dirons, madame la présidente, est dans l'intérêt du public que nous servons.

L'Association des chefs de police de l'Ontario s'emploie à mieux faire respecter la loi et à améliorer la qualité de la vie au sein de notre communauté. Nous représentons 129 brigades dans la province d'Ontario, des plus importantes au plus petites. Les services de renseignements criminels, qui luttent contre le crime organisé, représentent 31 des principales brigades de police de la province d'Ontario, incluant la Police provinciale de l'Ontario, la Force policière du Toronto métropolitain

[*Text*]

and "O" Divisions of the RCMP, as well as the municipal police forces in the Province of Ontario.

We have great concern, Madam Chairman, in relation to the proposed amendments to the lotteries provisions of the Criminal Code, and particularly the opportunities that these proposals would afford organized crime within Canada.

We feel it is incumbent upon us as police officers to advise you of our concerns in that regard. Once we have done so, Madam Chairman, it is then up to the legislators to make a decision.

Accompanying me this evening are a number of specialists in the area of the lotteries section of the Criminal Code. The first presentation will be by Corporal Andy Durno of the Ontario Provincial Police. Corporal Durno is a member of the Gambling Committee of the Criminal Intelligence Service.

Following Corporal Durno will be the presentation of Staff Sergeant Peter Benge, who is with the Metropolitan Toronto Police Force. Staff Sergeant Benge will give you the police interpretation of the amendments as we see them and Corporal Durno will give you the position as it presently is.

Also in attendance this evening is Inspector Wilson, the Director of the Criminal Intelligence Service of Ontario. Inspector Wilson will give the committee an insight on the criminal intelligence part of the process as it relates to organized crime. I would ask that his portion of the presentation this evening be made "in camera", and we make that request for reasons of the public interest.

Also in attendance is Chief W.I. James Harding, the Chief of Police, Halton Regional Police Force. Chief Harding is the Chairman of the Legislative Committee of the Ontario Association of Chiefs of Police. Chief Harding will speak to the impact, as we see it, of organized crime as it relates to lotteries.

Madam Chairman, we will make our presentations in that order. As has already been indicated, Mr. Morton is here representing the Ministry of the Attorney General, Province of Ontario. Accompanying Mr. Morton is Mr. Robert H. Macdonald, also from the Ministry of the Attorney General, Province of Ontario.

I would ask that we now be permitted to proceed with our presentation. Corporal Durno will be the lead-off speaker.

The Chairman: Please proceed, Corporal Durno.

Corporal K.A. (Andy) Durno, Gaming Section, Special Investigations Branch, Ontario Provincial Police: Madam Chairman, Honourable senators: The law pertaining to gaming and betting is contained in Part V of the Criminal Code. Its interpretation is difficult because of deficiencies in the language itself, deficiencies which have resulted in varying interpretations across the country.

In the next few moments, I shall give you my interpretation of the law as it is currently written. My views have been arrived at after six and one-half years experience in enforcing the gaming laws in the Province of Ontario. I propose to give you my interpretation of the law in the following areas:

(1) Slot machines;

[*Traduction*]

et les divisions «A» et «O» de la Gendarmerie royale et des brigades de police municipale de la province.

Nous nous inquiétons beaucoup, Madame la présidente, des modifications proposées aux dispositions du Code criminel touchant la loterie et plus particulièrement des possibilités que ces propositions ouvriraient au crime organisé au Canada.

Il nous incombe, croyons-nous, en qualité d'agents de police, de vous faire part de nos préoccupations à ce sujet. Il reviendra par la suite au législateur de prendre une décision.

Je suis accompagné ce soir d'un certain nombre de personnes spécialisées sur le chapitre du Code criminel qui traite des loteries. Le caporal Andy Durno de la Police provinciale de l'Ontario prendra la parole le premier. Il est membre du Comité sur les jeux de hasard des Services de renseignements criminels.

Après celui du caporal Durno, viendra l'exposé du sergent Peter Benge, de la Force policière du Toronto métropolitain. Le sergent-chef Benge vous expliquera comment la police interprète ces modifications, et le caporal Durno vous exposera notre position actuelle.

Je suis aussi accompagné, ce soir, de l'inspecteur Wilson, directeur des Services de renseignements criminels de l'Ontario. L'inspecteur Wilson donnera au Comité un aperçu du fonctionnement de son service en matière de crime organisé. Pour des raisons d'intérêt public, je vous demanderais de vous réunir à *huis clos* pour recevoir sa déposition.

Vient ensuite le chef W. I. James Harding, de la Force policière régionale de Halton. Le chef Harding préside le Comité législatif de l'Association des chefs de police de l'Ontario. Il parlera des rapports, tels que nous les voyons, du crime organisé aux loteries.

Voilà, Madame la présidente, dans quel ordre nous vous soumettrons nos mémoires. Comme je l'ai dit déjà, M. Morton représente ici le ministère du Procureur général de l'Ontario. Il est accompagné de M. Robert H. Macdonald, également du ministère du Procureur général de la province de l'Ontario.

Avec votre permission, nous procéderons maintenant comme prévu. La caporal Durno est le premier sur la liste.

La présidente: La parole est à vous, caporal Durno.

Le caporal K. A. (Andy) Durno, Section des jeux de hasard, Division des enquêtes spéciales, Police provinciale de l'Ontario: Madame la présidente, honorables sénateurs, les dispositions légales concernant les jeux et les paris se trouvent dans la partie V du Code criminel. Leur interprétation est difficile à cause de l'imprécision du libellé retenu, qui a prêté à diverses interprétations dans les différentes régions du pays.

Je vous exposerai pendant quelques minutes mon interprétation de la loi, sous son libellé actuel; interprétation qui est le fruit de six années et demie passées à appliquer les lois sur les jeux de hasard dans la province d'Ontario. Je voudrais m'arrêter plus particulièrement aux domaines suivants:

1) les appareils à sous;

[*Text*]

(2) Wheels of fortune, such as roulette wheels;
(3) Dice games;
(4) Bookmaking, betting, and pool selling;
(5) Lotteries, such as raffles and bingos;
(6) Games such as blackjack;
(7) Prohibited games, such as punch board, coin table, and three-card monte; and
(8) Horse racing.

These eight categories will be discussed as they pertain to, No. 1, the Government of Canada; No. 2, the government of a province; No. 3, charities and religious groups; and No. 4, agricultural fairs and public places of amusement.

A chart has been prepared showing all of these areas and the situation in respect of those areas under the current legislation and under the legislation as it would be amended by Bill C-81.

I believe all members of the committee have been provided with a copy of that chart.

Section 190 of the Criminal Code is the "Permitted Lotteries" section, and much reference will be made to that section throughout my presentation.

Let me deal first with the situation with respect to slot machines. Subsection 180(3) of the Criminal Code explicitly defines slot machines and includes what is commonly referred to as the "one-armed bandit." The definition of "slot machine" does not include machines that dispense as prizes only free games.

Subsection 180(2) states that a place that is found to be equipped with the slot machine "shall be conclusively presumed to be a common gaming house."

Thus, under the current legislation a slot machine is totally prohibited. This prohibition includes its use by all three sectors enumerated, the Government of Canada, the government of a province, charitable and religious groups, agricultural fairs and public places of amusement.

Next, the wheel of fortune. Subsection 189(1) paragraph (g) of the Criminal Code states that it is an offence to induce any person "to stake or hazard any money or other valuable property or thing . . . on the operation of a wheel of fortune."

Subsection 189(3) of the Criminal Code creates an exemption in respect of the operation of a wheel of fortune at an agricultural fair for goods, wares and merchandise. The operation of wheels of fortune for money at agricultural fairs must be conducted under the auspices of a licence.

Presently, the Government of Canada and the government of a province are permitted to conduct and manage certain types of lottery schemes, but this does not include the operation of wheels of fortune.

Subsection 190(1) paragraph (c) pertains to charitable and religious groups which are authorized, under the auspices of a licence issued by a province, to conduct and manage certain lottery schemes which do include the operation of a wheel of fortune, provided that the feed does not exceed 50 cents and the prize does not exceed $100.

[*Traduction*]

2) les roues de fortune, comme la roulette;
3) les jeux de dés;
4) le bookmaking, les mises collectives ou paris;
5) les loteries, comme les tirages et le bingo;
6) les jeux de cartes, comme le blackjack;
7) les jeux prohibés, comme les planchettes à poinçonner, les tables à monnaie et le bonneteau; et
8) les courses de chevaux.

Nous examinerons chacun de ces huit jeux de hasard du point de vue: 1) du gouvernement du Canada; 2) du gouvernement provincial; 3) des organismes de charité ou religieux, et 4) des foires agricoles et des lieux d'amusement publics.

Nous avons préparé un tableau qui établit pour chacun de ces domaines, la situation telle qu'elle est en vertu de la loi actuelle, et telle qu'elle serait, si la loi était modifiée conformément au projet de loi C-81.

Je crois que tous les membres du Comité ont reçu copie de ce tableau.

L'article 190 du Code criminel énumère les «loteries permises». Nous y reviendrons souvent pendant mon exposé.

Je vais d'abord vous parler des appareils à sous, que le paragraphe 180(3) du Code criminel interdit explicitement, visant en outre ce qu'on appelle communément les «one-armed bandit». La définition d'«appareils à sous» n'englobe pas les appareils qui ne dispensent comme prix que des parties gratuites.

Le paragraphe 180(2) porte que tout local muni d'un appareil à sous «sera de façon concluante présumé une maison de jeu».

La loi actuelle interdit donc totalement les appareils à sous, et cette interdiction vaut pour les quatre groupes que j'ai énumérés, savoir le gouvernement du Canada, le gouvernement provincial, les organismes de charité ou religieux et les foires agricoles et les lieux d'amusement publics.

Vient ensuite la roue de loterie. Selon l'alinéa 189(1)*g*) du Code criminel, est coupable d'un acte criminel quiconque incite une personne «à risquer ou hasarder de l'argent ou quelque autre bien ou chose de valeur . . . sur le fonctionnement d'une roue de fortune».

Le paragraphe 189(3) même du Code prévoit une dérogation au sujet du fonctionnement d'une roue de fortune, lors d'une foire agricole, pour des biens, commodités et marchandises. Mais cette activité requiert une licence.

Actuellement, le gouvernement du Canada et le gouvernement provincial sont autorisés à mettre sur pied et à exploiter certains genres de loterie, mais elles ne comprennent pas les roues de fortune.

L'alinéa 190(1)*c*) porte sur les organismes de charité et les organismes religieux qui sont autorisés, s'ils ont une licence émise par la province, à mettre sur pied et à exploiter certaines loteries, y compris la roue de fortune, pouvu que le prix du ticket ne dépasse pas 50c. et celui de la récompense 100 dollars.

[*Text*]

Under the current law, any person at a public place of amusement is authorized to conduct and manage certain lottery schemes under the auspices of a licence which do include the operation of wheels of fortune.

In summarizing the situation in respect of wheels of fortune, they cannot be operated by any person, the Government of Canada or the government of a province. They can, however, be operated at agricultural fairs for goods, wares and merchandise, and they can also be operated, under the auspices of a licence, by charitable and religious groups and by persons at public places of amusement.

Next, dice games. Subsection 189(1) paragraph (g) of the Criminal Code currently creates an offence where any person induces any person "to stake or hazard any money or other valuable property or thing on the result of any dice game."

Section 190 of the Code, the "Permitted Lotteries," section does not permit the operation of any dice games by anyone: the Government of Canada, the government of a province, charitable and religious groups, agricultural fairs or public places of amusement.

The next area is that of bookmaking, pool selling and betting. Pool selling would include such schemes as the federal government's now defunct sports pool lottery.

Subsection 186(1) paragraph (e) currently creates an offence where one engages in "pool-selling or book-making, or in the business or occupation of betting."

Subsection 188(1) makes it lawful for the Government of Canada to operate and manage a pool system of betting on any combination of two or more athletic contests, in accordance with regulations made by the Governor-in-Council.

This provision was enacted in 1979 to allow the Government of Canada to operate and manage the Canadian Sports Pool Corporation, a venture that proved unsuccessful and which is not now in operation.

Presently, the Criminal Code does not permit bookmaking, betting or pool selling by anyone: the Government of Canada, the government of a province, charitable and religious groups, or agricultural fairs and public places of amusement, except in the instance outlined in Subsection 188(1), which is not now in operation.

The next area is lotteries such as bingos and raffles. Subsection 189(1), paragraph (d) creates an offence where one "conducts or manages any scheme . . . for the purpose of determining who . . . are the winners of any property."

The conducting and managing of bingos and raffles would fall within this definition. Presently, the Government of Canada and the government of a province are permitted to conduct and manage certain lottery-type schemes which do include lotteries such as bingos and raffles. Charitable and religious groups are also authorized to conduct and manage certain lottery-type schemes which also include schemes such as bingos and raffles, provided that they are operated under the auspices of a licence.

[*Traduction*]

En vertu de la loi actuelle, toute personne qui est dans un lieu d'amusement public, est autorisée à mettre sur pied et à exploiter certaines loteries aux termes d'une licence, et notamment une roue de fortune.

En résumé, il est interdit à quiconque, y compris au gouvernement du Canada ou à celui d'une province, d'exploiter une roue de fortune. Ces roues sont toutefois permises lors de foires agricoles pour des biens, des commodités ou marchandises, et peuvent aussi être exploitées, en vertu d'une licence, par des organismes charitables ou religieux et par les personnes dans des lieux d'amusement publics.

Viennent ensuite les jeux de dés. Selon l'alinéa 189(1)*g*) du Code criminel, est coupable de délit toute personne qui en incite une autre à «miser ou risquer toute somme d'argent ou autre chose ou propriété de valeur sur le résultat d'un jeu de dé».

L'article 190 du Code intitulé «Loteries permises» interdit le jeu de dés pour tout le monde, aussi bien pour le gouvernement du Canada et le gouvernement d'une province, que pour les organismes de charité ou religieux, les foires agricoles et les lieux d'amusement publics.

Le domaine suivant est celui du bookmaking, de la vente de mises collectives et des paris. La vente de mises collectives comprend entre autres la défunte loterie sportive du gouvernement fédéral.

Selon l'alinéa 186(1)*e*) commet une infraction quiconque participe à la vente «d'une mise collective ou au bookmaking, ou encore à l'entreprise ou à la profession de parieur».

L'article 188.1 porte qu'il est légal, pour le gouvernement du Canada de mettre sur pied et de vendre des paris collectifs visant deux événements sportifs ou plus, en conformité des règlements établis par le gouverneur en conseil.

Cette disposition fut adoptée en 1979 pour permettre au gouvernement fédéral de mettre sur pied et d'administrer la Société canadienne des paris sportifs, qui n'est plus en exploitation.

En ce moment, le Code criminel interdit le bookmaking, les paris ou la vente d'une mise collective par qui que ce soit—le gouvernement du Canada, le gouvernement d'une province, les organismes de charité et religieux, les foires agricoles ou les lieux d'amusement publics—sous réserve des cas énumérés à l'article 188.1 actuellement en vigueur.

Le domaine suivant est celui des loteries, comme les bingos et les tirages. En vertu de l'alinéa 189(1)*d*) est coupable de délit quiconque «conduit ou administre un plan . . . pour déterminer . . . les gagnants d'un bien . . .»

La mise sur pied et l'exploitation des bingos et tirages tombent sous le coup de cette définition. Pour le moment, le gouvernement du Canada et le gouvernement des provinces sont autorisés à organiser et gérer certaines formes de loterie qui comprennent le bingo et les tirages. Les organismes de charité et religieux sont également autorisés à en organiser, notamment, des bingos et des tirages, pourvu qu'ils aient une licence.

[*Text*]

Agricultural fairs are also authorized to conduct and manage lottery-type schemes which would include lotteries such as bingos and raffles, again provided that they are operated under the auspices of a licence.

Persons at public places of amusement are authorized to conduct and manage certain lottery-type schemes which also would include bingos and raffles, provided that they are operated under the auspices of a licence.

Thus, bingos and raffles can be conducted and managed by the Government of Canada and the government of a province without a licence. They can also be conducted and managed by charitable and religious groups, agricultural fairs and public places of amusement under the auspices of a licence.

The next area involves games such a blackjack.

Subsection 179(1) defines "common gaming house". Subsection 185(1) creates an offence to keep a common gaming house.

The game of blackjack, where the bank is kept by the house, falls within the definition of "common gaming house."

The present Section 190 of the Criminal Code, the "Permitted Lotteries" section, does not specifically address offences under Subsection 185(1). Section 190 begins with the words:

> 190(1) Notwithstanding any of the provisions of this Part relating to gaming and betting, it is lawful—and

it goes on. The gaming and betting sections of Part V would include Section 185, the keeping of a common gaming house. Subsection 190(2) is open to various interpretations. To my knowledge, it has never been argued in the courts. Basically, it provides that the Lieutenant Governor in Council of a province may impose terms and conditions to a licence when issued to charitable or religious groups, agricultural fairs, and public places of amusement.

Most provinces interpret the opening phrase in Section 190 and Subsection 190(2) as their authority to issue licences for Monte Carlo events—which, in reality, is the licensing of common gaming houses.

Generally, these Monte Carlo events are conducted and managed by bona fide charitable and religious groups, with the proceeds going toward worthy causes.

The Criminal Code presently restricts betting limits to 50 cents, with a maximum payout of $100 for charitable and religious organizations.

As the maximum betting limits are small and the proceeds go toward worthy causes, it is doubtful that Subsection 190(2) will ever be tested in an Ontario court to determine whether in fact a province has the authority to license a common gaming house.

The next area relates to prohibited games. Subsection 189(1), paragraph (g) currently creates an offence for anyone to induce any person "to stake or hazard any money or other

[*Traduction*]

Les foires agricoles sont aussi autorisées à mettre sur pied et exploiter certains genres de loterie, comprenant les bingos et les tirages pourvu, ici encore, qu'elles détiennent une licence.

Les gens qui se trouvent dans des lieux d'amusement publics ont la même autorisation pour les bingos et les tirages, pourvu qu'ils détiennent une licence.

Le gouvernement du Canada et ceux des provinces peuvent donc organiser et exploiter des bingos et des tirages sans avoir de licence. Et les organismes de charité et religieux, ainsi que les foires agricoles et lieux d'amusement publics, peuvent aussi en avoir, mais munis d'une licence.

Passons maintenant au blackjack.

Le paragraphe 179(1) définit la «maison de jeu» et le paragraphe 185(1) stipule qu'il est criminel d'en tenir une.

Le jeu de blackjack, lorsque la banque est tenue par la maison, tombe sous le coup de la définition d'une «maison de jeu.»

L'actuel paragraphe 190 du Code criminel consacré aux «Loteries permises», ne se rapporte pas spécifiquement aux délits relevant du paragraphe 185(1). L'article 190 commence par les mots:

> «190(1) Nonobstant toutes dispositions de la présente Partie relatives aux jeux et paris, il sera légal . . . »,

et ainsi de suite. Les articles de la Partie V sur le jeu et le pari comprennent l'article 185, tenancier d'une maison de jeu ou de pari et le paragraphe 190(2) qui prête à diverses interprétations. Celui-ci n'a jamais fait, que je sache, l'objet d'une controverse devant les tribunaux. Essentiellement, il porte que le lieutenant-gouverneur en conseil d'une province peut prescrire les modalités de l'octroi d'une licence à des organismes de charité ou religieux, à des foires agricoles et à des lieux d'amusement publics.

La plupart des provinces trouvent dans la première phrase de l'article 190 et du paragraphe 190(2) l'autorité nécessaire pour délivrer des licences pour les jeux de hasard du type «Monte-Carlo». Il s'agit de fait de l'octroi d'une licence de mise sur pied et d'exploitation de maisons de jeux.

Généralement, ces jeux de hasard nommés «Monte-Carlo» sont mis sur pied et exploités par des organismes de charité et des organismes religieux autorisés, et le produit est utilisé à des fins méritoires.

Le Code criminel restreint actuellement les limites en matière de paris à 50c., avec une récompense maximum de cent dollars, le produit étant versé à des organismes de charité et à des organismes religieux.

Comme les limites en matière de paris sont basses et que le produit est versé à des causes méritoires, il est douteux que le paragraphe 190(2) soit jamais examiné par un tribunal de l'Ontario pour déterminer si, de fait, une province a l'autorité nécessaire pour délivrer une licence de mise sur pied et d'exploitation de maisons de jeux.

Viennent ensuite les jeux illicites. L'alinéa *g*) du paragraphe 189(1), interdit à toute personne d'inciter une autre à «risquer ou hasarder de l'argent ou quelque autre bien ou chose de

[*Text*]

valuable property or thing on the result of any . . . three-card monte, punch board, coin table." This prohibition includes a prohibition in respect of such games against the Government of Canada, the government of a province, charitable and religious groups, or agricultural fairs and public places of amusement.

The game of three-card monte is the term used in the Criminal Code. It is commonly referred to as the shell game. This particular game is prohibited because of the manner by which the operator can manipulate the outcome of the game.

In the game of coin table, a coin runs down a chute on to a checkered layout indicating the payoff. To play the game of punch board, a player pays a sum of money to punch out a piece of paper with a nail-type object, with a paper dropping out of the bottom indicating the payout.

The final area is that of horse racing—

Senator Buckwold: Subsection 189(1), paragraph (g) uses the word "induces." That means that someone has to invite someone to participate in the game. What would be the situation in the circumstance where a couple of fellows simply got together and decided that they wanted to participate in one of these games? If there is no inducement to participate, would participation in one of these games be legal?

Corporal Durno: That would be subject to interpretation by the courts. To my mind, if one were to put out a layout for a crap game and started to roll the dice, I would consider that inducement.

The Chairman: If at all possible, the preference would be to hold questions until the conclusion of the entire presentation.

Corporal Durno: The final area I wish to deal with is that of horse racing. Subsection 190(6) of the Code states:

> (6) Nothing in this section shall be construed as authorizing the making or recording of bets made through the agency of a pari-mutuel system, other than in accordance with Section 188.

This section prohibits the recording of bets on horse racing by anyone except in accordance with Section 188 of the Code: the Government of Canada, the government of a province, charitable and religious groups, and agricultural fairs and public places of amusement.

The present Criminal Code defines a "lottery scheme" to include a game. That is in Subsection 190(5). And then "game" is further defined as "a game of chance or mixed chance and skill."

Subsection 190(2) provides authority for the Lieutenant Governor in Council of a province to impose terms and conditions relating to the conduct and management of a lottery scheme for which a licence is issued. The legislation does not contain an offence in respect of the violation of such terms and conditions. Thus, ensuring compliance with the terms and conditions is not enforceable, with the result that it is virtually non-existent. Flagrant violations of the terms and conditions of such licences is rampant throughout the Province of Ontario,

[*Traduction*]

valeur sur le résultat . . . d'un jeu de bonneteau, d'une planchette à poinçonner ou d'une table à monnaie». Ces interdictions s'étendent au gouvernement du Canada, aux gouvernements provinciaux, aux organismes de charité et aux organismes religieux, aux foires agricoles et aux lieux d'amusement publics.

Le jeu de bonneteau est le terme utilisé dans le Code criminel. En anglais, on l'appelle habituellement «shell game». Il est défendu parce que la personne qui l'exploite peut en influencer le résultat.

Dans le jeu de la table à monnaie, une pièce descend le long d'une chute sur une table à carreaux où le prix est indiqué. Pour jouer sur la planchette à poinçonner, il faut verser une somme d'argent qui permet au joueur de détacher un morceau de papier au moyen d'une espèce de tige. Sur ce papier se trouve écrit le montant que le joueur a gagné.

Nous en venons enfin aux courses de chevaux . . .

Le sénateur Buckwold: L'alinéa *g*) du paragraphe 189(1) utilise le mot «décide». Il faut donc que quelqu'un invite la personne à participer au jeu. Mais qu'advient-il s'il s'agit de deux gars qui décident de participer à l'un de ces jeux? En l'absence de toute incitation, la participation à l'un de ces jeux est-elle légale?

Le caporal Durno: Il faut s'en remettre sur ce point à la décision du tribunal. A mon avis, si quelqu'un prépare le dispositif pour jouer aux dés et commence à jeter les dés, je verrais là une incitation.

Le président: Autant que possible, il serait préférable d'attendre pour poser vos questions que le témoin ait fini son exposé.

Le caporal Durno: Le dernier domaine dont je veux vous parler est celui des courses de chevaux. Le paragraphe 190(6) du Code stipule:

> (6) Rien au présent article ne doit s'interpréter comme permettant de faire ou d'inscrire des paris par l'intermédiaire d'un système de pari mutuel, si ce n'est en conformité de l'article 188.

Ce paragraphe interdit la prise de paris sur les courses de chevaux par toute personne, sauf en conformité de l'article 188 du Code: le gouvernement du Canada, le gouvernement d'une province, les organismes de charité et les organismes religieux, les foires agricoles et lieux d'amusement publics.

D'après la définition du Code criminel actuel, «système de loterie comprend un jeu». C'est au paragraphe 190(5). Et le jeu est défini ailleurs comme «un jeu de hasard ou un jeu où se mêlent le hasard et».

Le paragraphe 190(2) autorise le lieutenant-gouverneur en conseil d'une province à fixer les conditions d'exploitation et de gestion de la loterie autorisée par une licence. Le texte de loi ne prévoit pas d'infractions en cas de violation de ces conditions. Par conséquent, il est impossible de les faire respecter, ce qui les annule presque. Partout en Ontario, elles sont violées et la police n'a aucun recours pour faire appliquer la loi, même si elle reçoit des plaintes de la part des citoyens.

[*Text*]

and the police find themselves powerless in taking any enforcement action, even on a complaint from a citizen.

That concludes my portion of the presentation, Madam Chairman.

Staff Sergeant P. Benge, Morality Bureau, Metropolitan Toronto Police Force: Madam Chairman, Honourable senators, before getting into the substance of my portion of the presentation, perhaps I should outline my qualifications.

I am Chairman of CISO Gambling Committee. Also, for the past three years I have been the head of one of the largest gambling enforcement squads in Canada.

You have just heard what the various groups are allowed t do under the legislation as it now exists. I might add that these areas usually are the subject of discussion as a result of different interpretations of the existing law.

I shall now provide you with a preview of the Bill and its effect on gambling trends. For purposes of my presentation, I will be using the chart used by Corporal Durno. The situation under Bill C-81 is set out under the columns headed up "B." The "B" column shows the "yes" "no" allowance should the amendments proposed in Bill C-81 be enacted. The first category on the chart is the Government of Canada. Looking across the chart, you will note that the first seven categories are marked "no," with the final category, horse racing, marked "yes." In other words, the Government of Canada would be removed from all gambling ventures but for horse racing, an area which is under the jurisdiction of Agriculture Canada.

We have no qualms about this. In fact, it can only help to clarify Part V of the Criminal Code.

I shall skip the next category for the moment, the government of a province, and go on to the next two groups, charitable and religious organizations licensed by the provincial governments and agricultural fairs and public places of amusement.

In both cases, you will observe that their respective allowances are virtually unchanged as between the existing law and what the law will be should the amendments in Bill C-81 be enacted. However, the betting limits for charitable and religious groups has been removed. This means that a bet of $1,000 in a blackjack game would be permissible under licence.

Let me now go back to the category "government of a province," or main area of concern. Let me first focus on Area 4 on the chart, that of bookmaking, pool selling, and betting.

Under the proposed Subsection 190(4), paragraph (b), the government of a province would have the power to operate bookmaking, pool setting and betting operations on more than one sporting event. Thus, there could be bookmaking on hockey or football playoffs, boxing, and even the Olympics; or, in its broadest sense, even on a bullfight in Mexico. The criterion is that there be two events.

[*Traduction*]

Ainsi se termine ma partie, Madame la présidente.

Le sergent d'état-major P. Benge, de l'Escouade de la moralité, Force policière du grand Toronto: Madame la présidente, honorables sénateurs, avant d'entrer dans le vif du sujet, je devrais peut-être vous préciser à quel titre je comparais.

Je suis président du Comité des paris du Bureau de renseignements criminels de l'Ontario; au cours des trois dernières années, j'ai aussi dirigé l'une des plus grosses escouades de lutte contre le jeu au Canada.

Nous venons d'entendre ce que la loi actuelle autorise pour les divers groupes. Je pourrais ajouter que ces domaines font habituellement l'objet de discussions, car la loi se prête à différentes interprétations.

Je vais maintenant vous donner un avant-goût des conséquences que le projet de loi aurait sur les milieux du jeu. Aux fins de mon exposé, je me servirai du même tableau utilisé par le caporal Durno. La situation résultant du projet de loi C-81 figure dans les colonnes «B», où l'on a précisé ce qui serait permis et ce qui ne le serait pas si les amendements proposés au projet de loi C-81 étaient adoptés. Le premier groupe sur ce tableau est le gouvernement du Canada. Vous noterez que les sept premières catégories de jeu sont marquées d'un «non», tandis que la dernière catégorie, celle des courses sous harnais est marquée d'un «oui». Autrement dit, le gouvernement du Canada se retirerait de tout ce qui a trait au jeu à l'exception des courses sous harnais, domaine qui relève d'Agriculture Canada.

Nous n'y voyons absolument rien de mal. En fait, cela ne peut que servir à préciser la partie V du Code criminel.

J'omets, pour le moment, le groupe suivant, celui d'un gouvernement provincial, pour regarder les deux prochains groupes, savoir les organismes de charité et les organismes religieux reconnus par les gouvernements provinciaux, ainsi que les foires agricoles et les lieux d'amusement publics.

Dans les deux cas, vous remarquerez que ce qui leur est autorisé est pratiquement inchangé en vertu de la loi actuelle et de celle que nous aurions si les amendements en cause étaient adoptés. Toutefois, les limites des paris pour les organismes de charité et religieux ont été levées. Ainsi, un pari de 1 000 $ dans un jeu de «blackjack» pourra être autorisé pourvu qu'une licence soit accordée.

Permettez-moi maintenant de revenir au groupe «gouvernement provincial», notre principal sujet de préoccupation. Considérons d'abord la quatrième catégorie du tableau, celle du «bookmaking», de la vente d'une mise collective et des paris.

Aux termes de l'alinéa 190(4)*b*) proposé, un gouvernement provincial aurait le pouvoir de faire du bookmaking, de vendre une mise collective ou de prendre des paris à l'occasion de plus d'un événement sportif. En effet, il pourrait faire du bookmaking pour les finales au hockey ou au football, à la boxe et même aux jeux olympiques; ou, dans son sens le plus large, même pour un combat de taureaux au Mexique. Le critère est la tenue de deux événements.

[*Text*]

This represents a major expansion of what the Government of Canada can now do under Section 188.1.

Moving back to the chart now, Honourable senators will notice that for the "government of a province" category Area 1, slot machines, Area 2, wheel of fortune, including roulette wheels, and Area 6, blackjack, have changed to a "yes" allowance under the proposed Subsection 190(4), which proposed subsection provides the definition of a "lottery scheme." Also, in Area 3, dice games, Honourable senators will note that the allowance is "no"; however, if the dice game were operated by a computer or video device, this area could also change to "yes."

What do all of these areas have in common? Well, they are the main ingredients for Las Vegas-style casino gambling.

Why our concern, you may ask. Casino gambling—or Monte Carlo nights, as they are commonly called—have been going on for years in Canada, and particularly so in the Western provinces, where their conduct is controlled by the respective provincial governments. However, those casinos are run for charitable or religious benefit, with most of the proceeds going to those groups. Wheels of fortune are allowed, whereas roulette wheels, because of the odds involved, are not. Slot machines are prohibited at such events, and will remain prohibited even if the amendments in Bill C-81 are enacted. This is not so for the provincial governments, which will be allowed to operated casinos with roulette wheels and—and this is most important—and with slot machines, the proceeds from which would all go to the provincial government.

Corporal Durno has already made the point that there is a complete prohibition in respect of slot machines under Subsection 180(3). It appears that Parliament intended to keep slot machines in the prohibited category in Canada.

Bill C-81, under the proposed Subsection 190(4), paragraph (c), referring again to the definition of "lottery scheme," completely contradicts this legislation by allowing provincial governments to operate such machines. If Bill C-81 is enacted, we will be in the position of having two different sections of the Criminal Code dealing with slot machines, one contradicting the other.

Let me enlighten you as to the importance of slot machines, or one-armed bandits as they are commonly called.

Slot machines were originally introduced into casinos for the ladies to be entertained while their men played at various gaming tables. They are for impersonal-type and are addictive to new gamblers. The casinos can control the payout percentages on these machines. For example, the machine nearest the casino doors pays up more than those farther inside the casino, the reason, of course, being to attract and retain the interest of the players.

Senator Buckwold: A good tip.

Staff Sergeant Benge: During 1984, slot machines accounted for 49.9 per cent of the total casino revenue in the Las Vegas area. According to "Gaming & Wagering Business", a publication for gaming/wagering executives and

[*Traduction*]

C'est un important élargissement de ce qui est permis au gouvernement du Canada en vertu de l'actuel article 188.1.

Si l'on revient au tableau, les honorables sénateurs noteront que, pour les secteurs 1: appareils à sous, 2: roue de fortune, y compris la roulette, et 6: le «blackjack», le groupe «gouvernement provincial» devrait obtenir une autorisation, c'est-à-dire un «oui» aux termes du paragraphe 190(4) proposé, dont l'alinéa donne une définition de «loterie». En outre, pour le secteur 3, celui des jeux de dés, les honorables sénateurs constateront qu'il n'y a pas d'autorisation, que c'est un «non»; toutefois, si le jeu de dés était exploité par ordinateur ou par vidéo, ce domaine pourrait également être transformé en un «oui».

Qu'ont tous ces domaines en commun? Il s'agit en fait des principales composantes d'un casino à la Las Vegas.

Pourquoi donc nous en préoccupons-nous, demanderez-vous? Le jeu dans les casinos—ou les nuits à la Monte Carlo, comme on les appelle communément—existe depuis des années au Canada, et plus particulièrement dans les provinces de l'Ouest, où leur exploitation est régie par chacun des gouvernements provinciaux. Toutefois, ces casinos fonctionnent à des fins charitables ou religieuses, et la plupart des recettes vont à ces organismes. Les roues de fortunes sont autorisées, tandis que la roulette, un jeu de hasard, ne l'est pas. Les appareils à sous sont interdits lors de ces activités et le demeureront même si les amendements du projet de loi C-81 sont adoptés. Les gouvernements provinciaux, eux, seront autorisés à diriger des casinos munis de roulettes et—qui plus est—d'appareils à sous, et leurs recettes iront entièrement au gouvernement provincial.

La caporal Durno a déjà précisé que le paragraphe 180(3) interdit formellement les appareils à sous. Il semble que ce soit la volonté du Parlement de laisser les appareils à sous dans la catégorie des jeux interdits au Canada.

L'alinéa 190(4)*c*) du projet de loi, qui reprend la définition de «loterie», va complètement à l'encontre de cette loi en autorisant les gouvernements provinciaux à exploiter de tels appareils. Si ce projet de loi est adopté, deux différents articles du Code criminel traiteront des appareils à sous, et ils seront contradictoires.

Permettez-moi de vous éclairer sur l'importance des appareils à sous, ou des «one-armed bandits» comme on les appelle plus communément.

Les appareils à sous ont fait leur entrée dans les casinos pour distraire les dames pendant que leur mari jouait aux diverses tables de jeu. Ils s'adressent à ceux qui préfèrent un type impersonnel de jeu, et les parieurs néophytes n'arrivent plus à s'en passer. Les casinos peuvent contrôler le pourcentage des déboursés de ces appareils. Par exemple, l'appareil le plus près des portes du casino paie plus, tout simplement parce qu'on veut ainsi attirer les joueurs et s'assurer que leur intérêt soit maintenu.

Le sénateur Buckwold: Un bon renseignement!

Le sergent d'état-major Benge: En 1984, les appareils à sous rapportaient 49,9 p. 100 du revenu total des casinos de la région de Las Vegas. Selon «Gaming & Wagering Business», publication destinée aux directeurs de maisons de jeu et de

[*Text*]

government officials, this essentially means that, in modern casinos, half of the gambling action is attributed to slot machines, while the other half of the revenue is derived from a variety of other games, such as blackjack, poker, baccarat, roulette, and dice games such as craps, and cheeno, which is a type of bingo game that one can play at breakfast.

Let me read for you a paragraph from the "Gaming and Wagering Business" publication dated October 1985. This is an American publication and, again, is intended for gaming wagering executives and government officials. It reads:

> This is why it may be difficult to accept the steadily increasing importance of slot machines to the gambling halls in the Las Vegas area. Their significance increases annually, and there is every reason to believe that slot machines will for the first time generate more than 50 percent of Clark County (Las Vegas area) casino revenues during the current fiscal year that ends next summer.

And the "next summer" therein referred to is the summer of 1986.

That is why slot machines are so important to casinos.

It has been said by the Honourable Otto Jelinek that Bill C-81 will not promote an expansion of gambling. Let me enlighten the committee in this respect. The Minister's statement is inaccurate, for the most part, via-à-vis the government of a province. Provincial governments will have the power to operate, on their own behalf, Las Vegas style casinos, complete with slot machines. The proceeds derived from those casinos will go to the provincial government, and not to the charitable and religious groups, as is now the case.

We are not saying that these proceeds will not be used for the public good. What we are saying is that gambling on the part of the public will increase drastically once slot machines are introduced.

However way one looks at it, the opportunity is there for provincial governments to take full advantage of the proposed amendments, something which, contrary to what has been said previously, will significantly expand gambling amongst the Canadian public.

To what degree the provincial governments will seize this opportunity once presented is unknown at this time. We therefore feel that more study is necessary at this time so as to determine the potential ramifications of such amendments, both socially and economically.

That concludes my portion of the presentation, Madam Chairman.

Thank you, Staff Sergeant Benge.

Mr. W.I. James Harding, Chief of Police, Halton Regional Police Force: Madam Chairman, Honourable senators: I am pleased to join with Chief Basse and those other of my colleagues present this evening representing policing in the Province of Ontario. We appreciate having this opportunity of appearing before you for the purpose of expressing our con-

[*Traduction*]

paris ainsi qu'aux hauts fonctionnaires, cela signifie essentiellement que dans les casinos modernes, la moitié des recettes de jeu est attribuée aux appareils à sous, tandis que l'autre moitié provient d'une foule d'autres jeux tels le «blackjack», le poker, le baccarat, la roulette et les jeux de dés comme «craps» et «cheeno», qui est un genre de bingo qu'on peut jouer au petit déjeuner.

Permettez-moi de vous lire un extrait de «Gaming and Wagering Business» d'octobre 1985. C'est une publication américaine qui, je le répète, s'adresse aux directeurs de maisons de jeu et de paris et aux hauts fonctionnaires:

> «C'est pourquoi il peut être difficile d'accepter que les appareils à sous prennent une importance toujours croissante dans les salles de jeu de Las Vegas. Cette importance croît annuellement, et tout porte à croire que, pour la première fois, ils produiront plus de 50 p. 100 des recettes des maisons de jeu du comté de Clark (région de Las Vegas) au cours de l'exercice financier actuel qui se termine l'été prochain.»

Par «été prochain» on entendait ici l'été de 1986.

Voilà pourquoi les appareils à sous sont si importants pour les casinos.

L'honorable Otto Jelinek a déclaré que le projet de loi C-81 ne favorisera pas le développement des maisons de jeu. Permettez-moi de préciser. La déclaration du ministre est dans l'ensemble fausse, en ce qui a trait au gouvernement des provinces. Ces gouvernements auront le pouvoir d'exploiter eux-mêmes des maisons de jeu à la Las Vegas, y compris des appareils à sous. Les recettes de ces maisons de jeu iront au gouvernement provincial et non à des organismes de charité ou à des groupes religieux, comme c'est maintenant le cas.

Loin de nous la pensée que ces revenus ne seront pas utilisés pour le bien public. Nous croyons simplement que le public s'adonnera de plus en plus au jeu dès que les appareils à sous feront leur apparition.

Quoi qu'il en soit, les gouvernements provinciaux pourraient tirer pleinement profit des amendements proposés—ce qui, contrairement à ce qu'on a déjà dit, contribuera sensiblement à relancer le jeu chez les Canadiens.

Nous ne savons pas encore dans quelle mesure les gouvernements provinciaux sauteront sur l'occasion. Nous estimons donc qu'il faut approfondir la question et étudier les ramifications possibles de tels amendements, sur les plans social et économique.

Ceci met fin à mon exposé, Madame la présidente.

Je vous remercie sergent d'état-major Benge.

M. W. I. Harding, chef de police, corps policier régional de Halton: Madame la présidente, honorables sénateurs, je suis heureux de me joindre au chef Basse et à tous mes autres collègues ici présents ce soir pour représenter les forces policières de la province de l'Ontario. Nous vous sommes reconnaissants de nous fournir cette possibilité de comparaître devant vous afin de vous faire part de nos préoccupations au sujet des chan-

[*Text*]

cerns relative to the proposed changes to the Criminal Code of Canada regarding gaming.

For the purposes of my presentation, I shall be making reference to the chart now displayed before you as a means of graphically illustrating the impact of the proposed changes to the Criminal Code of Canada, and specifically their impact on policing in the Province of Ontario.

It will, I hope, become clear to you that the advantage to be gained from the proposed amendments falls heavily on the side of organized crime and those in our society who actively participate in it. To say that there are no advantages to the proposed amendments would be to turn a blind eye to the obvious.

During our review of the proposals and the consequent evaluation of their impact on the particular part of Canadian society that we are appointed to serve and protect, the advantages would seem to be falling in the following areas:

(1) The proposed amendments, with the exception of those relative to slot machines, are not radically different from the liberal interpretation currently placed upon the existing law in the provinces of Alberta and Manitoba;

(2) The amendments will result in a large amount of revenue, which provincial governments can then apply to the public good;

(3) There is a growing public demand for betting, gaming and lottery activities.

As meaningful as those considerations might well be, they pale in the light of other considerations and the volume of established historical fact that should caution a responsible government to spend considerable time in making a comprehensive evaluation of the impact of its pending decision on society.

There are other facts and arguments which must be placed in the scales of the decision-making process relative to the proposed changes to the Criminal Code of Canada. Such arguments include:

(1) The impact of the proposed legislative changes upon organized crime, white collar crime, and street crime in the Province of Ontario;

(2) The impact upon available police resources;

(3) The impact upon the public in the Province of Ontario.

It is these three topics to which I shall now address myself, and once again, whilst doing so, I shall be making reference to the chart now displayed before you.

The grave and deeply entrenched fear of senior Ontario police officials is that the proposed changes to the Criminal Code of Canada will open the door to uncontrolled or improperly controlled casino gambling in Ontario. Comprehensive research in other jurisdictions which have liberalized gaming laws have demonstrated that casino gambling creates a market for the perpetrators of various crimes.

Not only is there an increase in crime in general—which is alarming in itself—it also creates havoc for law enforcement agencies and for the population at large.

[*Traduction*]

gements proposés au Code criminel du Canada dans le domaine des jeux.

Pour mieux suivre mon exposé, je vous prierais de vous reporter au tableau que vous avez devant vous, et qui illustre graphiquement l'incidence des changements proposés au Code criminel du Canada en ce qu'ils touchent plus particulièrement les forces policières de la province de l'Ontario.

J'espère que vous vous rendrez compte que c'est le crime organisé et ses promoteurs qui tireront profit des amendements proposés. Ce serait nier l'évidence, toutefois, de dire que les amendements proposés ne présentent aucun avantage.

Après avoir examiné les propositions et leurs conséquences sur la portion de la société canadienne que nous sommes chargés de protéger et de servir, nous avons pu percevoir les avantages suivants:

(1) les amendements proposés, à l'exception de ceux qui traitent des appareils à sous, ne diffèrent pas radicalement de l'interprétation libérale qu'on donne actuellement à la loi dans les provinces de l'Alberta et du Manitoba;

(2) les amendements engendreront une plus grande quantité de revenus, que les gouvernements provinciaux pourront ensuite consacrer au bien public;

(3) le public réclame de plus en plus d'activités en matière de paris, de jeux et de loteries.

Aussi importantes que puissent être ces considérations, elles perdent tout intérêt comparées à d'autres et au nombreux faits historiques qui devraient inciter un gouvernement responsable à consacrer à certain temps à une évaluation exhaustive de l'incidence d'une de ces décisions éventuelles sur la société.

Il y a également lieu de tenir compte d'autres faits et facteurs dans la prise de décisions relatives aux changements qu'il est proposé d'apporter au Code criminel canadien. Au nombre de ces facteurs mentionnons:

(1) l'incidence des modifications législatives proposées sur le crime organisé, le crime commercial et le crime de rue en Ontario;

(2) l'incidence sur les effectifs disponibles des forces de l'ordre;

(3) l'incidence sur la population de l'Ontario.

C'est de ces trois sujets que j'aborderai maintenant en me reportant encore au tableau que vous voyez devant vous.

Les hauts fonctionnaires de la police de l'Ontario craignent vivement que les modifications qu'il est proposé d'apporter au Code criminel canadien entraînent l'établissement de maisons de jeu qui seront peu ou mal surveillées en Ontario. Des recherches exhaustives menées dans d'autres territoires qui ont libéralisé leurs lois à cet effet ont révélé que les maisons de jeu créent un contexte criminel.

Non seulement entraînent-elles une augmentation du crime en général, ce qui est déjà alarmant en soi, mais elles nuisent

[*Text*]

The effects of legalized casino gambling on crime can be broken down into three sub headings, the first being that of organized crime.

Should the proposed changes to the Criminal Code result in casino gambling in the Province of Ontario, individuals already associated with illegal gambling and the casino industry in other jurisdictions will attempt to obtain a foothold on existing properties, prime real estate, for future casino sites.

Madam Chairman, Honourable senators, it would be very naive of our provincial and federal governments to assume that such action has not already taken place. Research has established that once organized crime has a foothold with respect to location, it can then employ its international resources to ensure that the construction and operation of casinos are conducted with their interests in mind.

Organized crime has shown that it used casino gambling as a vehicle to monopolize other service industries, such as waste disposal, common linen services, and vending operations. The potential for laundering illegallygenerated funds through these services, and others, is unlimited.

It is also fair to assume that, with the establishment of new businesses, organized crime will attempt to maximize its control through the manipulation of labour unions. In addition, organized crime will attempt to involve itself in offences such as complex frauds, narcotic importation, loan sharking, prostitution—all of which are well known to be associated with gambling.

The second category is that of white collar crime. Due to the flow of large amounts of cash from the public to the casinos, and vice versa, the opportunities for individuals to commit white collar crimes are ever present and will escalate. Such crimes include embezzlement, the falsifying of accounts and records, the manipulation of computers, and real estate and mortgage frauds.

The third category is that of street crime. Casinos, it has been established without doubt, draw together all of the classical components for large-scale increases in crimes usually described as street crimes. A large transient population, a permissive social environment, accelerated commercial activity, large amounts of loose money in circulation, and an influx of a large number of persons attracted to such an atmosphere ensure the presence of street crime. Those which are likely to increase drastically are: armed robberies, aggravated assaults, thefts, offences related to narcotics and break and enters. Harder street crimes include extortion and murder.

Madam Chairman, Honourable senators, I respectfully draw to your attention that this is not mere speculation or conjecture; this is fact—*this is fact*—based upon the reality of bitter experience in other jurisdictions.

[*Traduction*]

gravement aux organismes d'application de la loi et à l'ensemble de la population.

L'incidence du jeu légalisé sur le crime a trois volets, le premier étant le crime organisé.

Si les modifications qu'il est proposé d'apporter au Code criminel ont pour effet de permettre l'établissement de maisons de jeu dans la province de l'Ontario, les individus qui se livrent déjà au jeu illégal et qui enrichissent l'industrie du jeu dans d'autres provinces tenteront de mettre la main sur des propriétés et des biens immobiliers de choix pour aménager des casinos.

Madame la présidente, honorables sénateurs, les gouvernements fédéral et provinciaux feraient preuve d'une grande naïveté en supposant que pareilles choses n'existent pas. Des recherches ont démontré que dès qu'un syndicat du crime s'installe à un endroit donné, il peut recourir à ses ressources internationales pour veiller à ce que la construction et l'exploitation des casinos soient effectuées dans son intérêt.

Les syndicats du crime ont démontré qu'il pouvait se servir des maisons de jeu pour monopoliser d'autres industries de service comme celles de l'élimination des déchets, des buanderies et des distributrices automatiques. La possibilité de blanchir des fonds provenant illégalement de ces services et d'autres est illimitée.

Il est également juste de supposer qu'avec l'établissement de nouvelles entreprises, le crime organisé tentera de maximiser son pouvoir en manipulant les syndicats de travailleurs. En outre, le crime organisé essaiera de tremper dans les fraudes complexes, l'importation de narcotiques, les prêts usuraires et la prostitution, toutes des infractions que l'on sait liées au jeu.

La seconde catégorie de crime est le crime dit commercial. Étant donné les grandes sommes d'argent qui passent des joueurs aux casinos, l'on peut s'attendre à une augmentation du nombre d'occasions de commettre des crimes commerciaux, dont les détournements de fonds, la falsification de comptes et de dossiers, la manipulation d'ordinateurs et la fraude sur le marché des biens immobiliers et sur les hypothèques.

La troisième catégorie est celle du crime de rue. Les casinos, comme il a été établi sans l'ombre d'un doute, rassemblent tous les éléments classiques susceptibles de causer une forte montée de la criminalité habituellement décrite comme crime de rue. Une vaste population de passage, un milieu social permissif, une activité commerciale accélérée, de grandes sommes d'argent qui circulent en liberté, et l'arrivée d'un grand nombre de personnes attirées par une telle atmosphère, voilà tous des facteurs propices au crime de rue. Parmi ces crimes, ceux dont la fréquence augmentera probablement radicalement sont les suivants: les vols à main armée, les actes de violence caractérisés, le vols, les délits liés aux narcotiques et le vol avec effraction. Les crimes de rue les plus violents sont notamment l'extorsion et le meurtre.

Madame la présidente, honorables sénateurs, je vous prierais d'observer que ce n'est pas une simple spéculation ni une simple conjecture; c'est un fait—*c'est un fait*—éprouvé par la réalité de l'amère expérience qu'ont connue d'autres juridictions.

[*Text*]

I should like now to address myself to the impact of these proposed changes on police resources.

In addition to the investigative and intelligence activities which should accompany the application of any person or organization wishing to embark on gaming enterprises—which will in itself witness an escalated use of police resources—there are other very important impacts upon the police service. Historical fact has established the reality that there will be a tremendous increase in crime, and police forces will find themselves unable to cope with the increased demand for their services with available resources.

In Atlantic City in the United States of America, the increased demand for police services rose 2000 per cent after gambling casinos were put in place. In addition, other examples would lead the police to believe that many of their best and experienced officers will leave the department to take up more lucrative positions with the casino security forces.

Morale within our police forces suffers due to the inability to handle the increased workload and the neglect of other departmental responsibilities.

It must be obvious to those in government that the cost to the taxpayer to increase police resources to the level where they are able to adequately handle the situation of escalating crime is overwhelming.

The public are of concern to us now, and I would like to talk about the impact on the public. Again, it is not merely conjecture or fear for an uncertain future which would cause us to be cautious but rather the established experience of other jurisdictions. Udoubtedly, casinos will be established in areas geared toward the tourist industry, and it is equally certain that the type of individual attracted by casino gambling is a very different person from the usual tourist or tourist entrepreneur. The citizens of the areas where these establishments are set up will be forced to make adjustments to their life styles in order to cope with the influx of "high rollers." It is suggested that, in such a milieu, there is a gradual process of erosion of the social order, by virtue of relaxed regulations, permissiveness, and the "easy come/easy go" type of thinking.

Residents of communities in which casinos locate will soon see a reduction in police services, such as a longer response time for their calls for service, because officers will be dedicating more time to the ever present population surrounding the gambling industry.

The glamour and mystique of casino gambling will likely draw in many ordinary citizens, who will lose their hard earned money. It is suggested that this money would be better used by being put into other sectors of the Canadian economy.

Experience in other jurisdictions has witnessed an accompanying increase in absenteeism from one's employment and an escalation in serious domestic assaults. It has also seen large communities totally disrupted, with the original population of

[*Traduction*]

J'aimerais maintenant vous entretenir de l'incidence de ces changements proposés sur les ressources de la police.

En plus des enquêtes et des activités de renseignements qui devraient accompagner la demande de toute personnes ou de tout organisme qui désire se lancer dans des entreprises de jeu—qui eux-mêmes nécessitent de plus en plus de ressources policières—il y a d'autres très importantes répercussions sur le service policier. Des faits historiques prouvent qu'il y aura une énorme recrudescence de la criminalité, et les forces policières se trouveront incapables de faire face à la demande accrue, étant donné les ressources dont elles disposent à l'heure actuelle.

A Atlantic City, aux États-Unis, la demande accrue de services policiers s'est élevée de 2 000 p. 100 après l'ouverture des casinos. En outre, d'autres exemples amèneraient le service de police à croire qu'un grand nombre de ses officiers parmi les meilleurs et les plus expérimentés quitteront le service pour accepter des postes plus lucratifs au sein des forces de sécurité du casino.

Le moral de nos forces policières en souffre parce que nous sommes incapables de faire face à ce surcroît de travail et que nous négligeons d'autres responsabilités du service.

Il doit être évident aux membres du gouvernement que les contribuables seraient forcés de débourser des sommes colossales pour augmenter les ressources policières au niveau où elles pourraient adéquatement faire face à la montée du crime.

Nous nous soucions du public, et j'aimerais vous parler des conséquences pour le public. Je le répète, ce ne sont pas de simples conjectures ni la crainte pour un avenir incertain qui nous dicteraient la prudence, mais plutôt l'expérience acquise dans d'autres domaines. Naturellement, des casinos seront installés à proximité des zones touristiques, et il est tout aussi certain que le type de personnes attirées par le jeu dans les casinos est très différent du touriste habituel ou du personnel touristique. Les citoyens qui résident dans les zones où ces établissements seront installés, se verront forcés de changer leur style de vie pour faire face à l'arrivée de la cohorte de joueurs. Nous sommes d'avis que dans un tel milieu, il y a une détérioration progressive de l'ordre social, en raison d'un relâchement des règlements, d'une certaine permissivité, et d'une morale laxiste.

Les résidents des localités où se trouveront des casinos assisteront rapidement à une réduction des services policiers, qui se manifestera par un temps d'attente plus long après leur demande de service, parce que les officiers consacreront de plus en plus de temps à surveiller la population qui entoure l'industrie du jeu.

La séduction et la mystique qui entourent le jeu des casinos attireront un grand nombre de simples citoyens qui perderont ainsi leur argent si durement gagné. Nous croyons que cet argent serait mieux utilisé en investissant dans d'autres secteurs de l'économie canadienne.

L'expérience démontre qu'il y a une augmentation de l'absentéisme au travail et une aggravation des querelles de ménage. D'importantes collectivités ont été complètement démembrées lorsque la population originale de l'endroit a déménagé pour faire place aux casinos.

[*Text*]

the area moving out to accommodate the presence of gaming casinos.

There has been a dramatic increase in the welfare rules, and there have been excessive demands upon other social services.

This presentation represents only a very quick overview of some of the potentially dangerous impacts that permissive gaming laws can have upon our Ontario society. In order to rectify that deficiency, I refer you, Madam Chairman, and Honourable senators, to the Programs Branch User Report prepared for the Ministry of the Solicitor General of Canada, entitled: "Legalized Gambling: An Overview." This report, prepared in 1984, was prepared by Margaret E. Beare, who is in attendance this evening, and Howard Hampton. This report offers significant cautions against legalized gambling. It clearly shows—and again this is a report compiled for the federal government—clearly shows that some of the persons interviewed regarding this matter, persons who have lived the experience of legalized casino gambling, describe it as an "engraved invitation to organized crime."

We urge the government to carefully review and evaluate the potential impacts of legalized gambling on our community.

Madam Chairman, Honourable senators, the police forces of the Province of Ontario do not stand alone in respect of these concerns. I should like to share with you a resolution of the Canadian Association of Chiefs of Police, a resolution passed at the conference of that association held in 1985. A copy of this resolution was forwarded to the federal Minister of Justice, and as far as I am aware we have had no response to that communication to this date.

The resolution reads:

> The federal/provincial Lottery Agreement and the proposed changes to the Criminal Code at Section 190 give rise to serious concerns by the Canadian Association of Chiefs of Police. This agreement and these proposals would pave the way for legal gambling such as casinos operating under either Provincial or Municipal licences.
>
> WHEREAS research has determined that there is a definite correlation between the existence of legalized casino gambling and the incidence of crime, and
>
> WHEREAS this is further supported by the fact that the State of Nevada leads the statistics for street crime per capita and further that in the first three years of operation Atlantic City street crime rose by 171 per cent far in excess of the U.S. national average of 26 per cent and
>
> WHEREAS casino operations generate large sums of cash flow which is difficult to account for in terms of the money going in and out of the operation making this an attractive way to launder illegitimate funds and
>
> WHEREAS there are many examples of the negative impact of casinos on a community due to the connected activities of prostitution, drugs, alcohol, loan sharking, etc., and

[*Traduction*]

Le recours à l'assistance sociale a augmenté radicalement, et les autres services sociaux ont subi un fardeau excessif.

Ce n'est là qu'un très bref aperçu de certaines des conséquences graves que les lois permissives sur le jeu peuvent avoir sur notre société en Ontario. Pour corriger cette lacune, je vous prierais, madame la présidente et honorables sénateurs, de vous reporter au Rapport des usagers de la Direction des programmes préparé par le ministère du Solliciteur général du Canada intitulé «La légalisation du jeu: une vue d'ensemble». Ce rapport a été préparé en 1984 par Margaret E. Beare, qui assiste à la séance ce soir, et Howard Hampton. Le rapport présente d'importantes mises en garde contre la légalisation du jeu. Il démontre clairement—et, je le répète, il s'agit d'un rapport préparé pour le gouvernement fédéral—que certaines des personnes interviewées à cet égard, des personnes qui avaient vécu l'expérience du jeu légalisé dans des casinos, l'ont décrite comme une forte incitation au crime organisé.

Nous pressons le gouvernement d'examiner attentivement et d'évaluer les conséquences possibles de la légalisation du jeu dans notre collectivité.

Madame la présidente, honorables sénateurs, les forces policières de la province de l'Ontario ne sont pas les seules à avoir ces préoccupations. J'aimerais vous faire part d'une résolution de l'Association canadienne des chefs de police, résolution qui a été adoptée à la conférence de cette association en 1985. Une copie de cette résolution a été envoyée au ministre fédéral de la Justice, et pour autant que je sache, nous n'avons pas encore eu de réponse.

La résolution se lit comme suit:

> L'entente fédérale/provinciale sur les loteries et les changements qu'on se propose d'apporter à l'article 190 du Code criminel inquiètent sérieusement l'Association canadienne des chefs de police. Cette entente et ces propositions faciliteraient l'installation de maisons de jeu légales, comme les casinos, qui seraient exploitées sous licences provinciales ou municipales.
>
> ATTENDU que la recherche a déterminé qu'il y avait une corrélation certaine entre l'existence des maisons de jeu légalisées et l'incidence du crime, et
>
> ATTENDU qu'à l'appui de nos revendications, nous pouvons citer le fait que l'État du Nevada a le plus haut taux de crime de rue par habitant et qu'en plus, au cours des trois premières années d'exploitation de maisons de jeu à Atlantic City le taux de crime de rue a grimpé de 171 p. 100, ce qui dépasse de loin la moyenne nationale qui est de 26 p. 100 et
>
> ATTENDU que les casinos engendrent de vastes sommes d'argent liquide dont il est difficile de comptabiliser les entrées et les sorties du casino, ce qui peut présenter un moyen attrayant de «blanchir» des fonds illégitimes et
>
> ATTENDU qu'il y a de nombreux exemples de l'effet négatif des casinos sur une collectivité, car ils entraînent toute une série de problèmes tels la prostitution, la drogue, l'alcool, le prêt usuraire, etc., et

[*Text*]

WHEREAS there is a belief that casinos can generate large revenues for governments which is incorrect when considered in conjunction with the increased cost of law enforcement, and social services

THEREFORE BE IT RESOLVED that the Government of Canada in co-operation with the provinces conduct a full study of the impact of legal gambling and in particular the operation of casinos.

Let me conclude by saying, Madam Chairman, that one of my primary duties as chief of police is to identify local community police needs and to design the response of my force to meet those needs. In discharging that duty, it has come to my mind that there are very many groups within the Province of Ontario who are bitterly opposed to the presence of gaming casinos. To try to convince them that there is good in this enterprise is akin to convincing Socrates of the medicinal value of hemlock.

Madam Chairman, that concludes my portion of the presentation. I should like to file with the committee the resolution of the Canadian Association of Chiefs of Police.

The Chairman: Thank you, Chief Harding. That resolution will be in the record.

Mr. Morton, please.

Mr. Morton: Madam Chairman, Honourable senators, the Attorney General of the Province of Ontario has two major concerns with respect to Bill C-81. The first concern is the process by which the proponents of Bill C-81 would seek to have it proclaimed; the second is the substantial change in the law that this bill will effect and the impact of that change on the public of the Province of Ontario and, as far as we are concerned, the public of Canada.

We support the view of the police agencies on the law.

Let me first speak to the process. At the risk of repeating what you already know, perhaps I could briefly take you through the normal criminal law amendment process in this country, at least insofar as I have been involved in it for the past 15 or 16 years. The usual process is: Step 1: there is an idea for change, and that idea could come from the federal government, from a province, from a private association or lobbying group, or organization such as the Uniform Law Conference of Canada, an organization that has met every year since the late 1800s.

Once that idea has been generated, the federal Department of Justice institutes a process. Step 2, then, would be a study of the idea for change. That could be a study carried out by the Law Reform Commission of Canada—which, as you know, has been studying various aspects of the criminal law for some five or six years now—or by the Criminal Code Review Section within the Department of Justice.

Step 3 is the result of either of those avenues, or perhaps even both. In many cases—and I would venture to even say most—the proposed changed goes through both the Law

[*Traduction*]

ATTENDU qu'on croit que les casinos peuvent renflouer les coffres des gouvernements, ce qui est faux si l'on considère les coûts accrus de la mise en application de la loi et de l'utilisation des services sociaux,

IL EST PAR CONSÉQUENT RÉSOLU que le gouvernement du Canada, en collaboration avec les provinces, effectue une étude complète sur l'incidence de la légalisation du jeu et en particulier de l'exploitation des casinos.

Permettez-moi de conclure en disant, madame la présidente, qu'une de mes principales fonctions, à titre de chef de police, est d'identifier les besoins locaux en services policiers et de trouver une solution pour que mes policiers répondent à ces besoins. En m'acquittant de cette tâche, il m'est venu à l'esprit qu'il y avait de nombreux groupes en Ontario qui s'opposent avec acharnement à la présence de casinos. Essayer de les convaincre des mérites de cette entreprise, c'est un peu comme tenter de convaincre Socrate de la valeur médicinale de la ciguë.

Madame la présidente, ceci conclut mon témoignage. J'aimerais déposer devant le Comité la résolution de l'Association canadienne des chefs de police.

La présidente: Merci, chef Harding. Cette résolution sera versée au dossier.

M. Morton, je vous prie.

M. Morton: Madame la présidente, honorables sénateurs, le procureur général de la province de l'Ontario a deux grandes préoccupations au sujet du projet de loi C-81. Premièrement, il s'inquiète de la manière dont les parrains de ce projet ont l'intention de le faire proclamer; deuxièmement, il craint que les importants changements apportés à la loi aient des incidences sur la population de l'Ontario et, quant à nous, sur celle de l'ensemble du Canada.

Nous partageons l'opinion des corps policiers sur cette loi.

Permettez-moi d'abord de parler du processus. Au risque de répéter ce que vous savez déjà, peut-être, permettez que je vous donne quelques renseignements sur le processus normal de modification du droit pénal au Canada, pour autant que j'y ai moi-même été mêlé depuis une quinzaine d'années. Voici comment cela se passe habituellement. Première étape: le gouvernement fédéral, une province, une association privée, un groupe de pression ou un organisme comme la Conférence sur l'uniformisation des lois au Canada qui se réunit tous les ans depuis la fin du 19e siècle, proposent un changement; dès que l'idée a jailli, le ministère canadien de la Justice passe à l'action.

À la deuxième étape on étudie le changement proposé. Cette étude est menée soit par la Commission de réforme du droit du Canada—qui, comme vous le savez, se penche sur divers aspects du droit pénal depuis 5 ou 6 ans maintenant—soit par la section chargée de réviser le code criminel au ministère de la Justice.

La troisième étape est le résultat de l'une ou l'autre de ces démarches, parfois des deux. Dans bien des cas—et même dans la plupart des cas—le changement proposé est présenté à

[*Text*]

Reform Commission and the Criminal Code Review Committee processes. In either forum, there are a number of working papers, study paper, recommendations and reports, and there then follows Step 4, which is multilateral and bilateral consultation between the federal Department of Justice and each of the provincial attorneys general. That process involves telephone communication, formal meetings, and written submissions.

Perhaps even more important than the consultation that takes place between governments is the consultation that takes place with the public. Honourable senators will recall that the Fraser Task Force travelled across Canada, consulting with various members of the public in a democratic fashion. Similarly, the Badgeley Task Force, which dealt with the sexual abuse of children, conducted meetings across the country.

In several other areas, members of the public in Canada have been given the opportunity to express their views with respect to a proposes change.

I venture to say that until yesterday not a single person in Canada, apart from those directly involved in the process, the government people, had any notion whatsoever that these amendments were being proposed by the Government of Canada.

The fifth step in the usual criminal law amendment process is that the Department of Justice then prepares a position. It may disagree with some of what the provinces say and it may make some changes based up the recommendations of the provinces; but, in the final analysis, it is the Department of Justice that develops the position which is recommended to Cabinet, and based on that recommendation, the Cabinet takes a position on the matter. That is Step 6.

Step 7 involves the preparation of a legislative draft of the proposed change, followed by a draft bill. In some cases, that draft bill is then circulated through the whole process once again, providing the provincial attorneys general, those who are responsible constitutionally for the administration of criminal justice in this country, to have further input.

Step 8 is the introduction of the amending bill in the House of Commons, with referral at some point to the Justice and Legal Affairs Committee of the House, where again there can be input by the public and government sectors.

Once the bill receives third reading in the House of Commons, it is referred to the Senate, where the process just outlined is repeated.

Honourable senators, there has been limited consultation by the Department of Justice with the provincial attorneys general in respect of Bill C-81.

I want to make it clear that I am not laying the blame for there not having been more extensive consultation at the feet of the Department of Justice. In my respectful view, the agreement that was entered into tied the hands of the federal department to an even greater extent than it tied the hands of the provinces.

[*Traduction*]

la Commission de réforme du droit et à la Section de révision du code criminel, qui soudent des documents de travail ou d'étude, des recommandations et des rapports sur ledit changement. Vient ensuite la quatrième étape: consultations multilatérales et bilatérales entre le ministère fédéral de la Justice et chaque procureur général provincial. Cette étape comporte des communications téléphoniques, des rencontres officielles et le dépôt de mémoires.

La consultation intergouvernementale est certes importante, mais celle du public l'est plus encore. Les honorables sénateurs se rappelleront que le groupe d'étude Fraser a parcouru le Canada pour consulter démocratiquement les divers porte-parole du public. Pareillement, le groupe d'étude Badgley, chargé de la question des services sexuels contre les enfants, a tenu des réunions dans tout le pays.

Dans plusieurs autres domaines, le public canadien a pu s'exprimer sur les changements proposés.

J'oserais dire que, jusqu'à hier, personne au Canada, mis à part les fonctionnaires qui sont directement engagés dans le processus, n'avait la moindre idée que le gouvernement du Canada proposait ces amendements.

La cinquième étape du processus normal de modification du droit pénal est celle où le ministère de la Justice prépare une déclaration de principe, qui ne va pas nécessairement dans le sens voulu par les provinces, mais qui peut aussi tenir compte de certains changements recommandés par les provinces; mais, en dernière analyse, c'est le ministère de la Justice qui décide ce qui doit être recommandé au cabinet et, en se fondant sur cette recommandation, le cabinet tranche la question. C'est l'étape numéro six.

La septième étape est celle de la rédaction d'une ébauche législative du changement proposé, suivi d'un avant-projet de loi. Dans certains cas, ce dernier refait tout le circuit pour que les procureurs généraux des provinces et tous ceux qui sont responsables constitutionnellement de l'administration de la justice pénale dans ce pays donnent leur opinion.

La huitième étape est le dépôt du projet de loi modificateur à la Chambre des communes qui le renvoie au Comité de la justice et des questions juridiques de la Chambre, où le public et les intervenants gouvernementaux peuvent à nouveau intervenir.

Lorsque le projet de loi a fait l'objet de la troisième lecture à la Chambre des communes, il est renvoyé au Sénat où le processus que je viens de décrire se répète.

Honorables sénateurs, il y a eu très peu de consultation entre le ministère de la Justice et les procureurs généraux des provinces au sujet du projet de loi C-81.

Je tiens à préciser que je n'en rejette pas le blâme sur le ministère de la Justice. À mon humble avis, l'entente qui a été conclue obligeait le gouvernement fédéral beaucoup plus que les provinces.

[*Text*]

The second important issue that arises out of the normal process for criminal law amendment is that there are never, to my knowledge, any time limits placed on when a piece of legislation must be passed. In my opinion, that is a vital safeguard to the democratic process. There is no rush, no hurry, to get it in before anyone has the opportunity to voice objection or concern with respect to the proposed change.

The agreement which you have before you contains a time limit—and I shall refer in a moment in more detail to that—of December 31,1985. It provides that the Government of Canada undertakes to use its best efforts—and I must say it has used its best efforts, in my view—to have this bill passed as soon as possible and, in any event, it must use its best efforts to have it passed by December 31, 1985.

Insofar as the process that has taken place on this particular bill is concerned, there has been some evidence before you from the Honourable Mr. Jelinek, Minister of State for Fitness and Amateur Sport. I would like to review with you, from our perspective, what the process have been.

The original agreement was negotiated by ministers not responsible for the administration of justice; it was negotiated, by and large, by the interprovincial lottery corporation and a private law firm in the Province of Québec.

The amendments were attached as an appendix to the agreement, and on May 2, 1985, at a federal-provincial deputy attorney general meeting, a meeting which dealt with at least ten and perhaps as many as twenty agenda items over a day and a half or two-day period, the agreement was handed out. My recollection of what was said at the meeting is to the effect that there had been negotiations with respect to amendments to the Criminal Code and that the federal government wanted our views with respect to those amendments once we had an opportunity to read them.

On reading that agreement on the flight home, those of us in the Province of Ontario were anxious to find out precisely what this was all about and to speak to law enforcement officers and those with a degree of expertise in the area as to what the possible effects of the amendments could be.

On June 3, 1985, the agreement was signed. The Province of Ontario had requested that a clause be included in the agreement setting out that the proposed amendments would be subject to the approval of the provincial ministers responsible for the administration of justice.

We were made aware, after the agreement was signed, that the approval clause was not included; that, rather, a consultation clause was put in. In other words, that it would be subject to consultation—and, as Honourable senators are aware, there is a vast difference between "approval" and "consultation."

Then we were advised that at the last minute the December 31, 1985 deadline was stuck into the agreement.

On June 6, in Halifax, there was a federal-provincial consultation with respect to several items, the major one, in my view at least, being Bill C-81. One of the items on the agenda was in fact the amendments to the lotteries section of the Criminal

[*Traduction*]

Deuxièmement, il faut signaler que dans le processus normal de modification du droit pénal, on ne fixe jamais, à ma connaissance, le moment où un projet de loi doit être adopté. C'est, à mon avis, une garantie essentielle pour un processus démocratique. Rien ne presse et l'on permet à tous ceux qui ont des objections ou des préoccupations de les exprimer.

L'entente que vous étudiez renferme une limite de temps—et j'y reviendrai plus longuement dans un instant—qui est le 31 décembre 1985. Il faut donc que le gouvernement du Canada déploie tous ses efforts—et je dois dire, qu'il l'a fait—pour faire adopter ce projet de loi le plus tôt possible et, de toute façon, il faut qu'il fasse l'impossible pour le faire adopter d'ici le 31 décembre 1985.

Dans le cas de ce projet de loi-ci, vous avez entendu les témoignages de l'honorable M. Jelinek, ministre d'État (Santé et Sport amateur). J'aimerais revoir avec vous, de notre propre point de vue, comment les choses se sont déroulées.

L'entente initiale fut négociée par des ministres qui n'étaient pas responsables de l'administration de la justice, c'est-à-dire par l'Interprovincial Lottery Corporation et un cabinet d'avocats privé du Québec.

Des amendements ont été joints en annexe de l'entente et, le 2 mai 1985, lors d'une réunion des sous-procureurs généraux fédéral et provinciaux, réunion ou l'on a abordé au moins dix sinon vingt points à l'ordre du jour en une journée et demi ou deux jours, l'entente fut distribuée. Si ma mémoire est bonne il y a eu des négociations au sujet des modifications du Code criminel, et le gouvernement a dit qu'il voulait savoir ce que nous pensions de ces amendements aussi tôt que nous aurions eu la possibilité de les lire.

L'ayant lu dans l'avion qui nous ramenait chez nous, nous tous de l'Ontario avions hâte de savoir à quoi nous en tenir exactement et de nous entretenir avec des agents d'application des lois et avec ceux qui avaient une certaine compétence dans le domaine, pour mesure les effets possibles des ces amendements.

Le 3 juin 1985, l'entente fut signée. L'Ontario avait demandé qu'on ajoute dans l'entente un article stipulant que les amendements proposés soient soumis à l'approbation des ministres provinciaux responsables de l'administration de la justice.

Après la signature de l'entente, on nous a signalé que l'article relatif à l'approbation n'avait pas été inclus et qu'il avait été remplacé par un article de consultation. Autrement dit, que l'entente ferait l'objet d'une consultation—et, comme les honorables sénateurs le savant, il y a une énorme différence entre «approbation» et «consultation».

On nous a ensuite appris que la date limite du 31 décembre 1985 avait été ajoutée à la toute dernière minute.

Le 6 juin, à Halifax, il y eut une consultation fédérale-provinciale sur plusieurs questions, dont la plus importante, à mon avis du moins, était celle du projet de loi C-81. Un des points à l'ordre du jour était les amendements de l'article du Code cri-

[*Text*]

Code. The Province of Ontario made its position known to the federal government at that time.

We received a response from the federal Department of Justice at the meeting, and we did have the opportunity at that meeting to state our views.

On at least one other occasion, the Deputy Attorney General for Ontario insisted on a complete and full consultation in the ordinary criminal process with respect to this bill. It is my respectful submission that that consultation has not taken place.

On October 25, 1985, the Attorney General, Mr. Scott, wrote to Mr. Crosbie, and I believe Honourable senators have been provided with a copy of that letter. Mr. Scott, in that letter, set out, in very brief fashion, some of his major concerns, but the major thrust of the letter was that he wanted a full consultation; he wanted the usual criminal law amendment process followed.

Mr. Crosbie replied to that letter, and I believe Honourable senators have also been provided with a copy of the response.

The major differences, then, in summary, between the bill before the committee and the usual criminal law amendment process are four in number: First of all, the amendments to the Criminal Code were negotiated as part of an agreement by agencies and ministries not involved in the administration of justice—agencies and ministries which, in my respectful view, and in the view of the Attorney General of the Province of Ontario, do not have any of the expertise required to deal with criminal law amendments.

Secondly, none of the steps in the usual criminal process, with the exception of two, were followed.

Third, we have a deadline with respect to the implementation of this bill.

And fourth, in the House of Commons, with the exception of the participation of one honourable member, there was absolutely no debate on the merits of the amendments.

The House of Commons sat in Committee of the whole on the bill, and the bill received second and third readings on the same day. As well, it is my understanding that it was introduced by way of motion as opposed to being an agenda item, and our further understanding is that it was introduced rather late in the day.

Those are my respectful submissions and the submissions of the Attorney General of Ontario with respect to the process. I shall now deal with the substance of the bill.

We agree with the interpretation placed upon the present law and the law as it would be amended that has been outlined by the police agencies present here this evening. As can be seen, the applicable sections of the Criminal Code, as they now read and as they would be amended, are very techincal. They are confusing, and that confusion is made even more difficult by virtue of the fact that there is very little jurisprudence in this country with respect to their interpretation.

The submission of the Attorney General of Ontario is that the present sections of the Criminal Code permit the traditional form of lottery. They permit the draw by lots. They per-

[*Traduction*]

minel qui traite des loteries. L'Ontario a alors fait connaître sa position au gouvernement fédéral.

Lors de cette réunion, nous avons reçu une réponse du ministère fédéral de la Justice et nous avons pu exprimer nos points de vue.

À une autre occasion, le sous-procureur général de l'Ontario a insisté pour qu'ait lieu une pleine consultation sur le processus habituel de modification du droit pénal en ce qui a trait à ce projet de loi. Je tiens à vous signaler, respectueusement, que cette consultation n'a jamais eu lieu.

Le 25 octobre 1985, le procureur général, M. Scott, a écrit à M. Crosbie et je crois que les honorables sénateurs ont reçu copie de cette lettre. M. Scott exposait très brièvement certaines de ses principales inquiétudes, mais il réclamait surtout une pleine consultation; il voulait que le processus habituel de modification du droit pénal soit suivi.

M. Crosbie a répondu à cette lettre, et je crois que les honorables sénateurs ont aussi reçu copie de cette réponse.

Bref, il existe quatre grandes différences, entre le projet de loi qu'étudie le comité et le processus habituel de modification du droit pénal. Premièrement, les modifications du Code criminel ont été négociées dans le cadre d'une entente entre des organismes et des ministères non responsables de l'administration de la justice—des organismes et des ministères qui, à mon humble avis, et de l'avis du procureur général de la province de l'Ontario, n'avaient pas la compétence voulue pour traiter de modifications du droit pénal.

Deuxièmement, aucune des étapes du processus habituel de modification du droit pénal, à l'exception de deux, n'on été respectées.

Troisièmement, nous avons une date limite pour l'application de ce projet de loi.

Et quatrièmement, à la Chambre des communes, à l'exception d'une intervention d'un seul député, il n'y a eu absolument aucun débat sur les mérites des modifications.

La Chambre des communes a siégé en comité plénier pour étudier le projet de loi, et la deuxième et la troisième lectures du projet de loi ont eu lieu le même jour. Qui plus est, je crois savoir qu'il a été présenté au moyen d'une motion au lieu d'être inscrit à l'ordre du jour, et ce même plutôt vers la fin de la journée.

Voilà ce que moi-même et le procureur général de l'Ontario voulions respectueusement vous soumettre au sujet du processus. J'aborderai maintenant l'essence même du projet de loi.

Nous sommes d'accord avec l'interprétation donnée ce soir par les corps policiers ici présents, au sujet de la loi actuelle et de la loi telle qu'elle serait modifiée. Comme on peut le voir, le libellé actuel ainsi que le libellé modifié des articles en cause du Code criminel, sont très techniques. On s'y perd, d'autant plus qu'il y a très peu de jurisprudence dans ce pays qui pourrait nous guider quant à leur interprétation.

Le procureur général de l'Ontario estime que les articles actuels du Code criminel autorisent la forme traditionnelle de loterie, soit le tirage au sort, et les ventes d'une mise en com-

[*Text*]

mit what is known as pool selling, where the entire prize money is made up of the funds used by those purchasing tickets. In other words, they do not contemplate any banked form of lottery where the house sets up a pile of money against which one plays.

The current law, it must be remembered, limits the type of activity that may take place, and goes on to permit, in Section 190, those types of games therein set out. It is clear, in my respectful view, that statutory interpretation requires that one interprets permissive legislation by looking at what it permits. It only permits what it says it permits, and no more.

The representatives of the police agencies before you have gone through the amendments with you, and I do not propose to repeat what they have said. I would simply say that, with respect to government-operated wheels of fortune, the change proposed is a major one; with respect to bookmaking—something which is now permitted by the government of a province, or would be under this legislation—the proposal represents a major change.

Section 188.1 as it now reads permits the Government of Canada to have pool selling; that is, the prizes are determined by the amount of money put in on the lots. The proposed amendments refer to "bookmaking"; and I think the ordinary usage of that term makes clear what is referred to.

The proposed amendments would permit bookmaking on two or more sporting events or athletic contests anywhere in the world.

There isn't even an attempt to confine it to Canada, where we feel we have some control over sporting events. As the police officers before you have indicated, we could have, under the proposed amendments, a government-operated bookmaking scheme where people operate on two bullfights in another country, or any other two sporting events in another country. They could bet on two basketball games in a gymnasium somewhere. In other words, it would involve sporting events for which there are not the controls that are on the ordinary sporting events that take place in Canada.

The provisions in respect of slot machines also represent a major change. As has been indicated, this is the direction in which casinos are going. In our view, that change is a very substantial one.

As is apparent, we radically disagree with the view presented to the committee by the Honourable Mr. Jelinek, who indicated to you that the bill would result in no changes to the law; that the law was simply going to be clarified. He went on to say that the proposed amendments would, in some measure, restrict gambling and would in no way expand gambling.

It is our respectful view that Mr. Jelinek was in error in making that submission to you.

Chief Harding has gone through the effect of the amendments, and I basically agree with the views he has expressed to you, and particularly so insofar as the concern expressed about organized crime becoming involved.

[*Traduction*]

mun, où toute la somme qui constitue le prix est composée des fonds recueillis de l'achat des billets. Autrement dit, le législateur n'a jamais autorisé que les fonds de loterie constituent en quelque sorte une banque, que la maison met en jeu.

Notons que la loi actuelle limite les types d'activités qui peuvent avoir lieu, et permet certains types de jeu, à l'article 190. Il est clair à mon humble avis, que dans l'interprétation des lois, il faut interpréter une legislation facultative d'après ce qu'elle permet. Elle ne permet que ce qu'elle dit permettre, et rien de plus.

Les représentants des corps policiers qui ont comparu devant vous ont déjà passé en revue les amendements, de telle sorte que je m'en abstiendrai. J'aimerais simplement dire que le changement proposé au sujet des roues de fortune exploitées par le gouvernement est d'importance, comme celui qui a trait au bookmaking—type d'exploitation qui est maintenant autorisée par le gouvernement d'une province ou qui le serait aux termes de cette loi.

L'article 188.1 actuel autorise le gouvernement du Canada à procéder à la vente d'une mise collective, c'est-à-dire où les prix sont déterminés par la somme d'argent recueilli pour le tirage au sort. Les amendements proposés visent le «bookmaking»; et je pense que l'usage courant de ce terme nous renseigne sur ce dont il s'agit.

Les amendements proposés autoriseraient le bookmaking sur au moins deux épreuves ou manifestations sportives qui se tiendraient n'importe où dans le monde.

On ne tente même pas de circonscrire cette autorisation au Canada, où nous estimons exercer un certain contrôle sur les manifestations sportives. Comme les agents de police vous l'ont indiqué, il serait possible, aux termes des amendements proposés, d'avoir un système de bookmaking exploité par le gouvernement, où la population pourrait parier sur deux combats de taureaux qui de dérouleraient dans un autre pays, où à l'occasion de deux autres manifestations sportives ayant lieu dans un autre pays. On pourrait tout aussi bien parier sur deux joutes de ballon-panier dans un gymnase situé n'importe où. Bref, il s'agirait de manifestations sportives sur lesquelles nous n'exerçons pas le contrôle que nous avons en pareil cas ici au Canada.

Les dispositions qui visent les appareils à sous ont elles aussi subi un profond changement. Comme certains l'ont signalé, c'est la voie de l'avenir pour les casinos. À notre avis, ce changement est très lourd de conséquences.

Comme vous pouvez en juger, nous sommes tout à fait en désaccord avec l'honorable M. Jelinek, pour qui le projet de loi, loin de modifier la loi ne ferait que la préciser. Ce dernier a même déclaré que les amendements proposés limiteraient dans une certaine mesure le jeu et ne permettraient pas qu'il preuve de l'importance.

À notre humble avis, le témoignage de M. Jelinek était erroné.

Le chef Harding a passé en revue les conséquences des amendements. Je suis fondamentalement d'accord avec ses conclusions, notamment en ce qui a trait à l'immixtion du crime organisé.

[*Text*]

Organized crime has historically focused on gambling as a means of not only making money directly from gambling but in using it to set up various other enterprises through money laundering, some of them legitimate and some illegitimate. Our concern is that those types of industries will be encourge to seek a foothold in Canada should this bill be passed.

What does the Attorney General of Ontario say should be done before this bill is passed? It is the Attorney General's view that the ordinary criminal law process, although somewhat condensed, ought to be set in motion; that there ought to be a full and complete analysis and social impact study, with consideration given to all of the potential social, economic and political ramifications which are likely to result from such legislative changes.

Secondly, there ought to be full and complete public disclosure, and the opportunity given to any interested or affected person, group orr organization to respond to the proposed changes, whether we agree with their views or not.

In the light of that, I should like to file with the Clerk of the committee a collection of newspaper articles which, in our view, indicate that, at least in the Province of Ontario, there are large segments of the population pressing for a cutback in the existing law. They are seeking a royal commission into gambling. Whether we agree with their view or not, it is the submission of the Attorney General of Ontario that they have the right to be heard.

I shall simply file those newspaper articles with the Clerk, with particular reference to the first two or three. The first is entitled: "Mobs Battle for Casinos"; and the second refers to the opposition of the United Church to lotteries. The group of Canadian churches referred to comprise the Baptist Federation of Canada, the United Church, and the Salvation Church, a brief which was submitted to the Government of Canada, the Honourable Justice Minister Mr. Chrétien, to outlaw lotteries, and as well there are several other articles—all of which show that there is a large segment of the population which would be opposed to any further increases in gambling.

The third item that the Attorney General of Ontario would request is that there be a final assessment by the appropriate government officials, having regard to the input that would be obtained in Step 2.

Those are my respectful submissions, Madam Chairman.

The Chairman: Thank you, Mr. Morton. At this point the committee will continue "in camera" for the purpose of hearing Inspector Wilson's presentation.

The committee continued "in camera."

[*Traduction*]

Depuis toujours, le crime organisé s'intéresse au jeu, non seulement pour en tirer directement de l'argent, mais pour mettre sur pied diverses autres entreprises légitimes ou non, en utilisant de l'argent «blanchi». Nous craignons que ce type d'industrie ne soit encouragé à s'installer au Canada si le projet de loi était adopté.

Que préconise le procureur général de l'Ontario avant l'adoption du projet de loi? Il croit que le processus habituel du droit pénal, quelque peu accéléré, devrait être mis en branle; qu'il faudrait effectuer une analyse complète et en profondeur ainsi qu'une étude des conséquences sociales où l'on traiterait de toutes les ramifications sociales, économiques et politiques que pourraient entraîner de tels changements législatifs.

Deuxièmement, il faudrait que le public soit pleinement mis au courant des changements, et que tous les particuliers, groupes ou organismes intéressés ou visés puissent se manifester, peu importe que nous soyons d'accord ou non avec leurs points de vue.

Ceci dit, j'aimerais confier au greffier du Comité un recueil d'articles de journeaux qui, à notre avis, indiquent qu'au moins en Ontario, d'importantes couches de la population insistent pour que la loi actuelle soit épurée. Ces personnes réclament la création d'une commission royale sur le jeu. Quelles que soient les motivations de ces gens, le procureur général de l'Ontario estime qu'ils ont droit de parole.

Je remettrai donc simplement ces articles de journeaux au greffier, mais je vous signale que les deux ou trois premiers sont tout particulièrement intéressants. Le premier s'intitule: «*Mobs Battle for Casinos*»; le deuxième traite de l'opposition de l'Église Unie aux loteries. Le groupe d'églises canadiennes en question comprend la Fédération baptiste du Canada, l'Église Unie et l'Armée du salut. Il y a aussi un mémoire qui a été présenté au gouvernement du Canada, à l'honorable ministre de la Justice M. Chrétien, visant l'interdiction des loteries, ainsi que plusieurs autres articles dont tous prouvent qu'une importante partie de la population serait opposée à toute intensification du jeu.

En troisième lieu, le procureur général de l'Ontario recommande que les hauts fonctionnaires compétents effectuent une évaluation finale, en tenant compte de la participation qui serait obtenue à l'étape n° 2.

C'est tout ce qui j'avais à dire, madame la présidente.

La présidente: Merci, monsieur Morton. Le Comité continuera maintenant à siéger à huis clos pour entendre le témoignage de l'inspecteur Wilson.

La séance se poursuit à huis clos.

APPENDIX "LEG-31-A"

The Federal/Provincial Lottery Agreement and the proposed changes to the Criminal Code at Section 190 give rise to serious concern by the Canadian Association of Chiefs of Police. This agreement and these proposals would pave the way for legal gambling such as casinos operating under either Provincial or Municipal licences.

WHEREAS research has determined that there is a definite correlation between the existence of legalized casino gambling and the incidence of crime, and

WHEREAS this is further supported by the fact that the State of Nevada leads the statistics for street crime per capita and further that in the first three years of operation Atlantic City street crime rose by 171% far in execss of the U.S. national average of 26% and

WHEREAS casino operations generate large sums of cash flow which is difficult to account for in terms of the money going in and out of the operation making this an attractive way to launder illegitimate funds and

WHEREAS there are many examples of the negative impact of casinos on a community due to the connected activities of prostitution, drugs, alcohol, loan sharking, etc.

WHEREAS there is a belief that casinos can generate large revenues for governments which is incorrect when considered in conjunction with the increased cost of law enforcement, and social services

THEREFORE BE IT RESOLVED that the Government of Canada in co-operation with the provinces conduct a full study of the impact of legal gambling and in particular the operation of casinos.

APPENDICE «LEG-31-A»

L'Association canadiennes des Chefs de police a de sérieuses inquiétudes concernant l'Entente fédérale-provinciale et les changements proposés à l'article 190 du Code criminel. Cette entente et ces propositions de modification, en effet, légaliseraient les jeux d'argent organisés par les casinos exploités en vertu de licences provinciales ou municipale.

CONSIDÉRANT que les recherches ont établi qu'il existe une corrélation certaine entre les maisons de jeu légalisées et l'incidence criminelle, et

CONSIDÉRANT que cette constitution est corroborée par le fait que l'État du Nevada a les pires statistiques par habitant relatives à l'incidence du crime sur la voie publique, et qu'au cours des trois premières années d'exploitation de maisons de jeu ce genre le crime a augmenté de 171 p. 100 à Atlantic City, c'est-à-dire énormément plus que la moyenne américaine nationale de 26 p. 100, et

CONSIDÉRANT que l'exploitation d'un casino produit d'énormes liquidités et qu'il est difficile de savoir exactement d'où vient et où va l'argent qui entre dans une telle exploitation, et que cela constitue un moyen idéal de blanchir des sommes acquises illégitimement, et

CONSIDÉRANT qu'il est facile de donner des exemples de la nocivité des casinos sur une collectivité à cause des activités parallèles qu'ils attirent, à savoir la prostitution, le narcotisme, l'alcoolisme, les prêts usuraires, etc., et

CONSIDÉRANT qu'on estime généralement qu'un casino peut être nue source d'importants revenus pour un gouvernement, alors qu'il n'en est rien parce qu'il créé de nouvelles dépenses en matière d'application de la loi et de services sociaux,

IL EST RÉSOLU que le gouvernement du Canada, en collaboration avec les provinces, étudie toutes les répercussions qu'une légalisation des jeux d'argent, et notamment l'exploitation de casinos, entraîneraient.

APPENDIX "LEG-31-B"

Minister's File: 20-26 (2690)
Dept'l File:
November 27, 1985

The Honourable Ian Scott, Q.C.
Attorney General of Ontario
Ministry of the Attorney
General of Ontario
18th Floor
18 King Street East
Toronto, Ontario
M5C 1C5

Dear Mr. Scott:

Thank you for your letter of October 25, 1985, concerning Bill C-81, the proposed *Act to Amend the Criminal Code (lotteries)*.

The Bill was passed by the House of Commons on November 6, 1985, with an all-party consent. The Senate will likely consider the Bill in late November and early December.

Officials of our departments met on November 12-13, 1985; in the course of the meeting discussions occurred on Bill C-81. Your officials enunciated the concerns outlined in your letter and my officials responded. Nevertheless, I would like to take this opportunity to advise you personally of my views on the nature of the process and the proposed amendments.

As you know, negotiations for the Federal-Provincial Lottery Agreement occurred primarily between the Minister of State for Fitness and Amateur Sport and provincial Ministers responsible for revenue and lotteries. The Department of Justice only played an advisory role until late April 1985, when the Department became more involved in the process in order to ensure that any proposals considered were consistent with sound criminal justice policy. At that time, it also became apparent that a number of the provincial departments of Attorneys General were not being kept fully advised of the negotiations by their provincial colleagues. Accordingly, my Deputy Minister notified his provincial counterparts, at the meeting of Deputy Ministers Responsible for Criminal Justice on May 1-2, 1985, of the negotiations and distributed copies of the proposals in order that provincial departments of Attorneys General could contact their provincial colleagues responsible for the negotiations on the Agreement. A month later, on June 3, 1985, the Agreement was signed.

Following the signing of the Agreement, a consultation occurred between our officials, in Halifax, on June 6, 1985. It was decided that provincial departments of Attorneys General would convey their comments by letter. As a result of this process, a number of further amendments were proposed, some of which are contained in the Bill. None of these are inconsistent with the substance of the proposals contained in the Agreement.

APPENDICE «LEG-31 B»

Dossier du ministre: 20-26 (2690)
Dossier du ministère:
27 novembre 1985

Monsieur Ian Scott, c.r.
Procureur général de l'Ontario
Ministère du Procureur général
de l'Ontario
18, rue King est,
18e étage
Toronto (Ontario)
M5C 1C5

Monsieur le Ministre,

J'accuse par la présente réception de votre lettre du 25 octobre 1985 concernant le projet de loi C-81, *Loi modifiant le Code criminel (loteries)*, et vous en remercie.

Ce projet de loi a été adopté par la Chambre des communes le 6 novembre 1985, avec le consentement de tous les partis. Le Sénat l'étudiera probablement à la fin novembre ou au début décembre.

Lors d'une réunion de fonctionnaires de nos ministères les 12 et 13 novembre derniers, des discussions ont surgit sur ce projet de loi. Vos fonctionnaires ont fait état des inquiétudes que vous m'exposez dans votre lettre, et mes fonctionnaires y ont répondu. Néanmoins, je voudrais par la présente vous mettre personnellement au courant de mes idées sur la portée du processus et des amendements envisagés.

Comme vous le savez, les négociations en vue de l'Entente fédérale-provinciale sur les loteries ont été menées principalement par le ministre d'État à la Condition physique et au sport amateur d'une part, et par les ministres provinciaux responsables des revenus des loteries d'autre part. Le ministère de la Justice n'a joué qu'un rôle consultatif jusqu'à la fin d'avril 1985, date à partir de laquelle il participa plus activement aux pourparlers pour s'assurer que les propositions envisagées soient conformes aux principes du droit criminel. Il est apparu à ce moment-là que les ministres provinciaux qui participaient aux négociations n'avaient pas pleinement informé leurs collègues des ministères du procureur général. C'est pourquoi, au cours d'une réunion de sous-ministres chargés de la justice pénale, les 1er et 2 mai 1985, mon sous-ministre donna à ses homologues provinciaux des renseignements sur les négociations en cours et leur communiqua copie des propositions étudiées pour que les procureurs généraux des provinces se mettent en rapport avec leurs collègues chargés de négocier l'entente. Un mois plus tard, soit le 3 juin 1985, cette entente était signée.

Le 6 juin 1985 nos fonctionnaires se sont consultés à Halifax. Il fut convenu que les ministères provinciaux du Procureur général communiqueraient leurs observations par écrit. C'est ce qui explique que plusieurs autres modifications, dont certaines ont été retenues dans le projet de loi, furent proposées. Aucune d'entre elles ne s'oppose à la teneur des propositions énoncées dans l'Entente.

Given that the substance of the proposals in the Agreement could not be fundamentally changed after June 3, 1985, we are of the opinion that we have acted in good faith, both in the notification of the existence of the negotiations and in the process of consultation, and have attempted to make any amendments requested by provincial Attorneys General.

With respect to the merits of the proposed amendments contained in Bill C-81, subsection 190(5) of the *Criminal Code* at present defines "lottery scheme" to include a game, and section 179 defines "game" to mean a "game of chance or mixed chance and skill". This vague definition of "lottery scheme" has produced a number of legal disputes, both in and out of court, as to what types of gaming activities are legal under the banner of "lottery scheme". Legal interpretation has given the concept a liberal meaning. For example, a government-operated casino exists in Manitoba and casinos are operated in Alberta by various charitable organizations under provincial licence. A sportspool betting game, called "Hockey Select", was operated in Québec for a number of years based on the results of National Hockey League scores. In Ontario and in other provinces, a game called "Loto 6-49" is operated, which many legal and gaming experts claim involves not only pool system features, but betting features.

Recent judicial interpretation has given the concept a broader meaning, affirming the validity of the above activities and opening the door to other types of gaming activities. The most notable is the case of *A.G. of Canada v. Loto Québec Corp.* Combined with the *non obstante* clause in the opening words of section 190, this judicial interpretation would have opened up the scope of permissible gambling, by provinces and licenced persons, to include a broad range of betting and gambling activities, such as betting on the outcome of all sorts of events, whether athletic or not, including single sporting events and races. While the provinces have not to date chosen to fully jump into this legal loophole, it is advisable to set prospectively some proper legal limits as to what should be permissible.

The proposed amendments in Bill C-81 would provide clear legislative authority for the conduct of provincially operated or licenced activities that have been or are currently being undertaken. Clear legislative authority would be given to the provinces to operate, or licence the operation of, lotteries and other games of chance that involve betting, pool selling and pool systems betting. As indicated, this conduct is currently permitted under judicial interpretations of the present law.

In recognizing past and current activities, the Bill would, on the other hand, narrow the scope of other activities that, likely, could be conducted or licenced by provinces under the present judicial interpretation of the law. The amendments would create some additional limits to those that currently exist in the law, and the operation or licencing of certain types of activities would be specifically prohibited. For example, the operation of a dice game, three-card monte, punch board and coin table would continue to be prohibited, as under the present law. In addition, the proposals would prohibit the provinces or licenced organizations from conducting bookmaking, pool selling or the making or recording of any types of bets, including pool or pari-mutuel betting, on any race or fight, or on a single sport

Et puisque ces propositions ne pouvaient plus être fondamentalement modifiées après le 3 juin 1985, nous estimons avoir agit de bonne foi, aussi bien en révélant l'existence de ces négociations qu'en participant à la consultation, et que nous avons cherché à effectuer les modifications que demandaient les procureurs généraux des provinces.

En ce qui concerne maintenant la teneur des modifications proposées dans le projet de loi C-81, le paragraphe 190(5) en vigueur du *Code criminel* inclut le jeu dans sa définition de «loterie», et l'article 179 dit que le jeu est «un jeu de hasard où se mêlent le hasard et l'adresse». Le manque de précision de cette définition a donné lieu à toute un série de batailles juridiques, dans les tribunaux et ailleurs, concernant la légalité de certains jeux. La jurisprudence a donné de la nation une interprétation large. Le Manitoba, par exemple, exploite un casino et plusieurs organismes à but non lucratif en exploitent en Alberta sous licence provinciale. Au Québec, un jeu de pari par mises collectives, appelé «Hockey Select» parce qu'il dépend des résultats des parties de la Ligue nationale de hockey, fut exploité pendant de nombreuses années. L'Ontario et d'autres provinces exploitent de leur côté un jeu appelé «Loto 6-49» qui, selon de nombreux experts juridiques et en jeu, comporte non seulement des mises collectives mais aussi des paris.

Les interprétations juridiques récentes ont donné une interprétation encore plus large de cette définition, confirmant la validité des activités susmentionnées et ouvrant la voie à d'autres formes de jeux. L'affaire la plus notoire est le procès de *A.G. of Canada c. Loto Québec Corp.* Unie à la clause dérogatoire des tous premiers mots de l'article 190, cette interprétation juridique aurait permis à des provinces ou à des personnes licenciées de se livrer à toute une série d'activités de paris et de hasard, par exemple à des paris faits sur le résultat de toutes sortes d'événements, athlétiques ou autres, y compris des événements sportifs et des courses individuels. Les provinces n'ont pas, jusqu'ici, exploité à leur avantage cette lacune de la loi; mais il est sage par mesure de précaution, de préciser dans la loi quelles activités sont permises.

Les amendements proposés donneraient un cadre législatif clair aux activités de jeu exploitées par les provinces ou licenciées par celles-ci, ou encore qui existent déjà ou que l'on veut entreprendre. Les provinces auraient ainsi clairement le pouvoir législatif de mettre sur pied des loteries et autres jeux de hasard comportant des paris, la vente d'une mise collective ou des paris collectifs. Comme nous l'avons indiqué, les interprétations juridiques de la loi en vigueur permettent déjà ces activités.

Tout en confirmant la légalité des activités passées et actuelles, ce projet de loi réduirait les autres activités que les provinces voudraient mettre sur pied ou licencier aux termes de l'interprétation juridique actuelle de la loi. Les modifications limiteraient aussi un peu plus celles qui sont déjà autorisées par la loi, et interdiraient la mise sur pied de certaines activités ou l'octroi de licences s'y rapportant. La mise sur pied d'un jeu de dés, d'un jeu de bonneteau, d'une planchette à poinçonner ou d'une table à monnaie, par exemple, continuerait d'être interdite, comme maintenant. En outre, le bookmaking, la vente d'une mise collective ou l'inscription ou la prise de paris, y compris les paris faits par mise collective ou par un système de paris collectifs ou de pari mutuel sur une course ou un com-

event or athletic contest. Therefore, lawful lotteries or gaming activities operated or licenced by the provinces would be restricted to the results or outcomes of a combination of at least two or more sport events or athletic contests, or to the outcome of any other contingency or contingencies, such as the drawing of numbers or cards, spinning of wheels, etc. o such limits appear to exist under the current law.

The Bill also proposes restrictions in respect of lotteries or other games of chance that are operated through computers, video devices or other machines that amount to "slot machines" within the meaning of the *Criminal Code*. Legal arguments have been made that under the current law, slot machines could be operated under the rubric of "lottery scheme". The Bill, however, would restrict such interpretation. Only provincial governments themselves would be permitted under the proposals to operate such devices. The provinces would not be able to licence the operation of such devices by other persons.

I think it is clear from what I have said that the Bill clarifies a number of uncertainties in the law. Additionally, it gives clear legislative recognition to past and present provincial activities, but also puts some very clear restrictions and bounds as to what is and what is not permissible. Accordingly, given the state of the current law and judicial interpretation of it, the Bill, when viewed correctly, does not promote an expansion of gambling, but rather sets some realistic and clear standards of what is permissible and, in some cases, restricts the scope of the current law. It is only because the law has finally been set out in black and white that the impression may be created that this Bill promotes the expansion of gambling. By clearly setting out in black and white what is permissible, it also clearly spells out what is prohibited. I therefore, with respect, do not share your interpretation that the major thrust of the Bill is to broaden the scope of the law. In fact, in my opinion, it narrows the scope in a number of significant areas, as noted.

In this regard, I should add that three of the areas in which the Bill actually does broaden the scope of the present law were the result of proposals made by provincial departments of Attorneys General during the post-Agreement consultations that occurred in the summer of 1985. These areas include: the amendments to extend exemptions and licencing privileges, that currently exist for agricultural fairs, to fishery and other types of fairs; the elimination of prize and consideration limits in respect of charitable or religious lotteries or games operated at bazaars; and the increase in the prize and consideration limits for lotteries and games operated by persons at a public place of amusement.

As to the concerns regarding the possible increase in crime and the impact on police resources, I share your concern and those of the police. Gaming specialists with the Royal Canadian Mounted Police are of the opinion that it is essential that proper controls are put in place prior to and during any gaming activities. Nevertheless, the Bill does not impose gaming and its associated costs on the provinces. The new legisla-

bat, une épreuve ou manifestation sportive seraient interdits aux provinces et aux organismes licenciés. Les seules loteries et jeux que les provinces pourraient légalement mettre sur pied ou licencier seraient liés aux résultats d'une combinaison d'au moins deux événements sportifs ou concours athlétiques, ou au résultat de n'importe quel autre événement contingent, comme le tirage de numéros ou de cartes, la mise en mouvement d'une roue, etc. La loi en vigueur ne semble comporter aucune limite de ce genre.

Le projet de loi impose également certaines restrictions aux loteries ou autres jeux de hasard exploités à l'aide d'un ordinateur, d'un dispositif électronique de visualisation, ou d'un appareil à sous au sens du *Code criminel*. Certains ont avancés des arguments juridiques pour soutenir qu'en vertu de la loi actuelle, les appareils à sous pouvaient être mis sur pied en vertu des dispositions actuelles sur les «loteries». Le projet de loi limite l'interprétation de ces dispositions. Aux termes des nouvelles propositions, seuls les gouvernements des provinces seraient autorisés à mettre sur pied de tels appareils, et ils ne pourraient licencier d'autres personnes pour qu'elles en mettent sur pied.

Ces explications montrent bien, me semble-t-il, que le projet de loi élimine plusieurs imprécisions de la loi actuelle. Il confirme également les activités provinciales passées et présentes et fixe très clairement les limites de ce qui est ou n'est pas permissible. Par conséquent, compte tenu de l'état de la loi en vigueur et de l'interprétation juridique qui en est donné, ce projet de loi, s'il est lu correctement, loin de favoriser le développement des jeux de hasard, établit des balises réalistes et claires sur ce qui est permis, et restreint dans d'autres cas, la portée de la loi en vigueur. Tout ce que ce projet de loi fait est de mettre finalement les points sur le i en ce domaine: il ne faudrait pas en conclure qu'il préconise le développement des jeux de hasard. En énonçant noir sur blanc ce qui est permis, il définit du même coup ce qui est interdit. Sauf votre respect, je ne partage donc pas votre interprétation voulant que ce projet de loi ait pour principal objet d'élargir la portée de la loi. A mon avis, au contraire, il la rétrécit dans plusieurs domaines, comme je l'ai indiqué.

A cet égard, je voudrais signaler que ce sont des propositions faites par les ministères provinciaux des Procureurs généraux lors des consultations qui ont suivi l'Entente dans le courant de l'été 1985, qui sont à l'origine d'un élargissement de la loi actuelle dans trois domaines: à savoir les modifications visant à élargir les exemptions et privilèges de licences accordées en ce moment aux foires agricoles et du poisson et à d'autres sortes de foires; la suppression des limites imposées au montant de chaque prix ou à la contrepartie versée par des organismes de charité ou religieux dans des bazars, et l'augmentation du montant de chaque prix ou de la contrepartie versée dans les loteries et jeux exploités par des personnes dans un lieu d'amusement public.

Quant aux inquiétudes concernant l'augmentation éventuelle de la criminalité ainsi que les répercussions sur les ressources policières, je les partage, et partage celles des policiers. Les experts en jeux de la Gendarmerie royale du Canada estiment qu'il faut absolument adopter des moyens de contrôle adéquats avant et pendant des activités de jeux de hasard. Toutefois, le projet de loi n'oblige aucune province à se lancer dans de telles

tion, like the present legislation, is merely implementing in nature. It is up to each province to determine what types of gaming activities, if any, are to be permitted. I would trust that in permitting any gaming activity in future, provinces will consider seriously all of the moral, law enforcement, social and financial costs that may be involved in addition to the financial or tourism benefits.

I am glad that we have had this opportunity to exchange views on the nature and implications of the Bill. My officials and I are available for further discussion but, as indicated earlier, the Senate will soon commence consideration of the Bill. Any further comments would be appreciated at your earliest convenience.

Yours sincerely,

John C. Crosbie

activités et à supporter les coûts qu'elles entraînent. La nouvelle loi, comme celle qui est en vigueur, n'est proposée qu'à titre indicatif. Il appartient à chaque province de décider quel genre de jeux elle permettra, si elle en permet. Je suis convaincu qu'avant de permettre telle ou telle activité en ce domaine, les provinces en étudieront sérieusement toutes les dimensions morales, légales, sociales et financières, et ne regarderont pas uniquement les avantages sur les plans financiers ou touristiques.

Je suis heureux que la nature et les implications éventuelles de ce projet de loi nous aient donné l'occasion d'échanger nos vues. Mes fonctionnaires et moi-même sommes prêts à poursuivre la discussion mais, comme je l'ai indiqué précédemment, le Sénat se mettra très bientôt à étudier ledit projet de loi. Toute autre observation serait le bienvenue dès qu'il vous conviendra d'en présenter.

Avec l'expression de mes salutations distinguées.

John C. Crosbie

October 25, 1985

The Honourable
Mr. John C. Crosbie, P.C., Q.C., M.P.
Minister of Justice and
Attorney General of Canada
Justice Department
239 Wellington Street
Ottawa, Ontario
K1A 0H8

Dear John—

I am writing to you with reference to proposed amendments to the Lottery Provisions of the Criminal Code.

As you are aware, the proposed amendments are provided for in the Federal/Provincial Lottery Agreement which was entered into by all provinces and the Federal Government on June 3, 1985.

Clause 1, 1.2 of the Agreement provides that the amendments which are attached to the Agreement as Schedule "A", are to be proclaimed in force "as soon as possible; and in any event, not later than December 31, 1985".

I have a number of serious concerns with respect to the proposed amendments and I am therefore urging you not to proceed toward an introduction of them until I have had an opportunity to consult with you.

Although I am requesting a full and complete consultation with respect to the proposed amendments, some of my concerns are as follows:

(1) The process by which the proposed amendments came into being.

(2) The concerns of law enforcement agencies which include:

the likelihood of an increase in the crime rate as a direct result of broadering the lottery provisions;

Le 25 octobre 1985

Monsieur John C. Crosbie, c.p., c.r. député
Ministre de la Justice et
Procureur général du Canada
Ministère de la Justice
239, rue Wellington
Ottawa (Ontario)
K1A 0H8

Cher John,

Je vous écris concernant les modifications proposées aux dispositions se rapportant aux loteries dans le Code criminel.

Comme vous le savez, ces modifications font partie de l'Entente fédérale/provinciale sur les loteries conclues entre toutes les provinces et le gouvernement fédéral le 3 juin 1985.

Le paragraphe 1.2 de l'article 1 de cette Entente dispose que les modifications jointes à l'Entente à l'Annexe «A», prendront effet «le plus tôt possible et, à tout événement, au plus tard le 31 décembre 1985».

J'ai plusieurs inquiétudes concernant quelques-unes de ces modifications, et je viens donc vous prier de ne pas procéder à leur mise en vigueur avant que j'ai eu le temps de vous consulter.

Tout en vous demandant d'être consulté sur l'ensemble de ces modifications, voici quelques-unes des inquiétudes qui m'agitent:

(1) la façon dont ces modifications ont vu le jour;

(2) les inquiétudes des organismes chargés de faire respecter la loi, et notamment:

—la hausse probable du taux de criminalité résultant directement d'un élargissement des dispositions sur les loteries;

the impact on police resources and the resultant decrease in police availability with respect to their other responsibilities;

the possibility of the amendments encouraging organized crime to take a foothold in Canada.

(3) the impact on the public.

(4) The failure to receive input from the public and various interest groups with respect to the desirability and need to broaden the lottery provisions.

My officials and I would be pleased to meet with you and your officials in order that we might more fully enunciate our concerns to you.

Yours very truly,

IAN SCOTT
Attorney General

—les répercussions sur les ressources policières et la diminution, par voie de conséquence, du temps que les policiers pourront consacrer à leurs autres responsabilités;

—la crainte que ces modifications n'encouragent le crime organisé à prendre pied au Canada.

(3) L'incidence sur le public.

(4) L'absence de toute participation du public et des autres groupes d'intérêt concernés en ce qui concerne l'opportunité et la nécessité d'élargir les dispositions touchant les loteries.

Mes fonctionnaires et moi-mêmes serions heureux de vous rencontrer ainsi que vos hauts fonctionnaires pour vous donner plus d'explications sur nos inquiétudes.

Avec l'expression de mes salutations distinguées.

Le procureur général
IAN SCOTT

APPENDIX "LEG-31-C"

November 28, 1985

The Honourable John Neiman
Chairman of
The Standing Senate Committee
Legal and Constitutional Affairs
Room 475-S
Senate of Canada
Ottawa, Ontario
K1A 0A6

Dear Senator:

Attached please find, in both official languages, a copy of the agreement which was discussed at the Committee hearings today and which the Honourable Otto Jelinek agreed to provide.

Thank you.

Sincerely yours,

Allan Higdon
Legislative Assistant

Encl.

THIS AGREEMENT entered into as of the 3rd day of June 1985, BETWEEN THE GOVERNMENT OF CANADA, AND

THE GOVERNMENT OF ALBERTA,

THE GOVERNMENT OF BRITISH COLUMBIA,

THE GOVERNMENT OF MANITOBA,

THE GOVERNMENT OF NEW BRUNSWICK,

THE GOVERNMENT OF NEWFOUNDLAND,

THE GOVERNMENT OF NOVA SCOTIA,

THE GOVERNMENT OF ONTARIO,

THE GOVERNMENT OF PRINCE EDWARD ISLAND,

THE GOVERNMENT OF QUEBEC AND

THE GOVERNMENT OF SASKATCHEWAN

(hereinafter collectively referred to as the "Provinces")

WITNESSETH THAT, in consideration of the mutual covenants herein set forth, the parties hereto agree as follows:

1. The Government of Canada undertakes

1.1 to refrain from re-entering the field of gaming and betting (except to the extent of its present role under section 188 of the Criminal Code with respect to horse races) and to ensure that the rights of the Provinces in that field are not reduced or restricted;

APPENDICE «LEG-31-C»

28 novembre 1985

LA PRÉSENTE ENTENTE Intervenue le 3e jour de juin 1985 ENTRE LE GOUVERNEMENT DU CANADA ET

LE GOUVERNEMENT DE L'ALBERTA,

LE GOUVERNEMENT DE LA COLOMBIE-BRITANNIQUE,

LE GOUVERNEMENT DU MANITOBA,

LE GOUVERNEMENT DU NOUVEAU-BRUNSWICK,

LE GOUVERNEMENT DE TERRE-NEUVE,

LE GOUVERNEMENT DE LA NOUVELLE-ÉCOSSE,

LE GOUVERNEMENT DE L'ONTARIO,

LE GOUVERNEMENT DE L'ÎLE-DU-PRINCE-ÉDOUARD,

LE GOUVERNEMENT DU QUÉBEC ET

LE GOUVERNEMENT DE LA SASKATCHEWAN

(ci-après appelés collectivement «les Provinces»)

ATTESTE QUE, compte tenu des engagements contenus dans la présente, les parties à la présente s'entendent comme suit:

1. Le gouvernement du Canada s'engage

1.1 à ne pas se relancer dans le domaine des jeux et paris (sauf dans la mesure où l'exige son rôle actuel dans le secteur des courses de chevaux, conformément à l'article 188 du Code criminel), et à veiller à ce que les droits des Provinces dans ce domaine ne soient ni réduits ni restreints;

1.2 to introduce amendments to the Criminal Code in substance in accordance with the a draft attached hereto as Schedule A, which amendments shall be subject to consultation with the Provincial Ministers responsible for the administration of Justice, and to use its best efforts to ensure that approved amendments are proclaimed in force as soon as possible; and in any event, no later than December 31, 1985.

1.3 to use its best efforts to ensure that Bill C-2 (An Act respecting the winding up of the Canadian Sports Pool Corporation and Loto Canada Inc.) is assented to and proclaimed in force not later than September 30, 1985 and that Loto Canada Inc. is wound up not later than October 31, 1985; and

1.4 to cause the Attorney General of Canada, within two weeks of execution of this Agreement, to desist without costs from its appeal to the Supreme Court of Canada from the Québec Court of Appeal judgment in the case of the Attorney General of Canada vs Lotto-Québec.

2. The Provinces undertake

2.1 subject to article 4, to pay to the Government of Canada the aggregate amount of $100,000,000 in three equal yearly installments, on or before December 31 in each of the years 1985, 1986 and 1987;

2.2 subject to article 4, to continue their indexed payments under paragraph 3 of the Agreement evidenced by a letter dated August 23, 1979 signed by the Government of Canada and the Provinces (the "1979 Agreement"); and

2.3 to cause the Attorneys General of all Provinces, within 10 days after all actions referred to in paragraphs 1.2, 1.3 and 1.4 have been completed, to desist without costs from their proceedings in the case of the Attorneys General of all the Provinces of Canada and Interprovincial Lottery Corporation vs Her Majesty the Queen in Right of Canada (Federal Court No. T-622-84).

3. The Provinces agree among themselves that the payments to be made pursuant to paragraphs 2.1 and 2.2 hereof shall be deemed to be Loto Installments under the Agreement entered into as of January 1, 1980 among themselves and Interprovincial Lottery Corporation and the Regional Marketing Organizations, as amended from time to time. The Provinces hereby declare that the provisions of the January 1, 1980 Agreement do not diminish or in any way adversely affect the obligations of the Provinces under paragraphs 2.1 and 2.2.

4. The payments to be made by the Provinces pursuant to paragraphs 2.1 and 2.2 are in consideration of the fulfilment by the Government of Canada of its undertakings under article 1. Should any dispute arise with respect to such fulfilment, the Provinces shall be entitled to withhold their payments until such dispute is resolved and to exercise all recourses they may have with respect to such dispute.

5. This agreement supersedes and replaces all prior Agreements among the parties respecting gaming and bet-

1.2 à apporter des modifications de fond au Code criminel conformément à l'ébauche jointe à la présente (annexe A), et les modifications sont assujetties à une étude de la part des ministres responsables de l'administration de la justice et à mettre tout en œuvre pour que l'approbation de ces modifications prennent effet le plus tôt possible; et, a tout événement, au plus tard le 31 décembre 1985.

1.3 à mettre tout en œuvre pour que le projet de loi C-2 (Loi portant dissolution de la Société canadienne des paris sportifs et de Loto Canada Inc.) soit adopté et entre en vigueur au plus tard le 30 septembre 1985, et que la société Loto Canada Inc. soit liquidée au plus tard le 31 octobre 1985; et

1.4 à ce que le Procureur général du Canada abandonne, dans les deux semaines de l'entrée en vigueur de la présente entente et sans réclamer de frais, les procédures en appel qu'il a entreprises auprès de la Cour suprême du Canada relativement au jugement de la Cour d'appel du Québec dans la cause l'opposant à Loto Québec.

2. Les provinces s'engagent

2.1 sous réserve de l'article 4, à payer au gouvernement du Canada la somme globale de 100 000 $ en trois versements annuels égaux le ou avant le 31 décembre des années 1985, 1986 et 1987;

2.2 sous réserve de l'article 4, à continuer les paiements indexés qui sont prévus à l'article 3 de l'entente attestée par une lettre datée du 23 août 1979 et signée par le gouvernement du Canada et les Provinces («entente de 1979»); et

2.3 à ce que les Procureurs généraux de toutes les Provinces abandonnent, dans les 10 jours suivant la fin des mesures mentionnées aux paragraphes 1.2, 1.3 et 1.4 et sans réclamer de frais, les poursuites entreprises par eux et par la Société de la loterie interprovinciale Inc. contre Sa Majesté la Reine du chef du Canada (no. de Cour fédérale T-622-84).

3. Les Provinces conviennent entre elles que les paiements devant être effectués en vertu des paragraphes 2.1 et 2.2 de la présente devront être considérés comme des versements relatifs à la loterie, conformément à l'entente intervenue le 1er janvier 1980 entre elles, la Société de la loterie interprovinciale Inc. et les organismes régionaux de commercialisation, telle qu'elle est modifiée de temps en temps. Les Provinces déclarent par la présente que les dispositions de l'entente du 1er janvier 1980 ne diminuent ni n'altèrent en rien les obligations auxquelles elles sont soumises en vertu des paragraphes 2.1 et 2.2.

4. Les paiements que doivent effectuer les Provinces en application des paragraphes 2.1 et 2.2 sont liés au respect des engagements pris par le gouvernement du Canada à l'article 1. Dans l'éventualité d'un litige quant au respect des engagements, les Provinces peuvent retarder leurs paiements jusqu'à ce que le litige soit réglé et exercer tous les recours dont elles peuvent disposer relativement à celui-ci.

5. La présente entente annule et remplace toutes les ententes sur les jeux et paris intervenues précédemment

ting and constitutes the entire Agreement among the parties, except in respect of those provisions of the 1979 Agreement herein specifically referred to.

6. Any notice, demand or consent which is required or permitted to be given herein shall be in writing and shall be either delivered in person or sent by prepaid registered mail to the respective addresses of the parties appearing below or to such other address of which any party may give notice to the others:

If to the Government of Canada:

The Honourable Minister of State
Fitness and Amateur Sport
Confederation Building
House of Commons
Ottawa, Ontario
K1A 0A6

If to the Provinces:

All Provinces of Canada
c/o Interprovincial Lottery Corporation
Suite 203
101 Bloor Street West
Toronto, Ontario
M5S 1P7

If so mailed, the third business day after the date of mailing shall be deemed to be the date such notice, demand or consent has been given.

7. This Agreement shall be binding on Her Majesty in Right of Canada and of each of the Provinces and on Her assignees, agents, mandataries, representatives, servants and employees. The parties acknowledge that the subject matter of this Agreement is a commercial matter, and they undertake not to invoke any Crown Prerogative or immunity in any dispute, including any court proceedings, arising from this Agreement.

8. This Agreement may only be amended or terminated by the unanimous consent of the Provinces and the Government of Canada.

Each of the parties hereto has signed this Agreement by its duly authorized Minister(s), on the understanding that this Agreement shall be valid and binding only when signed by all parties.

DATED June 3, 1985

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

by

entre les parties et constitue l'entente globale, sauf pour ce qui est des dispositions de l'entente de 1979 mentionnées expressément dans la présente.

6. Tout avis, toute demande ou tout consentement nécessaires ou permis dans le cadre de la présente devront être présentés par écrit et remis en personne ou envoyés par courrier recommandé affranchi à l'adresse respective de chacune des parties figurant ci-après ou à toute autre adresse que l'une ou l'autre des parties pourrait communiquer aux autres:

Adresse du gouvernement du Canada:

L'honorable ministre d'État à la Condition physique et au Sport amateur
Édifice de la Confédération
Chambre des communes
Ottawa (Ontario)
K1A 0A6

Adresse des Provinces:

Toutes les Provinces du Canada
a/s de la Société de la loterie interprovinciale Inc.
101 rue Bloor, Ouest, pièce 203
Toronto, Ontario
M5S 1P7

Dans le cas d'un envoi postal, le troisième jour ouvrable suivant la date de l'envoi sera considéré comme étant celui où l'avis, la demande ou le consentement en question ont été communiqués.

7. La présente entente est obligatoire pour Sa Majesté du chef du Canada et de chacune des Provinces, et pour ses cessionnaires, agents, mandataires, représentants, serveurs et employés. Les parties reconnaissent que l'objet de la présente entente est d'ordre commercial et s'engagent à n'invoquer aucune prérogative de la Couronne ni aucune immunité en cas de litige, entre autres, en cas de procédures judiciaires dérivant de la présente entente.

8. La présente entente ne peut être modifiée ou révoquée qu'avec le consentement unanime des Provinces et du gouvernement du Canada.

Chacune des parties à la présente a signé la présente entente par l'intermédiaire de son ou ses ministres dûment autorisés étant entendu que cette convention ne sera valide et exécutoire que lorsqu'elle sera signée par toutes les parties.

DATÉ le 3 juin 1985

SA MAJESTÉ DU CHEF DU CANADA

par

DATED June 6, 1985
Approved as a binding Intergovernmental Agreement for the Province of Alberta

A/Minister of Federal and Intergovernmental Affairs

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA

by

DATÉ le 6 juin 1985
Approved as a binding Intergovernmental Agreement for the Province of Alberta

A/Minister of Federal and Intergovernmental Affairs

SA MAJESTÉ DU CHEF DE LA PROVINCE DE L'ALBERTA

par

DATED June 3, 1985

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

by

DATÉ le 3 juin 1985

SA MAJESTÉ DU CHEF DE LA PROVINCE DE LA COLOMBIE-BRITANNIQUE

par

DATED June 3, 1985

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA

by

DATÉ le 3 juin 1985

SA MAJESTÉ DU CHEF DE LA PROVINCE DU MANITOBA

par

DATED June 3, 1985

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK

by

DATÉ le 3 juin 1985

SA MAJESTÉ DU CHEF DE LA PROVINCE DU NOUVEAU-BRUNSWICK

par

DATED June 3, 1985

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND

by

DATÉ le 3 juin 1985

SA MAJESTÉ DU CHEF DE LA PROVINCE DE TERRE-NEUVE

par

DATED June 3, 1985

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA

by

DATÉ le 3 juin 1985

SA MAJESTÉ DU CHEF DE LA PROVINCE DE LA NOUVELLE-ÉCOSSE

par

DATED May 30, 1985

HER MAJESTY THE QUEEN IN RIGHT ONTARIO

by

DATÉ le 30 mai 1985

SA MAJESTÉ DU CHEF DE LA PROVINCE DE L'ONTARIO

par

DATED June 3, 1985

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF PRINCE EDWARD ISLAND

by

DATÉ Le 3 juin 1985

SA MAJESTÉ DU CHEF DE LA PROVINCE DE L'ÎLE DU PRINCE ÉDOUARD

par

DATED June 5, 1985

ON BEHALF OF THE GOVERNMENT OF QUEBEC

by

DATÉ le 5 juin 1985

AU NOM DU GOUVERNEMENT DU QUÉBEC

par

DATED June 3, 1985

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF SASKATCHEWAN

by

DATÉ le 3 juin 1985

SA MAJESTÉ DU CHEF DE LA PROVINCE DE LA SASKATCHEWAN

par

SCHEDULE A

Draft Amendments To Criminal Code

1. Section 188.1 of the Criminal Code is repealed.

2. Section 190 of the Criminal Code is repealed and the following substituted therefore:

ANNEXE A

Projet d'amendements au code criminel

1. L'article 188.1 du Code criminel est abrogé.

2. L'article 190 du Code criminel est abrogé et remplacé par le suivant:

"190. (1) Notwithstanding any of the provisions of this Part relating to gaming and betting, it is lawful

(a) for the government of a province, either alone or in conjunction with the government of another province, to conduct and manage a lottery scheme in that province, or in that and such other province, in accordance with any law enacted by the legislature of that province;

(b) for a charitable or religious organization, under the authority of licence issued by the Lieutenant Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof, to conduct and manage a lottery scheme in that province if

(i) the proceeds from the lottery scheme are used for a charitable or religious object or purpose, and

(ii) in the case of a lottery scheme conducted by the charitable or religious organization at a bazaar,

(A) the amount or value of each prize awarded does not exceed one hundred dollars, and

(B) the money or other valuable consideration paid to secure a chance to win a prize does not exceed fifty cents;

(c) for an agricultural fair or exhibition or an operator of a concession leased by an agricultural fair or exhibition board, under the authority of a licence issued by the Lieutenant Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof, to conduct and manage a lottery scheme in that province;

(d) for any person, under the authority of a licence issued by the Lieutenant Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof, to conduct and manage a lottery scheme at a public place of amusement in that province if

(i) the amount or value of each prize awarded does not exceed one hundred dollars, and

(ii) the money or other valuable consideration paid to secure a chance to win a prize does not exceed fifty cents;

(e) for the government of a province to agree with the government of another province that lots, cards or tickets in relation of a lottery scheme that is by any of paragraphs (a) to (d) authorized to be conducted and managed in that other province may be sold in the province;

(f) under the authority of a licence issued by the Lieutenant Governor in Council of a province or such other person or authority in the province as may be designated by the Lieutenant Governor in Council thereof, to conduct and manage in the province a lottery scheme that is authorized to be conducted and managed in one or more

«190.(1) Nonobstant toutes dispositions de la présente Partie relatives aux jeux et paris, il sera légal,

a) pour le gouvernement d'une province, soit seul, soit de concert avec le gouvernement d'une autre province, de conduire et d'administrer un système de loterie dans cette province, ou dans cette province et dans l'autre province, en conformité de toute législation édictée par la législature de cette province;

b) pour un organisme de charité ou un organisme religieux, sous l'autorité d'une licence émise par le lieutenant-gouverneur en conseil d'une province ou par telle autre personne ou autorité dans la province que peut spécifier le lieutenant-gouverneur en conseil de cette province, de conduire et administrer un système de loterie dans cette province

i) si le produit du système de loterie est utilisé pour des fins ou œuvres charitables ou religieuses, et

ii) si, dans le cas d'un système de loterie conduit par un organisme de charité ou un organisme religieux dans une vente de charité,

A) le montant ou la valeur de chaque prix attribué ne dépasse pas cent dollars, et

B) l'argent ou autre valeur payé pour obtenir une chance de gagner un prix ne dépasse pas cinquante cents;

c) pour une foire ou exposition agricole, ou pour un exploitant d'une concession donnée à bail par le conseil d'une foire ou d'une exposition agricole, sous l'autorité d'une licence émise par le lieutenant-gouverneur en conseil d'une province ou par telle autre personne ou autorité dans la province que peut spécifier le lieutenant-gouverneur en conseil de cette province, de conduire et administrer un système de loterie dans cette province;

d) pour toute personne, sous l'autorité d'une licence émise par le lieutenant-gouverneur en conseil d'une province ou par telle autre personne ou autorité dans la province que peut spécifier le lieutenant-gouverneur en conseil de cette province, de conduire et administrer un système de loterie dans un lieu d'amusement public dans cette province

i) si le montant ou la valeur de chaque prix attribué ne dépasse pas cent dollars, et

ii) si l'argent ou autre valeur payé pour obtenir une chance de gagner un prix ne dépasse pas cinquante cents;

e) pour le gouvernement d'une province de conclure un accord avec le gouvernement d'une autre province permettant la vente sur son territoire de lots, cartes ou billets d'un système de loterie dont la conduite et l'administration sont autorisées dans cette autre province en vertu de l'un des alinéas a) à d).

f) sous l'autorité d'une licence émise par le lieutenant-gouverneur en conseil d'une province ou par telle autre personne ou autorité dans la province que peut spécifier le lieutenant-gouverneur en conseil de cette province, de conduire et administrer dans la province un système de loterie

other provinces where the authority by which the lottery scheme was first authorized to be conducted and managed consents thereto;

(g) for any person, for the purpose of a lottery scheme which is lawful in a province under any of paragraphs (a) to (f) and in accordance with the applicable law or licence, to do anything in such province which is required for the conduct, management, operation and sale of such lottery scheme or to participate therein; and

(h) for any person to make or print anywhere in Canada or to cause or procure to be made or printed anywhere in Canada anything relating to gaming and betting which is to be used in a place where it can legally be used or to send, transmit, mail, ship, deliver or allow to be sent, transmitted, mailed, shipped or delivered or accept for carriage or transport or convey any such thing where the destination thereof is a place where it is lawful to use such thing.

(2) Subject to this Act, a licence issued by or under the authority of the Lieutenant Governor in Council of a province as described in paragraph (1)(b), (c), (d) or (f) may contain such terms and conditions relating to the conduct and management of the lottery scheme to which the licence relates as the Lieutenant Governor in Council of that province, the person or authority in the province designated by him or any law enacted by the legislature of that province may prescribe.

(3) Subject to paragraph (1)(h), every one who, in any province other than a province in which a lottery scheme is by any of paragraphs (1)(a) to (f) authorized to be conducted and managed, does anything, for the purposes of that lottery scheme, which is not legal under any other provision of this Part relating to gaming and betting, is guilty,

(a) in all cases other than a mere participation in that lottery scheme, of an indictable offence and liable to imprisonment for two years, or

(b) in the case of mere participation in that lottery scheme, of an offence punishable on summary conviction.

(4) In this section "lottery scheme" means a game or any proposal, scheme, plan, means, device, contrivance or operation described in any of paragraphs 189(1)(a) to (g) and includes any of the above activities which involves betting, other than:

(a) a dice game, three-card monte, punch board or coin table,

(b) bookmaking, pool selling and the making or recording of bets, including bets made through the agency or a pool or pari-mutuel system, on any race or fight, or on a single sport event or athletic contest, and

(c) for the purposes of paragraphs (1)(b) to (f) a game or proposal, scheme, plan, device, contrivance or operation described in any of paragraphs 189(1)(a) to (g) which is

déjà autorisé dans une autre province, avec le consentement de l'autorité qui l'a permis en premier lieu;

g) pour toute personne, aux fins d'un système de loterie autorisé dans une province en vertu de l'un des alinéas a) à f) et en conformité de la loi ou licence applicable, de faire toute chose requise pour la conduite, l'administration, l'exploitation et la vente de ce système de loterie ou d'y participer; et

h) pour toute personne de fabriquer ou imprimer ou faire fabriquer ou imprimer au Canada toute chose reliée aux jeux et paris si cette chose doit être utilisée à un endroit où elle peut être utilisée légalement ou d'envoyer, transmettre, expédier ou livrer ou faire envoyer, transmettre, expédier ou livrer ou accepter pour livraison ou transport une telle chose si sa destination est un lieu où son utilisation est légale.

(2) Sous réserve de la présente loi, une licence délivrée par le lieutenant-gouverneur en conseil d'une province ou sous son autorité en vertu de l'un des alinéas b), c), d) ou f), peut contenir les modalités que le lieutenant-gouverneur en conseil de cette province, la personne ou autorité dans la province qu'il choisit ou toute législation édictée par la législature de cette province peut prescrire, relativement à l'administration et à la conduite du système de loterie auquel la licence se rapporte.

(3) Sous réserve de l'alinéa (1)h), quiconque, dans une province autre que celle où il est permis de conduire et d'administrer un système de loterie en vertu des alinéas (1)a) à f), accomplit toute chose, pour les fins de ce système de loterie, qui n'est pas légale en vertu de toute autre disposition de la présente Partie relative aux jeux et paris, est coupable

a) dans tous les cas autres qu'une simple participation à ce système de loterie, d'un acte criminel et passible d'un emprisonnement de deux ans, ou

b) dans le cas d'une simple participation à ce système de loterie, d'une infraction punissable sur déclaration sommaire de culpabilité.

(4) Au présent article, «système de loterie» signifie un jeu ou toute proposition, projet, plan, moyen, système, arrangement ou opération décrit à l'un des alinéas 189(1)a) à g) et comprend chacune de ces activités qui comporte du pari, la vente d'une mise collective ou un système de mise collective, sauf

a) un jeu de dés, un jeu de bonneteau, une planchette à poiçonnet ou une table à monnaie,

b) le bookmaking, la vente d'une mise collective, et le placement et l'inscription de paris, y comprise les paris effectués par l'intermédiaire d'un système de mise collective ou de pari mutuel, sur une course ou un combat ou sur un seul événement sportif ou concours athlétique, et

c) pour les fins des alinéas (1)b) à f), un jeu ou une proposition, projet, plan, moyen, système, arrangement ou opération décrit à l'un des alinéas 189(1)a) à g) qui est

operated on or through any computer, video device or machine.

(5) Nothing in this section shall be construed as authorizing the making or recording of bets on horse races through the agency of a parmi-mutuel system other than in accordance with section 188."

exploité sur tout ordinateur, appareil vidéo ou machine ou par son intermédiaire.

(5) Rien au présent article ne doit s'interpréter comme permettant de faire ou d'inscrire, des paris sur des courses de chevaux par l'intermédiaire d'un système de pari-mutuel, si ce n'est en conformité de l'article 188.»

TAB 18

First Session
Thirty-third Parliament, 1984-85

SENATE OF CANADA

Proceedings of the Standing Senate Committee on

Legal and Constitutional Affairs

Chairman:
The Honourable JOAN NEIMAN

Thursday, December 5, 1985
Wednesday, December 11, 1985

Issue No. 32

Second proceedings on:

The Examination of Bill C-49, "An Act to amend the Criminal Code (prostitution)"

Fourth proceedings on:

The Examination of Bill C-81, "An Act to amend the Criminal Code (lotteries)"

WITNESSES:

(See back cover)

Première session de la
trente-troisième législature, 1984-1985

SÉNAT DU CANADA

Délibérations du Comité sénatorial permanent des

Affaires juridiques et constitutionnelles

Présidente:
L'honorable JOAN NEIMAN

Le jeudi 5 décembre 1985
Le mercredi 11 décembre 1985

Fascicule nº 32

Deuxième fascicule concernant:

L'étude du projet de loi C-49, «Loi modifiant le Code criminel (prostitution)»

Quatrième fasicule concernant:

L'étude du projet de loi C-81, «Loi modifiant le Code criminel (loteries)»

TÉMOINS:

(Voir à l'endos)

28328—1

EVIDENCE

Ottawa, Wednesday, December 11, 1985

[*Text*]

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred Bill C-81, to amend the Criminal Code (lotteries), met this day at 4:15 p.m. to give consideration to the bill.

Senator Joan Neiman (*Chairman*) in the Chair.

The Chairman: Honourable senators, we are resuming our consideration of Bill C-81 to amend the Criminal Code with respect to provisions regarding lotteries. Today we have with us again Mr. Richard Mosley who is General Counsel of the Criminal Law Policy and Amendments Section, Department of Justice. We are pleased to have Deputy Commissioner Henry Jensen from the Royal Canadian Mounted Police as well as Sergeant R.G. Robinson who is a Gaming Specialist with the RCMP.

I have suggested to Mr. Mosley that the committee would probably appreciate the opportunity of being led through the relevant sections of the Criminal Code that we will be considering. He has heard the testimony that was given to us last Wednesday by various officials from Ontario so perhaps he would like an opportunity to comment on some of their interpretations of the proposed amendments.

I believe that all of you have copies of the relevant sections of the Criminal Code that we will be referring to during the course of these hearings. Mr. Mosley, I will let you start off.

Mr. Richard Mosley, General Counsel, Criminal Law Policy and Amendments Section, Department of Justice: Thank you, Madam Chairman and honourable senators. Before going into the specific provisions of Bill C-81, I should like to take advantage of this opportunity to speak first on the general legislative scheme and the policy behind it in Part V of the Criminal Code. As you will no doubt appreciate, by now there is a significant divergence of opinion as to the interpretation of that part between the Department of Justice, the provincial departments of the Attorney General and the view that was expressed to you last week by witnesses on behalf of the Ontario police community and the Ontario Ministry of the Attorney General.

The reason for that divergence of opinion, I believe, stems from the complexity of Part V of the Criminal Code. That part of the Criminal Code perhaps more than any other section or area of the code, most closely resembles the complexity of the Income Tax Act or other like examples of legislative difficulty. The reason for that is that Part V has been built up over the years by accumulated accretions of amendments which have led to the current package which, as one witness suggested last week, appears to be contradictory on its face. I suggest to you that it is not, and that it can be clearly interpreted and clearly read if one takes the time and care to do so. The interpretations that the Department of Justice have placed on that part of the code, and the interpretations placed on it by most of the provinces, are the interpretations that are to be applied.

TÉMOIGNAGES

Ottawa, le mercredi 11 décembre 1985

[*Traduction*]

Le comité sénatorial permanent des affaires juridiques et constitutionnelles se réunit aujourd'hui à 16 h 15 pour étudier le projet de loi C-81, Loi modifiant le Code criminel (loteries), dont il a été saisi.

Le sénateur Joan Neiman (*présidente*) occupe le fauteuil.

La présidente: Honorables sénateurs, nous reprenons notre examen du projet de loi C-81, qui consiste en une loi visant à modifier les dispositions du Code criminel portant sur les loteries. Nous accueillons de nouveau aujourd'hui M. Richard Mosley, avocat-général de la Section de la politique et de la modification du droit en matière pénale du ministère de la Justice. Nous avons galement le plaisir d'avoir avec nous M. Henry Jensen, sous-commissaire de la Gendarmerie royale du Canada, et le sergent R. G. Robinson, spécialiste des jeux à la GRC.

J'ai indiqué à M. Mosley que les membres du comité aimeraient probablement qu'il leur explique les articles du Code criminel qu'ils devront étudier. Comme M. Mosley a entendu, mercredi dernier, le témoignage de divers fonctionnaires de l'Ontario, il pourrait peut-être nous dire ce qu'il pense de leurs interprétations des modifications proposées.

Je pense que nous avons tous un exemplaire des articles pertinents du Code criminel dont il sera question au cours de ces audiences. M. Mosley, je vous laisse donc la parole.

M. Richard Mosley, avocat-général, Section de la politique et de la modification du droit en matière pénale du ministère de la Justice: Merci, madame la présidente et honorables sénateurs. Avant d'entrer dans les détails du projet de loi C-81, j'aimerais parler du cadre législatif général et de la politique sur laquelle se fonde la Partie V du Code criminel. Comme vous avez probablement pu vous en rendre compte, cette partie a donné lieu a des interprétations fort différentes de la part du ministère de la Justice, des ministères provinciaux, du Procureur général et des témoins qui ont comparu devant vous la semaine dernière au nom des forces de l'ordre de l'Ontario et du ministère du Procureur général de l'Ontario.

Ces différences d'opinion découlent, à mon avis, de la complexité de la Partie V du Code criminel. Plus peut-être que tout autre article ou toute autre section du Code, cette partie présente autant de complexités que la Loi de l'impôt sur le revenu ou d'autres textes de loi compliqués. Cela part du fait que la Partie V a été constituée au fil des années par une accumulation d'ajouts et de modifications, qui ont abouti au texte actuel, texte qui, selon un des témoins de la semaine dernière, semble présenter des contradictions. A mon avis, cette partie ne comporte aucune contradiction et il est possible de l'interpréter et de la lire clairement si on y consacre le temps et le soin nécessaires. Les interprétations qu'il faut donner à cette partie sont celles que le ministère de la Justice lui ont données et celles que la plupart des provinces lui ont données.

[*Text*]

The reason why this current divergence of opinion is present relates back to amendments through Bill C-150 which was introduced by Mr. Turner and adopted in 1969. Mr. Turner in making a statement to the Justice and Legal Affairs Committee of the House of Commons at that time indicated the general policy that was being adopted. Prior to that time there were far-reaching prohibitions. The Criminal Code's approach to gaming and betting was generally one of prohibition with certain limited exceptions for certain types of operations such as an agricultural fair or exhibition.

In introducing the amendments in Bill C-150 Mr. Turner indicated, and I am quoting from his statement at the time:

> The most significant thing about the proposed changes respecting lottery schemes—and that phrase includes games of chance generally—is that this type of activity by religious and charitable organizations will be left largely to the discretion of the provincial authorities through provincially- issued licences.
>
> The same considerations will apply to agricultural fairs and exhibitions, with respect to gaming connected with such fairs and exhibitions, conducted off the exhibition grounds, and with respect to gaming at public places of amusement.
>
> We believe, Mr. Chairman, that this will enable local attitudes and local considerations to govern in this matter, and that it will be more accurately reflected at the provincial level.
>
> The sections also provide, of course, that provincial governments will be authorized to conduct what is commonly referred to as a state lottery, and if it chooses to do so, that the federal government will be authorized to conduct a state lottery.

What Mr. Turner contemplated at that time was a considerable expansion of the exemptions from the general prohibition scheme against gaming and betting in the Criminal Code which would cover not only the type of state lottery that we have such as Wintario and games that you are familiar with, but also, and he made a point of being specific games of chance generally.

Those amendments which are principally found in what is now section 190 of the Criminal Code have been the subject of application and interpretation by the provincial governments since that time. There was a statement made by the Attorney General of Canada, the Minister of Justice of Canada in 1972 before the same committee, Justice and Legal Affairs, in response to an inquiry from the then Mr. Asselin, and now Senator Asselin, as to whether or not the law permitted the establishment of state-run or state-licensed casinos. At that time there was considerable interest in the Province of Quebec on that question and the minister of the day, Mr.Lang, stated:

> . . . I also am advised that, if such casinos are operated by a given province, they are now permissible under the Criminal Code.

[*Traduction*]

Les raisons de la différence d'opinions actuelle remontent aux modifications proposées en 1969 par M. Turner dans le projet de loi C-150 et adoptées la même année. Dans une déclaration faite à l'époque au Comité de la justice et des affaires juridiques de la Chambre des communes, M. Turner avait exposé la politique générale qui était adoptée. Avant cela, le Code comprenait des interdictions assez générales. Il interdisait dans l'ensemble les jeux et les paris à l'exception de quelques rares cas se rapportant à des activités comme les foires agricoles ou les expositions.

Dans sa présentation des modifications proposées par le projet de loi C-150, M. Turner avait indiqué à l'époque:

> L'aspect le plus important des changements proposés à l'égard des loteries, et cela comprend tous les jeux de hasard en général, est que les activités de ce genre poursuivies par des organismes religieux et des organismes de charité seront essentiellement laissées à la discrétion des autorités provinciales, qui délivreront des permis provinciaux à cet effet.
>
> Le même principe s'appliquera aux jeux associés à des foires agricoles et expositions et tenus ailleurs qu'à ces foires et expositions, et aux jeux tenus dans des lieux d'amusement publics.
>
> Nous pensons, monsieur le président, que cela permettra de laisser les attitudes locales et les considérations locales régir ces questions, du fait que ces attitudes et considérations peuvent être plus facilement reflétées à l'échelon provincial.
>
> Les articles prévoient également que les gouvernements provinciaux auront le droit d'organiser ce qu'on appelle communément des loteries d'État et que, s'il décide de le faire, le gouvernement fédéral aura le droit d'organiser une loterie d'État.

Ce que M. Turner envisageait à l'époque était d'élargir considérablement les exemptions à l'interdiction générale des jeux et des paris contenue dans le Code criminel, afin de les appliquer non seulement au type de loterie d'État comme Wintario et les autres jeux que vous connaissez, mais aussi, et cela, il l'a bien précisé, aux jeux de hasard en général.

Ces modifications, essentiellement exposées à l'article 190 du Code criminel, ont été appliquées et interprétées depuis lors par les gouvernements provinciaux. En réponse à une question de M. Asselin, aujourd'hui sénateur, qui désirait savoir si la loi autorisait l'établissement de casinos exploités ou réglementés par l'État, le Procureur général du Canada et ministre de la Justice a fait une déclartion en 1972 devant le comité de la Justice et des affaires juridiques. La province du Québec s'intéressait de près à cette question et le ministre de l'époque, M. Lang a déclaré:

> . . . D'après les opinions que j'ai reçues, le Code criminel autorise maintenant de tels casinos, s'ils sont exploités par une province.

[*Text*]

MR. ASSELIN: They are not permissible now.

MR. LANG: They are.

MR. ASSELIN: Under the law?

MR. LANG: If operated by a province.

MR. ASSELIN: The lotteries, not the casinos.

Then Mr. Christie, a senior official of the Department of Justice at the time, said:

> Yes, if the province itself wants to run the casinos, under the law, as we interpret it, they can do so today. That was in 1972.

Since that time and since that statement of interpretation of what was permitted by section 190 of the Criminal Code, certain of the provincial governments have, indeed, gotten into the field of operation of casinos such as the province of Manitoba where the government itself operates a casino. In Alberta there are two casinos operated virtually year-round for and by charitable and religious groups under the close scrutiny of the provincially operated Gaming Commission.

I am not going to comment further on the examples in those provinces or the other examples in, for example, Saskatchewan or Dawson City in the Yukon.

With us today there is a gaming specialist from the RCMP who is familiar with those operations and who is also very familiar with the controls that are applied to them at present by the provincial governments.

I raise that experience in the western provinces, however, simply to illustrate that the view of the current state of the law that was expressed to you last week is by no means the view of the law that is held by the provincial governments generally. The attorneys general of those provinces have permitted or approved the operation within their boundaries of casinos within the context of the existing law. It is therefore, I suggest, a very narrow and limited interpretation of the existing law to suggest that it does not now permit the operation of such establishments and that the amendments in this bill would make such a fundamental change. It is the position of the Department of Justice that the bill would make no change of that nature but that it would simply clarify the existing law in respect of that major issue. It would make certain changes in respect of features of the operation of gaming within Canada.

I will now proceed through the bill to try to explain what those changes would be. Beginning with clause 1, it would repeal section 188.1. The repeal of section 188.1 would end the legal authority of the federal government and the governments of one or more provinces which entered into an agreement jointly with the federal government to operate and manage a pool system of betting on any combination of two or more athletic contests or events. That is directly in response to requests from the provincial governments that the federal government get out of the field. Those requests have gone so far as to suggest that the federal government abandon the field of gaming control entirely through the provisions of the Criminal Code and leave it to the provinces to regulate.

[*Traduction*]

M. ASSELIN: De tels casinos ne sont pas autorisés maintenant.

M. LANG: Ils le sont.

M. ASSELIN: En vertu de la loi?

M. LANG: A condition d'être exploités par une province.

M. ASSELIN: Les loteries, pas les casinos.

Sur quoi, M. Christie, à l'époque haut fonctionnaire du ministère de la Justice, a déclaré:

> Oui, si la province désire elle-même exploiter des casinos, la loi actuelle, telle que nous l'interprétons, l'y autorise. Voilà ce qui s'est dit en 1972.

Depuis lors et depuis cette interprétation de ce qu'autorisait l'article 190 du Code criminel, certains gouvernements provinciaux se sont en fait lancés dans l'exploitation de casinos, notamment le Manitoba, qui exloite lui-même un casino. En Alberta, deux casinos sont exploités pour ainsi dire toute l'année par des organismes de charité et des groupes religieux ou en leur nom, sous la supervision d'une commission provinciale des jeux.

Je ne m'attarderai pas sur les exemples de ces provinces ou sur d'autres exemples comme celui de la Saskatchewan ou celui de Dawson City dans le Yukon.

Nous avons aujourd'hui avec nous un spécialiste des jeux de la GRC, qui connaît très bien ces opérations et qui connaît également les mécanismes de contrôle que leur appliquent actuellement les gouvernements provinciaux.

Si je cite ces exemples des provinces de l'ouest, c'est pour vous montrer que l'opinion de la portée actuelle de la loi qui vous a été donnée la semaine dernière ne correspond pas du tout à l'interprétation que la plupart des gouvernements provinciaux donnent à la loi. Les procureurs généraux de ces provinces ont autorisé ou approuvé l'exploitation de casinos dans leur province, dans le contexte de la loi en vigueur. C'est donc, à mon avis, interpréter de façon trop stricte la loi en vigueur que de suggérer qu'elle ne permet pas actuellement l'exploitation de tels établissements et que les modifications proposées par le projet de loi entraîneraient un changement fondamental à cet égard. Le ministère de la Justice estime que le projet de loi en vigueur à propos de cette question importante. Il changerait certains aspects de l'exploitation des jeux au Canada.

Je vais maintenant examiner les diverses clauses de ce projet de loi pour vous expliquer quels seraient ces changements. La clause 1 vise à abroger l'article 188.1. Cette abrogation mettrait fin à l'autorité légale qu'ont le gouvernement fédéral et le gouvernement d'une ou plusieurs provinces de conclure un accord commun pour exploiter et diriger un système de mise collective sur deux épreuves ou manifestations sportives ou plus. Cette abrogation vise à répondre directement aux demandes des gouvernements provinciaux, qui désirent exclure le gouvernement fédéral de ce domaine. Certaines provinces ont même demandé que le gouvernement fédéral renonce entièrement à contrôler les jeux au moyen du Code criminel et qu'il en laisse la réglementation aux provinces.

[*Text*]

Clause 2 contains an amendment to the existing subsection 189(3) and adds a new subsection (3.1). The effect of both is to extend to fairs or exhibitions relating to fisheries the exemption that is currently provided under the law to agricultural fairs and exhibitions. The request for that amendment came from the Province of New Brunswick. It was circulated to all of the other provinces in the course of our discussions this past summer and no objections were expressed to that change in the law.

Clause 3 repeals the current paragraph 190.(1)(I) and would thereby end legal authority for the federal government to conduct and manage a lottery scheme.

The Chairman: Clause 3 repeals the entire section 190, does it not?

Mr. Mosley: Yes, that is the drafting vehicle. In effect, what it does is repeal and substitute, but the substitution drops what is now 190.(1)(a), which gives the federal government the authority to conduct a lottery scheme. I think it extremely important that honourable senators focus upon the opening words of section 190. subsection (1):

> Notwithstanding any of the provisions of this Part relating to gaming and betting, it is lawful

Those words are of great importance in the discussion which has developed, because they refer not only to the provisions of section 189 but to all of the other provisions of Part V of the Criminal Code. In other words, they refer not only to the specific lottery provisions in section 189, but they also refer to the other gaming and betting provisions of that Part.

For example, last week reference was made to a definition of "slot machine" in subsection 180(3) and to a presumption, in subsection 180(2) that, for the purpose of proceedings under this Part, a place that is found to be equipped with a slot machine shall be conclusively presumed to be a common gaming house.

In reading that, honourable senators must keep in mind the opening words of subsection 190.(1),

> Notwithstanding any of the provisions of this Part relating to gaming and betting, it is lawful . . .

That is a legislative override to anything else in Part V of the Criminal Code. If it can be brought within the terms of subsection 190.(1), it overrides anything else in Part V. That is a matter that is basic to the difference of opinion between the Department of Justice and the Ministry of the Attorney General of Ontario, together with another part of section 190, to which I will refer in due course.

Continuing through the amendments to the bill, the new 190(1)(b) would treat charitable or religious lottery schemes that are conducted at bazaars in the same manner as charitable or religious lottery schemes that are not conducted at bazaars. Legislative monetary limits currently exist in respect of considerations paid to play and prizes awarded at lottery schemes conducted at bazaars. The amendment will treat equally all charitable or religious lottery schemes and will permit the provinces to set their own monetary limits.

[*Traduction*]

La clause 2 modifie l'actuel paragraphe 189(3) et lui ajoute un nouveau paragraphe (3.1). Ces modifications visent à inclure les foires et expositions se rapportant à la pêche dans les foires et expositions agricoles actuellement visées par l'exemption. Ces modifications ont été demandées par la province du Nouveau-Brunswick. Dans le cadre des débats de l'été dernier, le gouvernement a diffusé ces modifications à toutes les autres provinces, qui n'ont formulé aucune objection à leur égard.

La clause 3 abroge l'actuel alinéa 190.(1)(i) et enlèverait ainsi au gouvernement fédéral l'autorité légale de conduire et d'administrer un système de loterie.

La présidente: La clause 3 n'abroge-t-elle pas tout l'article 190?

M. Mosley: Oui, c'est ainsi qu'elle est rédigée. En fait, elle abroge l'article et le remplace par un nouveal article d'où est éliminé l'actuel alinéa 190.(1)(a), qui autorise le gouvernement fédéral à conduire un système de loterie. Je pense qu'il est très important que les honorables sénateurs prêtent une attention particulière à l'introduction du paragraphe 190.(1):

> Nonobstant toutes dispositions de la présente Partie relatives aux jeux et paris, il sera légal

Ce libellé joue un rôle fort important dans les débats auquel le projet de loi a donné lieu, car il se réfère non seulement aux dispositions de l'article 189, mais à toutes les autres dispositions de la Partie V du Code criminel. Autrement dit, il se réfère non seulement aux dispositions de l'article 189 concernant les loteries, mais aussi aux autres dispositions de cette partie portant sur les jeux et les paris.

La semaine dernière, par exemple, un des témoins a cité la définition d'«appareil à sous» donnée par le paragraphe 180(3) et la présomption, au paragraphe 180(2) qu'aux fins des poursuites engagées en vertu de cette partie, un local que l'on trouve muni d'un appareil à sous est de façon concluante présumé une maison de jeu.

Quand ils lisent cela, les honorables sénateurs doivent se rappeler l'introduction du paragraphe 190(1):

> Nonobstant toutes dispositions de la présente Partie relatives aux jeux et paris, il sera légal . . .

Cette clause dérogatoire prime sur tout autre élément de la Partie V du Code criminel. Dans le contexte des dispositions du paragraphe 190.(1), elle prime sur toutes les autres clauses de la Partie V. Ce point est à l'origine du différend qui oppose le ministère de la Justice et le ministère du Procureur général de l'Ontario, de même qu'une autre partie de l'article 190 dont je parlerai en temps voulu.

Poursuivons notre examen des modifications. Le nouvel alinéa 190(1)(b) mettait sur un même pied les loteries organisées à des fins charitables ou religieuses dans une vente de charité et les loteries organisées à des fins charitables ou religieuses ailleurs que dans une vente de charité. La loi limite actuellement le montant des mises et le montant des prix attribués dans une loterie organisée dans une vente de charité. La modification traite de la même façon toutes les loteries organisées à des fins charitables ou religieuses et permettra aux provinces d'établir leurs propres limites monétaires.

[*Text*]

Last week there was a fundamental error made in the course of the testimony, not by Mr. Morton but by the representatives of the police agency. There were repeated references made to the monetary limits involving charitable or religious organizations. Unfortunately, that overlooked the actual reading of this section as it is now in the Criminal Code. Honourable senators have before them copies of these. If we examine 190(1)(c) as it reads now, we will find, under the main part of paragraph (2), two subparagraphs. The first reads, simply:

> if
>
> (i) the proceeds from the lottery scheme are used for a charitable or religious object or purpose, and
>
> (ii) in the case of a lottery scheme conducted by the charitable or religious organization at a bazaar,
>
> (A) the amount or value of each prize awarded does not exceed one hundred dollars, and
>
> (B) the money or other valuable consideration paid to secure a chance to win a prize does not exceed fifty cents;

The representatives from the police agencies last week read subparagraph (ii) as applying to any lottery scheme operated by a charitable or religious organization under the authority of a licence under 190(1)(c), a fundamental error which came, with the greatest of respect for the gentlemen who appeared before you, from a lack of understanding of the role of legal gambling in this country, the lack of understanding which flows, I suggest, from the fact that the Province of Ontario has never gone into the field as deeply as have some of the other provinces. Other provinces, such as Alberta and Manitoba, have established strict gaming controls and have paid a great deal of attention to the provisions of section 190, because they operate under that section exclusively.

That error is important, I think, in the context of this discussion, because it was suggested to honourable senators repeatedly that there was a major change in these amendments by opening the monetary limits which are currently found in subparagraph (ii). With the greatest of respect, there are lottery schemes involving gaming. I will come to the definition of "lottery scheme" in due course, but the meaning of "lottry scheme" includes a game of chance or mixed chance and skill. That is because section 190 says that, in that section, "lottery scheme" includes a game. There is a definition in section 179 of the Criminal Code of the word "game" as meaning a game of chance or mixed chance and skill. So whenever we see a reference to "lottery scheme" in section 190, we must remember that it includes a game of chance or a game of mixed chance and skill.

It was suggested to this committee last week that there was a major change being made here because the monetary limits for charitable or religious organizations were being lifted. That

[*Traduction*]

La semaine dernière, une erreur fondamentale a été commise dans un témoignage, non celui de M. Morton, mais celui du représentant des forces de l'ordre. Le témoin a mentionné à plusieurs reprises les limites monétaires visant les organismes de charité ou les organismes religieux. Malheureusement, le témoin n'a tenu aucun compte du libellé de l'article qui figure actuellement dans le Code criminel. Les honorables sénateurs ont cet article sous les yeux. Si nous examinons l'alinéa 190(1)(c), tel qu'il est actuellement libellé, nous trouvons deux sous-alinéas sous le corps principal de l'alinéa (2). Le premier de ces sous-alinéas dit simplement ceci:

> (i) si le produit du système de loterie est utilisé pour des fins ou œuvres charitables ou religieuses, et
>
> (ii) si, dans le cas d'un système de loterie conduit par un organisme de charité ou un organisme religieux dans une vente de charité,
>
> (A) Le montant ou la valeur de chaque prix attribué ne dépassent pas cent dollars, et
>
> (B) l'argent ou autre valeur payés pour obtenir une chance de gagner un prix ne dépassent pas cinquante cents;

La semaine dernière, les représentants des forces de police ont interprété le sous-alinéa (ii) comme s'appliquant à toute loterie exploitée par un organisme de charité ou un organisme religieux au titre d'un permis délivré en vertu de l'alinéa 190(1)(c). Il s'agit là d'une erreur fondamentale qui, avec tout le respect que je dois aux témoins qui ont comparu devant vous, découle d'une mauvaise compréhension du rôle du jeu légal au Canada. Ce manque de compréhension s'explique, à mon avis, par le fait que la province de l'Ontario ne s'est pas lancée dans ces opérations autant que certaines des autres provinces. D'autres provinces comme l'Alberta et le Manitoba ont établi des mécanismes stricts de contrôle du jeu et ont examiné de très près les dispositions de l'article 190, parce que c'est exclusivement en vertu de cet article qu'elles peuvent réglementer le jeu.

Cette erreur est, selon moi, importante dans le contexte de ces débats, car on vous a fait valoir à plusieurs reprises que les modifications donneraient lieu à un changement important, en repoussant les limites actuellement prévues par le sous-alinéa (ii). J'aimerais préciser, bien respectueusement, qu'il existe des loteries qui comprennent un certain élément de jeu. Je viendrai à la définition de «loterie» en temps utile et je me contenterai de dire pour le moment que «loterie» peut désigner un jeu de hasard ou un jeu où se mêlent le hasard et l'adresse. En fait, l'article 190 précise qu'à cet article, «système de loterie» comprend un jeu. L'article 179 du Code criminel définit le mot «jeu» comme désignant un jeu de hasard ou un jeu où se mêlent le hasard et l'adresse. Par conséquent, chaque fois que l'article 190 parle d'un «système de loterie», il faut se rappeler que cela comprend un jeu de hasard ou un jeu où se mêlent le hasard et l'adresse.

Certains ont fait valoir au comité la semaine dernière que le projet de loi proposait un changement important, parce qu'il augmentait les limites monétaires imposées aux organismes de

[*Text*]

is not the case. They are being lifted only in respect of those events conducted at bazaars. There is no legal definition of bazaar and I am not aware of any cases of defining what a bazaar is. But I suggest you to quite strongly that it does not cover the type of event that is being conducted for gaming purposes by charitable and religious organizations in most jurisdictions in this country at this time. The new paragraph 190(1)(c) would extend to the board of any fair or exhibition approved by the province the ability to conduct and manage a lottery scheme under provincial licence. At present only cultural fairs or exhibitions may be licenced. That is also an expansion in the sense that it extends from simply agricultural fairs to any fair or exhibition. Once again, it must be approved by the province before this exemption would apply.

The amendments to paragraph 190(1)(d) concern lotteries which are operated by persons at public places of amusement. The changes there would simply raise the current monetary limits for prizes and considerations to $500 and $2 respectively from the current limits of $100 and $.50. It was suggested that the current limits are unrealistic at current values. The new paragraph 190(1)(f) would incorporate the current subsection 190(1.1) which concerns licensing of inter-provincial lotteries. There are then a series of amendments to subsections 190(1) and 190(1.1) which remove each of the individual authorizations in paragraphs 190(1), (a) to (f), and replace them by a general paragraph of authorization in 190(1)(g). That paragraph would permit any person for the purposes of the operation of or participation in a lottery scheme to do anything required for the conduct, managment or operation of or participation in such lottery scheme. Again, it is completely under the authorization and control of the provincial government. The same series of amendments would also permit provincial governments and approved fair or exhibition boards to operate a wheel of fortune. Currently only licensed charitable or religious organizations and persons at a public place of amusement may operate wheels of fortune. It is suggested that that is a major change from the current state of the law. With the greatest respect, I do not think that it makes much difference whether a charitable or religious organization or persons at a public place of amusement may operate wheels of fortune but not the provincial governments and approved fair or exhibition boards. We are simply talking about another variant of gaming.

The new paragraph 190(1)(h) would amend the current subsection 190(4.1) to permit the manufacture and export of gaming and betting equipment to any place where it is lawful to use such things or where a legal structure exists for the approval of such things. In other words, if it is unlawful in the other jurisdiction, it cannot be exported from Canada. The merits of that amendment are that there are businesses within Canada which have the technology at present to produce the equipment suitable for this purpose, and it would contribute to the strength of those businesses. These are reputable firms. For

[*Traduction*]

charité ou aux organismes religieux. Ce n'est pas le cas. Ces limites ne sont augmentées que dans le cas des loteries organisées dans des ventes de charité. Il n'y a pas de définitin légale de «vente de charité» et je n'ai connaissance d'aucun cas où l'expression «vente de charité» ait été définie. À mon avis, les ventes de charité n'englobent pas le type d'événement organisé actuellement à des fins de jeu par des organismes de charité ou des organismes religieux dans la plupart des provinces. Le nouvel alinéa 190(1)(c) donnerait au conseil de toute foire ou exposition approuvée par la province le droit de mettre sur pied et d'exploiter une loterie en vertu d'un permis provincial. À l'heure actuelle, de tels permis ne peuvent être délivrés qu'à des foires ou expositions agricoles. Il s'agit dont également d'une expansion, en ce sens qu'au lieu de viser uniquement les foires agricoles, l'exemption s'applique à toute foire ou exposition. Encore une fois, l'exemption ne s'applique qu'avec l'approbation de la province.

Les modifications apportées à l'alinéa 190(1)(d) visent les loteries exploitées par des personnes dans un lieu d'amusement public. Les changements porteraient simplement à 500 $ et 2 $ respectivement les limites monétaires de 100 $ et 0,50 $ actuellement imposées aux prix et à la mise. Il a été indiqué que les limites actuelles ne sont pas réalistes dans le contexte des valeurs d'aujourd'hui. Le nouvel alinéa 190(1)(f) engloberait l'actuel paragraphe 190(1.1), qui porte sur les permis délivrés à l'égard de loteries interprovinciales. Il y a ensuite une série d'amendements qui modifient les paragraphes 190(1) et 190(1.1) en supprimant les autorisations individuelles prévues aux alinéas 190(1)(a) à 190(1)(f), pour les remplacer par une autorisation générale à l'alinéa 190(1)(g). Aux fins de l'exploitation d'une loterie ou de la participation à une telle loterie, cet alinéa permettrait à toute personne de prendre les mesures nécessaires pour mettre sur pied, administer ou gérer la loterie, ou participer à celle-ci. Ici encore, toutes ces activités doivent être autorisées et contrôlées par le gouvernement fédéral. Cette série de modifications permettrait également aux gouvernement provinciaux et aux conseils de foires et expositions approuvées d'exploiter des roues de la fortune. À l'heure actuelle, seuls les organismes de charité ou les organismes religieux et les personnes dans un lieu d'amusement public peuvent exploiter des roues de la fortune en vertu d'un permis. Certains font valoir que c'est là un changement profond par rapport à la loi en vigueur. Je pense, bien respectueusement, qu'il importe peu que ce soit un orgamisme de charité, un organisme religieux, une personne dans un lieu d'amusement public, un gouvernement provincial ou le conseil de foires et d'expositions approuvées qui puisse exploiter des roues de la fortune. Nous ne parlons ici que d'une autre variante du jeu.

Le nouvel alinéa 190(1)(h) modifierait l'actuel paragraphe 190(4.1) en permettant la fabrication d'équipement de jeu et de pari et l'exportation d'un tel équipement à tout endroit où son utilisation est permise par la loi et où il existe une structure légale pour son approbation. Autrement dit, un tel équipement ne peut être exporté du Canada à un pays où son utilisation n'est pas permise par la loi. Cette modification présente l'avantage de permettre l'expansion commerciale d'entreprises canadiennes disposant actuellement de la technologie nécessaire pour fabriquer l'équipement en question. Il s'agit d'entreprises

[*Text*]

example, in the lottery ticket field, both the British American and the Canadian Bank Note Corporations are among the leaders in the world in the production of tickets, including tickets which are in themselves a form of game. In other words, you play with the ticket. You strike something off or you open it up and the prize that you may or may not win is indicated on the ticket. The amendment to subsection 190(2) would provide that the terms and conditions of a licence issued by the Lieutenant Governor in Council of a province may be prescribed by any law enacted by the legislature of that province, as well as by the Lieutenant Governor in Council or a person designated by him. The current provision does not apply for provincial legislation. We feel that that is an oversight. The provinces who wish to enter into the field of gaming may want to legislate the controls that are to be applied through licences, rather than to simply have them done through executive fiat or through Order in Council. The new subsection 190(3) would provide for offences in respect of persons who do anything that is not authorized by or pursuant to the provisions of section 190. This amendment extends the scope of the current controls because it will cover now not only the conduct and management of a lottery scheme, but the operation of that lottery scheme and will also cover anyone who participates in the lottery scheme, which is not the current situation.

The new subsection 190(4) would define lottery schemes. The legal authority for a provincially operated or licensed activity would be clarified to specifically permit in legislation the operation of lotteries and games that involve betting, pool selling and pool system betting. This conduct is currently permitted under judicial interpretation of the present law. The provinces would be restricted, however, from operating or licensing the operation of a dice game, three card monte, punch board or coin table. The reason for those restrictions is that those particular forms of gaming are susceptible to control by the operator.

Senator Nurgitz: What was that?

Mr. Mosley: There is more scope for control by the operator, the person who is managing the game at the time. For example, three card monte, as was explained last week, is a term that is popularly known as a shell game where the person is switching an object under covers, and the bet is placed on which of the covers under which the object is to be found. You will see it on the streets of any large American city, but it is, of course, subject to the sleight of hand of the person who is operating the game. For that reason, it is not felt to be a suitable type of game for legalized gambling in the country.

Senator Nurgitz: And dice?

Mr. Mosley: Dice is excluded for the same reason. However, the committee has received a letter from the Attorney General of Manitoba. The Attorney General of Manitoba wants this bill to go further and to permit provinces to operate dice games because there are now secure forms of a dice game where the operator does not handle the dice himself. The Attorney Gen-

[*Traduction*]

de bonne réputation. Dans le secteur des billets de loterie, par exemple, la British American Bank Note Corporation et la Canadian Bank Note Corporation sont parmi les plus grands producteurs mondiaux de billets de loterie, y compris de billets qui constituent en eux-mêmes une sorte de jeu. Autrement dit, on peut jouer avec le billet, c'est-à-dire biffer quelque chose ou ouvrir le billet pour voir si l'on a gagné quelque chose. En vertu de la modification du paragraphe 190(2), les conditions d'une licence délivrée par le lieutenant-gouverneur en conseil d'une province peuvent être fixées par toute loi de cette province ainsi que par le lieutenant-gouverneur en conseil ou une personne qu'il aura désignée. La disposition en vigueur ne s'applique pas à la législation provinciale. Nous pensons qu'il s'agit là d'une omission. Les provinces qui désirent se lancer dans le domaines du jeu peuvent vouloir établir par voie législative les contrôles qui seront exercés par l'intermédiaire des licences plutôt que d'avoir recours à des décisions de l'exécutif ou à des décrets du conseil. Le nouveau paragraphe 190(3) énumère les délits dont se rendrait coupable une personne commenttant un acte non autorisé par les dispositions de l'article 190 ou en vertu de ces dispositions. Cette modification étend la portée actuelle des mécanismes de contrôle, parce qu'elle visera non seulement la mise sur pied et l'administration d'une loterie, mais aussi l'exploitation de cette loterie, ainsi que tout participant à la loterie, ce qui n'est pas le cas actuellement.

Le nouveau paragraphe 190(4) définirait les loteries. Cela permettrait de clarifier l'autorisation légale d'une activité provinciale ou d'une activité faisant l'objet d'un permis provincial, afin de permettre expressément dans la loi l'exploitation de loteries et de jeux associés au pari, à la vente d'une mise collective ou à des paris collectifs. Ces activités sont actuellement autorisées en vertu de l'interprétation judiciaire de la loi en vigueur. Il serait toutefois interdit aux provinces d'exploiter un jeu de dés, un jeu de bonneteau, une planchette à poinçonner ou une table à monnaie ou de délivrer un permis pour leur exploitation. Cette restriction a été prévue parce que ces formes de jeu se prêtent à la manipulation de la part de l'exploitant.

Le sénateur Nurgitz: Qu'avez-vous dit?

M. Mosley: L'exploitant, c'est-à-dire la personne qui administre le jeu peut plus facilement l'influencer. Prenez l'exemple du jeu de bonneteau. Comme il a été expliqué la semaine dernière, il s'agit du jeu communément appelé le tour des gobelets, qui consiste à faire passer rapidement un objet sous des gobelets, les parieurs devant chercher à deviner sous quel gobelet se trouve l'objet. C'est un jeu qui se pratique dans les rues de toute grande ville américaine, mais qui se prête à l'escamotage malhonnête de la part du manipulateur. Pour cette raison, nous avons pensé que ce n'était pas un jeu qu'il convenait de légaliser au Canada.

Le sénateur Nurgitz: Et les dés?

M. Mosley: Nous avons exclu les dés pour la même raison. Toutefois, le comité a reçu une lettre du Procureur général du Manitoba, qui aimerait que le projet de loi autorise les provinces à exploiter des jeux de dés, parce qu'il existe aujourd'hui des formes de jeux de dés ne se prêtant à aucune manipulation malhonnête, du fait que l'exploitant ne touche pas les dés lui-

[*Text*]

eral of Manitoba, Mr. Penner, refers in his letter to a game called Sic Bo. As I understand it the dice are encased in some form of ball and there is no question of the person operating the game manipulating the dice to control the result. So Manitoba would like us to go further, but for the time being, we feel that that is not an appropriate change to make. However, if these, as they suggest, highly secure forms of dice games prove to be such, then there would be no reason in principle for excluding such games from the operation of the law.

In addition, the proposal would not permit the provinces or licensed organizations to conduct any type of betting, pool selling or pari-mutuel system betting on any race, fight or single sporting event or athletic contest. They would, however, permit the provinces to operate or license under a lottery scheme, activities such as pool selling, betting and pool system betting on any combination of sports events or athletic contests and on any other contingency or contingencies, such as the drawing of numbers, other than a race, fight or single sporting event or athletic contest. The licensing of lottery schemes or gambling devices which are operated on or through any computer, video device or machine would also not be permitted. However, provincial governments themselves could operate such devices. The amendment to subsection 190(5) would ensure that the only provisions in the Criminal Code permitting pari-mutuel betting on horse races are those contained in section 188, which limits the field to the federal government. And, finally, subsection 4 simply indicates that the act or any provision thereof is to come into force on a day fixed by proclamation. That is a review of the scope of the bill and the amendments. As I indicated earlier there is a difference of interpretation which, if I may, is based on a difference in the reading of section 190. Last week it was suggested that certain forms of gaming were specifically addressed such as slot machines. They could not be operated under licence by the province because there was nothing specific in section 190 to permit that. With the greatest respect for that view, it is open to question particularly since the decision of the Quebec Court of Appeal in the case of the Attorney General of Canada against the Loto Quebec Corporation. The reason for that is the broad scope of the meaning of the term "lottery scheme."

As I indicated to you earlier, the definition of "lottery scheme" as it is now provided for in the Criminal Code includes a game, and the definition of the word "game" includes a game of chance or mixed chance and skill. That covers the waterfront. Virtually any type of gaming activity that you can think of can be brought within the rubric of the term "lottery scheme."

If you look at section 190 of the Criminal Code the opening words read:

> Notwithstanding any of the provisions of this Part relating to gaming and betting, it is lawful

[*Traduction*]

même. Dans sa lettre, le Procureur général du Manitoba, M. Penner, parle d'un jeu appelé Sicbo. D'après ce que j'ai compris, les dés sont enfermés dans une sorte de boule et il n'est donc pas possible à l'exploitant de manipuler les dés pour influencer le résultat du jeu. Le Manitoba aimerait donc que le projet de loi autorise les jeux de dés, mais, pour le moment, nous ne pensons pas que ce changement soit opportun. Par contre, si, comme le fait valoir le Manitoba, il existe bel et bien des formes de jeux de dés à l'épreuve de toute manipulation, il n'y aurait en principe aucune raison pour la loi de les interdire.

De plus, le projet de loi interdirait aux provinces ou à des organismes auxquelles elles auraient délivré un permis d'exploiter tout système de paris, toute vente de mise collective ou tout système de pari mutuel sur une course ou un combat ou sur une seule épreuve ou manifestation sportive. Par contre, il permettrait aux provinces de mener, dans le cadre d'une loterie, des activités comme la vente d'une mise collective, des paris et des paris collectifs sur une combinaison d'épreuves ou de manifestations sportives et sur tout autre événement ou série d'événements, comme le tirage de numéros, autres qu'une course, un combat ou une seule épreuve ou manifestation sportive, et de délivrer des permis pour de telles activités. Le projet de loi interdirait également aux provinces de délivrer des permis pour des loteries ou dispositifs de jeu exploités par un ordinateur, un dispositif électronique de visualisation ou une machine. Par contre, les provinces elles-mêmes seraient libres d'exploiter de tels dispositifs. La modification du paragraphe 190(5) permettrait de s'assurer que les seules dispositions du Code criminel autorisant les paris sur des courses de chevaux par l'intermédiaire d'un système de pari mutuel sont celles de l'article 188, qui réserve ces activités au gouvernement fédéral. Enfin, le paragraphe 4 indique simplement que la loi ou une quelconque de ses dispositions doit entrer en vigueur à la date fixée par proclamation. Voilà qui termine cet examen du projet de loi et des modifications. Comme je l'ai indiqué tout à l'heure, il existe une différence d'interprétation qui, à mon avis, part d'une compréhension différente de l'article 190. On vous a fait valoir, la semaine dernière, que certaines formes de jeu comme les appareils à sous étaient visées expressément et que ces appareils ne pouvaient être exploités en vertu d'un permis provincial, parce que l'article 190 ne comportait aucune disposition autorisant expressément cette exploitation. Je pense que cette opinion peut être contestée, notamment depuis le jugement rendu par la Cour d'appel du Québec dans l'affaire opposant le Procureur général du Canada à la société Loto Québec. La raison de cette incertitude est le sens assez large donné à l'expression «système de loterie».

Comme je l'ai déjà indiqué, la définition de «système de loterie» actuellement donnée par le Code criminel comprend un jeu et la définition du mot «jeu» comprend un jeu de hasard ou un jeu où se mêlent le hasard et l'adresse. Cela couvre toutes les possibilités. Presque tous les jeux auxquels on peut songer tombent dans cette définition de «système de loterie».

L'introduction de l'article 190 du Code criminel précise:

> Nonobstant toutes dispositions de la présente Partie relatives aux jeux et paris, il sera légal

[*Text*]

There is nothing in Part V which specifically prohibits slot machines. There is a presumption that applies when slot machines are located in the premises that the premises are a common gaming house and there is a prohibition against common gaming houses.

Just to illustrate the broadest extent of the reasoning applying to section 190, the use of a slot machine can be construed to be a game. It can, therefore, be construed to be a lottery scheme, and if it can be construed to be a lottery scheme, the provincial government can either operate that or license its operation under section 190 notwithstanding the fact that another section in the Criminal Code in that part says that premises in which slot machines are located are common gaming houses.

I should point out that the provinces have not gone so far as to start to license or operate slot machines. To illustrate the extent to which that interpretation can go, there is a decision of the New Brunswick Court of Appeal in 1982 *Regina versus Finnigan* in which the accused was operating a gaming establishment on a parking lot in New Brunswick. A licence had been issued to the Canadian Legion to run this establishment. The accused was operating slot machines. They were confiscated; he was charged; he argued that he was operating under a licence. He was convicted and the conviction was upheld because he could not establish that he was the licensee that the province had given authority to operate. Notwithstanding that, the Court of Appeal allowed his appeal against sentence and gave him back his slot machines.

That is perhaps the extreme reach of that interpretation. The narrow extreme is that which was conveyed to you last week where the witnesses who appeared on behalf of the Ontario Police Community and the Ontario Ministry of the Attorney General, whereby you can only read section 190 as permitting those things which are specifically referred to in section 189(1)(a) to (g). Section 189 is basically a prohibition section. It says that you cannot do these things and then it lists a broad variety of types of gaming activity. Section 190 in its subparagraphs specifically at present excludes those paragraphs. Whether it is charitable or religious as opposed to agricultural fair or a government operation there is a difference between whether the exceptions are section 189(1)(a) to (f) or section 189(1)(a) to (g).

The narrow interpretation is that you can only look to those things in section 189 which are prohibited by that section. That overlooks, unfortunately, the opening words in section 190(1) "Notwithstanding any of the provisions of this Part relating to gaming and betting, it is lawful" and overlooks the breadth of the definition of the term "lottery scheme."

The provincial governments outside of Ontario have not overlooked the breadth of this provision and it is on the basis of their interpretation of it that they have established the lottery schemes, the games and the casino operations that are in place now.

[*Traduction*]

Il n'y a rien dans la Partie V qui interdise expressément les appareils à sous. Toutefois, un local que l'on trouve muni d'appareils à sous est présumé une maison de jeu, que la loi interdit.

Pour illustrer jusqu'où on peut pousser le raisonnement dans le cas de l'article 190, on peut considérer que l'emploi d'un appareil à sous constitue un jeu. On peut donc considérer qu'il s'agit d'un système de loterie, auquel cas le gouvernement provincial peut l'exploiter ou peut délivrer un permis pour son exploitation en vertu de l'article 190, bien qu'un autre article de cette partie du Code criminel précise que les locaux où se trouvent des appareils à sous sont des maisons de jeu.

Il me faut préciser que les provinces n'ont pas encore commencé à exploiter des appareils à sous ou à délivrer des permis pour leur exploitation. Pour illustrer jusqu'où peut nous mener cette interprétation, j'aimerais vous référer à un jugement rendu en 1982 par la Cour d'appel du Nouveau-Brunswick. Il s'agit de l'affaire «La Reine contre Finnigan», où l'accusé exploitait un établissement de jeu dans un terrain de stationnement au Nouveau-Brunswick. La Légion canadienne avait reçu un permis pour exploiter cet établissement. L'accusé exploitait des appareils à sous. Ses appareils furent confisqués et il fut inculpé. Il fit valoir qu'il les exploitait en vertu d'un permis. Il fut condamné et la condamnation fut confirmée, parce qu'il ne put établir qu'il était la personne à laquelle la province avait délivré un permis. Malgré cela, la Cour d'appel l'autorisa à faire appel et lui rendit ses appareils à sous.

Voilà probablement l'interprétation la plus vaste. L'interprétation la plus restreinte est celle qui vous a été donnée la semaine dernière par les témoins qui ont comparu au nom des forces de police de l'Ontario et du ministère du Procureur général de l'Ontario, et qui avancent que l'article 190 ne permet que les choses expressément mentionnées aux alinéas 189(1)(a) à 189(1)(g). L'article 189 est essentiellement un article d'interdiction. Il précise qu'il est interdit de faire certaines choses et énumère une grande variété de types de jeux. Dans ses sous-alinéas, l'article 190 exclut expressément ces alinéas. Qu'il s'agisse d'un organisme de charité ou d'un organisme religieux plutôt que d'une foire agricole ou d'une exploitation provinciale, il y a une distinction à faire entre les exceptions prévues par l'article 189(1)(a) à (f) et celles prévues par l'article 189(1)(a) à (g).

Si l'on veut interpréter la loi de façon restreinte, on peut dire qu'il ne faut considérer, dans l'article 189, que les choses interdites par cet article. Malheureusement, cette interprétation ne tient aucun compte de l'introduction du paragraphe 190(1) «Nonobstant toutes dispositions de la présente Partie relatives aux jeux et paris, il sera légal», et ne tient aucun compte de la portée de la définition de l'expression «système de loterie».

Les gouvernements provinciaux autres que l'Ontario ont tenu compte de la portée de cette disposition et c'est à partir de leur interprétation de cette disposition qu'ils ont établis leurs systèmes de loterie, leurs jeux et leurs casinos.

[*Text*]

That came to a head in the Loto Quebec case because the lottery corporation within Quebec had started a game called Hockey Select which was a form of pool in which the player would bet on the combination of results on a number of sporting events and the payout was based on the number of players and the number of sporting events which were correct. It was argued by the Government of Canada that that was a form of pari-mutuel betting and that because of the current section 190 subsection (6) which reads "nothing in this section shall be construed as authorized in the making or recording of bets made through the agency of the pari-mutuel system other than in accordance with section 180(8)," that it was illegal. A Quebec Court of Appeal said that it was not illegal. The province can do it under its authority in section 190 and they tied it in specifically to one of the paragraphs in section 189, but they went on to say in any event that this is a game and, therefore, it is a lottery scheme and the province can operate or license the operation of this because of the scope of the definition in section 190 subsection 5.

The situation that we have now is the following: Many of the provinces are operating casinos on an interpretation of the current provisions which the Minister of Justice of Canada said as far back as 1972 was permissible and which appears to have been confirmed by the decision of the Quebec Court of Appeal in the Attorney General of Canada against the Loto Quebec Corporation. One province is suggesting through its police community and the Ministry of the Attorney General of that province that that is an incorrect interpretation of the law.

In effect, what has been suggested is that the schemes in the other provinces are being operated illegally and that the attorneys general of those provinces are countenancing the operation of a legal gaming scheme within their boundaries.

What has also been suggested is that the provincial governments cannot be trusted to control gaming within their boundaries. With the greatest respect, that is a position which the Department of Justice certainly cannot support. The policy of the federal government since 1969 has been to extend to the provincial governments the right to control these activities within their boundaries. That policy has been consistently applied with the one exception of the area of pari-mutuel betting where the federal government challenged the provincial right to operate in that area and lost, but that position is consistent with the amendments in Bill C-81.

No provincial government in this country is about to operate, or to approve, or to license the type of Las Vegas or Atlantic City gambling establishment that was suggested last week would come about as a result of these amendments. With the greatest respect to the witnesses who made that suggestion, it ignores the responsibility for the public interest that the provincial governments have over activities within their boundaries.

Madam Chairman, that concludes my remarks.

[*Traduction*]

Le cas de Loto Québec a forcé une décision, parce que cette société avait lancé au Québec un jeu appelé Hockey Select, une forme de pari collectif où les joueurs misaient sur la combinaison des résultats d'un certain nombre d'épreuves sportives et où les prix étaient basés sur le nombre de joueurs et sur le nombre d'épreuves sportives qui avaient été devinées correctement. Le gouvernement du Canada a fait valoir qu'il s'agissait d'une forme de pari mutuel et, par conséquent, d'un jeu illégal, car l'actuel paragraphe 190(6) dit «Rien au présent article ne doit s'interpréter comme permettant de faire ou d'inscrire des paris par l'intermédiaire d'un système de pari mutuel, si ce n'est en conformité de l'article 188.» Une Cour d'appel du Québec a jugé que le jeu n'était pas illégal, car l'article 190 donnait à la province le pouvoir d'autoriser ce jeu. La Cour a expressément invoqué l'un des alinéas de l'article 189 et a ajouté qu'il s'agissait n'importe comment d'un jeu et, par conséquent, d'un système de loterie, autrement dit que la province pouvait l'exploiter ou délivrer un permis pour son exploitation, du fait de la portée de la définition donnée au paragraphe 5 de l'article 190.

A l'heure actuelle la situation est la suivante: un grand nombre de provinces exploitent actuellement des casinos en se basant sur une interprétation des dispositions actuelles que le ministre de la Justice a trouvée admissible en 1972 et qui semble avoir été confirmée par le jugement de la Cour d'appel du Québec dans l'affaire opposant le Procureur général du Canada à la société Loto Québec. Par contre, une province ou, plus précisément, les forces de police et le ministère du Procureur général de cette province avancent qu'il s'agit là d'une interprétation erronée de la loi.

Cela revient à dire que les autres provinces exploitent illégalement ces systèmes et que les procureurs généraux de ces provinces sanctionnent l'exploitation d'un système de jeu légal dans leur province.

Il a également été avancé qu'on ne peut laisser aux gouvernements provinciaux le soin de contrôler les jeux sur leur propre territoire. A mon avis, c'est là une position que le ministère de la Justice ne saurait appuyer. Depuis 1969, la politique du gouvernement fédéral a consisté à donner aux gouvernements provinciaux le droit de contrôler ces activités sur leur propre territoire. Cette politique a été appliquée de façon uniforme, sauf que le gouvernement fédéral a contesté le droit des provinces d'exploiter des paris mutuels, mais n'a pas eu gain de cause. Toutefois, cette position est conforme aux modifications proposées par le projet de loi C-81.

Contrairement à ce que pensent certains, qui ont fait valoir la semaine dernière que ces modifications pourraient aboutir à ce genre de situation, aucune province n'est sur le point d'exploiter ou d'approuver un établissement de jeu semblable à ceux de Las Vegas ou d'Atlantic City, ni à délivrer un permis pour un tel établissement. Avec tout le respect que je dois aux témoins qui ont avancé cette hypothèse, je pense qu'ils ne tiennent aucun compte de la responsabilité que les gouvernements provinciaux ont à l'égard de l'intérêt public en ce qui concerne ces activités sur leur territoire.

Madame la présidente, voilà qui met fin à mes observations.

[*Text*]

The Chairman: That is very helpful. Thank you, Mr. Mosley.

Senator Nurgitz: I really intended to save my questions for the two RCMP witnesses but I do not want to let Mr. Mosley go without making this one comment. I understand fully what he is talking about in terms of the exclusion of some games where control is in the hands of a single dealer—a person who controls the game. I did not understand how dice leaves more control in the hands of a single person operating the game than, for instance, blackjack with a dealer or even in the case of a roulette wheel.

Mr. Mosley: If I may, I would like to refer that question to Mr. Robinson.

Sergeant R.G. Robinson, Gaming Specialist, Royal Canadian Mounted Police: Do I understand correctly, senator, that you are referring to games that are dealt by individuals?

Senator Nurgitz: Mr. Mosley in his presentation said there is an exclusion of dice games, three-card monte, punch boards and so on, the reasoning being that it is more readily controllable by a single dealer or operator. I think that is what he intended and I see that he is nodding his head in agreement. In a dice game, for example, does the shooter not select two dice out of a group of many?

Mr. Robinson: In a craps game, for example, in a casino in the United States, the person has his hands on the dice. The problem with that is never ending because the dice can be switched. It is very easy to cheat with that method. In fact, to go one step further, the provinces do not even allow players to touch the cards in blackjack. Only the dealer can touch the cards in blackjack.

Senator Nurgitz: They are dealt open?

Mr. Robinson: It is dealt not by hand but from a shoe, holding four decks of cards.

The Chairman: Honourable senators, before we continue, I think Commissioner Jensen has a statement to make. I invited your comments, Senator Nurgitz, but perhaps we could hear from Commissioner Jensen and we can open the questioning following that.

Mr. Henry Jensen, Deputy Commissioner, Royal Canadian Mounted Policy: Madam Chairman and honourable senators, I am the Senior Deputy Commissioner of the RCMP representing Commissioner Simmons before you today. Many of you are aware that the RCMP is responsible for provincial policing services in eight provinces of Canada, the two territories of Canada plus in excess of 190 municipalities. Acting in that role, we are responsible for the law enforcement provisions that we are dealing with today relative to lottery schemes.

I have had an opportunity to examine the provisions of Bill C-81 and to assess them in comparison with the provisions of the existing Criminal Code. Taking into account existing interpretations relative to the law as it exists in the Criminal Code today, and the practices which exist across Canada within jurisdictions which we police in relation to the licensing and operation of various forms of gambling, I am of the view that the provisions contained in Bill C-81 recognize the existing

[*Traduction*]

La présidente: Ces observations ont été fort utiles. Je vous remercie, M. Mosley.

Le sénateur Nurgitz: Je voulais réserver mes questions pour les deux témoins de la GRC, mais j'ai un commentaire à faire avant le départ de M. Mosley. J'ai bien compris ce qu'il nous a dit à propos de l'exclusion de certains jeux pouvant être contrôlés par une seule personne. Par contre, je ne comprends pas en quoi une personne peut contrôler les dés plus qu'un jeu de black-jack ou une roulette.

M. Mosley: Si vous le permettez, je laisserai M. Robinson répondre à cette question.

Le sergent R. G. Robinson, spécialiste des jeux, Gendarmerie royale du Canada: Si j'ai bien compris, monsieur le sénateur, vous voulez parler des jeux tenus par des croupiers?

Le sénateur Nurgitz: Dans son exposé, M. Mosley a indiqué que les jeux de dés, le jeu de bonneteau, la planchette à poinçonner, etc., avaient été exclus parce qu'il est plus facile à un croupier ou à un exploitant de les manipuler. Je pense que c'est ce qu'il a voulu dire et je vois qu'il hoche la tête pour le confirmer. Dans un jeu de dés, par exemple, le joueur ne choisit-il pas deux dés parmi plusieurs?

M. Robinson: Dans les jeux de dés, tels qu'ils se pratiquent, par exemple, dans un casino des États-Unis, la personne a ses mains sur les dés. Cela pose des problèmes, parce qu'il est possible de changer les dés. Il est très facile de tricher ainsi. En fait, pour aller même plus loin, les provinces ne permettent même pas aux joueurs de blackjack de toucher les cartes. Dans un jeu de blackjack, seul le croupier peut toucher les cartes.

Le sénateur Nurgitz: Comment les cartes sont-elles données?

M. Robinson: Elles ne sont pas données à la main, mais à l'aide d'un sabot qui contient quatre jeux de cartes.

La présidente: Honorables sénateurs, avant que nous poursuivions, je pense que le commissaire Jensen a une déclaration à nous faire. Je vous ai invité à faire des commentaires, sénateur Nurgitz, mais nous pourrions peut-être attendre d'avoir entendu le commissaire Jensen avant de poser des questions.

M. Henry Jensen, sous-commissaire, Gendarmerie royale du Canada: Madame la présidente et honorables sénateurs, en ma qualité de sous-commissaire principal de la GRC, je représente aujourd'hui le commissaire Simmons. Comme la plupart d'entre vous le savent, la GRC assure des services de police dans huit provinces et dans les deux territoires, ainsi que dans plus de 190 municipalités. Dans ce rôle, la GRC doit faire respecter les dispositions de la loi se rapportant aux systèmes de loterie, que nous examinons aujourd'hui.

J'ai eu l'occasion d'examiner les dispositions du projet de loi C-81 et de les comparer aux dispositions actuelles du Code criminel. Conscient des interprétations auxquelles a donné lieu la loi, telle que l'énonce actuellement le Code criminel, et des pratiques en cours dans les provinces où nous sommes chargés d'appliquer la loi concernant la délivrance de permis de l'exploitation de diverses formes de jeu, j'estime que les dispositions du projet de loi C-81 tiennent compte de la situation qui

[*Text*]

reality in the areas that we police and that they articulate, in a clearer way, for our police officers who must enforce them and for the licensing authority, as to the types of lottery schemes that may be permitted by various groups—the provinces, charitable organizations, boards of fairs or exhibitions, or other persons.

I am of the opinion that we are not allowing the law of Canada to be violated today nor is that our intention. Whether it were a private organization, a charitable organization or the government of a province which was violating the criminal law, we would take action.

This improved clarity, in my view, should serve to facilitate improved law enforcement in this area. It will enable provinces, by virtue of proposed changes to section 190, to attach conditions which will have force of law. In my view, that will assist in proper supervision and control of the events and in the application of sanctions by the authorities for any breaches of the law.

As a senior police administrator, I share much of the concern which was expressed by some of my police colleagues in other jurisdictions in Canada. However, I am not alarmed by the proposed amendments for the reasons which I cited earlier: They recognize the existing situation in the country; clarify the law for easier interpretation by a police officer who must apply them; and provide for sanctions if the conditions of the permit or licence are, in fact, breached.

As expressed by other police officials, there is cause for concern when decisions are taken by provinces with respect to licensing. These decisions should be taken in full recognition of any impact they might have on law enforcement at the local level, on crime and on the potential for undesirables to gain privileges through the licensing process. Great care must be taken to ensure that these undesirables are screened out and do not acquire or, if they have acquired, do not retain such privileges and licences. There is no doubt that this screening process is essential and that it would increase the workload of all police authorities, of course, commensurate with the level of licensing which a province would undertake.

Whenever large numbers of people congregate in a particular community or region of the country, whether to attend sporting events, gambling events, rodeos, fairs, church, or what have you, they bring with them law enforcement problems and an additional demand for law enforcement service and often result in an increase in the crime rate in some situations. Licensing authorities must be congizant of the impact on law enforcement when they make their decisions to license or not to license.

Further, there must be sufficient supervisory staff in place to ensure that these lotteries are conducted in accordance with the law and in accordance with the conditions that are attached to the licensing process.

[*Traduction*]

existe actuellement dans les provinces où nous devons appliquer la loi et qu'elles indiquent de façon bien plus claire, à l'intention de nos agents qui doivent les faire respecter, ainsi qu'à l'intention des autorités responsables de la délivrance des permis, les types de loteries que peuvent exploiter divers groupes: les provinces, les organismes de charité, les conseils de foires ou d'expositions, ou d'autres personnes.

Je ne pense pas que nous laissions qui que ce soit enfreindre la loi au Canada et, d'ailleurs, ce n'est pas notre intention. S'il y avait infraction du droit criminel, nous agirions, que l'auteur de l'infraction soit un organisme privé, un organisme de charité ou un gouvernement provincial.

A mon avis, les précisions apportées par le projet de loi faciliteront l'application de la loi dans le domaine des jeux. Les modifications proposées de l'article 190 en particulier permettront aux provinces de stipuler des conditions qui auront force de loi. Je pense que cela permettra aux autorités de mieux superviser et contrôler les jeux et d'appliquer des sanctions quand la loi est enfreinte.

En tant que haut fonctionnaire d'un service de police, je partage un grand nombre des inquiétudes exprimées par certains de mes collègues d'autres forces de police. Par contre, les modifications proposées ne m'inquiètent nullement pour les raisons que j'ai indiquées: ces modifications tiennent compte de la situation qui existe au Canada, clarifient la loi et la rendent plus facile à interpréter pour un agent de police qui doit l'appliquer, et prévoient des sanctions si les conditions se rattachant au permis ou à la licence ne sont pas respectées.

Comme l'ont indiqué les responsables d'autres forces de police, les décisions que prennent les provinces à l'égard de la délivrance de permis peuvent donner lieu à certaines inquiétudes. Ces décisions devraient tenir compte des effets locaux sur l'application de la loi, sur la criminalité et sur la possibilité, pour des personnes indésirables, d'obtenir des permis leur accordant certains privilèges. Il faut faire tous les efforts pour identifier ces personnes indésirables et veiller à ce qu'elles ne puissent obtenir de tels privilèges ou permis, ou à ce qu'elles ne puissent les conserver si elles les ont déjà obtenus. Il ne fait aucun doute que ce processus de sélection est essentiel et qu'il ajoutera à la charge de travail de toutes les forces de police en proportion du nombre de permis qu'une province désire délivrer.

Chaque fois que des manifestations sportives, des jeux, des rodéos, des foires, des événements religieux, etc., attirent un nombre important de personnes dans une localité ou une région donnée du pays, cela crée certains problèmes d'application de la loi, met davantage à contribution les forces de police et entraîne souvent une augmentation du nombre de délits commis dans certaines situations. Les autorités responsables de la délivrance des permis doivent avoir pleine connaissance des effets de leurs actions sur l'application de la loi, quand elles décident de délivrer ou non un permis.

Qui plus est, le personnel de supervision doit être suffisant pour s'assurer que les loteries sont administrées en conformité de la loi et en conformité des conditions se rattachant au permis.

[*Text*]

In western Canada, where casinos are licensed, the local police of jurisdiction—whether that be the Royal Canadian Mounted Police or city forces—have not, at least until this point in time, been able to associate the operation of these casinos with organized criminal activity or with any measurable increase in street crime.

I have confidence in our ability as a police force to offer advice to provincial authorities or to the licensing authority, and our experience has been that they are willing recipients of that advice and that they react to such advice.

The RCMP participates in the Canadian Association of Chiefs of Police. At its annual convention in Saint John, New Brunswick, an officer of our force served as a member of that association and, indeed, endorsed the resolution of the CACP, which I understand this committee received on a previous occasion. The reason we were able to support this resolution is based on the fact that there had been a phase one study conducted in the external environment—outside Canada—and we are of the view that it would be most useful for us, as a law enforcement agency and as advisers in this area, to gather all the knowledge which exists about the subject. We have already asked, on our own initiative, that the Solicitor General commence a second phase of that study of legalized gambling focusing on the situation in Canada. I do not believe that one can look solely to another country and its environment and draw a parallel between what exists or what is happening in that country and project that it will actually happen in our country. That depends on so many different factors. The force has a national responsibility in terms of gathering and disseminating criminal intelligence, which is useful to all law enforcement agencies concerned about organized crime in particular and crime in general. We use that framework to disseminate such information. Under a parallel program we have established, at strategic points across Canada, gaming specialists who are there to serve and assist provincial authorities and other police forces in executing their respective responsibilities.

We also operate the Canadian Police College. Within that police college, we hold specialized courses from time to time to improve the qualifications of investigators within our force and within all other forces that want to participate in the program across Canada, focusing on the problem of gambling. Thank you.

Senator Doyle: I have a very general question which I shall direct to the Deputy Commissioner. He spoke of the improved clarity of the proposed law. I will have to accept his word for that, not being myself an authority on the previous law, but I did not find this clear. If I were a member of the Lions Club or the Rotary Club or the legislature of Ontario, I would not know what it would or would not countenance. It seems that section 190 contradicts section 189 and that section 189 contradicts whatever else there may be—there is a litany of built-in contradictions. I speak with all due respect to the RCMP, and I am quite sure that it has experts who will, indeed, understand all of the contradictions, but your hosts will not understand them. What is there in the way of clarity for those people who have to run the business? Will they have to go through the expense of hiring RCMP officers or other gaming experts so as to figure out how to run a game of bingo according to the

[*Traduction*]

Dans l'Ouest du Canada, où l'exploitation de casinos a été autorisée, les forces de police, qu'il s'agisse de la Gendarmerie royale du Canada ou de services de police municipaux n'ont, du moins jusqu'à présent, fait aucun rapprochement entre l'exploitation de ces casinos et des activités criminelles organisées ou toute augmentation mesurable du nombre de délits.

J'ai confiance que nous pouvons, en tant que force de police, offrir nos conseils aux autorités provinciales et aux responsables de la délivrance des permis, et notre expérience montre qu'ils acceptent volontiers nos conseils et les suivent.

La GRC fait partie de l'Association canadienne des chefs de police. Au congrès annuel de l'Association, qui s'est tenu à Saint-Jean au Nouveau-Brunswick, un de nos agents, qui est membre de l'Association, a en fait appuyé la résolution de l'ACCP, qui a été communiquée à votre comité. Nous avons appuyé cette résolution parce que la première phase d'une étude a été menée à l'étranger et que nous estimons qu'il nous serait utile, en tant qu'organisme d'application de la loi et en tant que conseillers dans ce domaine, de savoir tout ce qu'il y a à apprendre sur le sujet. Nous avons déjà demandé, de notre propre chef, au Solliciteur général de commencer la deuxième phase de cette étude sur la légalisation du jeu, qui, elle, portera sur la situation au Canada. Je ne pense pas qu'on puisse, à partir de ce qu'on observe dans un autre pays, prédire ce qui se passera dans notre propre pays. Un trop grand nombre de facteurs entrent en jeu. A l'échelon national, la GRC a la responsabilité de recueillir et de diffuser, à propos des activités criminelles, des renseignements qui sont d'une grande utilité aux forces de l'ordre préoccupées par le crime en général et le crime organisé en particulier. Nous avons recours à ce moyen pour diffuser de tels renseignements. Dans le cadre d'un programme parallèle, nous avons mis en place, à des points stratégiques du Canada, des spécialistes des jeux, qui peuvent aider les autorités provinciales et les autres forces de police à s'acquitter de leurs responsabilités respectives.

Nous avons également le Collège canadien de police, où nous organisons périodiquement des cours spécialisés sur le problème du jeu, à l'intention des enquêteurs de la GRC et d'autres forces de police canadiennes qui désirent participer à ce programme. Je vous remercie.

Le sénateur Doyle: J'ai une question d'ordre très général que j'aimerais poser au sous-commissaire. Il nous a parlé de la plus grande clarté de la loi proposée. Je devrai le croire sur parole, parce que je ne suis pas expert en la matière en ce qui concerne la loi en vigueur, mais, personnellement, je ne la trouve pas claire. Si j'étais membre du Lions Club ou du Rotary Club ou encore député provincial de l'Ontario, j'aurais du mal à dire ce que la loi permet ou ne permet pas. Il me semble que l'article 190 contredit l'article 189 et que l'article 189 contredit d'autres clauses de la loi. La loi semble être truffée de contradictions. Je dis tout cela avec le plus grand respect pour la GRC. Je suis certain qu'elle a des experts qui comprennent toutes ces contradictions, mais les personnes visées ne les comprendront pas. La loi est-elle vraiment claire pour les personnes qui exploitent des jeux? Leur faudra-t-il engager à leurs frais des agents de la GRC ou d'autres experts des jeux

[*Text*]

law? This may not displease Senator Nurgitz, but will prospective businessmen have to hire three or four lawyers to tell them how to run their businesses? That is my general question.

Deputy Commissioner Jensen: I believe that I can only partially respond to your question, senator, after which I will ask Mr. Mosley to continue. This legislation has improved the clarity of the previous provisions from the point of view of the readability and understanding of a law enforcement officer. In terms of the general public who may want to become involved in a scheme, I have no comment to offer. I will turn that part of the question over to Mr. Mosley.

Senator Doyle: I am referring to two types of the public, if I may put it that way. One would be those people who would come and spend their money to try to win a prize and the other would be those people who are trying to raise money and who might have to hire gaming experts in order to run games for them. I might just continue to go to Oswego Beach to put my money on blackjack because I understand exactly what is coming out of the little machine, even though it may be rigged. I will not have to refer to a little book to see whether what I am doing is precisely what the law allows. I am still confused in that regard.

The Chairman: Mr. Mosley, can you enlighten our committee?

Mr. Mosley: I do not think I can enlighten the committee, Madam Chairman, but I can commiserate with Senator Doyle because I agree with him completely that this is an extremely confusing area of the Criminal Code. The legislation does improve the clarity to those who are familiar with these matters and who can read cross-references and so on, but the senator is quite correct that, for the average member of the public, this is going to be incomprehensible. The existing provisions are incomprehensible.

There is under way a process of fundamental review of the criminal law, one of the principles of which is that the criminal law in general should be made more accessible to the public. The general public should be able to read and understand it without the assistance of a lawyer. That exercise, in relation to Part V of the Criminal Code, remains to be done. The department is certainly not suggesting that this is the end of the road for the review of Part V. We must come back to it in the context of that fundamental review and try to clean it up so that it is accessible and can be read by the general public, but we are not engaged in that exercise in this process. We are responding to representations made to the government by the provinces to make some amendments to clarify their role. They have the lawyers to read and to interpret it. The average citizen will have no immediate need to interpret this part of the code. He cannot interpret it now and I certainly will not try to suggest that, with the passage of this bill, he will be able to interpret it then. But those who have to interpret it—those who are engaged in the licensing of lottery schemes—do have the people now who can interpret it.

Those people have the assistance of the force through gaming specialists such as Sergeant Robinson and they have their

[*Traduction*]

pour leur demander comment exploiter un jeu de bingo en conformité de la loi? Cela ne déplaira peut-être pas au sénateur Nurgitz, mais des hommes d'affaires devront-ils engager trois ou quatre avocats pour savoir comment mener leur entreprise? Voilà ma question.

Le sous-commissaire Jensen: Je pense ne pouvoir répondre qu'à une partie de votre question, monsieur le sénateur, et je demanderai à M. Mosley de répondre au reste. Le projet de loi clarifie les dispositions en vigueur en ce sens qu'il est plus facile à un agent d'application de la loi de les comprendre. Pour ce qui est des membres du public qui désireraient participer à un jeu, je ne saurais vous donner de réponse. Je laisse ce soin à M. Mosley.

Le sénateur Doyle: Je parle ici de deux types de public, si je puis m'exprimer ainsi. D'une part, il y a les personnes qui dépensent leur argent dans l'espoir de gagner un prix et, d'autre part, il y a celles qui cherchent à obtenir de l'argent et qui seront peut-être obligées d'engager des experts pour organiser les jeux. Je continuerai peut-être à me rendre à Oswego Beach pour jouer au blackjack, parce que je comprends exactement ce qui sort de la machine, même si le jeu risque d'être truqué. Je n'aurai pas à consulter un livre pour déterminer si mes activités sont autorisées par la loi. Tout cela n'est pas clair dans mon esprit.

La présidente: M. Mosley, pourriez-vous éclairer le comité?

M. Mosley: Je ne pense pas pouvoir le faire, madame la présidente, mais je compatis avec le sénateur Doyle parce que je suis entièrement d'accord avec lui: il s'agit là d'une partie extrêmement déroutante du Code criminel. Le projet de loi clarifie les choses pour ceux qui sont bien au courant de ces questions et qui peuvent se retrouver dans les renvois, etc., mais le sénateur a raison de dire que l'homme moyen ne saurait comprendre la loi. Les dispositions en vigueur sont incompréhensibles.

Partant du principe que le public devrait pouvoir comprendre plus facilement le droit criminel, une réforme profonde du droit criminel a été entamée. Le public devrait pouvoir lire et comprendre le Code criminel sans l'aide d'un avocat. Dans le cas de la Partie V du Code criminel, la réforme nécessaire n'a pas encore eu lieu. Le ministère de la Justice ne cherche pas à prétendre que l'on s'en tiendra là dans le cas de la Partie V. Nous y reviendrons dans le cadre de la réforme fondamentale et nous tenterons de la simplifier pour la mettre à la portée du grand public, mais ce n'est pas l'objet de ce projet de loi. Le projet de loi vise à satisfaire les provinces, qui ont demandé une modification de la loi visant à clarifier leur rôle. Les provinces ont des avocats capables de lire et d'interpréter la loi. Le Canadien moyen n'a aucun besoin immédiat d'interpréter cette partie du Code. Il ne peut interpréter les dispositions en vigueur et je n'essaierai pas de prétendre qu'il pourra les interpréter plus facilement, une fois que le projet de loi aura été adopté. Par contre, ceux qui doivent interpréter la loi, c'est-à-dire les autorités auxquelles il appartient de délivrer des permis à l'égard des loteries, ont des avocats capables de l'interpréter.

Ces autorités bénéficient de l'aide de la GRC, en la personne de spécialistes des jeux comme le sergent Robinson, et ont

[*Text*]

own experts on staff. I do not think that they will have any difficulty whatsoever applying these provisions. As I have said, however, in this process of fundamental review, we must come to Part V and try to clean it up. It is the result of many, many years of amendments. Given my druthers, we would be dealing with that fundamental review. There are, however, other priorities and the resources of the Department of Justice can only go so far. Those other priorities have to be dealt with first before we come to this.

Senator Doyle: Mr. Mosley, I have one last short question. I have lost track of time, but when was it that Justice Minister Turner looked out for his young tigers with fire in their bellies to get in and reform the Criminal Code so as to make it understandable to the rest of the country? Have we come any distance at all in that regard?

Mr. Mosley: We have come some distance. You are quite correct in that this goes back to 1970 or 1971. In 1980-81, however, a new process of accelerated review of the Criminal Law came into effect, with resources applied by the federal government to the Department of Justice, to the Ministry of the Solicitor General and to the Law Reform Commission itself. That process is under way.

At present, the commission is drafting a model Criminal Code which will be tabled in the House of Commons in the foreseeable future, within the next year. That does not, at present, deal with gaming. It sets the framework. It deals with the general area of the Criminal Law and those provisions dealing with responsibility. But the process is moving along and I can assure honourable senators that the government and the Department of Justice remain committed to that process.

Senator Nurgitz: I shall first direct my questions to the Deputy Commissioner and to Sergeant Robinson. I do not know whether they have had an opportunity to read the evidence which was given last week before this committee. I refer specifically to the evidence which was given by Chief Harding in which there was a suggestion of organized crime and of undesirable elements not only monopolizing the casino business but getting into related matters, waste disposal, common linen services and vending operations. I am having some trouble knowing where they fit into a casino operation, coming from a province that operates one. I would like to know what monitoring is done by your force with respect to, say, the provinces of Manitoba and Alberta—because obviously those are the only two places where you would have experience. I would like your comment on that, if it is a proper question. I will leave that to you. I am not asking for names. I would also like to know whether your criminal intelligence service has determined that, in those provinces where there are casinos, we have an influence of organized crime. If you tell me that in the interests of the police or national security you should not answer that question, I will accept that.

[*Traduction*]

leurs propres experts. Je ne pense pas qu'elles aient la moindre difficulté à appliquer les dispositions en question. Toutefois, comme je l'ai indiqué, nous devrons nous attaquer à la Partie V dans le cadre de la réforme fondamentale et tenter de la rendre plus compréhensible. Cette partie représente l'aboutissement d'un grand nombre de modifications apportées au fil des années. Si j'avais le choix, j'opterais pour une réforme immédiate. Toutefois, le ministère de la Justice a d'autres priorités et ses ressources ne lui permettent pas de tout faire en même temps. Il devra s'occuper des autres priorités avant d'aborder la réforme de la Partie V.

Le sénateur Doyle: Monsieur Mosley, une dernière question, fort brève. Je ne sais plus combien d'années se sont écoulées depuis que le ministre de la Justice, M. Turner, a indiqué qu'il comptait sur ses jeunes avocats pleins de zèle pour réformer le Code criminel et le rendre compréhensible à tous les Canadiens. Avons-nous fait des progrès quelconques dans cette direction?

M. Mosley: Nous avons fait certains progrès. Le mouvement a été amorcé en 1970 ou 1971. Toutefois, en 1980-1981, le gouvernement fédéral a décidé d'accélérer la réforme du droit criminel et, à ces fins, a affecté des ressources au ministère de la Justice, au ministère du Solliciteur général et à la Commission de la réforme du droit. La réforme se poursuit.

La Commission prépare actuellement un code criminel modèle, qui sera déposé bientôt à la Chambre des communes, probablement dans l'année à venir. Ce code, pour le moment, ne traite pas du jeu. Il ne fait qu'établir un cadre d'ensemble. Il porte sur le domaine général du droit criminel et sur les dispositions touchant la responsabilité. Mais la réforme continue et je puis garantir aux honorables sénateurs que le gouvernement et le ministère de la Justice sont fermement décidés à poursuivre leurs efforts.

Le sénateur Nurgitz: J'adresserai tout d'abord mes questions au sous-commissaire et au sergent Robinson. Je ne sais pas s'ils ont lu les témoignages présentés la semaine dernière à notre comité, notamment celui du chef Harding, qui avance non seulement que le crime organisé et des éléments indésirables monopolisent l'exploitation de casinos, mais aussi qu'ils se lancent dans des secteurs connexes, comme le ramassage des ordures, les services de buanderie et l'exploitation de machines distributrices. Provenant moi-même d'une province qui exploite un casino, j'ai du mal à comprendre quelle part ces éléments jouent dans l'exploitation de casinos. J'aimerais savoir quel genre de contrôle la GRC exerce, disons, dans les provinces du Manitoba et de l'Alberta, étant donné que ce sont les deux seules provinces où le GRC a une telle expérience. J'aimerais votre réponse à cette question, si vous pensez que je peux la poser. Je vous en laisse la décision. Je ne demande pas de noms. J'aimerais également savoir si votre service des renseignements sur les activités criminelles a pu déterminer si, dans les provinces où ils existent, les casinos tombent sous l'influence du crime organisé. Toutefois, je comprendrais fort bien si vous me dites que l'intérêt de la police ou la sécurité nationale vous empêche de répondre à ma question.

[*Text*]

Deputy Commissioner Jensen: To answer your last question first, senator, we have no indication of any influence of organized crime in any of the provinces that we police, relative to the operation of these casinos.

Senator Nurgitz: Manitoba and Alberta are operating casino operations on a fairly regular basis. Are you being specific about those provinces also, in the answer you have just given?

Deputy Commissioner Jensen: Yes.

Senator Nurgitz: Now, can you answer the first question?

Deputy Commissioner Jensen: In terms of the first question, we do monitor on a national scale, and we work closely with all police forces in Canada and abroad with respect to the problem of organized crime, no matter what sphere of illicit activity it operates within.

Senator Nurgitz: The suggestion is that "illicit" people are operating legitimate interests, when they mention waste disposal, linen service, and so on. The suggestion is that undesirable elements are in those businesses because, somehow or other, they would be related to the casino operations.

The Chairman: I think more specifically it has been said that they use "legitimate" businesses to launder money obtained illegally or illicitly.

Senator Nurgitz: Bearing in mind my incoherence and the chairman's clarity, can you answer the question?

Deputy Commissioner Jensen: I think it is open to organized crime to become involved in any legal activity in any environment in Canada whether or not casino operations or other forms of gambling on the legal scale exist. I do not accept that there is any direct connection between garbage collection or linen service and the casino operations. I think it is fair to say that organized crime does have an interest in the service activity, and perhaps, in some of the environments where they operate world scale gambling casinos—and that is the industry, if you wish, of a community—there is greater propensity for organized crime to attempt to involve itself not only in the legal gambling aspect, but also in the peripheral industries and services that go to support a community.

Senator Nurgitz: I want to ask a question based on my "great" newspaper intelligence. Would there be more organized crime activity in the provinces of Quebec and Ontario—I am thinking of the larger provinces—or, let us take a chance, British Columbia.

Senator Perrault: It is a haven of righteousness.

Senator Nurgitz: That is why I took that chance—than, for example, in the provinces of Manitoba and Alberta, where they are operating a casino business.

Deputy Commissioner Jensen: In my estimation there is much greater potential for organized crime to exploit illegal as

[*Traduction*]

Le sous-commissaire Jensen: Pour répondre en premier à votre dernière question, monsieur le sénateur, rien n'indique que le crime organisé exerce une influence quelconque sur l'exploitation des casinos dans les provinces où nous assurons le maintien de l'ordre.

Le sénateur Nurgitz: Le Manitoba et l'Alberta exploitent des casinos de façon plus ou moins permanente. La réponse que vous venez de me donner s'applique-t-elle spécifiquement à ces provinces?

Le sous-commissaire Jensen: Oui.

Le sénateur Nurgitz: Je vous prierais maintenant de répondre à ma première question.

Le sous-commissaire Jensen: Pour répondre à votre première question, nous exerçons une surveillance à l'échelle nationale et nous œuvrons en étroite collaboration avec toutes les forces de police du Canada et de l'étranger à propos du problème que pose le crime organisé, quel que soit le secteur d'activités illicites dans lequel on le trouve.

Le sénateur Nurgitz: Il a été avancé que des éléments criminels exploitent des entreprises légitimes, comme des services de ramassage des ordures, des services de buanderie, etc. Il a été avancé que des éléments indésirables se lancent dans ces entreprises parce que, d'une façon ou d'une autre, elles sont liées à l'exploitation de casinos.

La présidente: Je pense plutôt qu'il a été dit que ces éléments se servent d'entreprises légitimes pour blanchir de l'argent obtenu illégalement.

Le sénateur Nurgitz: En tenant compte de mon manque de clarté et des précisions données par la présidente, pourriez-vous répondre à ma question?

Le sous-commissaire Jensen: Je pense que le crime organisé peut prendre part à toute activité légitime n'importe où au Canada, qu'il existe ou non des casinos ou d'autres formes légales de jeu. Je ne suis pas convaincu qu'il existe un lien direct entre le ramassage des ordures ou un service de buanderie et l'exploitation de casinos. Je pense que l'on peut dire que le crime organisé s'intéresse au secteur des services et que, dans certaines villes où il y a des casinos de renommée mondiale qui, en quelque sorte, constituent l'industrie de ces villes, le crime organisé a tendance à s'incruster non seulement dans l'exploitation légale de ces casinos, mais aussi dans les industries et services périphériques.

Le sénateur Nurgitz: J'aimerais vous poser une autre question. Peut-on s'attendre, à votre avis, à ce que le crime organisé soit plus actif dans de grandes provinces comme le Québec ou l'Ontario ou dans d'autres provinces comme, disons, la Colombie-Britannique . . .

Le sénateur Perrault: La Colombie-Britannique est l'exemple même de la vertu.

Le sénateur Nurgitz: Je ne l'ai prise que comme exemple—que, disons, dans les provinces du Manitoba et de l'Alberta, qui exploitent des casinos?

Le sous-commissaire Jensen: A mon avis, il est bien plus facile pour le crime organisé d'exploiter des entreprises illéga-

[*Text*]

well as legal enterprises in Quebec and Ontario than there is in any other environment in Canada. I endorse what Senator Perrault has said. I was the former commanding officer out there—

Senator Nurgitz: You British Columbians are all the same.

The Chairman: It has deteriorated since you left.

Deputy Commissioner Jensen: All joking aside, British Columbia is not exempt.

Senator Nurgitz: So what you are saying is that the larger, more populous areas have a greater propensity to attract organized crime than, for example, those small frontier provinces like Manitoba and Alberta, notwithstanding the fact that they have casinos.

Deputy Commissioner Jensen: I think the connection goes much deeper than that. It is tied to the composition of your population in a given community. It is tied to their connections with families, relatives, associates, in the American or foreign environments. So, when you consider the make-up of the popoulation in those two regions of Canada, it is understandable why there is greater potential for organized crime.

The Chairman: May I ask a supplementary? Would it also be tied to the fact that these operations in Manitoba and Alberta are closely monitored and governed by the provinces themselves?

Deputy Commissioner Jensen: They are very tightly controlled.

Senator Lang: I believe that Senator Nurgitz has preempted my question pretty well, but, as a supplementary comment to Senator Doyle's remark about the complexity of section 190, I might remind our witness from the Department of Justice of the old ditty with which I am sure he is familiar:

I am a legislative draughtsman,

I draw the country's laws

And of half of litigation,

I am undoubtedly the cause

The Chairman: That is a very useful addition to our deliberations.

Senator Lang: With respect to an article that appeared in the *Sunday Sun*, I would ask the following question: Have you any intelligence as to an increase in mob or mafia type activity that would be directly related to the anticipation of the passage of this bill?

Deputy Commissioner Jensen: The passage of this bill, from a law enforcement perspective, in terms of the existing law, changes the law enforcement environment and the provisions that already exist in a very minor way.

Senator Lang: In other words, these enforcement powers would basically be the same as they were heretofore.

Deputy Commissioner Jensen: Yes, and the authority of a province to issue licences.

[*Traduction*]

les et légales au Québec et en Ontario que n'importe où ailleurs au Canada. Je suis d'accord avec le sénateur Perrault. J'étais auparavant commandant en Colombie-Britannique . . .

Le sénateur Nurgitz: Vous qui venez de la Colombie-Britannique, vous êtes tous les mêmes.

La présidente: La province s'est détériorée depuis votre départ.

Le sous-commissaire Jensen: Blagues mises à part, la Colombie-Britannique n'est pas exempte des activités criminelles.

Le sénateur Nurgitz: D'après vous, les grandes provinces fortement peuplées ont donc tendance à attirer le crime organisé davantage que de petites provinces comme le Manitoba et l'Alberta, bien que ces dernières exploitent des casinos.

Le sous-commissaire Jensen: Je pense que c'est plus complexe que cela. Les activités criminelles sont liées à la composition de la population. Elles dépendent des liens avec la famille, les parents et les associés aux États-Unis ou dans d'autres pays. Il n'est donc pas surprenant, quand on considère la composition de la population de ces deux provinces, qu'il y existe un plus grand potentiel pour le crime organisé.

La présidente: Puis-je vous poser une question complémentaire? Tout cela n'est-il pas dû également au fait que l'exploitation de ces casinos au Manitoba et en Alberta est surveillée et administrée de très près par les provinces elles-mêmes?

Le sous-commissaire Jensen: Leur exploitation est sujette à un contrôle très strict.

Le sénateur Lang: Je pense que le sénateur Nurgitz a déjà posé la question que je me préparais à poser, mais, à propos de l'observation du sénateur Doyle concernant la complexité de l'article 190, j'aimerais rappeler au témoin du ministère de la Justice un vieux refrain, qu'il connaît probablement:

Pour moi qui rédige les lois,

il ne fait aucun doute

que je suis à l'origine

de la moitié des procès.

La présidente: Voilà un apport fort utile à nos débats.

Le sénateur Lang: A propos d'un article qui a paru dans le *Sunday Sun*, j'aimerais vous demander si vous avez des indices d'une augmentation des activités du crime organisé ou de la mafia, qui soit directement liée à l'adoption prévue de ce projet de loi.

Le sous-commissaire Jensen: Du point de vue de l'application de la loi, l'adoption de ce projet de loi ne change presque rien dans les conditions d'application et dans les dispositions déjà en vigueur.

Le sénateur Lang: Autrement dit, les pouvoirs d'application seraient essentiellement les mêmes qu'avant.

Le sous-commissaire Jensen: Oui, de même que le pouvoir de délivrance de permis que détiennent les provinces.

[*Text*]

Senator Lang: In other words, in your opinion, would this be an improvement over the preceding provisions, from a policeman's point of view?

Deputy Commissioner Jensen: I believe I answered yes to that question earlier on, because it was easier for us to understand it enabled more effective controls to be put in place by the authorizing of authority.

The Chairman: I think we should correct one comment in Mr. Hodgson's article to which Senator Lang referred.

Mr. Mosley: The article states that the police witnesses last week estimated that crime in Atlantic City had jumped 2,000 per cent since the introduction of casino gambling. That is not in fact what the witness stated. He stated that the demand for police services had increased by 2,000 per cent. In the resolution of the Canadian Association of Chiefs of Police, there is a reference to an increase in street crime of 171 per cent, which is still a significant increase but may be regarded as the result of other factors, such as a change in the complexion of Atlantic City during that period of time from a failing resort community to one of the premier tourist attractions on the Atlantic seaboard in the United States and the increased demand for services of a general police nature which may have resulted. I think it would be fair to say—and perhaps the Deputy Commissioner would care to comment—that in any situation where you have a significant change in the flow of people to a community and an increase in the numbers of that community you will have a significant change in the rate of street crime within that community.

Senator Perrault: Certainly, I think we all appreciate the testimony by Mr. Mosley and by the distinguished Deputy Commissioner who served with such distinction on the west coast at one point in his career. The concern that I feel is that I would not like any part of Canada to become like Las Vegas, Reno or Atlantic City, regardless of the reassurances provided by Mr. Mosley. The fact is that crime and gambling traditionally go hand in hand in almost every country in the world. Havana in pre-Castro time was the heart of Central American gambling, and with it went prostitution and all the other vices and the almost impossible law enforcement problem. At the present time we have responsible, benevolent governments in all the provinces of Canada regardless of political stripe. Is it conceivable down the line that a hard-pressed province, for example, Prince Edward Island—which is really the furthest from consideration in this sense—could say at some point in time that their revenue situation is such that they must convert to a gambling island to attract greater numbers of tourists? So they modify their legislation to provide the welcome mat for gambling. Notwithstanding any of the provisions of this gaming and betting legislation, it is lawful for the government of a province, either alone or in conjunction with another province to conduct and manage a lottery scheme in that province or in the other province in accordance with any law enacted by a legislature of that province. Is it conceivable that at some point in time, some legislature, a government not yet elected, could say in the future that this is a great source of revenue, "so let us go the route of Atlantic City and let us have as wide open

[*Traduction*]

Le sénateur Lang: En tant que policier, pensez-vous donc que ce projet de loi constitue une amélioration par rapport aux dispositions antérieures?

Le sous-commissaire Jensen: Je pense que j'ai déjà répondu oui à cette question. Plus la législation est facile à comprendre, plus les contrôles que peuvent mettre en œuvre les autorités sont efficaces.

La présidente: Je pense qu'il convient de corriger un commentaire figurant dans l'article de M. Hodgson dont a parlé le sénateur Lang.

M. Mosley: Selon cet article, les témoins représentant la police auraient dit la semaine dernière que le taux de criminalité a augmenté de 2 000 pour cent à Atlantic City depuis l'introduction des casinos. En fait, ce n'est pas ce qu'a dit le témoin. Il a déclaré que la demande de services de police avait augmenté de 2 000 pour cent. La résolution adoptée par l'Association canadienne des chefs de police parle d'une augmentation de la criminalité de 171 pour cent, ce qui reste malgré tout une forte augmentation. Toutefois, cette augmentation peut être due à d'autres facteurs, notamment à la transformation d'Atlantic City, qui, pendant cette période, est passée d'un lieu de villégiature en déclin à l'un des plus grands centres touristiques de la côte est des États-Unis, entraînant par là même une plus grande demande de services de police en général. Je pense que l'on peut dire, et le sous-commissaire pourrait peut-être nous donner son avis à ce sujet, que tout changement important de la population d'une localité, notamment une poussée démographique, influence considérablement le taux de criminalité dans cette localité.

Le sénateur Perrault: Je pense que nous avons tous trouvé utiles le témoignage de M. Mosley et celui du sous-commissaire, qui, au cours de sa carrière, s'est distingué en Colombie-Britannique. Personnellement, je n'aimerais pas qu'une ville quelconque en vienne à ressembler à Las Vegas, à Reno ou à Atlantic City, quoi qu'en dise M. Mosley pour nous rassurer. Il est indéniable que le crime et le jeu vont de pair dans presque tous les pays du monde. Avant l'arrivée de Castro, La Havane était le centre du jeu de l'Amérique centrale, et la prostitution et les autres vices que cela a attirés ont posé des problèmes presque insurmontables aux forces de l'ordre. Pour le moment, toutes les provinces du Canada ont des gouvernements responsables et bienveillants, quelle que soit leur appartenance politique. Il est toutefois possible que, dans les années à venir, une province désirant redresser son économie, l'Île-du-Prince-Édouard par exemple, en vienne à décider de se transformer en centre du jeu pour attirer un plus grand nombre de touristes. Il lui suffirait alors de modifier sa législation pour faire venir les joueurs. Quoi qu'en disent les dispositions de ce projet de loi sur le jeu et les paris, la loi autorise le gouvernement d'une province, soit seul soit en conjonction avec une autre province, à conduire et à administrer une loterie dans cette province ou dans toute autre province, en vertu de toute loi adoptée par l'assemblée législative de cette province. Dans quelques années, un gouvernement futur pourrait donc décider d'augmenter ses recettes en calquant le modèle d'Atlantic City et en offrant le plus de jeux possible. Dans ce cas, les problèmes d'application

[*Text*]

gambling as we can possibly manage." The law enforcement situation could be substantially different for the RCMP under those conditions, could it not?

Deputy Commissioner Jensen: My interpretation is that they can do it now.

Senator Perrault: Surely it is more difficult to create such a situation now with a federal government which has substantially greater powers with respect to gambling across this country and to the application of gaming laws. I am not suggesting that the federal governments are more virtuous than porovincial governments, but does it not open the possibility of something like this occurring in Canada, that we could have a province something like the State of Nevada in terms of its revenue sources?

Mr. Mosley: If I could comment on that, I concur completely with Deputy Commissioner Jensen, that such a situation could arise tomorrow in any one of the jurisdictions of this country if that jurisdiction chose to do so. That has been the state of affairs since Mr. Lang made his comment in 1972. It has not come to pass and I suggest that it will not come to pass. However, there is nothing in the current law which would prevent the province from doing that if it so chooses. We must not forget that notwithstanding the rule of the federal government in this field the enforcement of the Criminal Code rests with the provinces. So even if there were some questionable interpretations of the existing law, if the government of a province, including the Attorney General of that province, chose to expand gambling to the extent you have described, the federal government could not enforce any of the provisions of the Criminal Code in relation to such laws because the federal government does not enforce the Criminal Code.

Senator Perrault: In terms of preventing a situation of the type that I described from arising, are the changes more likely to prevent or hasten that process?

Mr. Mosley: Neither. They are not likely to prevent or hasten. They maintain the *status quo*. Parliament is not vacating the field by these amendments. Next year Parliament could come back with another bill which could reverse the entire trend of gaming in this country. If Parliament wanted to enforce that within a province, Parliament would also have to say that the enforcement of this provision within the Criminal Code rests with the Attorney General of Canada. However, that is not the tradition in Canada. Enforcement rests with the provincial governments. We do not believe that that is a constitutional division of authority. It is a traditional division of authority which is reinforced by the definition of the Attorney General in section 2 of the Criminal Code.

Senator Perrault: Some of the police witnesses who appeared the other day have spotless reputations for their attitude toward the law. It is difficult to reconcile the testimony that you have provided today with their comments of the other day. Could you explain why there is such apprehension and general serious concern on the part of some of them?

[*Traduction*]

de la loi seraient fort différents pour la GRC, ne le pensez-vous pas?

Le sous-commissaire Jensen: D'après mon interprétation, la loi en vigueur le permet déjà.

Le sénateur Perrault: Ne pensez-vous pas que cela soit actuellement plus difficile, du fait que le gouvernement fédéral a bien plus de pouvoirs en matière de jeu dans l'ensemble du pays et joue un rôle plus direct dans l'application de la législation relative au jeu? Je ne cherche pas à prétendre que le gouvernement fédéral soit plus vertueux que les gouvernements provinciaux, mais ne convenez-vous pas que le projet de loi ouvre la porte à ce genre de possibilité, c'est-à-dire qu'une province pourrait décider de chercher, comme l'État du Nevada, à augmenter ainsi ses recettes?

M. Mosley: Si vous me permettez de donner mon avis à ce sujet, je vous dirai que je suis entièrement d'accord avec le sous-commissaire Jensen: cette éventualité pourrait se produire demain dans n'importe quelle province, si cette province le décide. C'est la situation qui existe depuis les remarques faites en 1972 par M. Lang. Toutefois, cela ne s'est pas produit et, à mon avis, cela ne se produira jamais. Cependant, il n'y a rien dans la loi en vigueur qui empêche une province de se lancer dans cette direction si elle le désire. Il ne faut pas oublier que, malgré les pouvoirs qu'a le gouvernement fédéral dans ce domaine, l'application du Code criminel relève des provinces. Par conséquent, même si la loi en vigueur est interprétée de façon discutable et que le gouvernement d'une province, notamment le Procureur général de cette province, décide d'autoriser le jeu dans les proportions que vous avez évoquées, le gouvernement fédéral ne pourrait appliquer aucune des dispositions du Code criminel à l'égard de ces lois, parce que l'application du Code criminel ne relève pas du gouvernement fédéral.

Le sénateur Perrault: Mais pensez-vous que les changements proposés puissent prévenir ou faciliter ce genre d'éventualité?

M. Mosley: Ni l'un ni l'autre. Il est peu probable que ces changements préviennent ou facilitent ce genre de situation. En fait, ils maintiennent le *statu quo*. Ces modifications ne signifient pas que le Parlement renonce à toute responsabilité dans ce domaine. L'an prochain, le Parlement pourrait adopter un autre projet de loi qui irait dans le sens inverse. Le Parlement pourrait également décider que l'application de ces dispositions du Code criminel relève du Procureur général du Canada. Toutefois, ce n'est pas dans nos traditions. L'application appartient aux gouvernements provinciaux. Nous ne considérons pas qu'il s'agisse là d'une division constitutionnelle des pouvoirs. Il s'agit d'une division traditionnelle des pouvoirs, renforcée par la définition de «Procureur général» à l'article 2 du Code criminel.

Le sénateur Perrault: Certains des témoins qui ont comparu l'autre jour au nom de la police ont une réputation irréprochable en ce qui concerne leur attitude envers la loi. Il est difficile de concilier ce que vous nous avez dit aujourd'hui et les observations qu'ils ont faites l'autre jour. Pouvez-vous m'expliquer

[*Text*]

Deputy Commissioner Jensen: I have a serious concern, but it is subject to certain conditions of which I have already spoke. I believe that perhaps our difference of view may rest somewhat on the different environments for which we have primary law enforcement responsibility. Second, we have had experience with gaming. We have dealt with the law as it exists and, based on that experience, perhaps we are not as alarmed or frightened as the witnesses of the other day may be. I believe that they have read much of the same material and intelligence that we have in terms of the experience in some foreign environments but it does not include the Canadian environment. I, too, have been in some of those environments. I do not envisage that being the reality in Canada, and it certainly is not in the provinces in which I have policed.

Senator Perrault: Madam Chairman, it may be useful to have a meeting of those from the different policing jurisdictions to confer about this matter as it proceeds through Parliament in order to develop a uniformity of approach and cooperation at the enforcement level. Perhaps that is an idea. I assume that there have been no meetings held between the RCMP and some of these other authorities?

Deputy Commissioner Jensen: Madam Chairman, on a continuing basis, there is dialogue with our colleagues in other fields of law enforcement on all matters touching crime. There is considerable dialogue on an on-going basis between our gaming specialists and those within the other police jurisdictions that are charged with enforcing gaming laws. There may be a difference of view in some quarters.

The Chairman: Specifically, do you feel that there was sufficient consultation? Because this was one of the points that was made to us on Bill C-81 with respect to the provision for the changes. Have you had the opportunity to discuss this with your colleagues in the other forces?

Deputy Commissioner Jensen: I have not, personally, although as I mentioned earlier, at the Canadian Association of Chiefs of Police, one of our senior officers participated in a discussion with selected officers who comprised that committee from all parts of Canada. That led, of course, to the preparation of that resolution and the acceptance of that resolution by the general body of Chiefs of Police in Canada.

Senator Lewis: Madam Chairman, I have a couple of questions, one of which has really just been dealt with.

I take it from what the witnesses have said that, in their view, the passage of this amendment will not appreciably change the situation, or should I say enlarge the scope or the danger of organized crime taking over gaming. Is that correct?

Mr. Mosley: That is the position of the Department of Justice.

Deputy Commissioner Jensen: That is my view, that what exists today will exist subsequent to the passage. There is essentially little change.

[*Traduction*]

les grandes inquiétudes et les réserves que certains d'entre eux ont exprimées?

Le sous-commissaire Jensen: J'ai moi aussi de grandes inquiétudes, mais elles sont sujettes à certaines conditions que j'ai déjà mentionnées. Je pense que notre différence d'opinions repose peut-être dans une certaine mesure sur la différence des contextes dans lesquels nous sommes responsables du maintien de l'ordre. Deuxièmement, nous avons l'expérience du jeu. Nous avons appliqué la loi sous sa forme actuelle et, sur la foi de cette expérience, nous sommes peut-être moins alarmés ou moins effrayés que les témoins de l'autre jour. Je pense qu'ils ont lu plus ou moins la même documentation et les mêmes renseignements que nous sur l'expérience d'autres pays, mais cela ne comprend pas l'expérience canadienne. J'ai moi aussi visité certains de ces pays. Je ne pense pas que cette éventualité se réalise au Canada, et certainement pas dans les provinces où j'ai exercé mes fonctions.

Le sénateur Perrault: Madame la présidente, il serait peut-être bon de convoquer à une réunion les représentants des diverses forces de police pour débattre cette question afin d'adopter une approche uniforme et d'assurer la coopération sur le plan de l'application de la loi. C'est peut-être une idée à poursuivre. Je suppose qu'il n'y a eu aucune rencontre entre la GRC et certaines de ces autres forces de police.

Le sous-commissaire Jensen: Madame la présidente, nous avons des rapports suivis avec nos collègues d'autres forces de police sur toutes les questions concernant les activités criminelles. Nos experts du jeu sont en contact permanent avec les experts d'autres forces de police chargées d'appliquer les lois sur le jeu. Il est toutefois possible qu'il existe certaines différences d'opinions.

La présidente: Pour répondre plus précisément à la question, pensez-vous que la consultation ait été suffisante? C'est là un des points qui ont été soulevés à propos des changements proposés par le projet de loi C-81. Avez-vous eu l'occasion d'en discuter avec vos collègues d'autres forces de police?

Le sous-commissaire Jensen: Pas personnellement, mais, comme je l'ai indiqué, l'un de nos cadres supérieurs a participé à une discussion avec divers agents membres de l'Association canadienne des chefs de police. Cette discussion a abouti à la rédaction d'une résolution, qui a été adoptée par l'ensemble des chefs de police du Canada.

Le sénateur Lewis: Madame la présidente, j'ai deux questions à poser, dont une sur le sujet qui vient d'être soulevé.

Si j'ai bien compris ce qu'ont dit les témoins, ils estiment que l'adoption de ce projet de loi ne changera pas grand-chose à la situation, ou plus précisément n'augmentera pas le risque que le jeu tombe aux mains du crime organisé. Est-ce bien cela?

M. Mosley: C'est bien ce que pense le ministère de la Justice.

Le sous-commissaire Jensen: J'estime également que la situation actuelle restera la même après l'adoption du projet de loi. Il n'y a pratiquement aucun changement.

[*Text*]

Senator Lewis: With respect to my other point, Mr. Mosley, I will go back to what was said on another occasion dealing with the agreement of June 3, 1985. I notice that that agreement has been signed by all of the provinces and the federal government, presumably by the appropriate minister in each case. However, it looks to me as if it was not signed on behalf of the attorneys general of the provinces, or the Minister of Justice of Canada?

Mr. Mosley: That is correct.

Senator Lewis: I notice it is dated June 3, but that there are different dates on which it was signed by some of the provinces. Therefore I take it that the agreement was not signed at a meeting?

Mr. Mosley: The reason for that, in my understanding since I was not at the conference, Madam Chairman, was that although there were representatives of each of the provinces present, the ministers who had signing authority from their provincial cabinets were not present in every case. Therefore where you see, for example, a difference of date, the agreement was signed subsequently by the minister responsible for lotteries for that province.

Senator Lewis: I notice, for example, that Ontario actually signed before that date.

Mr. Mosley: That is correct. I believe that was Mr. Bennet. For some reason, he was not going to be available on June 3.

Senator Lewis: In my copy of the agreement, in clause 1.2, the second last line thereof, there is a line through the words:

. . . are proclaimed in force as soon . . .

Were those words actually taken out, or what was the case?

Mr. Mosley: No, that was left in.

Senator Lewis: Therefore what I have here is probably a photographing error or something like that.

Mr. Mosley: Perhaps an underlining. There were words added—

Senator Lewis: Those words that were added were apparently added afterwards. When I say "afterwards", I mean after it was typed—

Mr. Mosley: They were added at the meeting on the 3rd.

Senator Lewis: I see. In other words, they were agreed to by all the parties?

Mr. Mosley: Yes. It was a suggestion that was raised during the course of that meeting, and approved by all of the parties at that meeting.

Senator Lewis: Schedule A, which is the draft amendments to the Criminal Code, a copy of which we were given, was that the actual schedule which was actually attached to the agreement when it was signed?

Mr. Mosley: Yes, senator.

Senator Lewis: I seem to recall that there was some suggestion that there were some slight changes made.

Mr. Mosley: There were changes made. That was not a legislative draft.

[*Traduction*]

Le sénateur Lewis: Pour ce qui est de mon autre question, M. Mosley, je me réfère à ce qui a été dit à une autre occasion à propos de l'accord du 3 juin 1985. Je constate que cet accord a été signé par toutes les provinces et par le gouvernement fédéral, probablement par le ministre compétent dans chaque cas. Toutefois, il me semble que cet accord n'a pas été signé au nom des procureurs généraux des provinces ou du ministre de la Justice du Canada.

M. Mosley: C'est bien le cas.

Le sénateur Lewis: Je remarque que l'accord est daté du 3 juin, mais que certaines des provinces l'ont signé à une autre date. Puis-je donc en conclure que l'accord n'a pas été signé à l'occasion d'une rencontre?

M. Mosley: Je n'étais pas présent à la conférence, mais d'après ce que j'en sais, madame la présidente, toutes les provinces étaient représentées à cette rencontre, mais pas toujours par le ministre habilité à signer l'accord. Là où vous voyez sur l'accord une date différente, cela veut donc dire qu'il a été signé ultérieurement par le ministre responsable des loteries dans la province en question.

Le sénateur Lewis: Je constate, par exemple, que l'Ontario a en fait signé l'accord avant le 3 juin.

M. Mosley: C'est bien cela. Je pense qu'il s'agissait de M. Bennet. Pour une raison ou une autre, il ne pouvait être présent le 3 juin.

Le sénateur Lewis: Sur mon exemplaire de cet accord, à l'avant-dernière ligne de la clause 1.2, les mots

. . . are proclaimed in force as soon . . . semblent biffés.

Ces mots ont-ils en fait été éliminés?

M. Mosley: Non, ils ne l'ont pas été.

Le sénateur Lewis: Il doit donc s'agir d'une erreur de reproduction ou de quelque chose de ce genre.

M. Mosley: Peut-être que les mots ont été soulignés. Certains mots ont été ajoutés . . .

Le sénateur Lewis: Les mots qui ont été ajoutés semblent l'avoir été par la suite. Je veux dire par là, après la dactylographie . . .

M. Mosley: Ils ont été ajoutés lors de la réunion du 3 juin.

Le sénateur Lewis: Je comprends. Autrement dit, toutes les parties en ont convenu?

M. Mosley: Oui. Il s'agissait d'un ajout proposé au cours de la réunion et approuvé par toutes les parties présentes.

Le sénateur Lewis: L'annexe A, qui comprend les modifications proposées du Code criminel et dont nous avons reçu un exemplaire, est bien l'annexe qui était jointe à l'accord, quand celui-ci a été signé?

M. Mosley: Oui, monsieur le sénateur.

Le sénateur Lewis: Il me semble me souvenir que certains ont suggéré que des changements mineurs avaient été apportés.

M. Mosley: Certains changements ont été faits. Il ne s'agissait pas d'un projet de loi.

[*Text*]

Senator Lewis: No, I see.

Mr. Mosley: The schedule was turned over to the legislative counsel within the Department of Justice; they applied the substance. The agreement was that the amendments in substance with the schedule had to be introduced in the form of a bill, so that the legislative draftsmen, working with this and with some further suggestions that were made by the provinces during the course of last summer, produced Bill C-81.

Senator Lewis: I see, so that anyone looking at the schedule and comparing it with the bill, it is not identical?

Mr. Mosley: It is not identical.

Senator Lewis: It is not identical, but the provinces have agreed to the bill, have they?

Mr. Mosley: They had agreed to the schedule and to the further amendments that were proposed by certain of the provinces. The most notable example, again, is the fisheries fair exemption.

Senator Lewis: Just to follow that up, some of the provinces may have made some suggestions which are incorporated in the bill, but have all of the provinces actually approved of the bill in its present form?

Mr. Mosley: With the exception of the Ministry of the Attorney General in Ontario, my understanding is that every province has approved the bill in form C-81. There was only one other province which had indicated to us any serious reservations. However, those reservations did not relate to the substance of the amendments but to the process that was followed in developing the proposals. That province was Alberta.

In speaking with Alberta officials since the bill was developed, they have advised us, and advised me personally, that they have no difficulty with the substance of the amendments. Some provinces want us to go even further. One example is Manitoba. There is a letter from Mr. Penner. They want to engage in dice games. Also, the Province of British Columbia would prefer that we get out of the field entirely; that the Criminal Code provisions be repealed and that it be regulated under provincial law.

Senator Lewis: I had it in mind that, last week when we heard from Mr. Morton from Ontario, that he still had some reservations about the procedure that was followed.

Mr. Mosley: And the substance; I do want to make that clear. Ontario was the exception.

Senator Lewis: I am just wondering if you had any views that you could express to us on what he had to say at that time.

Mr. Mosley: I think I have made it clear, senator, that we do not agree with the interpretation placed on the existing law, nor on the changes that the amendments would make to the existing law.

Senator Lewis: It is, then, a fundamental difference of opinion?

[*Traduction*]

Le sénateur Lewis: Non, je comprends.

M. Mosley: L'annexe a été transmise aux conseillers législatifs du ministère de la Justice, pour qu'ils s'occupent des points de substance. Il avait été convenu que les modifications de substance dans l'annexe devraient être introduites sous forme de projet de loi. En conséquence, les rédacteurs se sont basés sur cette annexe et sur d'autres propositions faites au cours de l'été par les provinces pour produire le projet de loi C-81.

Le sénateur Lewis: Je vois. Par conséquent, l'annexe et le projet de loi ne sont pas identiques?

M. Mosley: Non, ils ne le sont pas.

Le sénateur Lewis: Ils ne le sont pas, mais les provinces ont approuvé le projet de loi, n'est-ce pas?

M. Mosley: Elles ont approuvé l'annexe et les autres modifications proposées par la suite par certaines provinces, notamment l'exemption visant les foires relatives aux pêches.

Le sénateur Lewis: Si vous me permettez de poursuivre ce point, certaines provinces peuvent avoir présenté des propositions, qui ont été incorporées au projet de loi, mais toutes les provinces ont-elles en fait approuvé le projet de loi sous sa forme actuelle?

M. Mosley: Autant que je le sache, toutes les provinces ont approuvé le projet de loi C-81 sous sa forme actuelle, à l'exception du ministère du Procureur général de l'Ontario. Il n'y a eu qu'une seule autre province qui ait eu certaines réserves. Toutefois, ces réserves ne concernent pas la substance des modifications, mais la façon dont les propositions ont été élaborées. Il s'agissait de l'Alberta.

Depuis la rédaction du projet de loi, nous avons conféré avec les représentants de l'Alberta, qui nous ont indiqué n'avoir aucune objection à propos de la substance des modifications. Ils me l'ont dit personnellement. Certaines provinces voulaient que nous allions plus loin, notamment le Manitoba. Nous avons une lettre de M. Penner. Le Manitoba désire autoriser les jeux de dés. La province de la Colombie-Britannique, quant à elle, préférerait que le gouvernement fédéral se retire entièrement de ce domaine, que les dispositions du Code criminel soient abrogées et que le jeu soit réglementé par la législation provinciale.

Le sénateur Lewis: Je pensais à ce que nous a dit la semaine dernière M. Morton de l'Ontario, qui a indiqué qu'il avait certaines réserves à propos du processus qui a été suivi.

M. Mosley: Il avait également des réserves à propos de la substance. Je tiens à le préciser. L'Ontario a été l'exception.

Le sénateur Lewis: Je me demande si vous avez une opinion sur ce qu'il a dit à ce moment-là.

M. Mosley: Je pense, monsieur le sénateur, avoir indiqué bien clairement que nous n'interprétons pas de la même façon la loi en vigueur, ni les changements que les modifications apporteraient à cette loi.

Le sénateur Lewis: Il s'agit donc d'une différence radicale d'opinions?

[*Text*]

Mr. Mosley: There are fundamental differences of opinion, yes.

Senator Buckwold: Madam Chairman, I wonder if I could ask a question. I have my name down on your list.

The Chairman: Yes, I have you on the list. However, before asking Senator Fairbairn to put her questions, I should read into the record a letter which I received yesterday from Mr. Leonard Penner, who is the Attorney General of Manitoba. You do not have copies of this letter and I intend to read it so that you will be aware of its contents. It was addressed to me as chairperson:

> This refers to your telex message of November 26th, 1985 in respect to Bill C-81.
>
> Through a crown agency, the Manitoba Lotteries Foundation, casinos are operated by the Government of Manitoba. Net revenues from these casinos presently operated under the existing Section 190(1)(b) are, by provincial government policy, earmarked for community programs.
>
> In planning the future of the government-run casino gaming in this jurisdiction, we may want to consider introduction of certain highly secure dice games such as Sic Bo, etc.
>
> If Bill C-81 is adopted in its present form, it will significantly affect our casino industry development, which we intend, with the passage of time, to be Canada's finest. It is currently the only government-operated facility in the country.
>
> You can appreciate the deleterious implications for Manitoba of prohibiting "dice games".
>
> We are therefore asking that you consider deleting the words "dice game" from the proposed Section 190(4)(a) of Bill C-81 so as to allow provincial governments to decide if such games are appropriate. After all, we understand the intent of Bill C-81 was to remove federal government involvement in lotteries and gaming (excluding bookmaking, pool selling, etc.) and permit the provinces greater flexibility. This has been done in the case of slot machines and video games. We seek the same accommodations in respect of dice games.
>
> In sum, we would be obliged if you would consider our position.

I have not replied to that letter, but Mr. Mosley may confirm that the agreement itself specifically excludes dice games. That is part of the agreement at the moment, is it?

Mr. Mosley: That is correct, Madam Chairman.

The Chairman: So, that is part of the agreement and is something, I would suggest, with which we should not concern ourselves, but you should know that request has been made.

[*Traduction*]

M. Mosley: Oui, il existe des différences radicales d'opinions.

Le sénateur Buckwold: Madame la présidente, je me demande si vous me permettrez de poser une question. Mon nom figure sur votre liste.

La présidente: Oui, il y figure. Toutefois, avant de demander au sénateur Fairbairn de poser ses questions, j'aimerais lire une lettre que j'ai reçue hier du Procureur général du Manitoba, M. Penner. Comme vous n'avez pas de copie de cette lettre, j'aimerais vous la lire, pour que vous sachiez ce qu'elle dit. Elle m'a été adressée en ma qualité de présidente.

> Cette lettre fait suite à votre télex du 26 novembre 1985 concernant le projet de loi C-81.
>
> Le gouvernement du Manitoba exploite actuellement des casinos par l'intermédiaire d'une société de la Couronne, la Manitoba Lotteries Foundation. Conformément à la politique du gouvernement provincial, les recettes nettes tirées de ces casinos, actuellement exploités en vertu de l'article 190(1)(b) en vigueur, sont destinées à des programmes communautaires.
>
> Cherchant actuellement à planifier l'avenir des jeux offerts dans les casinos exploités par le gouvernement, nous aimerions envisager l'introduction de certains jeux de dés ne présentant aucun risque de manipulation malhonnête, comme le Sic Bo, etc.
>
> Si le projet de loi C-81 est adopté sous sa forme actuelle, il influencera considérablement l'avenir de nos casinos, que nous aimerions voir devenir, au fil des années, les meilleurs du Canada, il s'agit actuellement des seuls casinos exploités par le gouvernement au Canada.
>
> Comme vous pouvez vous en douter, l'interdiction des jeux de dés a de profondes conséquences pour le Manitoba.
>
> Nous vous demandons donc d'envisager d'éliminer les mots «jeux de dés» de l'alinéa 190(4)(a) du projet de loi C-81, afin de laisser aux gouvernements provinciaux le soin de décider si de tels jeux sont appropriés. Après tout, le but du projet de loi C-81 est, d'après ce que nous avons compris, de mettre fin à l'intervention du gouvernement fédéral dans les loteries et les jeux (à l'exception du bookmaking, de la vente d'une mise collective, etc.) et d'offrir une plus grande latitude aux provinces. C'est ce qui a été fait dans le cas des appareils à sous et des jeux vidéo. Nous aimerions avoir la même latitude dans le cas des jeux de dés.
>
> Bref, nous vous serions reconnaissants de bien vouloir considérer notre requête.

Je n'ai pas répondu à cette lettre, mais M. Mosley pourrait peut-être confirmer si l'accord a expressément exclus les jeux de dés. Ils en sont bien exclus actuellement, n'est-ce pas?

M. Mosley: Ils en sont exclus, madame la présidente.

La présidente: Dans ce cas, c'est un point qui, à mon avis, ne devrait pas nous concerner. Je tenais toutefois à ce que vous sachiez que cette demande avait été faite.

[*Text*]

I now call upon Senator Fairbairn.

Senator Fairbairn: Thank you, Madam Chairman.

In essence, the questions that I had intended to ask have been asked, but perhaps I will ask them in a different way because I am still troubled.

One of the things that troubles me is that, as a committee, some of us are lawyers and some of us are not. Unless some of my colleagues have hidden depths, I do not think any of us are experts in either gambling or organized crime.

A great deal of reference has been made to the degree to which the amendments involved here clarify the law for law enforcement individuals and legal experts. One of our difficulties in that regard is the testimony that was given last week in which it would seem that it has not clarified that, as far as the the individuals who appeared from the Province of Ontario are concerned.

In terms of this process that was sketched out for us last week—the eight points that were referred to as being the normal federal-provincial consultation process when amending the Criminal Code of Canada—the suggestion was made that this was really not followed, or, if it was, it was followed in a very limited fashion, and that part of the problem for Ontario is that they want to see a condensed form of further consultation regarding this bill even at this late date.

Is this still open even though there has been an exchange of letters between the ministers? Is there still an opening for further clarification to take place, because obviously there appears to be a fundamental difference of opinion. Can this be resolved, do you think, by further consultations with officials from that particular government?

Mr. Mosley: With respect, Madam Chairman, I do not believe it can.

The position expressed last week was not so much directed at whether these amendments clarified the law, but to whether or not it changed the current law. The position that was taken by the witnesses was that Bill C-81 makes fundamental changes to the current law. I do not think they addressed their comments as to whether or not it clarified any of the specific provisions or whether it made it easier to read or to apply. So, that issue you may still want to address with them. I believe that Mr. Morton may be appearing before the committee again.

On the question of whether there remains an opportunity for further consultation, there are forums in which one can discuss the state of the criminal law. Mr. Morton referred to one of those forums, the Uniform Law Conference of Canada, which meets on an annual basis. The criminal law section of that forum has been meeting since the 1940s; the civil law section since 1905.

That forum provides an opportunity for the provinces to present resolutions for amendments to the law. They are discussed between the representatives of the provincial governments and the federal government and members of the defence bar, who participate as commissioners in that process.

[*Traduction*]

Je donne maintenant la parole au sénateur Fairbairn.

Le sénateur Fairbairn: Merci, madame la présidente.

Les questions que je désirais poser ont déjà été posées, mais je les poserai à nouveau de façon différente, car il reste certains points qui me préoccupent.

L'une des choses qui me tracassent est que certains membres de notre comité sont avocats tandis que d'autres ne le sont pas. À moins que certains de mes collègues aient des talents que je ne leur connais pas, aucun de nous n'est expert en la matière quand il s'agit de jeu ou de crime organisé.

On a beaucoup parlé de la mesure dans laquelle les modifications proposées rendent la loi plus limpide pour les forces de l'ordre et les juristes. Ce que j'ai du mal à comprendre, c'est que dans leur témoignage de la semaine dernière, les représentants de la province de l'Ontario ont, semble-t-il, indiqué que ces modifications n'avaient rien clarifié.

En ce qui concerne le processus qui nous a été décrit la semaine dernière, c'est-à-dire les huit points qui semblent faire partie du processus normal de consultations fédérales-provinciales avant l'amendement du Code criminel du Canada, certains semblent dire que ce processus n'a pas été suivi ou, s'il l'a été, qu'il n'a été suivi que partiellement. L'Ontario semble notamment désirer de nouvelles consultations, sous une forme condensée, è propos de ce projet de loi, même à cette étape tardive du processus.

Est-ce là une possibilité, bien qu'il y ait eu un échange de lettres entre les ministres? Étant donné qu'il semble exister une différence fondamentale d'opinions, est-il possible de clarifier davantage les choses? Pensez-vous que la question puisse être réglée par de nouvelles consultations avec les représentants de cette province?

M. Mosley: Bien franchement, madame la présidente, je ne le pense pas.

Les témoignages de la semaine dernière ne portaient pas tant sur la mesure dans laquelle les modifications clarifient la loi, mais sur la mesure dans laquelle ils la changent. Les témoins ont indiqué que le projet de loi C-81 apporte, à leur avis, des changements profonds à la loi en vigueur. Je ne pense pas qu'ils aient abordé la question de savoir si les modifications clarifient les dispositions de la loi ou si elles les rendent plus faciles à interpréter et à appliquer. Vous devrez donc les interroger à ce sujet. Je crois savoir que M. Morton comparaîtra peut-être de nouveau devant le comité.

En ce qui concerne la possibilité de nouvelles consultations, il existe diverses tribunes se prêtant à des débats sur le droit criminel. M. Morton a parlé d'une de ces tribunes, la Conférence sur l'uniformisation des lois au Canada, qui se réunit tous les ans. La section du droit criminel de cette conférence se réunit périodiquement depuis les années 40, et la section du droit civil depuis 1905.

Cette conférence donne aux provinces l'occasion de présenter des résolutions visant la modification des lois. Ces résolutions sont débattues par les représentants des gouvernements provinciaux et du gouvernement fédéral et les avocats qui participent au processus à titre de commissaires.

[*Text*]

There are also discussions on an ongoing basis at meetings of federal-provincial deputy ministers responsible for criminal justice, as well as at meetings of officials. We have had two within the past month, and there is another scheduled already for January. We do sit down and review these questions of changes to the law.

There is also a fundamental review of the criminal law which takes place when large portions of the Criminal Code of Canada are examined in depth. That is a slower process; it takes a considerable amount of time for all of these stages to be worked through.

With respect to Mr. Morton's comments last week, there is no normal process for criminal law amendments. The federal government is constitutionally responsible for making changes to the criminal law and has the authority—and exercises that authority—to propose those changes to Parliament when it deems it appropriate.

In the interests of federal-provincial co-operation, we do endeavour to consult as fully as possible and whenever possible.

In the context of this particular exercise, an agreement was struck between the federal government and the provinces. We endeavour, within the Department of Justice, to bring to the attention of the provincial ministers responsible for the criminal justice proposed changes as soon as we can. We presented the proposed amendments to them on May 2, 1985 and at a follow-up meeting in early June. At that time the agreement had already been signed, but it was subject to further discussion as to the fine points. The major elements of the agreement, however, have been agreed upon by the provincial ministers.

To be quite candid, Madam Chairman and honourable senators, we cannot be responsible for any lack of consultation with the provincial governments. We think these amendments are sound; there are no adverse criminal justice policy implications to them. The fact that within any of the provinces, and particularly within the province of Ontario, provincial officials and provincial ministers responsible for lotteries did not consult with the Attorney General of Ontario is not the responsibility of the Government of Canada, and particularly not the responsibility of the Department of Justice. The Minister of Justice exercised his function to ensure that the amendments that he proposed to Parliament reflected sound changes in the criminal law. I do not think that at this stage we can alter what are fundamentally different interpretations of the existing law through consultation. We have had those discussions over the past year. There have been no significant changes. There has been an educational process under way in terms of the interpretation of the current law and the effect of these changes, but I do not think that if we had sat down for a week of Sundays from this point on we would resolve those differences of interpretation.

Apart from that, we are bound, in our view, by an agreement which requires us to have those amendments proclaimed

[*Traduction*]

Ces questions sont également discutées en permanence lors des rencontres des sous-ministres fédéral et provinciaux responsables de la justice pénale, et lors des rencontres des fonctionnaires compétents. Deux de ces rencontres ont eu lieu le mois dernier et une autre est déjà prévue par le mois de janvier. Dans le cadre de ces rencontres, nous étudions ensemble les questions d'amendement de la législation.

De grandes parties du Code criminel du Canada sont également examinées en détail dans le cadre de la réforme fondamentale du droit criminel. Il s'agit toutefois d'un processus laborieux, dont les nombreuses étapes prennent beaucoup de temps.

En ce qui concerne les commentaires faits la semaine dernière par M. Morton, il n'existe pas de processus figé par les modifications du droit criminel. En vertu de la constitution, la modification du droit criminel incombe au gouvernement fédéral, qui a le pouvoir de proposer ces changements au Parlement quand il le juge approprié.

Dans l'intérêt de la coopération fédérale-provinciale, nous nous efforçons de consulter les provinces le plus possible chaque fois que cela s'avère faisable.

Dans le contexte du projet de loi en question, le gouvernement fédéral a conclu un accord avec les provinces. Le ministère de la Justice s'efforce de porter les changements proposés à l'attention des ministres provinciaux responsables de la justice pénale, dès qu'il le peut. Nous avons présenté les changements proposés aux provinces le 2 mai 1985, ainsi qu'à une réunion tenue au début du mois de juin. L'accord avait alors déjà été signé, mais il restait quelques détails à régler. Par contre, les ministres provinciaux ont convenu des principaux éléments de l'accord.

Pour être bien franc avec vous, madame la présidente et honorables sénateurs, nous ne pouvons accepter la responsabilité de tout manque de consultation avec les gouvernements provinciaux. Nous pensons que les modifications en question sont bonnes et qu'elles n'ont aucune conséquence fâcheuse sur la politique en matière de justice pénale. Si, dans une province quelconque et notamment en Ontario, les responsables provinciaux et les ministres provinciaux responsables des loteries n'ont pas consulté le Procureur général de la province, on ne saurait en rejeter la responsabilité sur le gouvernement du Canada et plus particulièrement sur le ministère de la Justice. Le ministre de la Justice s'est acquitté de ses responsabilités en s'assurant que les modifications qu'il a proposées au Parlement correspondaient à un changement désirable du droit criminel. Je ne pense pas que nous puissions, à ce stade, éliminer par la consultation une différence fondamentale dans l'interprétation de la loi en vigueur. Nous avons eu des discussions à ce sujet au cours de l'année passée, sans aboutir au moindre changement important. Nous avons cherché à expliquer l'interprétation de la loi en vigueur et les effets de ces changements, mais, même si nous devions y consacrer le restant de notre vie, je ne pense pas que nous arrivions à régler cette différence d'interprétations.

Cela mis à part, nous sommes, à mon avis, engagés par un accord qui nous contraint à faire promulguer ces modifications

[*Text*]

in force by December 31 of this year. The amendments have to pass the Senate and Royal Assent has to be given. The proclamation has to issue before the end of next week if we are to comply with the obligation imposed on the federal government by the provinces through this agreement.

The Chairman: Mr. Mosley, is it your position then that the Government of Canada can bind the Parliament of Canada?

Mr. Mosley: Not at all, Madam Chairman. Parliament cannot be bound by any agreement between the federal and provincial governments. If the agreement is frustrated by Parliament, we will certainly take the position that we have exercised our best efforts to get this bill passed and so be it, but that, unfortunately, may lead to litigation between the federal government and the provinces and that certainly is something that we would hope to avoid if at all possible.

Senator Nurgitz: You may or may not be in default.

Mr. Mosley: We may or may not be in default; we may be in substantial compliance and that may be sufficient.

Senator Fairbairn: Basically, to put it as starkly as you have, if you are thinking in terms of the deadline, you do not see in educational or any other kind of consultative terms that there is any light at the end of the tunnel in that direction vis-à-vis the process with the Attorney General's department in Ontario or between ministers. Maybe that is more properly a question for ministers.

Mr. Mosley: I see a lot of merit in having a fundamental review of Part V of the Criminal Code. In the process that I spoke of earlier with the Law Reform Commission, the Criminal Code review within the Department of Justice will take a considerable amount of time. I think it is a process which would involve the public in expressing their views on what type of gaming that they want within Canada. These amendments do not alter the *status quo*. To alter the *status quo* we would have to go back to the very fundamentals and to consider many revisions to Part V. In order to do that, even in a condensed form, would take, in my view in light of my experience with Criminal Code amendments, the minimum of a year.

Senator Buckwold: I am trying to reconcile the evidence given to us by Commissioner Jensen that the provinces can do anything now under our present legislation which is provided for in this new bill. Yet, I have a document, as do other members of the committee, which was submitted by Howard F. Morton of the Attorney General's department of Ontario. I presume that that is the same Mr. Morton who appeared before us. On page 2 he gives the existing games that are permitted and the proposed games. If I may be permitted I would like to read page 2. It states:

[*Traduction*]

d'ici le 31 décembre de cette année. Ces modifications doivent être approuvées par le Sénat et doivent recevoir la sanction royale. Si nous voulons respecter les obligations qu'impose au gouvernement fédéral l'accord qu'il a signé avec les provinces, la promulgation doit avoir lieu avant la fin de la semaine prochaine.

La présidente: M. Mosley, voulez-vous dire par là que le gouvernement du Canada peut engager le Parlement du Canada?

M. Mosley: Pas du tout, madame la présidente. Le parlement ne saurait être lié par un quelconque accord entre le gouvernement fédéral et les gouvernements provinciaux. Si l'accord n'aboutit pas parce que le Parlement rejette le projet de loi, nous pourrons certainement faire valoir que nous avons fait de notre mieux pour faire adopter le projet de loi. Malheureusement, une telle situation pourrait donner lieu à un litige entre le gouvernement fédéral et les provinces et c'est là quelque chose que nous aimerions éviter dans la mesure du possible.

Le sénateur Nurgitz: Il se pourrait donc que vous manquiez à vos engagements.

M. Mosley: Cela est possible, mais il est également possible que nous ayons respecté la substance de l'accord et que cela soit suffisant.

Le sénateur Fairbairn: Essentiellement, pour dire les choses aussi franchement que vous, dans la mesure où vous vous préoccupez des délais, vous ne pensez pas que le différend puisse être réglé par la discussion ou tout autre type de consultation avec le ministère du Procureur général de l'Ontario, ou par des entretiens entre les ministres? Mais peut-être est-ce là une question à laquelle les ministres devraient plutôt répondre.

M. Mosley: Je pense qu'il y a beaucoup d'avantages à procéder à une réforme profonde de la Partie V du Code criminel. Le processus de réforme du Code criminel dont j'ai déjà parlé et auquel participent la Commission de la réforme du droit et le ministère de la Justice prendra beaucoup de temps. Il s'agit, à mon avis, d'un processus où le public indiquera quels types de jeux il désire avoir au Canada. Ces modifications ne changent rien au *statu quo*. Pour changer le *statu quo*, il faudrait aller au fin fond des choses et envisager de nombreuses révisions de la Partie V. D'après mon expérience des modifications du Code criminel, je dirai qu'une telle tâche, même sous une forme condensée, prendrait au minimum un an.

Le sénateur Buckwold: J'essaie de faire concorder avec le reste le témoignage du commissaire Jensen, qui nous a dit que les provinces peuvent actuellement faire, en vertu de la loi en vigueur, tout ce que prévoit ce projet de loi. A côté de cela, j'ai, comme les autres membres du comité, un document qui nous a été présenté par M. Howard F. Morton du ministère du Procureur général de l'Ontario. Je suppose que c'est le même monsieur Morton qui a comparu devant nous. A la page 2, il énumère les jeux qui sont actuellement autorisés et les jeux qu'il est proposé d'autoriser. Si vous le permettez je vous lirai cette page. Elle dit ceci:

[*Text*]

EXISTING: Province not permitted to induce persons to play any wheel of fortune game, i.e. prohibits wheels of fortune.

PROPOSED: Province permitted to conduct and operate wheel of fortune games including roulette, slot machines etc. i.e. casinos.

EXISTING: III. Slot machines not permitted by virtue of s.180(2).

PROPOSED: Specifically permits games operated on or through computers, video devices or slot machines.

If Mr. Morton is correct I would suggest that that is a fairly significant change to what is permitted and what will be permitted in the way of gambling.

Mr. Mosley: I do not know if you are familiar with a wheel of fortune but it is a fairly common type of amusement which can be found at fairs and exhbitions during summer months. My understanding is that Mr. Morton believes and he is present and perhaps could comment on it, that a slot machine is a wheel of fortune turned on its side with several wheels of fortune in it a row. At least that has been communicated to me by one of my staff. I have a lot of difficulty with that interpretation. There is provision within the bill which would permit provinces to operate slot machines and that is quite a separate thing.

Senator Buckwold: Is that not a significant change? Can provinces operate slot machines now if they want to?

Mr. Mosley: Under the interpretation of the existing laws, which we referred to earlier, provinces could operate slot machines if they so chose. Some have, in fact, been considering that under the existing provisions of the law. I am not referring to the traditional type of slot machine that you may have in mind, the mechanically-operated one that was popular at places like Las Vegas in the past. The current type of slot machine is a computerized operation with a video terminal rather than the mechanical oranges, or whatever, showing up in the window.

There is really nothing in the existing law to prevent the provinces from setting up parlours containing these electronic games and operating them as games within the meaning of "lottery scheme" and within the exemptions provided under section 190. They could start doing that tomorrow.

We do clarify that authority. We also make it clear that no one else can do it and that only the provinces could operate.

There is only one province at present which is operating casino-type games and that is Manitoba.

The amendments make it clear that the provinces cannot license anyone to operate that type of game, whereas, at present, it is not at all clear that they could not license someone else to operate the game. If they have the authority to do it themselves under the existing law, they could license someone else to do it, such as a charitable or religious organization, a

[*Traduction*]

ACTUELLEMENT: la province n'a pas le droit d'entraîner les personnes à jouer à la roue de la fortune, c'est-à-dire que les roues de la fortune sont interdites.

PROPOSÉ: la province pourra conduire et exploiter des roues de la fortune, y compris la roulette, les appareils à sous, etc., c'est-à-dire des casinos.

ACTUELLEMENT: III. Les appareils à sous sont interdits par le paragraphe 180(2).

PROPOSÉ: autorisation expresse de jeux exploités par des ordinateurs, des dispositifs électroniques de visualisation ou des appareils à sous.

Si M. Morton a raison, il y a, à mon avis, une différence importante entre les jeux qui sont actuellement autorisés et les jeux qui seront autorisés.

M. Mosley: Je ne sais pas si vous savez en quoi consiste une roue de la fortune. Il s'agit d'un type d'amusement assez répandu, que l'on voit souvent en été dans les foires et les expositions. D'après ce que j'ai compris, et, comme M. Morton est présent, il pourrait peut-être le confirmer, M. Morton estime qu'un appareil à sous n'est en fait qu'une roue de la fortune tournée sur son côté et comprenant plusieurs roues de la fortune en rangée. Du moins, c'est ce que m'a dit l'un des membres de mon personnel. J'ai du mal à accepter cette interprétation. Le projet de loi comprend une disposition qui autoriserait les provinces à exploiter des appareils à sous, mais c'est là quelque chose de tout à fait différent.

Le sénateur Buckwold: N'est-ce pas là un changement important? Les provinces peuvent-elles exploiter aujourd'hui des appareils à sous si elles le désirent?

M. Mosley: Selon l'interprétation de la loi en vigueur dont nous avons déjà parlé, les provinces pourraient exploiter aujourd'hui des appareils à sous, si elles le désirent. Certaines ont en fait envisagé d'en exploiter en vertu des dispositions de la loi en vigueur. Je ne parle pas ici du type traditionnel d'appareil à sous auquel vous pensez peut-être, c'est-à-dire de l'appareil mécanique autrefois en vogue dans des villes comme Las Vegas. L'appareil à sous moderne est informatisé et un terminal de visualisation y remplace les anciennes rangées d'oranges, etc.

Il n'y a rien dans la loi en vigueur qui empêche les provinces d'établir des salles de jeu comprenant ces appareils électroniques et de les exploiter comme des jeux au sens du «système de loterie» défini par la loi et en vertu des exemptions prévues à l'article 190. Elles pourraient le faire dès demain.

Le projet de loi clarifie les pouvoirs des provinces à cet égard. Il précise également que seules les provinces, et personne d'autre, peuvent exploiter de tels appareils.

Il n'y a actuellement qu'une seule province qui exploite des jeux du type que l'on trouve dans les casinos: il s'agit du Manitoba.

Les modifications précisent clairement que les provinces ne peuvent délivrer un permis à qui que ce soit pour exploiter ce type de jeu, tandis que la loi actuelle n'indique pas explicitement qu'elles ne peuvent le faire. Si elles sont autorisées à exploiter de tels jeux en vertu de la loi en vigueur, elles pourraient délivrer un permis d'exploitation de tels jeux à

[*Text*]

fair or a person at a public place of amusement. The amendments make it quite clear they can license no one else, but they can operate them themselves.

The Chairman: Senator Buckwold, I am sorry to have to interrupt you, but we have heard word that our reporters are required at another meeting at 6 o'clock. We will be meeting tomorrow morning again at 9.30, and Mr. Mosely, undoubtedly, will be able to answer any further questions then.

Senator Buckwold: I will be unable to attend tomorrow. Perhaps I could just conclude by saying that I still find the answers very confusing in relation to the written document we have in front of us as presented by Mr. Morton. Perhaps that can be clarified tomorrow.

The Chairman: We are going to hear from Mr. Michel Gagnon of Montreal, who is with the Inter-Provincial Lottery Corporation of Quebec and is, apparently, a distinguished lawyer and expert in the field of lotteries. Then, if our witnesses would be good enough, we could continue our questions then. If Mr. Morton wishes to speak tomorrow morning, we will hear him then as well.

The committee continued *in camera*.

[*Traduction*]

quelqu'un d'autre, par exemple un organisme de charité, un organisme religieux, une foire ou une personne dans un lieu d'amusement public. Les modifications indiquent bien clairement que les provinces ne peuvent délivrer de tels permis, mais qu'elles peuvent elles-mêmes exploiter ces appareils.

La présidente: Sénateur Buckwold, je regrette de devoir vous interrompre. Nous venons d'apprendre que nos sténographes doivent se rendre à une autre séance à 18 heures. Le comité se réunira de nouveau demain matin à 9 heures 30, et M. Morton pourra alors, j'en suis certaine, répondre à toute autre question.

Le sénateur Buckwold: Je ne pourrai assister à la séance de demain. Permettez-moi de conclure en disant que je continue à trouver ces réponses fort troublantes dans le contexte du document qui nous a été présenté par M. Morton. Peut-être que la lumière pourra être faite demain sur cette affaire.

La présidente: Nous allons maintenant entendre le témoignage de M. Michel Gagnon de Montréal, qui représente la société de loterie interprovinciale du Québec et qui, semble-t-il, est un avocat éminent et un expert en loteries. Si nos témoins y consentent, nous pourrions ensuite poursuivre nos questions. Si M. Morton désire nous adresser la parole demain matin, nous pourrions également l'entendre.

La séance se poursuit à huis clos.

TAB 19

First Session
Thirty-third Parliament, 1984-85

Première session de la
trente-troisième législature, 1984-1985

SENATE OF CANADA

SÉNAT DU CANADA

Proceedings of the Standing Senate Committee on

Délibérations du Comité sénatorial permanent des

Legal and Constitutional Affairs

Affaires juridiques et constitutionnelles

Chairman:
The Honourable JOAN NEIMAN

Présidente:
L'honorable JOAN NEIMAN

Thursday, December 12, 1985

Le jeudi 12 décembre 1985

Issue No. 33

Fifth proceedings on:

The Examination of Bill C-81, "An Act to amend the Criminal Code (lotteries)"

Fascicule n° 33

Cinquième fascicule concernant:

L'étude du projet de loi C-81, «Loi modifiant le Code criminel (loteries)»

WITNESSES:
(See back cover)

TÉMOINS:
(Voir à l'endos)

28330—1

EVIDENCE

Ottawa, Thursday, December 12, 1985

[*Text*]

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred Bill C-81, to amend the Criminal Code (lotteries), met this day at 9.30 a.m. to give consideration to the bill.

Senator Joan Neiman (*Chairman*) in the Chair.

The Chairman: Honourable senators, when we were forced to conclude our hearings yesterday afternoon I believe that Senator Buckwold had put a question to Mr. Mosley which Mr. Mosley had not had sufficient opportunity to deal with. Perhaps the best procedure to follow this morning would be to allow Mr. Mosley to finish his answer to that question so that we will have it on record. Then we will ask Mr. Michel Gagnon, representing the Interprovincial Lottery Corporation from the legal firm of Ogilvie and Renault, to speak to us with respect to Bill C-81. We still have to hear from Deputy Commissioner Jensen and Sergeant Robinson from the RCMP. The committee will then be able to question all the witnesses. Mr. Howard Morton from the Ontario Attorney General's office is also here so we will have a general question period afterwards. We have a time constraint of 11 o'clock but some of our witnesses will be available again tomorrow morning, when we will have more time to deal with questions that remain unanswered today.

Mr. Mosley, perhaps you could review the question Senator Buckwold put to you yesterday.

Mr. Richard Mosley, General Counsel, Criminal Law Policy and Amendments Section, Department of Justice: Madam Chairman, the final question I did not get an opportunity to respond to yesterday was simply to this effect: what are we to do in the face of the chart prepared by Mr. Howard Morton of the Ontario Ministry of the Attorney General?

The first page of the chart is headed "Government of a Province" and has two columns entitled "Existing" and "Proposed."

The chart, of course, is nothing more than an expression of opinion on a question of interpretation of the current law and the effect of the proposed amendments. For example, on page 1, where Mr. Morton sets out beneath the reference to section 190(5) a column of commentary, that commentary simply reflects his view of the current law. In the opening paragraph he refers to the definition of "game" and indicates that *prima facie* that definition would seem to permit all games except dice games, three-card monte, punch boards, coin tables or wheels of fortune. He then goes on to say that section 190(1(b) is merely a permissive exception to the general prohibitions and must be interpreted to determine precisely what it permits. That is what I referred to yesterday as the restrictive interpretation of the exemptions provided by section 190. It overlooks the breadth of the meaning of the term "lottery scheme" and the breadth of the opening words of section 190(1) "Notwithstanding any of the provisions of this part relating to gaming and betting, it is lawful . . . "

TÉMOIGNAGES

Ottawa, le jeudi 12 décembre 1985

[*Traduction*]

Le Comité sénatorial permanent des affaires juridiques et constitutionnelles, qui est saisi du projet de loi C-81 modifiant le Code criminel (loteries), se réunit aujourd'hui à 9 h 30 pour l'étude de ce projet de loi.

Le sénateur Joan Neiman (*présidente*) occupe le fauteuil.

La présidente: Honorables sénateurs, quand nous avons dû lever la séance hier après-midi, si je ne me trompe, M. Mosley n'avait pas eu le temps de terminer sa réponse à la question que lui avait posée le sénateur Buckwold. Le mieux, peut-être, ce matin, est de permettre d'abord à M. Mosley de terminer cette réponse, afin qu'elle figure au compte rendu. Après quoi, M. Michel Gagnon, qui représente la Société interprovinciale des loteries et qui est membre de l'étude Ogilvie et Renault, sera invité à nous parler du projet de loi C-81. Il nous restera à entendre le sous-commissaire Jensen et le sergent Robinson de la Gendarmerie royale. Et le Comité aura l'occasion d'interroger tous les témoins. J'ajoute que M. Howard Morton, du Bureau du procureur général de l'Ontario, est également parmi nous et que nous aurons plus tard, par conséquent, une période générale de questions. Le temps nous est compté, nous devons lever la séance à 11 heures; mais certains de nos témoins seront de nouveau ici demain matin et il nous sera possible d'aborder alors les questions laissées sans réponse aujourd'hui.

Monsieur Mosley, peut-être pourriez-vous rappeler la question que vous a posée hier le sénateur Buckwold.

M. Richard Mosley, avocat général, Section de l'élaboration de la politique et des modifications au droit pénal, ministère de la Justice: Madame la présidente, c'est à la dernière question que je n'ai pu répondre hier, celle de savoir simplement ce que nous allons faire à propos du tableau établi par M. Howard Morton, du ministère du Procureur général d'Ontario.

La première page du tableau est intitulée: «Gouvernement d'une province» et comporte deux colonnes dont le titre respectif est «Dispositions existantes» et «Dispositions proposées».

Bien entendu, ce document n'est rien d'autre que l'expression d'une opinion à propos de l'interprétation à donner à la loi en vigueur et de l'effet à attendre des modifications proposées. Par exemple, à la page 1 où M. Morton, sous le renvoi au paragraphe 190(5), fait figurer un commentaire, celui-ci reflète simplement ses propres vues sur la loi en vigueur. Au premier paragraphe, il parle de la définition du jeu et dit qu'à première vue cette définition semblerait permettre tous les jeux, sauf le jeu de dés, le jeu de bonneteau, la planchette à poinçonner, la table à monnaie et la roue de fortune. Il poursuit en disant que l'article 190(1)b) est seulement une dérogation permise aux interdictions générales et doit être interprété comme déterminant précisément, ce qui est permis. C'est là justement ce que j'appelais hier une interprétation restrictive des exemptions prévues par l'article 190. Elle ne tient pas compte de la portée de ce que signifie le terme «système de loterie» ni de la portée des premiers mots du paragraphe 190(1): «Nonobstant toutes dispositions de la présente Partie relatives aux jeux et paris, il sera légal,».

[*Text*]

Mr. Morton goes on to refer to wheels of fortune and equates them in the proposed column with roulette and slot machines—i.e., casinos. There is a significant difference between wheels of fortune and slot machines. A wheel of fortune is dealer operated and is a mechanical device. There is no definition of it in the Criminal Code. It is a wheel with a quicker strap which, when the wheel stops spinning, indicates the winning configuration. The outcome is determined exclusively by human or physical action in the spinning of the wheel.

A slot machine is player operated and it is an automatic device. It is defined in the Criminal Code and the traditional type of slot machine is a complex system of reels, gears, timer clocks, electrical steps and so on. The outcome is determined entirely by automatic sequence. As I indicated yesterday there is a new generation of slots, however, which are electronic in nature.

Mr. Morton also suggests that slot machines are not permitted by virtue of section 180(2). That section does not prohibit slot machines. It is a presumption section which provides that premises where slot machines are located will be deemed to be common gaming houses. It is open to interpretation, however, that the scope of the meaning of lottery scheme in section 190(5) would permit a province to license or to operate these slot machines notwithstanding the presumption in section 180(2).

In the fourth point Mr. Morton indicates that the existing law does not permit a game in relation to section 189(1)(a) to (e). With the greatest respect to Mr. Morton's opinion, the reference in section 190 is to lottery scheme and lottery scheme once again is defined in section 190 as including the game and, of course, a game is defined in section 179 as including a game of chance or mixed chance or skill. It flys in the face of that statutory definition of the meaning of the term "lottery scheme" to suggest that a game is not included.

In the fifth point Mr. Morton goes on to suggest that only the federal government is authorized to operate and manage a pool system of betting on any combination of two or more athletic contests or events by virtue of section 188.1 which, of course, was directed at pari-mutuel betting on horse racing. There again that was the very point in issue in the case of the Attorney General of Canada against Loto Quebec Corporation because the Loto Quebec Corporation was, in fact, operating a pool system of betting on a combination of two or more athletic contests or events. Hockey Select was the game in question and that was exactly the type of thing that Mr. Morton refers to in his column as being permitted to the federal government alone. As we indicated to you, the Quebec Court of Appeal had no difficulty whatsoever in finding that that was within the power of the province to operate.

Finally, Mr. Morton suggests that the charitable or religious organization exemption is limited to traditional forms of lotter-

[*Traduction*]

Ensuite M. Morton parle de la roue de fortune et, dans la colonne des dispositions proposées, en fait l'équivalent de la roulette, de l'appareil à sous, c'est-è-dire du casino. Or il y a une grande différence entre la roue de fortune et l'appareil à sous. La roue de fortune, encore que le Code criminel n'en donne aucune définition, est un appareil mécanique dont le fonctionnement est assuré par le possesseur. C'est une roue munie d'une courroie qui permet la multiplication de la vitesse et qui, lorsqu'elle s'arrête, indique la combinaison gagnante. Le résultat est déterminé exclusivement par un geste humain ou physique, l'élan donné à la roue.

L'appareil à sous est un appareil automatique et c'est le joueur lui-même qui le fait fonctionner. Sa définition figure au Code criminel. Le type traditionnel est un ensemble complexe de bobines, d'organes, de minuteries, de phases électriques, etc. Le résultat est déterminé totalement par une suite d'opérations automatiques. Cependant, comme je l'ai dit hier, il y a une nouvelle génération d'appareils à sous, des appareils de caractère électronique.

M. Morton laisse entendre aussi que les appareils à sous ne sont pas autorisés en vertu du paragraphe 180(2). Ils ne sont pas non plus interdits par cet article. Il s'agit d'un article de présomption et qui prévoit que le local où sont situés des appareils à sous sera réputé être une maison de jeu publique. Il reste, toutefois, que toutes les interprétations sont possibles quand il s'agit de savoir si la portée de la définition d'un système de loterie, qui figure au paragraphe 190(5), permettrait à une province de délivrer une licence pour l'exploitation d'appareils à sous ou d'exploiter elle-même des appareils à sous en dépit de la présomption du paragraphe 180(2).

Dans son quatrième point, M. Morton prétend que la loi actuelle ne permet pas un jeu en ce qui concerne les aliénas 189(1) a) à e). Avec tout le respect que je dois à son opinion, je dois faire remarquer que la référence, à l'article 190, vise un système de loterie et que la définition d'un tel système à l'article 190 comprend un jeu et que, évidemment, un jeu selon la définition de l'article 179 comprend un jeu de pur hasard aussi bien qu'un jeu où se retrouvent hasard et adresse. C'est aller à l'encontre de la définition légale de système de loterie que de prétendre qu'un jeu n'est pas compris.

Dans son cinquième point, M. Morton conclut qu'en vertu de l'article 188.1, seul le gouvernement fédéral est autorisé à exploiter ou à gérer des paris collectifs sur une combinaison de deux épreuves ou manifestations sportives ou plus. Or il est évident que l'article en question vise le pari mutuel sur les courses de chevaux. C'était justement cette question qui était en litige dans l'affaire qui a opposé le procureur général du Canada à la Société des loteries du Québec. Celle-ci exploitait un système de paris collectifs sur une combinaison de deux épreuves ou manifestations sportives ou plus. Ce jeu s'appelait Hockey Sélect et constitue exactement le type de jeu que M. Morton dans son commentaire veut réserver au gouvernement fédéral. Comme nous vous l'avons dit, la Cour d'appel du Québec n'a eu aucune difficulté à conclure que l'exploitation d'un tel jeu n'outrepassait pas les pouvoirs de la province.

Finalement, M. Morton suggère que l'exemption en faveur des organismes de charité et des organismes religieux se limite

[*Text*]

ies described in section 189(1)(a) to (e) and 189(1)(f) and games of chance and mixed chance and skill for goods, wares or merchandise and 189(1)(g) wheels of fortune.

With the greatest respect, charitable and religious organizations across this country are operating games of chance with cash prizes and they are operating them under the interpretation, to which I have referred, of a "lottery scheme" including "game"—a "game" including a game of chance or mixed chance and skill. They are not restricted in practice; the practice flowing from the interpretation by the provinces of section 190 to "games of chance for goods, wares or merchandise."

Finally, Mr. Morton does clarify the point that was in error from the police testimony last week that the limitations on bets for charitable or religious organizations apply only to the operation of their activities at bazaars. That is a point I made last night, which, I think, is important to keep mind. There are no limits where those activities are taking place at other than bazaars under the existing law. That would not be changed by the amendment in the bill.

The Chairman: Thank you, Mr. Mosley. We will now move directly to Mr. Gagnon's opening statement.

Mr. Michel A. Gagnon, Associate, Ogilvie and Renault; representing the Interprovincial Lottery Corporation: Thank you, Madam Chairman. My client, the Interprovincial Lottery Corporation, unfortunately, learned only on Tuesday morning about some testimony that was given before you last week. Needless to say, the phone started ringing and, by the end of the day, I had been asked, if at all possible, to appear before the committee. I am thankful that my appearance could be arranged so expeditiously.

Perhaps I should first tell you a little of my background in the lotteries field. I was first retained by Loto Québec in 1972 to set up a new game which was called the Loto Perfecta which has now evolved to become 6/36.

Ever since then, I have been acting for Loto Québec in respect of all types of games including legislation, regulations, and so on.

In 1973, I was asked by Loto Québec and the Government of Quebec to assist the organizing committee on the Olympic Games to set up an Olympic lottery. I then had to discuss with the Department of Justice and the Treasury Board in Ottawa the arrangements for that. We eventually came up with a special bill to authorize that lottery which provided for an Order in Council to be passed in each of the provinces to authorize the conduct of that lottery in their territory. That involved going from province to province to explain what it was all

[*Traduction*]

aux formes traditionnelles de loterie indiquée aux alinéas 189(1)a) à e) et à l'alinéa 189(1)f), jeux de hasard et jeux où entrent en compte le hasard et l'adresse et dont les prix sont des biens, des articles fabriqués ou des marchandises, ainsi qu'à l'alinéa 189(1)g), les roues de fortune.

Encore une fois, avec tout le respect voulu, il me faut dire que les organismes de charité et les organismes religieux, partout au pays, ont recours aux jeux de hasard comportant prix en argent et qu'ils le font en vertu de l'interprétation dont j'ai parlé et qui veut qu'un «système de loterie» comprenne «un jeu» et qu'un «jeu» comprenne un jeu de hasard et un jeu où se mêlent hasard et adresse. En pratique, il n'y a pas de restriction; l'usage découle de l'interprétation donnée par les provinces à l'article 190 en ce qui concerne les jeux de hasard ayant pour prix des biens, des articles fabriqués ou des marchandises.

En dernier lieu, M. Morton éclaircit un point qui a été présenté d'une façon erronée la semaine dernière dans le témoignage de la police, c'est-à-dire que, dans le cas des organismes de charité et des organismes religieux, les limitations imposées aux paris ne s'appliqueraient qu'aux activités de ventes de charité. C'est une question que j'ai soulevée hier soir et, je crois qu'il importe d'en tenir compte. Sous le régime de la loi actuelle, il n'y a pas de limites où se tiennent ces activités quand elles ont lieu dans un endroit autre qu'une vente de charité. Et cela ne sera pas changé par la modification apportée par le projet de loi.

La présidente: Je vous remercie, monsieur Mosley. Nous entendrons maintenant la déclaration d'ouverture de M. Gagnon.

M. Michel-A. Gagnon, associé, Ogilvie et Renault; représentant la Société interprovinciale des loteries: Je vous remercie, madame la Présidente. Ce n'est, malheureusement, que mardi matin que ma cliente, la Société interprovinciale des loteries, a eu vent de certains témoignages déposés ici la semaine dernière. Faut-il dire qu'aussitôt les appels ont afflué, si bien qu'à la fin de la journée on me demandait, si la chose était possible, de comparaître devant votre Comité. Sachez que je vous suis reconnaissant d'avoir organisé cette comparution d'une façon si expéditive.

Peut-être devrais-je commencer par vous donner un aperçu de mon expérience dans le domaine des loteries. Mes services ont d'abord été retenus par Loto-Québec en 1972 pour mettre sur pied un nouveau jeu appelé Loto Perfecta et qui est devenu depuis le 6/36.

Depuis lors, je n'ai jamais cessé de travailler pour Loto-Québec et cela pour tous les genres de jeux et pour les questions de législation, de réglementation, etc.

En 1973, Loto-Québec et le gouvernement du Québec m'ont demandé d'aider le comité organisateur des Jeux olympiques à mettre sur pied une loterie olympique. J'ai dû alors discuter avec le ministère de la Justice et le Conseil du trésor à Ottawa les arrangements qui s'imposaient. Tout cela a abouti à un projet de loi spécial autorisant la loterie et qui prévoyait l'adoption d'un décret du Conseil dans chacune des provinces permettant le fonctionnement de la loterie sur le territoire de la province. Ce qui m'a amené à aller de province en province pour expliquer la situation et à travailler avec le ministère de

[*Text*]

about; and working with the Department of Justice to determine how it could be conducted within those provinces.

At the end of 1973 and the beginning of 1974, I was retained by the Government of Ontario to assist them in developing their legislation, regulations and their first scheme which was called Wintario.

At the end of the Olympic Lottery in 1976, I was retained, with the consent of Loto Québec and the Government of Québec, by Loto Canada to set up their own lottery. I assisted Loto Canada until 1978 when the federal government decided to expand on the activities of that corporation and created a situation where there would likely be a controversy, to say the least, between the provinces and the federal government. For obvious reasons, I had to leave Loto Canada at that time.

Shortly thereafter, Loto Québec joined the Interprovincial Lottery Corporation that had been set up by the Province of Ontario and the western provinces. I was asked to represent the Interprovincial Lottery Corporation and I have been acting for them since.

In the controversy between the federal government and the provinces, I was also retained by all of the provinces of Canada to represent them in an action in the Federal Court of Canada against the federal government over the alleged breach of an agreement entered into in 1979.

Recently, I have been most involved in the negotiations of a federal-provincial agreement annexed to which was a draft bill which is now Bill C-81, which is before you.

Throughout those years, I have had occasion to give a number of opinions over the interpretation to be given to the provisions of the Criminal Code.

The picture, as it was throughout those years, was quite well described by Professor Allan W. Mewett in an article published in the *Criminal Law Quarterly* in 1979 in which he said:

> Lotteries in Canada are now a way of life. They have proved lucrative to the government, beneficial to the community and, as far as we can judge, do not seem to have had any great discernible effect on the morals of the public. It is time to reconsider the absurd provisions of sections 185 to 191 of the Criminal Code.

He went on to say that, yet, nowadays, what is legal gambling and what is illegal gambling is, itself, a question that resembles a game of chance or, possibly, mixed chance and skill.

Throughout those years, I tried to bring a little more skill than chance into the interpretation. The federal government gave us the opportunity to clear up the matter when, in 1980 or in 1981, the Attorney General of Canada sued Loto Québec ad instituted injunction proceedings against that company to try to stop the Hockey Select game. That was the best opportunity that anyone ever had to test the whole area.

[*Traduction*]

la Justice pour déterminer les modalités de fonctionnement dans les provinces.

A la fin de 1973 et au début de 1974, le gouvernement de l'Ontario a fait appel à moi pour l'élaboration de la législation et de la réglementation touchant sa première entreprise appelée Wintario.

A la fin de la Loterie olympique en 1976, avec le consentement de Loto-Québec et du gouvernement du Québec, j'ai accepté d'aider Loto-Canada à établir sa propre loterie. J'ai aidé Loto-Canada jusqu'en 1978, année où le gouvernement fédéral décidait d'élargir l'activité de sa société de loteries et créait ainsi une situation de nature à soulever une controverse, pour ne pas dire plus, entre les provinces et le gouvernement fédéral. Pour des raisons évidentes, j'ai dût quitter Loto-Canada à ce moment-là.

Peu de temps après, Loto-Québec est devenue membre de la Société interprovinciale des loteries créée par la province d'Ontario et les provinces de l'Ouest. On m'a demandé alors de représenter cette société et je le fais depuis.

Dans la controverse qui a opposé le gouvernement fédéral et les provinces, celles-ci m'ont demandé de les représenter dans la poursuite qu'elles intentaient en Cour fédérale contre le gouvernement fédéral pour violation présumée de l'accord intervenu en 1979.

Ces derniers temps, j'ai participé activement à la négociation d'une entente fédérale-provinciale annexée à un avant-projet de loi, avant-projet qui est devenu le projet de loi C-81 dont vous êtes saisis.

Pendant toutes ces années, j'ai eu maintes fois l'occasion d'émettre un avis sur l'interprétation à donner aux dispositions du Code criminel.

La situation au cours de ces années a fait l'objet d'une magistrale description par M. Allan W. Mewett dans un article publié dans le *Criminal Law Quarterly* en 1979.

> Pour M. Mewett, les loteries au Canada sont devenues une façon de vivre. Elles se sont révélées lucratives pour le gouvernement et bénéfiques pour la communauté. Et, dans la mesure où l'on peut l'apprécier, elles ne semblent pas avoir eu d'effets vraiment significatifs sur la moralité publique. Le temps serait venu de remettre en question les dispositions absurdes des articles 185 à 191 du Code criminel.

Il ajoute que, de nos jours, départager ce qui est jeu légal de ce qui est jeu illégal est une opération qui s'apparente fort à un jeu de hasard ou du moins à un jeu où se disputent hasard et adresse.

Pour ma part, pendant toutes ces années, j'ai tâché, dans l'interprétation, d'y mettre davantage d'adresse que de hasard. Mais voilà qu'en 1980 ou en 1981, le gouvernement fédéral nous donnait la chance de voir la chose tirée au clair, quand le procureur général du Canada poursuivit Loto-Québec et entreprit des procédures d'injonction contre cette société dans un effort pour mettre fin au jeu de Hockey Sélect. Jamais si belle occasion n'était donnée de mettre à l'épreuve tout ce domaine.

[*Text*]

I was very pleased with the end result, because it confirmed the opinions that I had been giving to the provinces throughout the years.

In a nutshell, section 190 permits practically anything in the field of gaming and betting. This is clear for many reasons, and I suppose Mr. Mosley explained most of them, but I might summarize them by saying that the first words of section 190 are: "Notwithstanding any of the provisions of this Part relating to gaming and betting, it is lawful—." If the section was to permit only certain things that were not covered in all of the sections of the Part, the legislator would have certainly referred only to those sections that were involved in the exceptions. By saying that the lottery scheme includes a game, the legislator also showed that it covers practically everything. How can we imagine any scheme within gaming and betting which cannot be called a game?

More importantly, the reference in all of the subparagraphs of section 190(1) and in section 189(1)(a) through (f) or (g), in certain cases, makes it definite that everything is included and that is why the Court of Appeal made this decision. I understand Mr. Mosley filed a copy of the judgment of the Court of Appeal with the committee.

Mr. Mosley: It has been referred to.

Mr. Gagnon: I have copies here. I have the original which is in French and I have also prepared a translation. In a nutshell, the judgment of the court of appeal says that a scheme into which a person puts money and stands a chance to receive more money because other people have also put money into it is a permissible lottery scheme. It found that Hockey Select was precisely that.

That definition, however, in itself, applies to practically everything. A slot machine is just that; a wheel of fortune is just that; anything one can imagine is just that. The court of appeal had good support for what it said. Unfortunately, its references are not in the judgment, but when I pleaded the case before the appeal court I referred that court to three major decisions, two of which are from the Supreme Court of Canada and the other of which is from the Court of Appeal of Saskatchewan.

Those cases are *Roe vs. The King*, which was reported in the 1949 Supreme Court Reports at page 652; *The King vs. Blaine*, the case of the Saskatchewan Court of Appeal, reported in the Canadian Criminal cases, volume 99, 1951, at page 152; and *Dream Home Contests (Edmonton) Ltd. vs. The Queen*, a Supreme Court of Canada case reported in the Supreme Court Reports, 1960, at page 414. These cases decided that what is now subsection 189(1) covers practically everything and gave that same broad interpretation as is given in the judgment of the Court of Appeal of Quebec. In the Roe case, the game was that people had to bet on the time it would take a barrel to go from one point on the Red River to another point. There was an amount of money to be won for that person who guessed most accurately. The Blaine case was similar; people had to bet on the exact time the ice on the Saskatchewan River would break up. Again, the Dream Home case was a similar situation because people had to guess the exact cost

[*Traduction*]

Le résultat final m'a comblé, car il confirmait les avis que je n'avais cessé de donner aux provinces depuis nombre d'années.

En bref, l'article 190 permet à peu près tout dans le domaine du jeu et du pari. La chose est claire pour nombre de raisons. M. Mosley a dû en évoquer la plupart, mais je pourrais tout résumer en faisant remarquer que les premiers mots de l'article 190 sont ceux-ci: «Nonobstant toutes dispositions de la présente Partie relatives aux jeux et paris, il sera légal». S'il s'agissait pour l'article de permettre seulement certaines choses non visées par l'ensemble des dispositions de la Partie, le législateur certainement n'aurait fait référence qu'aux dispositions concernées par les exceptions. En outre, en disant qu'un système de loterie comprend un jeu, le législateur montre que le terme englobe à peu près tout. Car peut-on imaginer une opération dans le domaine du jeu et du pari qui ne puisse pas être appelée un jeu?

Ce qui est encore plus important, la référence dans tous les sous-alinéas de l'article 190(1) et dans l'article 189(1) a) à f) ou g) dans certains cas démontre clairement que tout est compris et c'est pourquoi la Cour d'appel en est venu à la décision qu'elle a prise. Sauf erreur, M. Mosley a déposé une copie du jugement de la Cour d'appel.

M. Mosley: Le jugement avait été invoqué déjà.

M. Gagnon: J'en ai ici des copies. J'ai l'original qui est en français et j'ai aussi établi une traduction. En résumé, le jugement de la Cour d'appel déclare qu'une opération dans laquelle une personne met de l'argent et court la chance d'en recevoir davantage, parce que d'autres personnes en ont mis aussi, constitue un système de loterie permis. Et la Cour a constaté que c'était précisément le cas de Hockey Sélect.

Il reste que la définition elle-même s'applique à presque tout. Elle s'applique à l'appareil à sous; elle s'applique à la roue de fortune et à toute autre chose du genre qu'on peut imaginer. La Cour d'appel s'appuyait sur du solide pour faire sa déclaration. Malheureusement, ses autorités ne figurent pas dans le jugement, mais quand j'ai plaidé l'affaire devant la Cour, j'ai invoqué trois décisions importantes, dont deux de la Cour Suprême du Canada et une de la Cour d'appel de la Saskatchewan.

Il s'agit de l'affaire Roe contre Le Roi qui figure à la page 652 des rapports de la Cour Suprême de 1949, de l'affaire Le Roi contre Blaine plaidée en Cour d'appel de la Saskatchewan et dont fait état les *Canadian Criminal Cases*, volume 99, 1951, à la page 152 et de l'affaire Dream Home Contests (Edmonton) Ltd. contre La Reine plaidée en Cour Suprême du Canada et signalée à la page 414 des Rapports de la Cour Suprême de 1960. Ces trois jugements décident que ce qui est maintement le paragraphe 189(1) couvre à peu près tout et en donne la même interprétation large que le jugement de la Cour d'appel du Québec. Dans l'affaire Roe, le jeu consistait à parier sur le temps que prendrait un baril pour aller d'un point à un autre sur la rivière Rouge. Et une somme d'argent allait à la personne qui avait deviné avec le plus d'exactitude. Dans l'affaire Blaine, le jeu était semblable: il s'agissait de parier sur l'heure exacte de la rupture de la glace sur la rivière Saskatchewan. Pour le cas de Dream House, il n'en était pas autre-

[*Text*]

of the house that had been built. The person whose guess was closest to the actual cost of the house won the house.

Perhaps one reason why the appeal to the Supreme Court of Canada was withdrawn is because, although it was not shown in the judgment of the court of appeal that this case was very well supported by judgments of the Supreme Court of Canada, it was certainly an aspect to consider. It was probably also a reason why the people in the Department of Justice of Canada were prepared to sit with the provinces to try to make the interpretation of those sections more clear.

The interpretation to be given to those sections is so broad that it means, at the present time in Canada, that a lottery scheme could be a casino and could include slot machines, roulette and all of those things that certain people have mentioned are not covered. The fact is that they are covered. I respectfully submit to honourable senators that the bill before them does not expand at all into the field of permanent lotteries in Canada but, rather, restricts what has been permitted so far.

I will, for a moment, discuss the areas where people could, to an extent, suggest that there is an expansion. The first has to do with the wheel of fortune. I will concede that the present wording of the code leaves a serious doubt as to whether a province could operate a wheel of fortune. There is direct wording to the effect that it might not, although there might be an argument that the general theory of the lottery scheme might supersede that difference. Practically speaking, however, will there be a difference if a province is clearly authorized to operate a wheel of fortune? I do not think so. Let us assume for a moment that in 10, 15 or 20 years from now a province was to decide to operate casinos and that law was not changed. That province could do so. As a matter of fact, and this was made public a few years ago, the government of Quebec looked very closely at the possibility of opening casinos. There were numerous reports and consultations made. The problem was not a legal one such that the province could not do it, but there were several other considerations which led that government, in the end, to decide not to open casinos.

Let us assume, however, that a province was to decide to operate casinos under the present legislation and that there was still this doubt over the wheel of fortune. The way around the problem is so easy: All the province would have to do is to license a charitable organization to run the roulette in that casino and that would be the end of it. That would not be a problem.

Senator Nurgitz: So that we understand, Madam Chairman, might I ask the witness whether a roulette wheel and a wheel of fortune, for the purposes of our discussion, are one and the same thing?

Mr. Gagnon: I do not think so. I think that there would be a good case to differentiate between the two. I understand that there have been lower court decisions in the past that might have interpreted them to be the same; they were never challenged. But we have to keep in mind here that we are on criminal law matters and that the wording of the code has to be interpreted quite restrictively. There is quite a difference,

[*Traduction*]

ment. Il fallait deviner le coût exact de la maison construite et la personne qui fixait le coût le plus proche du coût réel remportait la maison.

Si, dans le cas de Hockey Sélect, l'appel à la Cour Suprême a été retiré, c'est peut-être que le jugement de la Cour d'appel, même si le jugement lui-même ne le dit pas, s'appuyait fermement sur des jugements de la Cour Suprême. C'était du moins une chose à considérer. Probablement est-ce aussi la raison pour laquelle le ministère de la Justice du Canada a cru bon de rencontrer les provinces, afin de rendre plus claire l'interprétation de ces articles.

A l'heure actuelle au Canada, l'interprétation qu'il faut donner à ces articles est si large que le système de loterie envisagé pourrait être un casino et pourrait comprendre des appareils à sous, une roulette et toutes ces choses que certaines personnes one prétendu ne pas être visées. En fait, elles le sont visées. Puis-je respectueusement faire remarquer aux honorables sénateurs que le projet de loi dont ils sont saisis n'élargit aucunement le champ des loteries permanentes au Canada; au contraire, il restreint ce qui était permis jusqu'ici.

Arrêtons-nous un moment pour examiner les secteurs où dans une certaine mesure on pourrait parler d'élargissement. Le premier cas concerne la roue de fortune. Je concède que la formulation actuelle du Code n'aide guère à déterminer si une province peut ou ne peut pas exploiter une roue de fortune. Il est bien dit qu'elle ne le peut pas, mais on pourrait soutenir que la théorie générale concernant un système de loterie pourrait avoir priorité. Pratiquement, toutefois, y aurait-il une différence si une province était clairement autorisée à exploiter une roue de fortune? Je ne le crois pas. Supposons que dans 10, 15 ou 20 ans une province décide d'exploiter des casinos et qu'il n'y a pas eu de modifications à la loi. La province pourrait aller de l'avant. A dire vrai, et la chose est connue, il y a quelques années, le gouvernement du Québec a envisagé sérieusement d'ouvrir des casinos. Il y a eu de nombreux rapports et de nombreuses consultations. La question n'était pas de savoir si légalement la province pouvait procéder, ce sont d'autres considérations qui ont amené ce gouvernement à abandonner le projet.

Mettons, cependant, qu'une province décide d'exploiter un casino sous l'empire de la présente loi et que le doute persiste toujours au sujet de la roue de fortune. Il lui sera facile de contourner la difficulté. Elle n'a qu'à délivrer à un organisme de charité une licence pour l'exploitation de la roulette dans le casino et le tour serait joué. Il n'y aurait pas de problème.

Le sénateur Nurgitz: Pour mieux nous comprendre, Madame la Présidente, puis-je demander au témoin si, dans le contexte de notre discussion, la roue de la roulette et la roue de fortune sont une seule et même chose.

M. Gagnon: Je ne crois pas. A mon avis, il y aurait amplement justification à faire une différence entre les deux. Il y a, si je ne me trompe, des décisions de tribunaux inférieurs qui semblent les considérer comme une seule et même chose, et ces décisions n'ont jamais été contestées. Mais il ne faut pas oublier que nous sommes ici dans le domaine du droit pénal et que le texte du Code doit être interprété d'une façon très res-

[*Text*]

physically, between a wheel of fortune and a roulette wheel, so I would tend to think that the court would come to the conclusion that the wheel of fortune is what is known as a wheel of fortune and that the same applies to roulette, which existed at the time when the term "wheel of fortune" was inserted into the Criminal Code. If the legislator at that time had wanted to prohibit roulette, he would have mentioned that specific word in the legislation. Therefore, if somebody was charged with operating roulette, I am quite sure that he would be acquitted, because it is different from a wheel of fortune.

Senator Frith: There is certainly no difference in principle between a wheel of fortune and roulette, of course.

Mr. Gagnon: I agree, but, in the field of gaming and betting, let us be frank—the principles are always the same. You start from one point and end up at another point; somebody pays money and stand a chance to win a greater sum of money. That is why the definitions that are given can be so broad.

Practically speaking, whether the province does or does not have the power to operate the wheel of fortune does not make the real difference. However, it is now quite strange that we would have, in our laws, the power for a province to license people to do something the province itself cannot do it. Does that make sense? I suggest that, if the province is good enough to think about all of the conditions it can set for other people to operate a wheel of fortune, it would be reasonable enough to control itself if it wanted to operate the same thing.

Another area where it might be mentioned that there is an expansion is the area where the limits are then removed for the operation of a lottery scheme at a bazaar. Well, let us be frank and call a spade a spade. When a bazaar is held, nothing else is held, generally. If a charitable organization is given a licence to operate a lottery scheme, it will operate it anywhere it wants. Why not at a bazaar? For instance, they could have the bazaar in one room and operate the casino night in the next room, and it would be perfectly legal.

The problem that has occurred over the years is where people were under the false impression that there were limits on everything that charitable organizations could do. That was not the case. The limits exist only with respect to bazaars. As a matter of fact, this change was not required by any of the lottery corporations. It came from the people in the various provinces who are in charge of administering the licences.

The third point where one might argue that there might be an extension, is where the limits are being increased for the places of amusement, where the price paid is increased from 50 cents to $2 and the prize to be won is increased from $100 to $500. That is inflation. Again, that is a change which, I understand, was requested by the licensing authorities in some of the provinces.

Honourable senators, those are the only three areas where I believe that someone can really argue that there is an expansion in the field. As I mentioned, I do not see where there is as practical expansion.

[*Traduction*]

trictive. Matériellement la différence est grande entre une roue de fortune et une roue de roulette, si bien que j'aurais tendance à penser qu'un tribunal conclurait qu'une roue de fortune est ce qui est connu comme une roue de fortune et qu'il en serait de même de la roulette, d'autant plus que celle-ci existait au moment de l'insertion du terme «roue de fortune» dans le Code criminel. Si le législateur avait voulu, à ce moment-là, interdire la roulette, il aurait désigné nommément celle-ci dans la loi. C'est pourquoi, si quelqu'un était accusé d'exploiter une roulette, je suis sûr qu'il serait acquitté, parce qu'une roulette n'est pas une roue de fortune.

Le sénateur Frith: Évidemment, il n'y a certes pas de différence en principe entre une roue de fortune et une roulette.

M. Gagnon: Je suis d'accord, mais dans le domaine du jeu et du pari—soyons francs,—la règle est toujours la même. Vous partez d'ici pour aller là; vous versez une somme d'argent et vous courez la chance d'en remporter une somme supérieure. C'est pourquoi les définitions qui sont données peuvent être si compréhensives.

En pratique, que la province puisse ou ne puisse pas exploiter une roue de fortune, ça ne tire pas à conséquence. Ce qui est étrange, toutefois, c'est que nos lois puissent permettre à une province de délivrer à quelqu'un un permis pour faire quelque chose qu'elle n'a pas le pouvoir de faire elle-même. Est-ce que cela a du bon sens? A mon avis, quand une province est capable d'imposer de bonnes conditions de fonctionnement à celui qui exploite une roue de fortune, elle est capable de se les imposer à elle-même, si elle veut en exploiter une.

Un autre cas où il paraît y avoir élargissement, c'est celui de la suppression des restrictions pour l'exploitation d'un système de loterie à une vente de charité. Ne nous payons pas de mots. En général, si un organisme de charité organise une vente de charité, il n'organise pas d'autre chose en même temps. Et s'il détient une licence pour l'exploitation d'un système de loterie, il lui est loisible d'exploiter celui-ci où il veut. Pourquoi pas à une vente de charité? Par exemple, il pourrait tenir la vente dans une pièce et le casino dans une autre, et ce serait parfaitement légal.

Le problème qui a persisté pendant des ans, c'est que les gens, à tort, avaient l'impression qu'il y avait des limitations pour tout ce qu'un organisme de charité pouvait entreprendre. Tel n'était pas le cas. Il n'y avait limitations que pour les ventes de charité. A remarquer que ce ne sont pas les sociétés de loteries qui ont réclamé ce changement. Ce sont ceux qui, dans diverses provinces, ont la charge d'administrer les licences.

Une troisième possibilité d'élargissement que l'on pourrait soupçonner, c'est la hausse des limites applicables aux lieux d'amusement, où le maximum du montant à verser passe de 50 cents à 2 dollars et le maximum du prix à gagner, de 100 à 500 dollars. C'est une question d'inflation. Ici aussi, si je ne me trompe, le changement a été demandé par ceux qui délivrent les licences dans certaines provinces.

Honorables sénateurs, ce ne sont là que les trois endroits où quelqu'un peut prétendre qu'il y a élargissement. Mais, comme je l'ai dit, je ne peux guère en voir là en pratique.

[*Text*]

If we turn to the other side, there are very important restrictions that are being brought forward in what can be done today and could not be done after this bill is passed. In the betting on sports area, today any province or any licencee of a province could organize any betting scheme on any sport. Bill C-81 would restrict the area dramatically: no more betting on races; no more betting on fights. I saw in the transcript of last week that there was a suggestion that people might be authorized to bet on bullfights in Mexico. Now, that's a fight. The new bill will not allow any betting on any race or any fight; and, with respect to other sporting events, it could not be done on a single event. It could be done only on a series of events. The reason for that is that we do not want the players to get involved in funny games.

Senator Frith: A "series" would be more than one.

Mr. Gagnon: Yes. It could be two. The other area of restriction is in the area of equipment, and, more practically, slot machines. At the present time, under the existing law, anyone can operate a slot machine—obviously, under a licence. The new law would restrict the use of equipment to the provinces; and, practically speaking, that would be confirming the status quo. At the present time in Canada no one but the provinces is using computers, video devices, or what are called slot machines. Let us not kid ourselves. At the present time the provinces are operating slot machines. Those terminals that we see all over the country are slot machines, within the definition of section 183. You can go to any of those machines and use the system, which they call "quick-pick", where, if you do not want to pick your own numbers, for instance, on the Loto 649, you would just ask the operator to press a button and the machine would select your numbers for you. So the machine is carrying out a function which brings its operation within the definition of a slot machine.

So, again, this is a drastic restriction in what is presently permitted.

Another advantage of the proposed Bill C-81 is that the provinces can now go a step further in the governing of lottery schemes that they will license. They can now pass legislation that will cover the terms and conditions that are to apply to these licences. The present legislation says that the licence itself can contain terms and conditions. It is now being extended to authorize the law that would govern them.

I saw one positive point in the transcript of the testimony given before this committee last week, and I wished that I had thought about it earlier. That is the suggestion that was made perhaps a bit more teeth should be put into the legislation to enforce the terms and conditions that are given to licences. I agree with that. Unfortunately it may be too late on this round of amendments. There are ways around it. I thought of some last night, but I am not yet sure that the possible amendment that I thought of would really resolve the problem. But I agree that in the next round of amendments to the Criminal Code it would be a good idea to add some teeth in the provisions so

[*Traduction*]

Si nous regardions maintenant l'autre face de la médaille, les restrictions importantes que le projet de loi amène. Des choses peuvent être faites aujourd'hui, qu'il ne sera plus possible de faire une fois adopté le projet de loi. Pour les paris dans le domaine des sports, aujourd'hui une province ou le titulaire d'une licence délivrée par une province peut organiser n'importe quel système de pari à l'égard de n'importe quel sport. Le projet de loi C-81 restreint ce domaine radicalement. Il n'y aura plus de paris sur les courses, plus de paris sur les combats. J'ai lu dans votre compte rendu de la semaine passée la suggestion qu'il soit permis de parier sur les combats de taureaux de Mexico. Or ce sont là des combats et la nouvelle loi ne permettra aucun pari sur les courses ou sur les combats quels qu'ils soient. Pour ce qui est des autres manifestations sportives, le pari ne pourra porter sur un seul événement en particulier; il ne le pourra que sur une série d'événements. Il s'agit de protéger les joueurs contre les entreprises louches.

Le sénateur Frith: Par une série, il faut entendre plus d'un.

M. Gagnon: Oui, ce pourrait être deux. L'autre domaine de restrictions est celui du matériel, c'est-à-dire, à toutes fins utiles, les appareils à sous. Actuellement, sous l'empire de la loi en vigueur, n'importe qui peut exploiter un appareil à sous,—évidemment s'il détient une licence. La nouvelle loi limitera aux provinces l'utilisation de ce matériel, ce qui, en somme, n'est que la confirmation de la situation actuelle. Aujourd'hui au Canada, seules les provinces ont recours aux ordinateurs, aux dispositifs de visualisation et à ce qu'on appelle des appareils à sous. Ne nous leurrons pas. Actuellement les provinces exploitent des appareils à sous. Ces terminaux que nous voyons partout dans le pays, ce sont des appareils à sous, selon la définition de l'article 183. Vous savez qu'à ces terminaux, si vous ne voulez pas choisir vous-mêmes vos numéros pour, par exemple, la 6/49, il suffit de demander à l'opérateur de presser un bouton et la machine vous livre une série de numéros. Elle fait donc une fonction qui place son fonctionnement dans le cadre de la définition d'un appareil à sous.

Et c'est là un autre cas de restrictions radicales sur ce qui est actuellement permis.

Un autre avantage du projet de loi C-81 qui est envisagé, c'est qu'il donne aux provinces la possibilité de mieux régir les systèmes de loterie qu'elles concèdent par voie de licences. Elles peuvent dorénavant adopter une loi qui fixera les conditions et les modalités de toutes les licences. La loi actuelle permet d'inclure des conditions et des modalités dans la licence elle-même. La nouvelle loi va plus loin et autorise l'adoption d'une loi couvrant sur ce point toutes les licences.

Dans le compte rendu des témoignages de la semaine passée, je relève un point intéressant et auquel j'aurais aimé penser plus tôt. Il s'agit de la suggestion voulant que la loi soit plus sévère à l'égard des détenteurs de licence qui ne respectent pas les modalités et les conditions qui leur sont imposées. Je suis d'accord avec cela. Malheureusement, il est peut-être trop tard pour inclure quelque chose à ce sujet dans le présent train de modifications. Il y aurait des moyens d'y remédier. Quelques-uns me sont venus à l'esprit hier soir, mais je ne suis pas sûr que la modification à laquelle j'ai songé réglerait réellement le problème. Mais je suis d'accord pour qu'à la prochaine adop-

[*Text*]

that the terms and conditions of licences could be more clearly enforced.

The Chairman: Mr. Gagnon, would you like to expand on that a bit, because I believe that is one area that we would like to consider in making a report, or doing what we feel should be done. I think it is of concern to us.

Mr. Gagnon: At the present time there is a provision within section 190. The proposed new section 190(3) says:

> Every one who, for the purposes of a lottery scheme, does anything that is not authorized by or pursuant to a provision of this section

Then it goes on to give the penalties. There might be some difficulty for a court. I can remember a case—I think it was an Ontario case and I think it was called the Loto shares case—in which the court decided that when a lottery scheme is legal anybody can do anything around it. It might be a good idea to expand this wording. For what it is worth, I will give you the wording I came up with last night:

> (3) Everyone who, for the purposes of a lottery scheme, does anything that is not authorized by or pursuant to a provision of this section—

And I would add these words: "or is in breach of any term or condition of the applicable law or licence." I am not suggesting that this is an ideal solution because, as I say, I did not have time to go into it in detail.

Senator Nurgitz: Are you suggesting that the Criminal Code include provisions to punish people for being in breach of a provincial licence?

Mr. Gagnon: Actually, the previous paragraph, paragraph (2), provides that, whenever a licence is granted, it can have built into it certain terms and conditions, and these terms and conditions can now be enacted into provincial law. Unfortunately, there is nothing that says clearly that, if you are in breach of these terms and conditions or of that law, you are then liable for something. I could then argue that if you have a licence and are in breach of the terms and conditions of that licence, you are no longer protected by the licence.

Senator Nurgitz: And, therefore, in breach of the Criminal Code?

Mr. Gagnon: Yes. I think that line of argument could be pursued. As I said earlier, a great effort has been made in this bill to clarify those provisions, and to the extent that the reasoning we have just followed to get here is not clearly in the law, it might be a good idea to add it.

Senator Nurgitz: Just as one who drives a vehicle while one's licence is suspended by the provincial authorities is considered in breach of the Criminal Code of Canada?

Mr. Mosley: It is not quite clear, unfortunately, because of the decision of the Supreme Court of Canada in the *Boggs case*, which a few years ago, quashed the federal offence of dis-

[*Traduction*]

tion de modifications au Code criminel des dispositions plus sévères soient ajoutées à la loi, afin d'assurer le respect des modalités et des conditions des licences.

La présidente: Monsieur Gagnon, pourriez-vous développer davantage cette idée, car c'est un domaine que nous songeons à aborder dans notre rapport ou, du moins, faire ce que nous croyons le mieux à ce sujet. La chose est importante pour nous.

M. Gagnon: A l'heure actuelle, on trouve une disposition à ce sujet à l'article 190. Le paragraphe (3) du nouvel article 190 se lit comme suit:

> Quiconque, dans le cadre d'une loterie, commet un acte non autorisé par une autre disposition du présent article ou en vertu de celle-ci, est coupable . . .

Et ensuite les peines prévues sont énumérées. Il peut y avoir là une difficulté pour le tribunal. Je me rappelle une affaire,—je crois que c'était en Ontario et que le cas était celui de Loto Shares,—où le tribunal a conclu que, lorsqu'un système de loterie est légal, n'importe qui peut faire n'importe quoi dans le cadre du système. Il ne serait pas mauvais d'ajouter au texte du paragraphe (3) et, à toutes fins utiles, je vous soumets une version qui m'est venue à l'esprit hier soir. Au texte actuel:

> (3) Quiconque, dans le cadre d'une loterie, commet un acte non autorisé par une autre disposition du présent article ou en vertu de celle-ci, est coupable:

j'ajouterais avant «est coupable» les mots suivants: «ou enfreint l'une des modalités de la loi ou de la licence applicable». Je ne dis pas que c'est la solution idéale, car, comme je l'ai dit, j'ai eu peu de temps à y consacrer.

Le sénateur Nurgitz: Est-ce à dire que le Code criminel comprendrait des dispositions visant à punir les infractions à une licence provinciale?

M. Gagnon: En fait, le paragraphe précédent, le paragraphe (2), dispose que, lorsqu'une licence est accordée, elle peut être assortie de certaines conditions et que ces conditions peuvent maintenant être décrétées par une loi provinciale. Malheureusement, rien ne dit clairement que, si vous contrevenez à ces conditions ou à cette loi, vous êtes passibles de quelque chose. Je pourrais à la rigueur soutenir que si vous détenez une licence et en violez les conditions, vous n'êtes plus du tout protégés par la licence.

Le sénateur Nurgitz: Et, par conséquent, vous enfreignez le Code criminel?

M. Gagnon: C'est cela. Je crois que ce raisonnement est valable. Comme je l'ai dit tout à l'heure, un grand effort a été fait dans le projet de loi pour rendre plus claires ces dispositions et, dans la mesure où on n'y trouve pas l'aboutissement du raisonnement que nous venons de faire, il serait peut-être bon de l'ajouter.

Le sénateur Nurgitz: Tout comme celui qui conduit sa voiture alors que les autorités provinciales ont suspendu son permis est considéré comme ayant enfreint le Code criminel du Canada?

M. Mosley: Ce n'est pas aussi évident que cela. Malheureusement, par suite de la décision de la Cour Suprême dans l'affaire Boggs, il y a quelques années, l'infraction fédérale

[*Text*]

qualified driving which was at that time in the Code. The problem is the criminal consequences flowing from a breach of the provincial legislation. In this case, however, I think we could argue that the provincial licence flows from the federal provision and that any violation of that provincial licence could be dealt with. It would have to be explored with the constitutional law people.

Mr. Gagnon: I have concluded my remarks with regard to the law as I see it. The present section 190 gives very broad powers to people. We have tried to make clearer the jurisprudence and the facts as they have been shown to us. We have tried to maintain a *status quo* while calling a spade a spade. As I said, the areas that might be considered for expansion are actually not changing anything. However, I think that the existing law is improved in that some restrictions have been introduced in areas where there could be abuse. As I said, I found several what I believe are errors in law which are in contradiction of the jurisprudence according to the transcript of evidence given before you last week. I understand that time is of the essence, but I could go through all of them.

Just before the hearing this morning, I saw a table that was presented to you last week and another one that was presented to you yesterday. Going through these tables, I find it difficult to believe some of the things that I read. Some of the statements are clearly in contradiction of some of the obvious and easily intepreted phrases. For example, on page 2 of the table given to you yesterday is a statement to the effect that the existing law does not permit a game in relation to 189(1)(a) to (e). Paragraph 190(5) says clearly that in this section lottery scheme includes a game. So how can one say that the present law does not permit a game in relation to section 189(1)(a) to (e), especially when each of the subparagraphs of paragraph (1), (a) to (f), refer specifically to subparagraphs 189(1)(a) and following? In the interests of time, I will stop here.

The Chairman: We have a half hour left. Mr. Morton is here. His chart has been thoroughly criticized this morning. I understand that he has a short statement to make. Perhaps in the interest of getting all the arguments on the table, it would be worthwhile to give Mr. Morton the opportunity to make his statement before we proceed to questioning.

Mr. Howard F. Morton, Q.C., Director, Crown Law Office, Ministry of the Attorney General of Ontario: Madam Chairman, let me preface my remarks by saying that I have a great deal of respect for both Mr. Mosley and Mr. Gagnon as lawyers. However, I submit that there is a serious breakdown in logic in their arguments. You will recall that yesterday Mr. Mosley left the impression—and perhaps Mr. Gagnon went even further this morning—that the traditional interpretation by Ontario is clearly wrong, that there is not even—and these are my words—a chance in a million to make a game of it that we are right.

May I take you back to what Mr. Mosley and Deputy Commissioner Jensen said yesterday and what Mr. Gagnon said this morning. Mr. Mosley opened his presentation—I am referring to my notes and I hope they are accurate—by stating

[*Traduction*]

portant sur la conduite sans permis, qui était dans le Code à l'époque, a disparu. Le problème, ce sont les conséquences criminelles découlant d'une infraction à une loi provinciale. Dans le présent cas, toutefois, je crois qu'on pourrait soutenir que la licence provinciale est délivrée en vertu d'une disposition fédérale et qu'en conséquence une violation de cette licence provinciale peut tomber sous le coup du Code criminel. C'est une chose à examiner avec les spécialistes du droit constitutionnel.

M. Gagnon: J'ai terminé mes observations sur la loi telle qu'elle m'apparaît. L'actuel article 190 confère d'immenses pouvoirs. Nous avons tenté de débroussailler la jurisprudence et les faits qui nous ont été présentés, de maintenir une sorte de statu quo, tout en appelant un chat un chat. Comme je l'ai dit, les parties où l'on serait tenté de voir un élargissement ne changent rien en fait. Il reste qu'à mon avis la loi actuelle se trouve améliorée du fait des restrictions apportées aux secteurs où des abus sont possibles. Comme je l'ai dit, dans le compte rendu des témoignages de la semaine passée, j'ai relevé plus d'une erreur en matière de droit et qui viennent en contradiction avec la jurisprudence. Je sais que le temps presse, mais je peux les repasser toutes.

En entrant dans la salle ce matin, j'ai vu un tableau qu'on vous a présenté la semaine passée et un autre qu'on vous a présenté hier. En les parcourant, j'ai été étonné par certaines des déclarations qu'ils contenaient. Il y en a qui sont nettement en contradiction avec des textes très clairs et faciles à interpréter. Par exemple, à la page 2 du tableau que vous avez reçu hier, il est dit que la loi actuelle ne permet pas un jeu relativement aux alinéas 189(1)a) à e). Or l'article 190, au paragraphe (5) dit nettement qu'au présent article, un système de loterie comprend un jeu. Comment peut-on affirmer que la loi actuelle ne permet pas un jeu relativement aux alinéas 189(1)a) à e), surtout quand chacun des alinéas a) à f), du paragraphe (1) se réfère spécifiquement aux alinéas a) et suivants de l'article 189(1)? A cause du temps, je m'arrête ici.

La présidente: Il nous reste une demi-heure. M. Morton est ici et comme son tableau a été profondément critiqué ce matin, je crois savoir qu'il aimerait faire une courte déclaration. Comme nous aimerions avoir tous les côtés de la médaille, il serait peut-être bon de permettre à M. Morton de faire sa déclaration avant que nous procédions aux questions.

M. Howard F. Morton, C.R., directeur, Bureau de droit criminel, ministère du Procureur général: Madame la présidente, qu'il me soit permis, avant toute chose, de dire que je respecte profondément comme avocats aussi bien M. Mosley que M. Gagnon. Il me faut tout de même faire remarquer qu'il y a un manque flagrant de logique dans leur argumentation. Rappelez-vous qu'hier M. Mosley a créé l'impression,—et peut-être M. Gagnon l'a accentuée ce matin,—que l'interprétation traditionnellement donnée par l'Ontario était nettement fausse et même qu'il n'y aurait pas,—c'est moi qui le dit et nous sommes dans le domaine du jeu,—une chance sur un million que nous ayons raison.

Allons voir ce que M. Mosley et le sous-commissaire Jensen ont dit hier et ce que M. Gagnon a dit ce matin. M. Mosley a commencé sa présentation,—je consulte mes notes et j'espère être exact,—en déclarant que les divergences d'opinions décou-

[*Text*]

that the divergence of opinion is a result of the complexity in Part V of the Code. On two occasions, he went on to say, "as we interpret it." Deputy Commissioner Jensen said as well, "as I interpret it." They said that the legislation recognizes the existing reality as opposed to the law. Deputy Commissioner Jensen went on to say that the improved clarity in the bill before you will improve law enforcement because the law will be easier for us to understand.

Mr. Gagnon this morning, to buttress his argument, referred to an article by Professor Mewett, who indicates that deciding what the present law means is really a game of chance itself, it is so difficult.

So that on the one hand, the proponents of the bill admit to you that the preset law is so confusing, so complex and difficult to understand and so unclear, but on the other hand, that our interpretation cannot possibly be right. I submit that that is a clear breakdown in logic. If the existing law is so complex and so unclear as they would have you believe, then surely there must be at least one chance that the traditional Ontario interpretation, which has been developed over the years through a committee of lawyers and judges, must at least be arguments. It must at least have a chance of being the correct interpretation. I submit to you that, if the bill presently would clear up uncertainties, then our position with respect to the existing law, it must at the very least be conceded, might possibly be right. Yet the proponents of the bill—at least as I interpret their submissions—deny that.

Mr. Gagnon refers to the Federal government, the proponents of this bill, dropping their appeal from the Quebec Court of Appeal judgment. Well, all of you know, because you have the agreement before you, that it was made a condition of that agreement that the federal government drop their appeal against the Quebec Court of Appeal judgment. So, at the very least, the very department that puts the bill before you this morning launched an appeal on the basis that the Quebec Court of Appeal judgment was wrong. I submit to you for them to take the position they are now taking is extremely inconsistent.

At the very least, I submit, there are various interpretations open with respect to the existing law because of its confusion. The bill before you takes the broadest interpretation of the existing law as found in the provinces of Alberta and Manitoba. It takes the broadest interpretation, and it puts that in the Criminal Code to cover all of Canada, therefore, eliminating what I submit is a valid interpretation with respect to the present conditions.

We will never know what the present sections stand for because the Federal Government was forced to drop its appeal by undertaking to do so as a condition of the very agreement that is before you.

Secondly, yesterday Mr. Mosley indicated to you the main reason that the present statutes are confusing and difficult to understand is that they have been the result of patchwork amendments to the Criminal Code, section by section amendments. If you look at the bill before you, that is precisely what this bill is. It is another patchwork amendment to the Criminal

[*Traduction*]

lent de la complexité de la Partie V du Code. Par deux fois, on a pu l'entendre dire: «selon notre interprétation». De même le sous-commissaire Jensen a dit: «selon mon interprétation». L'un et l'autre ont admis que le projet de loi tient compte de la réalité par opposition à la loi. Et le sous-commissaire Jensen est allé jusqu'à dire que la clarté plus grande du projet de loi que vous étudiez aura pour effet d'améliorer l'application de la loi, car elle sera plus facile à comprendre.

Et ce matin, M. Gagnon, pour renforcer son argumentation, a invoqué un article de M. Mewett qui dit qu'il est si difficile de déterminer ce que la loi actuelle signifie que la tâche en elle-même constitue un jeu de hasard.

Voici donc des défenseurs du projet de loi qui, d'un côté, admettent que la loi actuelle n'est que confusion, complexité, obscurité et difficulté à comprendre et qui, de l'autre côté, déclare qu'il n'est pas possible que notre interprétation à nous soit la bonne. A mon avis, il n'y a pas plus manque de logique que cela. Si la loi actuelle est aussi compliquée et aussi obscure qu'ils veulent nous le faire croire, chose certaine, il doit y avoir une chance que l'interprétation traditionnelle de l'Ontario, qui s'est élaborée au cours des ans par le truchement d'un comité de juristes et de juges, soit une interprétation défendable et même qu'elle soit la bonne. Je vous fais remarquer que si le projet de loi supprime les incertitudes, donc celles de notre position vis-à-vis de la loi actuelle, il faut nous concéder qu'il est possible que nous ayons raison. Ce qui n'empêche pas,—si j'ai bien compris leurs déclarations,—les défenseurs du projet de loi de nous refuser cela.

M. Gagnon a parlé du retrait par le gouvernement fédéral, l'auteur du présent projet de loi, de son appel contre le jugement de la Cour d'appel du Québec. Or, comme vous le savez puisque vous avez l'entente entre les mains, ce retrait était une condition de l'entente. Ce qui fait que le même ministère qui propose le projet de loi que vous étudiez est le ministère qui a fait appel du jugement de la Cour d'appel du Québec, l'estimant erroné. A mon sens, pour ce ministère, prendre la position qu'il prend aujourd'hui, c'est de l'incohérence pure.

Je soutiens, à la rigueur, que pour la loi en vigueur, vu son obscurité, nombre d'interprétations sont possibles. Le projet de loi à l'étude adopte l'interprétation la plus large, celle qui a cours en Alberta et au Manitoba. On prend cette interprétation large et on l'insère dans le Code criminel pour l'appliquer à l'ensemble du Canada, éliminant ainsi une autre interprétation que je considère comme également valable.

Nous ne saurons jamais ce que les dispositions actuelles signifient vraiment, parce que le gouvernement fédéral s'est trouvé forcé de retirer son appel en acceptant ce retrait comme condition de l'entente que vous avez sous les yeux.

En deuxième lieu, M. Mosley, hier, a dit que la raison principale pour laquelle les présentes dispositions sont obscures et difficiles à interpréter est qu'elles sont le résultat d'un travail de modification opéré à la pièce dans le Code criminel, un article à la fois. C'est précisément le cas du projet de loi que vous étudiez. C'est une autre opération de rapiéçage du Code crimi-

[*Text*]

Code without a fundamental review of all of Part V of the Criminal code, and, if he is correct that that is why the present law is confusing, then I have some doubt as to whether this bill will make the law any less confusing.

You recall that the Attorney General of Ontario had two concerns with respect to this bill, and the first was the process of consultation. It is only in this house that there has been the kind of debate between Mr. Gagnon, Mr. Mosley and myself that would in any way amount to what could be called a consultation. Again, however, the public in our submission have a right to be heard, whether we agree with them or not; those who oppose gambling and the broadening of it have not had an opportunity to be heard on this issue—an issue which affects them whether we agree with them or not. The reason for that is the December 31st deadline that was put into the agreement.

The agreement which forms the basis for this bill does not even give you the opportunity to have that consultation, that sort of meaningful social impact study that could be done if the normal Criminal Law amendment process were followed. Mr. Mosley was quite correct yesterday when he said that the federal government has the constitutional authority to change the law whenever it sees fit by putting a bill into the house. But a long-standing tradition has developed in this country whereby the provinces must administer the law; and the reference yesterday to the creation of litigation by the framers of law has as much relevance for provinces as it does for the federal government, I suppose, because it is the provinces that must live with this law. The federal government has the constitutional authority to pass it; the provincial governments have the constitutional authority with respect to the administration of criminal justice in the province. That is why we say there ought to have been an appropriate consultation with public input.

In the interest of time, I do not propose to go over the change. I know Mr. Gagnon has some difficulty with it. I would direct your attention just to one aspect he did refer to, and that is IV.

The basis for that position is that if you look at sections 189(1)(a), (b), (c), (d), and (e), you will see that they refer to traditional forms of lottery, the very word that was used by the Quebec Court of Appeal. I am reading from page 511 of the reported judgment:

> "The *Code* therefore permits a structure or ensemble including a lottery as traditionally understood, or a game of chance or mixed chances and skill, or one and the other—"

This is the judgment reported at 9 Canadian Criminal Cases, third edition, page 508, and I was reading from page 511.

If you have an opportunity, examine the current provisions set out in 189(a) through (e). They refer to traditional forms of lottery. You do not get to the use of the word "game" until you get to (f). That is why (f) is not referred to in my IV. All I am trying to point out there is that if you look at 189(a), (b), (c), (d) and (e), there is no reference to a game. They refer to

[*Traduction*]

nel effectuée sans une révision profonde de la Partie 5 du Code. Si donc on a raison de dire que la loi actuelle est obscure parce que c'est du rapiéçage, je me demande si le présent projet de loi réussira à la rendre moins obscure.

Rappelez-vous que le procureur général de l'Ontario avait deux préoccupations en ce qui concerne ce projet de loi. La première portait sur la consultation. Or c'est seulement ici qu'il y a eu entre M. Gagnon, M. Mosley et moi-même ce genre de discussion que l'on pourrait à la rigueur appeler une consultation. Il reste que le public, qui a le droit de se faire entendre, que nous le voulions ou on, les gens qui s'opposent au jeu et ne veulent pas le voir rendre plus facile, eux n'ont pas eu l'occasion de se faire entendre, et pourtant la question les touche de près, que nous soyons ou non d'accord. La raison en est que la date limite du 31 décembre a été inscrite dans l'entente.

Cette entente, qui est à la source du projet de loi, ne permet pas de procéder à une consultation, à cette sorte d'étude sociale, profonde et large, qui aurait été possible si l'on avait procédé comme il est normal de le faire en matière de droit pénal dans le cas de modification. M. Mosley avait parfaitement raison hier en disant que le gouvernement fédéral avait le pouvoir constitutionnel de changer la loi quand il le juge bon, tout simplement en déposant un projet de loi au Parlement. Mais il y au pays une longue tradition qui veut que les provinces qui doivent appliquer la loi,—et ce qu'on a dit hier à propos des contestations soulevées par les rédacteurs s'applique aussi bien aux provinces, qu'au fédéral, j'imagine, parce que ce sont elles qui doivent se débattre avec la loi. Le gouvernement fédéral a le pouvoir constitutionnel d'adopter la loi; mais pour tout ce qui touche à l'administration de la justice criminelle dans une province, le pouvoir constitutionnel appartient au gouvernement de cette province. C'est pourquoi nous disons qu'il y aurait dû avoir consultation convenable et, aussi, avec le public.

Vu le peu de temps qui reste, je ne me propose pas de repasser le tableau. Il a semblé gêner M. Gagnon. J'attirerai votre attention sur un seul des points qu'il a soulevés, c'est-à-dire IV.

Pour connaître le fondement de cette position, il suffit d'examiner à l'article 189, par. (1), les alinéas a), b), c), d) et e). Ces alinéas se réfèrent aux formes traditionnelles de loterie, qui sont les formes dont justement parle la Cour d'appel. Le jugement, à la page 511 de *Canadian Criminal Cases*, nº 9, 3e édition, page 508, dit que

> le Code en conséquence permet une structure ou un ensemble comprenant une loterie au sens traditionnel du terme ou un jeu de hasard ou de hasard et d'adresse combinés, ou l'un et l'autre . . .

Voyez les dispositions actuelles de 189, a) à e). Elles ne parlent que des formes traditionnelles de loterie. Le mot «jeu» n'apparaît pas avant f). C'est pourquoi le nº IV ne parle pas de f). Tout ce qu'il s'agissait de faire remarquer, c'est qu'aux alinéas a), b), *c*), d) et e) il n'est pas question de jeu. Ces alinéas parlent des formes traditionnelles de loterie, tandis que la nouvelle loi permet le jeu d'une façon spécifique.

[*Text*]

traditional forms of lotteries, whereas the new legislation would specifically permit a game.

The only other submission I would make with respect to the existing law is this: If the federal government and Mr. Gagnon are correct that the existing law permits everything, as they have indicated, then why in 1980 was the Criminal Code amended by adding section 188.1 to permit the federal government to engage in a pool system of betting? You will recall that last week we spoke of the difference between a pool system of betting, where the total prize is made up of the amounts paid by persons who purchase lots or tickets, as opposed to a casino operation where you are actually betting against the operator and his bank. He starts the game with a bank of money, and you are playing against him. Now, maybe that bank is made up of everything that people lost the previous week, but it is still a bank game. The new provisions of the Criminal Code permit that; they permit book-making, the word is clearly used; and these sections would permit government operated book-making shops, which is something, in our submission, that was never permitted by the previous legislation.

The last comment I want to make—and it is more a question, because I have been unable to ascertain the answer this morning—concerns something Mr. Mosley said that bothered me somewhat. He indicated to you that, with respect to the deadline, the words "on June 3rd" were added. You will note that the Province of Ontario signed that agreement on May 30. Does that mean the words were put in after the agreement was signed? If so, that may raise serious concern. Again I want to stress that I am only raising this as a question.

Those are my respectful submissions and I thank you for giving me a second opportunity to speak to the matter.

The Chairman: Senator Frith, perhaps we can direct all of our questions to Mr. Gagnon, because we are going to be short of time. He is here from Montreal today and we want to hear from him.

Senator Frith: Mr. Gagnon, if I understand your evidence, the fact is that, for all these years, casino gambling, slot machines, Las Vegas type operations were permissible in Canada under licence from the provinces?

Mr. Gagnon: I would say yes and no. Yes, generally, according to the statement that you made, except with one reservation: Las Vegas type casinos have never been authorized in Canada and will not be. Las Vegas type—

Senator Frith: Do you mean it is not authorized by law, or it is not—

Mr. Gagnon: It is not authorized by law, and will not be authorized by law under the amendment, because a Las Vegas type of casino is a casino operated by private enterprise for private gain. That is not at all the case in Canada.

The only persons who are authorized to operate and conduct lottery schemes and casinos in Canada are charitable organizations, agricultural fairs and governments. Private enterprise has no part of it.

[*Traduction*]

La seule autre observation que j'aimerais faire à propos de la loi actuelle est ceci: si le gouvernement fédéral et M. Gagnon ont raison de dire que la loi actuelle permet tout, alors pourquoi, en 1980, a-t-on ajouté l'article 188.1 au Code criminel, afin de permettre au gouvernement fédéral de se lancer dans les paris collectifs? Rappelez-vous que la semaine passée on a parlé de la différence entre les paris collectifs, où le prix est le total des mises des joueurs, et le casino où le pari se fait réellement contre l'opérateur et sa banque. Celui-ci commence avec sa banque et vous jouez contre lui. Il se peut, sans doute, que la banque se compose de l'argent perdu par les joueurs la semaine précédente, mais c'est toujours un jeu contre la banque. Les nouvelles dispositions du Code criminel permettent cela; elles permettent le bookmaking, le mot est utilisé. Grâce à ces dispositions, le gouvernement pourra exploiter des comptoirs de bookmaking, ce qui, à notre avis, n'a jamais été autorisé par les anciennes dispositions.

Le dernier commentaire que j'aimerais faire,—mais c'est plutôt une question, une question dont j'ai été incapable d'avoir la réponse ce matin. Elle concerne quelque chose que M. Mosley a dit et qui me préoccupe quelque peu. M. Mosley a dit qu'en ce qui concerne la date limite les mots le 3 juin ont été ajoutés. Rappelez-vous que la province d'Ontario a signé l'entente le 30 mai. Est-ce à dire que ces mots ont été insérés après la signature de l'entente. Si tel est le cas, la chose ne laisse pas d'être préoccupante. Mais, encore une fois, il ne s'agit que d'une question.

Ce sont là les observations que je soumets respectueusement et je vous remercie de cette seconde occasion de parler.

La présidente: Sénateur Frith, peut-être pourrions-nous adresser nos questions à M. Gagnon, car nous n'avons pas beaucoup de temps. M. Gagnon vient de Montréal, il est ici pour la journée, et nous aimerions connaître son avis.

Le sénateur Frith: Monsieur Gagnon, si j'ai bien compris votre témoignage, le fait est que, pendant toutes ces années, le jeu en casino, les appareils à sous, les opérations de type Las Vegas étaient autorisés au Canada, moyennant une licence délivrée par une province.

M. Gagnon: A cela, je répondrai oui et non. Oui en général pour ce que vous dites, sauf un cas: les casinos de type Las Vegas n'ont jamais été autorisés au Canada et ne le seront pas. Ce type . . .

Le sénateur Frith: Voulez-vous dire non autorisés par la loi ou non . . .

M. Gagnon: Ils ne sont pas autorisés par la loi et ne seront pas autorisés par la loi modifiée, parce qu'un casino de type Las Vegas est un casino exploité par une entreprise privée et en vue d'un profit. Ce n'est pas du tout le cas au Canada.

Les seuls qui sont autorisés à exploiter et à conduire des systèmes de loterie et des casinos au Canada sont les organismes de charité, les foires agricoles et les gouvernements. L'entreprise privée n'entre pas en jeu.

[*Text*]

Senator Frith: So that means that, for all these years—and I know that you are basing this on the Loto Select case; you are saying that it confirms that the game includes all these elements.

Let me put it another way; let me summarize what you said. For all these years, any organization that could be called "charitable" could have been running a Las Vegas type of operation?

Mr. Gagnon: With a permit.

Senator Frith: Oh yes, with a permit. Let me put it the way that I put it in the first place: A province, for all these years before this legislation, could have authorized a charitable organization to operate a permanent establishment running a Las Vegas type operation?

Mr. Gagnon: They could have, and they have, to an extent, although not a permanent one. However, they have, on a regular basis, authorized casinos.

Senator Frith: Do you know, from your experience, whether the State of Nevada puts any conditions on the operations of the casinos in Las Vegas and elsewhere?

Mr. Gagnon: I do not think we are talking about the same thing here—

Senator Frith: No, I am just asking you that. I am moving now to the question of whether there is some solution to be found by putting conditions on the licence. I assume that Nevada puts conditions on those casinos.

Mr. Gagnon: Yes, as in the same way the present legislation and the amended bill would authorize the provinces to put terms and conditions on the licences. Section 192 does that.

Senator Frith: Very well; but the point I am making is that the imposition of conditions is something that you would expect in Atlantic City or anywhere. I know they are not charitable organizations; I mean, they probably think they are charitable organizations for their own charity, but that is another thing.

The next question is: Are there any reported cases on prosecutions of casino operations?

Mr. Gagnon: Not to my knowledge in Canada.

Senator Frith: When you said that the present legislation adds restrictions to this more permissive condition that now exists, you said that one of them related to equipment and that the existing legislation permits slot machines under licence, but that the new one restricts it to the provinces. I did not quite understand. Did you mean that the present legislation permits the federal government or the provinces to do it, and the new one just permits the provinces to do it? Is that what you meant?

Mr. Gagnon: Actually, under present legislation, the federal government, the provinces and anyone who holds a licence could operate them.

[*Traduction*]

Le sénateur Frith: Ce qui veut dire que pendant toutes ces années,—et je sais que vous vous fondez sur l'affaire Loto Sélect; vous dites que cela confirme que le jeu comprend tous ces éléments.

Permettez-moi de le dire autrement. Permettez-moi de résumer ce que vous avez dit: pendant toutes ces années, un organisme qui pouvait se dire de charité pouvait exploiter une entreprise de type Las Vegas?

M. Gagnon: Avec un permis.

Le sénateur Frith: Avec un permis, évidemment. Permettez-moi de m'exprimer comme je l'ai fait d'abord. Pendant toutes ces années qui ont précédé le présent projet de loi, une province aurait pu autoriser un organisme de charité à exploiter un établissement permanent se livrant à des opérations de type Las Vegas?

M. Gagnon: Les provinces l'auraient pu et, jusqu'à un certain point, elles l'ont fait, mais non sur une base permanente. Cependant, d'une façon assez régulière, elles ont autorisé des casinos.

Le sénateur Frith: Savez-vous, d'après votre expérience, si l'État du Nevada impose des conditions pour l'exploitation de casinos à Las Vegas ou ailleurs?

M. Gagnon: Je ne crois pas que l'on parle de la même chose ici.

Le sénateur Frith: Je sais, mais ne je faisais que demander. Je passe maintenant à la question de savoir si l'insertion de conditions dans la licence offre une solution quelconque. Je suppose que le Nevada met des conditions pour les casinos.

M. Gagnon: Oui, tout comme la loi actuelle et le projet de loi autorisent les provinces à mettre des modalités et des conditions dans les licences. C'est ce que fait l'article 192.

Le sénateur Frith: Bien, mais ce à quoi je veux en venir c'est que l'imposition de conditions est quelque chose auquel on peut s'attendre à Atlantic City ou ailleurs. Je sais que ces entreprises ne sont pas des organismes de charité, bien qu'elles puissent penser l'être envers elles-mêmes, mais cela est une autre affaire.

Ma question suivante est celle-ci. Y a-t-il eu des cas de poursuites concernant l'exploitation de casinos?

M. Gagnon: Pas que je sache au Canada.

Le sénateur Frith: Quand vous avez dit que le projet de loi ajoute des restrictions à la situation assez permissive qui prévaut, vous avez dit que l'une de ces restrictions porte sur le matériel. Vous avez dit que la loi actuelle permet les appareils à sous, moyennant une licence, mais que la nouvelle loi réserve cette faculté aux provinces. Je ne comprend pas tout à fait. Vouliez-vous dire que la loi actuelle le permet au gouvernement fédéral et aux provinces et que la nouvelle loi ne le permet qu'aux provinces. Est-ce cela?

M. Gagnon: En fait, sous le régime de la présente loi, le gouvernement fédéral, les provinces et n'importe qui qui détient une licence peuvent exploiter des appareils à sous.

[*Text*]

Senator Frith: And now, under the new legislation, only provincial licencees can do it?

Mr. Gagnon: Under the new legislation, the federal government is completely out of anything. Only the provinces can operate computers, video devices and slot machines. That means that there is no change as far as that is concerned. The change is that nobody else could operate those types of equipment.

Senator Frith: I know you perceive, or you seem to understand what we are faced with here, because we have some evidence from what we thought were quite distinguished witnesses, at least they seemed to be very experienced, and no doubt you have read this evidence. They felt that Mr. Jelinek's assurances that nothing was being added to the present law and, if anything, there were being some restrictions put on it, that he was in error in saying that. You are, in effect, saying that they are in error in saying that Mr. Jelinek was in error, because Mr. Jelinek was quite right; that the present law permits all of the things that these people who gave evidence were afraid of, in Ontario.

Mr. Gagnon: It is a great day for me, senotor, because for the first time since 1978, I am here in a public forum being able to agree with the federal government about lotteries.

Senator Frith: It is a first, is it?

Mr. Gagnon: Since 1978, yes.

Senator Frith: I am not sure whether that reassures me or not, because I am a little surprised to know what has been available all these years.

I take it that the evidence that indicates that organized crime feels that this bill will open some doors for them; that evidence, if it is correct, would mean that organized crime did not have the benefit of your legal advice over these years.

Senator Nurgitz: He could list them in his long string of clients.

Senator Frith: I take it that they did not have the benefit of your advice. Their lawyers, if they had them, were giving them wrong advice.

Mr. Gagnon: Senator, I think that they had no reason to expect anything big in Canada under present legislation, and they will not in the future. As I said earlier, the present legislation and the amended legislation will not permit private enterprise to get involved.

Senator Frith: Unless for charitable purposes.

Mr. Gagnon: Yes, but then it is not really private enterprise, and it is controlled under a licence. However, the main thing is that the real casino cannot operate here, especially due to the fact that equipment, slot machines and these types of things can be operated only by the provinces.

Senator Frith: Or their licences.

[*Traduction*]

Le sénateur Frith: Et maintenant, sous le régime de la nouvelle loi, seuls les détenteurs d'une licence provinciale peuvent le faire?

M. Gagnon: Dans le cas de la nouvelle loi, le gouvernement fédéral est hors de course. Seules les provinces peuvent exploiter des ordinateurs, des dispositifs de visualisation et des appareils à sous. Sur ce dernier point, rien n'est changé. Ce qui est changé, c'est que personne d'autre ne peut exploiter ce genre de matériel.

Le sénateur Frith: Vous comprenez, je sais, ou du moins vous semblez comprendre notre difficile situation. Nous avons ici des témoignages en provenance de personnalités hautement distinguées, avions-nous estimé, et, du moins, très expérimentées. Vous avez, sans doute, lu ces témoignages. Selon ces témoignages, M. Jelinek, en donnant l'assurance que le projet de loi n'ajoutait rien à la législation actuelle, sinon peut-être d'insérer quelques restrictions, avait commis une erreur. Et, vous, vous venez et dites qu'ils commettent une erreur ceux qui disent que M. Jelinek a commis une erreur, parce que M. Jelinek a raison: la loi actuelle permet toutes ces choses qui inspirent des craintes aux témoins de l'Ontario.

M. Gagnon: C'est un grand jour pour moi, Monsieur le Sénateur, parce que pour la première fois depuis 1978 il m'est possible de dire en public que je suis d'accord avec le gouvernement fédéral en matière de loterie.

Le sénateur Frith: C'est vraiment la première fois?

M. Gagnon: Si, depuis 1978.

Le sénateur Frith: Je me demande si cela me rassure ou non, car je reste étonné d'apprendre tout ce qui était possible pendant toutes ces années.

S'ils ont raison les témoignages qui nous disent que le crime organisé a le sentiment que le projet de loi lui ouvre des débouchés, il faut croire que, pendant toutes ces années, le crime organisé n'a pas eu l'avantage de profiter de vos conseils juridiques.

Le sénateur Nurgitz: Il peut toujours les ajouter à sa longue liste de clients.

Le sénateur Frith: J'en conclus que le crime organisé n'a pu profiter de vos conseils. Ses avocats, s'il en a, lui ont donné de mauvais conseils.

M. Gagnon: Monsieur le sénateur, le crime organisé n'a aucune raison de nourrir quelque espoir tant sous l'actuel régime que sous le nouveau régime. Comme je l'ai dit tout à l'heure, ni la loi actuelle ni la loi modifiée ne permet à l'entreprise privée de s'impliquer.

Le sénateur Frith: A moins que ce soit pour des fins de charité.

M. Gagnon: Sans doute, mais en ce cas il ne s'agirait pas vraiment d'une entreprise privée et il y a une licence qui réglemente. Mais l'important, c'est qu'un vrai casino ne peut fonctionner ici, par suite surtout du fait que le matériel, les appareils à sous et les autres choses du genre ne peuvent être exploités que par les provinces.

Le sénateur Frith: Ou les détenteurs de licences délivrées par les provinces.

[*Text*]

Mr. Gagnon: No, computers, video devices and slot machines can be operated only by the government themselves.

Senator Frith: I see, and they cannot pass legislation to permit themselves to licence that kind of operation?

Mr. Gagnon: No.

Senator Frith: Why not?

Mr. Gagnon: Because they would be in breach of the Criminal Code. It is a criminal act to do anything within the field of gaming and betting unless you fall squarely within one of the exceptions and, with respect to the exceptions, the only person who can conduct and operate computers, video devices and slot machines is the government of a province, so I do not think that organized crime will spend a lot of money buying land and this type of thing when it knows that the only person who can operate is the government. If we look at all of the countries of the world who have open casinos and where the government has been in charge of the casinos, the rules of the game are quite different than those that you see in the States. You do not see many of the Las Vegas-type of casinos in those countries.

Senator Frith: Let me ask you this and after I have asked it you will understand what our concern is.

Assuming it is as you say—and I don't mean "assuming" as if I disagreed with that—that only the governments can run a casino-type operation—

Mr. Gagnon: That is not what I said.

Senator Frith: All right. Let us get that cleared up. We have had evidence that slot machines represent 50 per cent of the operation of the casinos, and that that figure is rising. I am only dealing with the slot machine type of operations. Only provincial governments can run a slot machine casino type of operation, is that right?

Mr. Gagnon: That is right.

Senator Frith: As I recall the evidence, it did not limit the concerns over regarding social consequences of a permanent casino establishment to those run by governments. As I understood the evidence, street crimes increase, neighbourhoods are changed, and there are serious social consequences to the establishment of a permanent casino-type slot machine operation. The witnesses did not say that that was because they were run by organized crime. So, we have to be concerned with that evidence.

If this legislation makes it clear that provincial governments can run permanent casino operations, and as many as they want in as many cities as they want—

Senator Flynn: That is not the same thing.

The Chairman: We are running out of time. I would appreciate the opportunity to allow other questions.

Senator Frith: I am just trying to clear this up. I am not trying to embarrass anybody.

The Chairman: We have only five minutes left.

[*Traduction*]

M. Gagnon: Non, car les ordinateurs, les dispositifs de visualisation et les appareils à sous ne peuvent être exploités que par le gouvernement lui-même.

Le sénateur Frith: Je vois, et les provinces ne peuvent adopter une loi les autorisant à délivrer des licences pour ce genre d'opération.

M. Gagnon: Non.

Le sénateur Frith: Pourquoi pas?

M. Gagnon: Ce serait une violation du Code criminel. C'est commettre un acte criminel que de faire quoi que ce soit dans le domaine des jeux et des paris, à moins d'être nettement visé par l'une des exceptions et, au terme des exceptions, seul le gouvernement d'une province peut gérer et exploiter des ordinateurs, des dispositifs de visualisation et des appareils à sous. Aussi je ne crois pas que le crime organisé se mettra à dépenser des sommes énormes pour l'achat de terrains et autres choses, quand il sait parfaitement que seul le gouvernement peut faire ce qu'il envisage de faire. Dans tous les pays du monde où l'on trouve des casinos et que ces casinos relèvent du gouvernement, les règles du jeu sont totalement différentes de celles qui ont cours aux États-Unis. Vous ne trouvez pas beaucoup de casinos de type Las Vegas dans ces pays.

Le sénateur Frith: Permettez-moi de vous poser une question et une fois cette question posée vous comprendrez quelle est notre inquiétude.

Supposons,—et quand je dis «supposons» cela ne veut pas dire que je ne suis pas d'accord,—supposons que seuls les gouvernements peuvent exploiter une entreprise de type casino . . .

M. Gagnon: Ce n'est pas ce que j'ai dit.

Le sénateur Frith: D'accord. Mettons les choses au point. Selon les témoignages, l'appareil à sous représente 50 pour 100 de l'activité d'un casino, et ce pourcentage est à la hausse. Je ne parle que des opérations d'appareils à sous. Seuls les gouvernements provinciaux peuvent exploiter une entreprise d'appareils à sous de type casino, n'est-ce pas?

M. Gagnon: C'est juste.

Le sénateur Frith: Si je me rappelle bien les témoignages, le souci concernant les conséquences sociales d'un établissement permanent de casino ne se limite pas à ceux qui sont exploités par les gouvernements. Si j'ai bien compris les témoignages, une entreprise permanente d'appareils à sous de type casino fait hausser la criminalité, détériore le voisinage et a des conséquences sociales graves. Les témoins n'ont pas dit que c'était parce que l'établissement était exploité par le crime organisé. C'est un témoignage dont il faut se soucier.

Si la loi dit nettement que les gouvernements provinciaux peuvent exploiter des casinos permanents, autant qu'ils le veulent et dans autant de villes qu'ils veulent . . .

Le sénateur Flynn: Ce n'est pas la même chose.

La présidente: Le temps s'écoule. J'aimerais qu'on puisse poser d'autres questions.

Le sénateur Frith: Je tente simplement de tirer la chose au clair. Je ne veux pas gêner personne.

La présidente: Il ne nous reste que cinq minutes.

[*Text*]

Mr. Gagnon: Perhaps I could give the senator a short answer.

Senator Frith: We have this gentleman here because we are concerned about the evidence we have heard. We are concerned not because of the niceties of what one subclause says or what another subclause says, but because people have come to us and said: "Look, if this legislation goes through there will be serious social consequences". That is the question I am trying to burrow in on. That is central; it is not a little nit-picking point on a subclause.

Mr. Gagnon: In brief, senator, the way it was and the way it will be is that provincial governments can conduct a lottery scheme only if they have legislation authorizing them to do so. So, provincial legislation has to authorize the province to conduct lottery schemes.

Of course, the provincial governments would have to go through the whole process of analyzing all of these problems you have referred to before taking the decision to go into that kind of business.

As a matter of fact—and I mentioned this earlier—six or seven years ago the Government of Quebec went through that whole process and decided not to go into that business.

Senator Frith: But other provinces will be able to.

Mr. Gagnon: They could, but they would have to take their responsibilities seriously and analyze all of these concerns.

The Chairman: Mr. Gagnon, we are grateful for your appearance. If other questions arise perhaps we can impose on you to appear before the committee again.

We are being signalled to vacate the room, but Senator Nurgitz has a quick question.

Senator Nurgitz: I wish to follow up on Senator Frith's concerns. My question is for the deputy commissioner.

We have had evidence to the effect that there will be massive increases in street crime, armed robberies, assault and drug peddling.

In the cities of Calgary, Edmonton and Winnipeg, casinos currently permitted under the Criminal Code of Canada operate on an ongoing basis with provincial control.

Senator Frith: In one location and not moving around?

Senator Nurgitz: In one location—well, they are now in one location. For example, in the City of Winnipeg the casino did move around to a couple of locations.

Can you tell us if there has been an increase in crime, especially street crime, in those cities?

Mr. Henry Jensen, Deputy Commissioner, Royal Canadian Mounted Police: The RCMP consulted with the police services in the locations you have cited, and based on their response and our personal knowledge of those situations, we are unable to link any appreciable increase in any type of crime to any of those operations.

[*Traduction*]

M. Gagnon: Peut-être pourrais-je donner une courte réponse au sénateur.

Le sénateur Frith: Si nous avons M. Gagnon ici, c'est que certains témoignages nous inquiètent. Ce n'est pas parce que nous nous concernons de ce que peut vouloir dire un sous-alinéa par rapport à un autre sous-alinéa, mais parce que des gens sont venus et nous ont dit: «Attention, l'adoption de cette législation aura des conséquences sociales graves». Voilà la question que j'essaie de creuser. C'est un point crucial, non des subtilités sur un sous-alinéa.

M. Gagnon: En bref, Monsieur le Sénateur, la situation qui prévalait et la situation qui va prévaloir est que le gouvernement provincial peut gérer un système de loterie seulement s'il possède une loi qui l'autorise à le faire. C'est dire qu'une loi provinciale doit autoriser la province à conduire un système de loterie.

C'est dire aussi, bien sûr, qu'avant de prendre sa décision le gouvernement provincial devra mener à bien tout le processus d'analyse des problèmes que vous soulevez.

A vrai dire,—et j'en ai déjà parlé,—il y a six ou sept ans, le gouvernement du Québec s'était imposé tout ce processus d'analyse avant de décider de ne pas donner suite à son projet.

Le sénateur Frith: Mais d'autres provinces seront capables de le faire.

M. Gagnon: Évidemment, mais elles devront prendre sérieusement leurs responsabilités et analyser tous les aspects.

La présidente: Monsieur Gagnon, nous vous remercions de votre présence. Si d'autres questions se présentent, peut-être pourrions-nous vous demander de revenir devant le Comité.

On nous demande de quitter la pièce, mais le sénateur Nurgitz a une brève question à poser.

Le sénateur Nurgitz: J'aimerais faire suite aux préoccupations du sénateur Frith. Ma question s'adresse au sous-commissaire.

On nous a dit qu'il y aurait augmentation rapide des crimes, des cambriolages à main armée, des assauts et de la vente des drogues.

A Calgary, Edmonton et Winnipeg, des casinos autorisés en vertu du Code criminel du Canada fonctionnent d'une façon permanente sous le contrôle de la province.

Le sénateur Frith: Sont-ils fixés à un endroit ou se déplacent-ils?

Le sénateur Nurgitz: A un endroit,—c'est-à-dire qu'ils le sont maintenant. Par exemple, à Winnipeg, le casino s'est déplacé d'un endroit à un autre.

Pourriez-vous nous dire si, dans ces villes, il y a eu augmentation de la criminalité, spécialement des délits commis sur la rue?

M. Henry Jensen, sous-commissaire, Gendarmerie royale du Canada: La Gendarmerie a consulté les corps poilciers des endroits que vous avez nommés. En nous fondant sur leur réponse et sur notre connaissance personnelle de la situation, je dois dire qu'il nous est impossible de lier aux opérations en

[*Text*]

Senator Nurgitz: Is that helpful?

Senator Frith: Yes.

Senator Nurgitz: I then want to ask Sergeant Robinson a question because he is a field expert in gaming operations. What can you tell us about the quality of control and the completeness of the provincial control over the casinos we have talked about located in Edmonton, Calgary and Winnipeg?

Sergeant R. G. Robinson, Gaming Specialist, Royal Canadian Mounted Police: A personal view?

Senator Nurgitz: Have you seen those personally?

Sergeant Robinson: I have seen those on many occasions. I live in Edmonton, have viewed the casinos in Calgary and am often in Winnipeg. The difference is that in Manitoba they have provincial control of gaming—that is, the government physically conducts, manages and operates the game. Alberta operates at arm's length as opposed to operating the games themselves.

My personal interpretation of how Alberta and Manitoba run the games is that it is an excellent system. I am not sure which one I would prefer, but obviously Manitoba's is the ultimate in gaming control. When the government itself runs casinos, that is the ultimate control.

Senator Nurgitz: But that has only been—

Sergeant Robinson: Since 1983. When the government started running the casinos as opposed to private operators, the revenue in the province generated by casino gaming rose considerably, I think by $2 million, if I am not mistaken.

Senator Nurgitz: Thank you.

The Chairman: Honourable senators, I thank the witnesses for their appearance before the committee today.

The committee adjourned.

[*Traduction*]

cause une augmentation sensible de la criminalité, de quelque genre qu'elle soit.

Le sénateur Nurgitz: Cela peut-il aider?

Le sénateur Frith: Oui.

Le sénateur Nurgitz: Maintenant j'aimerais poser une question au sergent Robinson, car il est un expert dans le domaine du jeu. Que pouvez-vous nous dire au sujet de la qualité et de la profondeur du contrôle que la province exerce sur les casinos dont on vient de parler à Edmonton, Calgary et Winnipeg?

Sergent R. G. Robinson, spécialiste du jeu, Gendarmerie royale du Canada: Une opinion personnelle?

Le sénateur Nurgitz: Les avez-vous personnellement visités?

Sergent Robinson: Je les ai vus à plusieurs reprises. Je demeure à Edmonton, j'ai vu les casinos de Calgary et je suis souvent à Winnipeg. La différence, c'est qu'au Manitoba le contrôle provincial est sur place, c'est-à-dire que le gouvernement lui-même dirige, gère et exploite le jeu. En Alberta, le gouvernement supervise de plus loin, il ne mène pas sur place.

Mon point de vue personnel est que l'Alberta et le Manitoba ont un excellent système pour diriger les jeux. Je ne suis pas sûr lequel je préfère, mais il est évident que le Manitoba possède le régime idéal de contrôle. Quand le gouvernement gère lui-même les casinos, il n'y a pas mieux.

Le sénateur Nurgitz: C'est seulement depuis . . .

Sergent Robinson: Depuis 1983. Quand le gouvernement a décidé de prendre en main la gestion des casinos, au lieu de la confier à des opérateurs privés, les recettes produites par le jeu dans la province ont fait un bond considérable, je crois, de 2 millions, si je ne me trompe.

Le sénateur Nurgitz: Merci.

Le président: Honorables sénateurs, je remercie les témoins d'avoir bien voulu honorer le Comité de leur présence.

La séance est levée.

TAB 20

First Session
Thirty-third Parliament, 1984-85

SENATE OF CANADA

Proceedings of the Standing Senate Committee on

Legal and Constitutional Affairs

Chairman:
The Honourable JOAN NEIMAN

Friday, December 13, 1985

Issue No. 34

Sixth proceedings on:

The Examination of Bill C-81, "An Act to amend the Criminal Code (lotteries)"

WITNESSES:

(See back cover)

Première session de la
trente-troisième législature, 1984-1985

SÉNAT DU CANADA

Délibérations du Comité sénatorial permanent des

Affaires juridiques et constitutionnelles

Présidente:
L'honorable JOAN NEIMAN

Le vendredi 13 décembre 1985

Fascicule nº 34

Sixième fascicule concernant:

L'étude du projet de loi C-81, «Loi modifiant le Code criminel (loteries)»

TÉMOINS:

(Voir à l'endos)

28335—1

EVIDENCE

Ottawa, Friday, December 13, 1985

[*Text*]

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-81, to amend the Criminal Code (lotteries), met this day at 9.30 a.m. to give consideration to the bill.

Senator Joan Neiman (*Chairman*) in the Chair.

The Chairman: We have with us this morning Mr. Binavince of Gowling and Henderson. Mr. Henderson cannot be here this morning because he is still occupied with the Estey Commission of Inquiry. He has asked Mr. Binavince to appear, and he, of course, has read the transcripts of the previous evidence and is thoroughly familiar with the subject we are discussing. This morning we will start with his statement.

We also have with us this morning Mr. Michel Gagnon; Deputy Commissioner Jensen; Sergeant Robinson and Mr. Mosley, of course, from the department; we also have Mr. Morton from the Office of the Attorney General of Ontario. Also in attendance are the witnesses who appeared previously from the Criminal Intelligence Service of Ontario.

It may be that more than one of these witnesses will add some comment to what will be said this morning. I shall ask your guidance regarding how we should approach this and whether we should hear additional statements from each person before we open the questioning.

In the meantime, Mr. Binavince, I would be happy if you would commence your statement.

Mr. Emilio S. Binavince, Gowling and Henderson: Thank you Madam Chairman. Honourable senators, first, I should like to thank you for giving me this opportunity to appear before you on behalf of my partner, Mr. Gordon Henderson. He asked me to extend his apologies for not being here today. At the outset, I must immediately confess that I cannot equal Mr. Henderson's eloquence, but I will, nonetheless, attempt to imitate his brilliance.

I would like to direct my statement primarily to the effect of the agreement between the Government of Canada and the governments of the various provinces, dated June 3, 1985.

I have read the statement made by Mr. Mosley on December 11, 1985, and the task I should like to discharge today is to express a different view from what he stated at pages L-1 and L-2 of the transcript. To put my comments in context, it would be useful to read to you what Mr. Mosley stated at that time. He said:

> Apart from that, we are bound in our view, by an agreement which requires us to have those amendments proclaimed in force by December 31 of this year. The amendments have to pass the Senate and Royal Assent has to be given. The proclamation has to issue before the end of next week if we are to comply with the obligation imposed on the federal government by the provinces through this agreement.

TÉMOIGNAGES

Ottawa, le vendredi 13 décembre 1985

[*Traduction*]

Le Comité sénatorial permanent des affaires juridiques et constitutionnelles, auquel a été déféré le projet de loi C-81, Loi modifiant le Code criminel (loteries), se réunit aujourd'hui à 9 h 30 pour examiner le projet de loi.

Le sénateur Joan Neiman (*présidente*) occupe le fauteuil.

La présidente: Nous recevons ce matin M. Binavince de Gowling and Henderson. M. Henderson ne peut venir ce matin, étant toujours occupé à la Commission d'enquête Estey. Il a demandé à M. Binavince de le remplacer. Celui-ci a lu, bien entendu, les procès-verbaux des témoignages précédents et connaît à fond la question dont nous traitons. Nous commencerons ce matin par sa déclaration liminaire.

Nous recevons également ce matin M. Michel Gagnon, Le sous-commissaire Jensen, le sergeant Robinson, M. Mosley, bien sûr, du ministère et aussi M. Morton du Bureau du procureur général de l'Ontario. Sont présents dans la salle également les témoins du Criminal Intelligence Service ontarien qui ont comparu précédemment.

Il se peut que l'un ou l'autre de ces témoins donne son avis sur ce qui se dira. Je vous demanderai comment procéder et si vous souhaitez que chaque personne fasse son exposé avant de passer aux questions.

Entre-temps, monsieur Binavince, je présente la parole pour votre déclaration liminaire.

M. Emilio S. Binavince, Gowling et Henderson: Je vous remercie, madame la présidente et honorables sénateurs. Je tiens tout d'abord à vous remercier de m'avoir donné l'occasion de comparaître devant vous au nom de mon associé, M. Gordon Henderson. Il m'a demandé de vous prier d'excuser son absence. Je dois confesser, d'emblée, que je ne peux égaler l'éloquence de M. Henderson mais je tenterai néanmoins d'imiter son éclat.

Mon exposé va porter essentiellement sur les conséquences de la convention passée entre le gouvernement du Canada et les gouvernements des diverses provinces en date du 3 juin 1985.

J'ai vu la déclaration de M. Mosley du 11 décembre 1985 et la tâche que je me suis fixée aujourd'hui est d'exprimer un point de vue différent de celui qu'il a énoncé aux pages L-1 et L-2 du procès-verbal. Pour placer mes remarques dans le contexte, il n'est pas inutile que je vous lise ce que M. Mosley a déclaré alors:

> Indépendamment de cela, nous sommes liés, à notre sens, par une convention qui nous contraint à promulguer d'ici le 31 décembre de cette année ces amendements. Ils devront à cette date avoir été adoptés par le Sénat et avoir reçu la sanction royale. La proclamation doit intervenir avant la fin de la semaine prochaine si nous voulons nous acquitter de l'obligation imposée au gouvernement fédéral par les provinces dans cette convention.

[*Text*]

THE CHAIRMAN: Mr. Mosley, is it your position then that the Government of Canada can bind the Parliament of Canada?

MR. MOSLEY: Not at all, Madam Chairman. Parliament cannot be bound by any agreement between the federal and provincial governments. If the agreement is frustrated by Parliament, we will certainly take the position that we have exercised our best efforts to get this bill passed and so be it, but that, unfortunately, may lead into litigation between the federal government and the provinces and that certainly is something that we would hope to avoid if at all possible.

I will not address the conflicting interpretations put before the committee by the various witnesses who have commented on the provisions of Bill C-81. It is my view that the rival interpretations are equally capable of being supported by argument and, ultimately, it is for the courts, not another commentator like me, to weigh the merits of such argument and claim the right to the last word.

However, I wish to state that I do not share the view expressed to the committee on December 11, 1985 by Mr. Mosley that the purpose of the bill is simply to clarify, rather than change, the nature of the existing law. If Mr. Mosley is correct in his view that the decision of the Quebec Court of Appeal has already resolved the problem of interpretation that this bill addresses, I fail to see how the bill can serve to clarify the matter further. The precedential value of a judicial decision is of far greater assistance in clarifying a statute than another enactment of a further statutory provision over which parties may quarrel, again to be refereed by the courts.

I will attempt to provide answers, so far as it is possible to determine them from the authorities, to the following questions:

1. May the federal government, through a federal minister, validly enter into a contract with another party or government under which the federal government undertakes that it will not conduct lottery activities in the future?

2. May the federal government, through a federal minister, validly enter into a contract with another party or government by which it undertakes that it will ensure that the rights of the provinces will not be restricted, i.e., that the criminal law power of Parliament will not be used to restrain that activity?

3. If such a contract is valid, would it bind a subsequent government?

4. To what does the word "approved" in article 1.2 of the agreement refer?

5. Would a failure of Parliament to pass Bill C-81 place the federal government in breach of contract?

[*Traduction*]

LA PRÉSIDENTE: Monsieur Mosley, votre position est-elle donc que le gouvernement du Canada peut contraindre le Parlement du Canada?

M. MOSLEY: Pas du tout, madame la présidente. Le Parlement ne peut être lié par aucune entente entre le gouvernement fédéral et les gouvernements provinciaux. Si le Parlement empêche la réalisation de la convention, nous prendrons pour position que nous avons exercé nos meilleurs efforts pour faire adopter le projet de loi. Il se pourrait, dans ce cas, que les provinces intentent un recours en justice contre le gouvernement fédéral et c'est quelque chose que nous aimerions éviter dans toute la mesure du possible.

Je ne vais pas passer en revue les interprétations contradictoires soumises à ce comité par les divers témoins qui ont donné leur avis sur les dispositions du projet de loi C-81. A mon sens, toutes ces interprétations rivales s'appuient sur des arguments solides et, au bout du compte, il appartiendra aux tribunaux, et non pas à un observateur comme moi, de peser les mérites de chaque argument et de trancher entre les diverses interprétations possibles.

Toutefois, je dois dire que je ne partage pas le point de vue exprimé à ce comité par M. Mosley le 11 décembre 1985, à l'effet que ce projet de loi ne fait que clarifier, plutôt que modifier, la nature de la loi existante. Si M. Mosley a raison lorsqu'il dit que la décision de la Cour d'appel du Québec a déjà tranché le problème d'interprétation qui se pose, je vois mal en quoi ce projet de loi pourra éclairer encore davantage les choses. Une décision de justice ayant valeur de précédent est infiniment plus utile pour préciser le sens d'une loi que la promulgation d'une nouvelle disposition statutaire sur le sens de laquelle les parties peuvent de nouveau se quereller pour finir par faire appel de nouveau à l'arbitrage des tribunaux.

Je vais tenter d'apporter des réponses, dans toute la mesure où il est possible de les dégager des textes et de la jurisprudence, aux questions suivantes:

1. Le gouvernement fédéral peut-il, par l'intermédiaire d'un ministre fédéral, conclure validement avec une autre partie ou un autre gouvernement un contrat aux termes duquel le gouvernement fédéral s'engage à ne pas organiser de loteries à l'avenir?

2. Le gouvernement fédéral peut-il, par l'intermédiaire d'un ministre fédéral, conclure validement avec une autre partie ou un gouvernement un contrat par lequel il s'engage à faire en sorte que les droits des provinces ne soient pas restreints, c'est-à-dire que le pouvoir en matière de droit pénal du Parlement ne soit pas utilisé pour restreindre cette activité?

3. Dans la mesure où un tel contrat est valide, contraint-il les gouvernements qui lui succéderont?

4. Quelle est la signification de l'article 1.2 de la convention?

5. Est-ce que la non-adoption par le Parlement du projet de loi C-81 placerait le gouvernement fédéral en situation de rupture de contrat?

[*Text*]

6. Would the mere submission of a bill to Parliament by the appropriate minister be sufficient compliance with the agreement?

7. If Bill C-81 is not passed, as contemplated by the agreement, are the provinces still obligated to pay the amounts stipulated in the agreement or would the agreement be frustrated?

8. If the agreement fails, can the Attorney General revive his appeal of the decision of the Quebec Court of Appeal in the case of the *Attorney General of Canada v. Loto Quebec*?

9. How much leeway does Parliament have to amend the provisions of Bill C-81 without placing the federal government in breach under the agreement?

10. What is the extent of liability of each province in the event of a default in payment of the amounts stipulated in the agreement to be paid to the federal government?

Before answering the individual questions, it is necessary to have some understanding, first, of the substance of the agreement of June 1985, and, second, of the general principles from which the answers to the questions will flow.

The form of the agreement purports to show that it is a private contract. There is a consideration clause, which is normal in a private contract. Article 7 of the agreement proposes to make the agreement binding on Her Majesty in the Right of Canada and Her Majesty in the right of the various provinces. The agreement uses private law terms such as "assignees," "agents," "notice," "demand," "consent" and so on. Article 7 of the agreement also purports to characterize the subject matter of the agreement as a "commercial matter," in spite of the clause stating that the "parties" undertake not to invoke any "crown prerogative or immunity" in any court proceedings.

Let me first examine the capacity in which these various parties to the agreement purport to act in entering into the agreement. To me, it is clear that the parties have entered into the agreement only in their capacity as constitutional institutions; that is, as the Government of Canada and as governments of the provinces. These terms are recognized terms in constitutional law. This is not an agreement entered into by them in their private capacities, and, if they did attempt to do that, it is doubtful whether it would be possible for them to do so, because, as compared with the United Kingdom, there the personal sovereign, Her Majesty, has two capacities: a private capacity and a public capacity; but here governments have only one capacity, because they are, in fact, governments—public institutions.

Let me look at the substance of the agreement. Although they characterize the subject matter to be commercial matters, the agreement really deals with powers of government. They are, primarily, constitutional powers of the federal Crown or executive government under the Constitution Act of 1867, which is governed by sections 9 to 16 of the Constitution Act, and secondarily with respect to the legislative power of Parliament are assigned by the Constitution under section 91(27).

[*Traduction*]

6. Est-ce que le seul dépôt d'un projet de loi au Parlement par le ministre approprié suffirait à la bonne exécution des obligations contractuelles du gouvernement fédéral?

7. Si le projet de loi C-81 n'est pas promulgué comme le prévoit la convention, les provinces seront-elles néanmoins tenues de verser les montants stipulés ou bien la convention deviendrait-elle nulle?

8. Si la convention devient nulle, le procureur général pourra-t-il renouveler son appel de la décision de la Cour d'appel du Québec dans l'affaire du procureur général du Canada v. Loto Québec?

9. Quelle latitude le Parlement possède-t-il de modifier les dispositions du projet de loi C-81 sans placer le gouvernement fédéral en situation de rupture de contrat?

10. Quelle serait la responsabilité civile de chaque province dans l'éventualité d'un défaut de paiement des montants stipulés dans la convention payables au gouvernement fédéral?

Avant de pouvoir répondre à ces diverses questions, il est nécessaire tout d'abord de bien comprendre la substance de l'entente de juin 1985 d'une part et, d'autre part, les principes généraux dont les réponses vont découler.

On peut inférer de la forme de la convention qu'il s'agit d'un contrat privé. Elle comporte une clause de considération, ce qui est la norme dans les contrats privés. L'article 7 rend la convention obligatoire pour Sa Majesté du chef du Canada et Sa Majesté du chef de chacune des provinces. Le libellé emploie des termes de droit privé tels que «cessionnaires», «agents», «avis», «demande», «consentement» etc. L'article 7 de la convention précise également que cette entente et «d'ordre commercial», en dépit de la clause par laquelle les «parties» s'engagent à n'invoquer aucune «prérogative de la Couronne ni aucune immunité» en cas de procédures judiciaires.

Permettez-moi d'abord d'examiner en quelle capacité ces diverses parties à la convention prétendent agir en concluant cette entente. Il est clair, à mon sens, que les parties ont conclu cette entente uniquement en leur capacité d'institutions constitutionnelles, c'est-à-dire en tant que gouvernement du Canada et en tant que gouvernements des provinces. Ce sont là des termes de droit constitutionnel reconnus. Il ne s'agit donc pas là d'un accord conclu par eux en leur capacité privée et il est même douteux qu'ils puissent conclure de tels contrats car, alors que le souverain au Royaume-Uni, Sa Majesté, possède deux capacités: une capacité privée et une capacité publique, les gouvernements, par définition, n'ont qu'une seule capacité, étant des institutions publiques.

Voyons donc la substance de la convention. Bien que les signataires qualifient l'objet de l'entente comme étant d'ordre commercial, celle-ci traite en fait de pouvoirs de gouvernement. Il s'agit essentiellement des pouvoirs constitutionnels de la Couronne fédérale ou de l'Exécutif conférés par les articles 9 à 16 de la Loi constitutionnelle de 1867 et, en second lieu, des pouvoirs législatifs attribués au Parlement par l'article 91(27) de la Constitution.

[*Text*]

The Constitution Act does not have very explicit provisions similar to those in respect of the Crown in right of a province, but the courts have already held that these are parallel executive powers of the provinces, quite similar to those of the federal Crown.

If one turns to the undertakings in articles 1 and 2 of the agreement, one finds that the subject matter, really, of the undertakings is government power. In article 1, the parties look at "gaming" and "betting" as a source of revenue. As sources of revenue, gaming and betting are no different from those contemplated by the revenue provisions in part 8 of the Constitution Act, 1867.

The right of the provinces that is being ensured in article 1.1 is, in effect, the right to tap gaming and betting as sources of revenue, and the restriction or reduction that is precluded in that article is one that involves the exercise of the criminal law powers of Parliament under section 91(27) of the Constitution.

Under article 1.2 the federal government undertakes to introduce amendments to the Criminal Code—that is Bill C-81 now before you. The introduction of legislation is eminently a governmental function of the executive. It is not something that a private person can exercise.

Article 1.3 speaks of the winding up of a corporation owned by the federal government funded by public money.

Under article 1.4, the federal government undertakes to cause the Attorney General of Canada to desist from the appeal that it has before the Supreme Court of Canada. This undertaking, I submit, is obviously an exercise of the power of the Attorney General under the Department of Justice Act; or, in any event, as the highest law officer of the Crown, he is exercising his official function in this regard.

As for the undertakings of the provincial government under article 2, there is an attempt to use the language and the trappings of a private contract. In my view, however, the payment that is dealt with under that article is simply a mechanism for revenue sharing. The moneys that are paid are public moneys—they are not private moneys. They are owned by the Crown in right of the provinces, and it is doubtful whether a Crown can have private moneys at all. They are being paid to another Crown—that is, the Crown in right of Canada.

Another interesting point in the agreement arises from article 4, which speaks of "consideration", which is a private law concept. This article allows a province to enforce compliance by withholding payment until a dispute that may arise from the agreement is resolved. In my view, this is no more than a sanction hold-back in revenue sharing, that is very common in Canada today. The most recent instance of that, although it is in a reverse character, is in the case of the Canada Health Act, where there is the failure of a province to comply with the conditions and criteria provided under that act.

So, in conclusion, the form of the agreement is that of a private law contract. The substance of the agreement is that it is

[*Traduction*]

La Loi constitutionnelle ne contient pas de dispositions très explicites concernant les pouvoirs de la Couronne du chef d'une province mais les tribunaux ont déjà statué que les provinces possèdent des pouvoirs exécutifs parallèles très similaires à ceux de la Couronne fédérale.

Lorsqu'on examine les engagements pris aux articles 1 et 2 de la convention, on constate que leur objet met réellement en jeu le pouvoir de gouverner. À l'article 1, les parties considèrent le domaine du «jeu» et du «pari» comme une source de revenu. En tant que telle, le jeu et le pari ne diffèrent en rien des sources de revenu visées par les dispositions sur les revenues de la partie 8 de la Loi constitutionnelle de 1867.

Les droits des provinces garantis par l'article 1.1 sont, dans la pratique, le droit d'exploiter le jeu d'argent et le pari en tant que sources de recettes, tandis que la restriction que cet article prohibe met en jeu l'exercice du pouvoir en matière de droit pénal conféré au Parlement par l'article 91(27) de la Constitution.

À l'article 1.2, le gouvernement fédéral s'engage à introduire des amendements au Code criminel, c'est-à-dire le bill C-81 dont vous êtes saisis maintenant. L'introduction d'un texte de loi est une fonction éminemment gouvernementale de l'Exécutif, ce n'est pas quelque chose qu'une personne privée peut faire.

L'article 1.3 traite de la dissolution d'une société appartenant à l'État fédéral, financée par les fonds publics.

À l'article 1.4, le gouvernement fédéral s'engage à faire en sorte que le procureur général du Canada se désiste de l'appel qu'il a interjeté auprès de la Cour suprême du Canada. À mon sens, cet engagement constitue manifestement un exercice du pouvoir conféré au procureur général par la Loi sur le ministère de la Justice ou, en tout état de cause, l'exercice de sa fonction officielle à cet égard en tant que premier officier de justice de la Couronne.

En ce qui concerne les engagements pris par les provinces à l'article 2, on constate là une tentative d'employer les termes et les formules propres aux contrats privés. Toutefois, à mon avis, le paiement dont il est question dans cet article n'est rien qu'un mécanisme de partage des revenus. Les sommes versées sont des fonds publics et non des fonds privés. Elles appartiennent à la Couronne du chef des provinces et il est de toute façon douteux que la Couronne puisse détenir des fonds privés. Ces sommes sont versées à une autre Couronne—c'est-à-dire à la Couronne du chef du Canada.

Un autre élément intéressant de la convention figure à l'article 4, où il est question «d'accomplisssement», qui est une notion de droit privé. Cet article permet aux provinces de contraindre à l'exécution de l'accord en retenant le paiement jusqu'à ce qu'un litige résultant éventuellement du contrat soit résolu. À mon sens il ne s'agit là rien de plus qu'une sanction de non-exécution, modalité très courante au Canada aujourd'hui. L'exemple le plus récent, encore que la sanction s'exerce en sens inverse, en est la Loi sur la santé au Canada qui pénalise une province qui refuse de se soumettre aux conditions et critères énoncés dans cette loi.

Ainsi, en conclusion, la forme de la convention est celle d'un contrat de droit privé. Sa substance montre qu'il met en jeu le

[*Text*]

an agreement relating to public government, because principally the exercise of executive powers under the Constitution, and partly the exercise of legislative powers by Parliament, is the subject matter being dealt with.

The question, considering this to be the character of the agreement, is what kind of principles should be applied in order to characterize this agreement? I will now turn to the legal principles that are relevant to the answer. The problem to be resolved is the legal character of the agreement. Is it a private contract or a political, government arrangement? I have some difficulty in characterizing the agreement as a contract. The first difficulty relates to the law that should govern the contract. All contracts are governed by the private law of a jurisdiction—for instance, a province. In the event of conflict, this law is very often called the "proper law of the contract". The proper law of a contract governs its interpretation and application, and, in the event of litigation arising from that contract, it will be applied by the court not only in determining liability but also in determining the amount of damages that may be imposed. In Canada there is no federal law of contract. All laws of contract are provincial laws. The difficulty, therefore, is what provincial law will apply to the agreement in the event that the parties have a dispute? Will it be the law of Ontario, of Nova Scotia, of Manitoba—or of Quebec, which has a very different tradition compared to that of the other jurisdictions? The second difficulty is what court would have jurisdiction to entertain a suit or proceeding based on the agreement?

In the various provinces there are proceedings against the Crown. In the Federal Court, there is the Federal Court Act. There are limitations as to the ability of the Federal Court to entertain a case in relation to subject matters of private contracts—and that would involve constitutional issues too complex to be discussed in relation to this question.

The main issue that must be addressed, therefore, is whether the powers of government can be made the subject matter of a private contract. For example, is it possible for the Governments of Ontario and Canada to enter into a contract whereby the powers of Her Majesty in right of Canada, as Commander in Chief of the military forces, under section 15 of the Constitution Act, are to be exercised by the executive council of Ontario? Or, in an example more closely related to the issues raised by this bill, is it possible for the Governments of Ontario and Canada to agree that henceforth the powers of the provinces to prosecute criminal law offences, as determined by the Supreme Court in the Hauser case, are to be exercised by the Attorney General of Canada?

The effect of such an agreement, of course, is the arrangement of the executive powers that are allocated by the Constitution to various levels of government.

Aside from constitutional grounds, I believe that contracts cannot govern the powers of the governments of the provinces and Canada. The law of contract cannot impose a restriction

[*Traduction*]

gouvernement public puisqu'elle concerne principalement l'exercice des pouvoirs exécutifs en vertu de la Constitution et auxiliairement l'exercice des pouvoirs législatifs par le Parlement.

Si tel est le caractère de la convention, la question qui se pose est de savoir quelle sorte de principes il convient d'appliquer pour caractériser cet accord. Je vais maintenant passer en revue les principes juridiques qui déterminent la réponse. Le probème à résoudre est celui du caractère de cette entente. S'agit-il d'un contrat privé ou d'une convention politique gouvernementale? J'éprouve quelque difficulté à caractériser cette entente de contrat. La première difficulté est de savoir quel droit régit le contrat. Tous les contrats sont régis par le droit privé d'une juridiction—par exemple, d'une province. Dans l'éventualité d'un litige, on qualifie très souvent ce droit «de droit applicable au contrat». Le droit applicable à un contrat régit son interprétation et son exécution et, en cas de litige résultant du contrat, il est appliqué par le tribunal non seulement pour déterminer la responsabilité mais également le montant des dommages et intérêts éventuellement imposés. Il n'existe pas au Canada de droit contractuel fédéral, celui-ci étant constitué exclusivement par des lois provinciales. La difficulté, par conséquent, est de savoir quelle loi provinciale s'appliquerait à la convention si un différend survenait entre les parties? Serait-ce la loi de l'Ontario, celle de Nouvelle-Écosse, celle du Manitoba ou du Québec, cette province ayant une tradition juridique très différente de celles des autres juridictions? La deuxième difficulté est de savoir quel tribunal aurait compétence pour entendre un procès ou des poursuites fondés sur la convention.

Il est possible dans les diverses provinces de poursuivre en justice la Couronne. La Cour fédérale est régie par la Loi sur la Cour fédérale, laquelle impose des restrictions à son pouvoir d'entendre une cause mettant en jeu des contrats privés ou des questions constitutionnelles d'une complexité trop grande pour être tranchée en rapport avec une telle cause.

Le principal point qu'il convient d'élucider, par conséquent, est de savoir si les pouvoirs du gouvernement peuvent être sujets à contrat privé. Par exemple, est-il possible aux gouvernements de l'Ontario et du Canada de conclure un contrat stipulant que les pouvoirs de Sa Majesté du chef du Canada, en tant que commandant en chef des Forces armées selon l'article 15 de la Loi constitutionnelle, seront exercés par le conseil exécutif de l'Ontario? Ou bien, pour prendre un exemple plus étroitement apparenté à ce projet de loi, est-il possible pour les gouvernements de l'Ontario et du Canada de convenir que dorénavant les pouvoirs des provinces d'intenter les poursuites à l'égard d'infractions au droit pénal, tels que déterminés par la Cour suprême dans l'affaire Hauser, seront exercés par le procureur général du Canada?

Une telle entente aurait manifestement pour effet de modifier la répartition des pouvoirs exécutifs que la Constitution attribue aux divers niveaux de gouvernement.

Toute considération constitutionnelle mise à part, je suis d'avis que les contrats ne peuvent régir les pouvoirs des gouvernements des provinces et du Canada. Le droit contractuel ne

[*Text*]

on effective government, and such contracts have been held to be void.

Senator Frith: It could have the effect of amending the Constitution.

Mr. Binavince: Yes; but that would be contrary to the amending formula, which has been adopted since 1982. Contracts may very well deal with restraint on private, and sometimes the exercise of government, powers. But what is in issue in this case, in my submission, is not simply an exercise of discretionary power. The responsibility to govern is not only a matter of discretionary power; it is also a matter of duty and responsibility imposed by the constitution. Alteration of those duties in their allocation between levels of government can only be made by changes to the ground rule that governs governments. That ground rule is the Constitution, not the law of contract.

In this regard I share the view expressed by Professor Frank Scott in his dissent in the arbitration relating to the *Taxation Agreement between the Government of Saskatchewan and the Government of Canada*.

If I might digress a little bit here in relation to agreements on tax sharing, such agreements have always been founded under a statute or specific authorization bestowed by the crown, whereas presumably what is being exercised in relation to this agreement is something that one would claim to arise from the prerogative powers of the crown. There is, of course, a distinction between statutory powers and prerogative powers. But, as decided by the Supreme Court of Canada in the operation dismantle case for the purposes of the Constitution, the source of power does not really matter very much.

Professor Scott stated at page 285:

> And in searching for rules of law it is my view that we must look primarily to the field of public and administrative law, not private law, since we are not dealing with a contract between private persons but with an agreement between two governments, acting through the Crown, and validated by Acts of Parliament. The parties to the taxation agreement were not authorized to make an agreement in any terms other than those prescribed in the schedule to the Saskatchewan statute. It is Canadian constitutional law that governs this dispute, and not the common law applicable to private persons, though the latter may be looked at to find analogous rules where no special constitutional rule exists.

That, of course, in more recent times would relate to what one calls constitutional conventions in the way in which various branches of government deal with each other. However, that is not an issue with relation to this bill.

The other basic principle that must be examined in this connection is that of Crown immunity. The doctrine of Crown immunity in relation to criminal matters was recently reaffirmed by the Supreme Court of Canada in *Regina versus Uranium Canada Ltd.*.

In that case the Supreme Court held that it is not possible to prosecute the Crown for a crime. The doctrine of Crown immunity flows from the principle that laws are enacted by the

[*Traduction*]

peut imposer aucune restriction au bon gouvernement et de tels contrats ont jusqu'à présent été déclarés nuls.

Le sénateur Frith: Ils pourraient avoir pour effet de modifier la Constitution.

M. Binavince: Oui; mais cela serait contraire à la formule d'amendement qui a été adoptée en 1982. Il peut arriver que des contrats restreignent des pouvoirs privés, et parfois même publics mais ce qui est en jeu ici, à mon sens, n'est pas seulement l'exercice d'un pouvoir discrétionnaire. La tâche de gouverner n'est pas simplement affaire de pouvoir discrétionnaire, elle est également un devoir et une responsabilité imposés par la Constitution. L'altération de la manière dont ces devoirs sont répartis entre niveaux de gouvernement ne peut résulter que de la modification des règles fondamentales qui régissent les gouvernements. Cette règle fondamentale est la Constitution et non le droit contractuel.

Je partage à cet égard le point de vue exprimé par le professeur Frank Scott dans sa sentence arbitrale dissidente intéressant la *Convention fiscale entre le gouvernement de la Saskatchewan et le gouvernement du Canada*.

Si je puis me permettre ici une petite digression, les accords de partage des recettes fiscales ont toujours été fondés sur un statut ou sur une autorisation expresse donnés par la Couronne, alors que ce qui est exercé ici paraît plutôt être une prérogative de la Couronne. Il y a, bien sûr, une distinction entre un pouvoir statutaire et une prérogative mais, ainsi qu'en a jugé la Cour suprême du Canada dans l'affaire de l'«opération démantèlement», la source du pouvoir importe peu aux fins de la Constitution.

Le professeur Scott déclarait à la page 285 du Jugement:

> Dans cette quête des règles de droit, il faut chercher principalement dans le champ du droit public et administratif et non du droit privé, car il ne s'agit pas là d'un contrat entre personnes privées mais d'une entente entre deux gouvernements qui procèdent de la Couronne, entente validée par des lois du Parlement. Les parties à l'accord fiscal ne pouvaient s'entendre sur des conditions autres que celles prescrites dans l'annexe au statut de la Saskatchewan. C'est le droit constitutionnel canadien qui régit ce litige et non pas le droit commun applicable aux personnes privées, encore que l'on puisse rechercher dans ce dernier des règles analogues là où il n'existe pas de règle constitutionnelle spéciale.

Cela, évidemment, nous ramène à ce que l'on a pris récemment coutume d'appeler les conventions constitutionnelles qui règlent les rapports entre les corps constitués. Toutefois, ce projet de loi ne met pas cet élément en jeu.

L'autre principe fondamental qu'il faut examiner en regard de ce projet de loi est celui de l'immunité de la Couronne. La doctrine de l'immunité de la Couronne en matière pénale vient d'être réaffirmée par la Cour suprême du Canada dans son jugement *Regina versus Uranium Canada Ltée*.

Dans cette affaire, la Cour suprême a tranché que la Couronne ne peut être poursuivie pour un acte criminel. La doctrine de l'immunité de la Couronne découle du principe que les

[*Text*]

sovereign to govern the subjects and not to govern the sovereign itself. This principle has been extended in Canada to the application of federal statutes to the Crown in right of a province. This was decided in *The Queen in Right of Alberta versus the Canadian Transport Commission*, which is a judgment written by the late Chief Justice Laskin. For this reason, in order to bind the Crown, a statute must comply with the requirements of section 16 of the Interpretation Act, and the usual method of complying with that provision is inserting a section in the statute which says that this statute binds the Crown, in which case, from that time on, the statute would find application.

Senator Frith: Was that the Eastern Provincial Airlines case?

Mr. Binavince: No, it was the Pacific Western case, when it was applying for a license.

The function of section 190 of the Criminal Code, which is the subject of this bill, is not to provide immunity to the Crown in right of Canada or the Crown in right of a province, because that is a constitutional principle that is already recognized. What it does is to make it lawful for the Government of Canada or of a province to conduct and manage a lottery. The purpose of this section is to make the conduct and management of lotteries lawful and accordingly immunize those persons who cannot claim Crown immunity from the commission of an offence. As a general rule, dispite the fact that the Crown enjoys immunity in respect of its acts, those who assist the Crown in the execution of those acts would nonetheless be subject to prosecution. I refer to persons such as aiders, abettors, accomplices, or accessories after the fact under the Criminal Code. By making gaming and betting lawful, the act is lawful and, therefore, there is no crime to which one could become an abettor, an aider or an accomplice. So section 190 of the Criminal Code, by making the conduct of lotteries lawful, removes the possibility of prosecution of any persons who assist the government in the conduct and management of those lotteries if those persons do not enjoy Crown immunity.

A further issue that must be considered is the liability of the Crown under the laws of the contract. The old constitutional principle that the king could do no wrong meant that the king was incapable of committing a breach of contract, just as he was incapable of committing a crime or a tort. Today, in Canada the recognized doctrine is that the governments are liable for breaches of contract. In other words, the modern doctrine of contract liability does not insist on Crown immunity, but the doctrine of contract liability of the Crown does not mean that Crown immunity in relation to the contract as a principle of constitutional law does not exist. It is simply based on the fact that the Crown has consented to be bound by the law of contract. Being based in consent, the Crown can always withdraw that consent and again re-assert its immunity. There are examples in Canadian history where this kind of proceeding has been followed. The most recent one, of course, is the attempt by Newfoundland to get out of the Churchill Falls agreement with Quebec. The reason for holding that agreement invalid was not so much on the basis that the Government of Newfoundland could not get out of its con-

[*Traduction*]

lois sont promulguées par le souverain pour gouverner ses sujets et non pour gouverner le souverain lui-même. Au Canada, ce principe a été étendu à l'application des lois fédérales à la Couronne du chef d'une province. Cela fut arrêté dans l'affaire *La Reine du chef de l'Alberta versus la Commission canadienne des transports* dont le jugement fut rédigé par feu le juge en chef Laskin. Pour cette raison, pour qu'une loi contraigne la Couronne, elle doit respecter les exigences de l'article 16 de la Loi d'interprétation, la méthode habituellement retenue étant d'insérer une clause stipulant que la loi est obligatoire pour la Couronne, la loi devenant alors contraignante à partir de la date d'insertion de la clause.

Le sénateur Frith: S'agissait-il là de l'affaire de Eastern Provincial Airlines?

M. Binavince: Non, il s'agissait de la demande de licence de la Pacific Western.

L'article 190 du Code criminel, qui fait l'objet de ce projet de loi, n'a pas pour fonction d'octroyer l'immunité à la Couronne du chef du Canada ou à la Couronne du chef d'une province car c'est là un principe constitutionnel déjà reconnu. Il a plutôt pour effet de légaliser l'organisation et l'administration d'une loterie par le gouvernement du Canada ou par une province. Légalisant les loteries, il donne immunité aux personnes qui ne peuvent revendiquer l'immunité de la Couronne. En effet, en règle générale, l'immunité dont la Couronne jouit à l'égard de ses actes ne met pas automatiquement à l'abri des poursuites ceux qui assistent la Couronne dans l'exécution de ces mêmes actes. Le Code criminel sanctionne ces personnes en tant qu'auxiliaires, fauteurs ou complices d'un crime. En légalisant le jeu et le pari, ces actes deviennent légaux, si bien qu'il n'y a plus de crime dont on pourrait se rendre l'auxiliaire ou le complice. Ainsi, l'article 190 du Code criminel, en légalisant la conduite de loteries, supprime la possibilité de poursuite contre toute personne qui assiste le gouvernement dans la conduite et l'administration de ces loteries lorsque ces personnes ne jouissent pas de l'immunité de la Couronne.

Un autre point qu'il convient d'examiner est la responsabilité de la Couronne en vertu du droit contractuel. Le vieux principe constitutionnel selon lequel le roi ne peut mal agir signifiait que le roi était incapable d'enfeindre un contrat, de la même façon qu'il était incapable de commettre un crime ou de causer un préjudice. De nos jours, au Canada, la doctrine reconnue veut que les gouvernements soient responsables des ruptures de contrats. En d'autres termes, la doctrine moderne de la responsabilité contractuelle ne garantit pas l'immunité de la Couronne dans ce domaine mais elle ne signifie pas non plus qu'il n'y a pas immunité de la Couronne à l'égard d'un contrat en tant que principe de droit constitutionnel. Elle est simplement fondée sur le fait que la Couronne consent à être liée par le droit contractuel. Puisqu'il s'agit d'un consentement, la Couronne peut toujours retirer ce consentement et réaffirmer son immunité. Il existe des exemples dans l'histoire canadienne d'une telle procédure, le plus récent étant la tentative de Terre-Neuve de se soustraire à l'accord sur Churchill Falls passé avec le Québec. L'argumentation employée pour invalider cet accord n'était pas que le gouvernement de Terre-Neuve ne

[*Text*]

tract, as because, constitutionally, it was enacting a statute that was outside its constitutional competence to enact. If the agreement that is at issue here is a private contract, then the limitations imposed by the provinces in their various proceedings against the Crown, or in this case with respect to federal liability under the Federal Court Act, may apply. If they open liability, it is always possible for these parties to evade their contractual liabilities under the agreement by the mere expedient of amending their statutes, if necessary, and re-asserting Crown immunity.

In my opinion the subject matter of this agreement is clearly the exercise of powers of executive government. The contract is entered into by ministers who represent governments of which they are members. I would submit that the resulting agrement is not a private contract but a political arrangement. The agreement is, I believe, governed by the principle expressed by Mr. Justice Taylor for the High Court of Australia in *South Australia versus the Commonwealth*. I will quote his statement at page 154.

> The status of the parties, their relationship to one another, the topics with which the agreement deals, the extent to which it is expressed to be finally definitive of their concurrence, the way in which it came into existence, these, or any one or more of them taken in the circumstances, may put the matter outside the realm of contract law. Undertakings that are political in character—using the "political" as referring to promises and undertakings of government, either to their own citizens or to their states or governments—are therefore often not enforceable by processes of law.

In effect, what the Court is saying in that case is that, if there is a breach of those political commitments, the proper forum for the resolution would not be the Court; the proper forum would be in the political chambers of government.

Applying this principle to the agreement between the governments of the provinces and of Canada, it is my opinion that its terms are clearly not justiciable. The Courts, as a matter of judicial prudence, if not law, will not resolve disputes arising from this agreement.

Let me then turn to the answers to the questions that I outlined earlier.

The federal government cannot make a contractual commitment, but only a political commitment, in the terms of Article 1.1. The Government of Canada can re-enter the field of gaming and betting at any time without incurring criminal liability, although persons assisting the Government, as long as it does not enjoy the lawful exemption in the Criminal Code, therefore, are not exercising a proper Crown purpose and may be prosecuted.

My answer to the second question is as follows: The undertaking of the federal government "that the rights of the provinces are not reduced or restricted" is only a political undertaking, not a contractual, legally coercible undertaking that can be the subject matter of a suit for damages or specific performance, as is usual in a private contract. There will be no

[*Traduction*]

peut se soustraire à son contrat mais qu'il n'avait pas compétence constitutionnelle pour promulguer ce statut. Si la convention dont il est question ici est un contrat privé, les limites fixées par les provinces à leurs procédures judiciaires aux termes de la Loi sur la responsabilité de la Couronne ou, en l'occurrence, à l'égard de la responsabilité fédérale aux termes de la Loi sur la Cour fédérale, sont applicables. Si leur responsabilité est engagée, il est toujours loisible à ces parties de se soustraire à leurs obligations contractuelles, stipulées dans la convention, par le simple expédient qui consiste à modifier leurs statuts, si nécessaire, et à réaffirmer l'immunité de la Couronne.

À mon sens, le sujet de cette convention est manifestement l'exercice des pouvoirs du gouvernement exécutif. Le contrat est conclu par des ministres qui représentent le gouvernement dont ils sont membres. J'estime que la convention qui en résulte n'est pas un contrat privé mais un arrangement politique. J'estime qu'un tel accord est régi par le principe exprimé par M. le juge Taylor de la Haute cour d'Australie dans l'affaire *South Australia versus the Commonwealth*. Je cite ce qu'il dit à la page 154.

> Le statut des parties, leurs relations l'une avec l'autre, les sujets sur lesquels porte l'accord, la manière dont il est exprimé et la façon dont il est conclu, tous ces éléments, ou l'un ou l'autre d'entre eux isolément, le placent en dehors du champ du droit contractuel. Des engagements qui sont de nature politique—le mot «politique» renvoyant ici à des promesses et à des engagements du gouvernement, soit vis-à-vis de leurs propres citoyens soit d'autres états ou gouvernements, échappent par conséquent souvent au domaine du droit.

Ce que disait donc la Haute cour dans cette affaire est que lorsqu'il y a rupture de ces engagements politiques, la tribune appropriée à la résolution de ce différend n'est pas un tribunal mais les chambres politiques du gouvernement.

Appliquant ce principe à la convention passée entre les gouvernements des provinces et celui du Canada, j'estime que ces clauses ne sont pas justifiables. Les tribunaux, se fondant sur la jurisprudence sinon sur la loi, refuseront de trancher les différends résultant de cette entente.

J'en viens maintenant aux réponses aux questions que j'ai formulées tout à l'heure.

Le gouvernement fédéral ne peut prendre un engagement contractuel mais uniquement un engagement politique vis-à-vis de la teneur de l'article 1.1. Le gouvernement du Canada peut réintégrer le domaine du jeu et du pari à tout moment, sans encourir de sanction pénale, bien que les personnes qui assistent le gouvernement pour ce faire, en l'absence d'un exemption légale du Code criminel, n'exerceront pas un pouvoir légitime de la Couronne et pourront être poursuivies.

Ma réponse à la deuxième question est la suivante: L'engagement du gouvernement fédéral «de faire en sorte que les droits des provinces ne soient pas réduits ou restreints» n'est qu'un engagement politique et non pas un engagement contractuel juridiquement contraignant et susceptible de faire l'objet de poursuites en dommages-intérêts comme ce serait le

[*Text*]

breach of contract if a statute is enacted to reduce or restrict provincial rights, and no such liability will arise by the introduction of a bill by the Government of Canada to achieve this end.

My answer to the third question is: Even assuming that the contract is a private law—I'm assuming this, and I do not think that it is correct—it is my opinion, nonetheless, that a subsequent government is not bound by any of the undertakings in the agreement. It is more likely that because of the indefinite length of time for which the exercise of an executive power is foregone, the clause will be found unreasonable and hence held unenforceable.

My answer to the fourth question is: The word "approved" in Article 1.2 refers to the approval by Parliament and Royal assent. The article speaks only of "consultation" with the provinces, not common approval by all governments. I am aware of the position taken by Mr. Mosley before this committee. I have to concede that his point is arguable as well. So I am simply saying that the word "consultation", if what it means is "consultation", should not be carried to the point of having a veto or a say of the last word.

My answer to question five is: The failure of Parliament to enact Bill C-81 does not constitute breach of contract. Even if the agreement is assumed to be a contract, Parliament is not and cannot be a party to the contract.

My answer to question six is: Assuming that the agreement is a contract, it is my view that a mere introduction of a bill in Parliament without best efforts to have it enacted into a statute would constitute a breach. This would be moreso if it were a political arrangement, because as a political arrangement, the governments contemplate that the Federal Government is expected to use its usual powers of discipline to ensure passage.

My answer to question seven is: In my opinion, the provinces are not obligated to pay, regardless of whether Bill C-81 passes or not. The doctrine of frustration in the law of contract does not apply. If one assumes, however, that the agreement is a contract, there is a good argument for the Federal Government to say that the mere failure of passage has no significance in a breach because the provinces are tapping this revenue source now, and the failure of the Bill to pass makes no difference. There is substantial performance, and probably there is no damage, in any event.

My answer to question eight is: I am not aware of the status of the application for leave to appeal. I have not had occasion to look at that, so I plead ignorance immediately of the Chairman and the Honourable Senators on this question.

My answer to question nine is: Parliament has all the leeway that its supremacy as Parliament implies, subject, of course, to the *Charter of Rights and Freedoms*. If it decides to go one way, that would be Parliament's judgement.

My answer to question ten is: In my view, there is no liability other than political.

[*Traduction*]

cas s'il s'agissait d'un contrat privé. Il n'y aura pas rupture de contrat si une loi est promulguée qui réduit ou restreint les droits des provinces et la responsabilité civile du gouvernement du Canada ne sera pas engagée s'il introduit un projet de loi à cette fin.

Ma réponse à la troisième question est celle-ci: Même en supposant que le contrat soit une loi privée—je me place dans cette hypothèse bien que je l'estime erronée—j'estime qu'un gouvernement ultérieur ne serait néanmoins pas lié par les engagements pris dans la convention. En effet, il est hautement probable que le renoncement à l'exercice d'un pouvoir exécutif pendant une durée indéfinie sera tenu pour une clause déraisonnable et par conséquent inapplicable.

Ma réponse à la quatrième question: Le terme «proclamé» de l'article 1.2 exprime l'adoption par le Parlement et la sanction royale. L'article ne mentionne qu'une «consultation» des provinces et non l'approbation collective de la part de tous les gouvernements. Je connais la position prise par M. Mosley devant ce comité et je reconnais qu'elle se défend également. Je dis donc simplement que le terme «consulter», s'il est pris dans son sens habituel ne signifie pas que les provinces ont un droit de veto ni le dernier mot.

Ma réponse à la question cinq est la suivante: L'omission par le Parlement de promulguer le projet de loi C-81 ne constitue pas une rupture de contrat. Même si l'on considère que la convention est un contrat, le Parlement n'est pas et ne peut pas être partie à un contrat.

Ma réponse à la question six: À supposer que la convention soit un contrat, la seule introduction d'un projet de loi au Parlement qui ne soit pas accompagnée des meilleurs efforts pour faire en sorte que ces amendements soient proclamés en vigueur, constituerait une rupture de contrat. Cela est d'autant plus vrai s'il s'agit d'un arrangement politique car les provinces s'attendent dans ce cas que le gouvernement fédéral emploie ses pouvoirs habituels de discipline de parti pour obtenir l'adoption.

Ma réponse à la question 7: À mon avis, les provinces ne sont pas obligées de payer, que le projet de loi C-81 soit adopté ou non. La doctrine de la frustration posée par le droit contractuel ne s'applique pas. Par contre, si la convention était un contrat, le gouvernement fédéral pourrait facilement arguer que la seule non-adoption du projet de loi ne constitue pas une rupture car les provinces touchent ces recettes de toute façon si bien que l'échec du projet de loi ne fait aucune différence. Il y aurait donc exécution du contrat et, quoiqu'il advienne, probablement aucun préjudice.

Ma réponse à la question huit: Je ne sais pas où en est la demande d'autorisation d'interjeter appel. Je n'ai pas eu l'occasion d'en prendre connaissance et je plaide donc immédiatement mon ignorance à ce sujet auprès du président et des honorables sénateurs.

Ma réponse à la question neuf: Le Parlement a toute la latitude que sa suprématie en tant que Parlement implique, sous réserve, bien sûr, des dispositions de la Charte des droits et des libertés. Le Parlement est seul juge de ses actes.

Ma réponse à la question dix: À mon avis, il n'existe aucune obligation autre que politique.

[*Text*]

Madam Chairman and Honourable Senators, that is my statement. Thank you.

The Chairman: Thank you, Mr. Binavince. Since this submission we have just heard deals very directly with the contract itself, and perhaps is apart from a lot of the other submissions and testimonies we have heard, I would suggest that we direct questions to Mr. Binavince's views first and then proceed with the other witnesses. Would you like to start, Senator Nurgitz?

Senator Nurgitz: Mr. Binavince, I have a couple of questions. On page 2 of your submission, you indicate that the Loto Quebec Corporation case resolved the question of the intrepretation of the lottery law, and that this does not in any way enhance the situation that we are better with a judicial interpretation than we are with further enactment. Surely you agree on reading the Loto Quebec case that, in essence, the case says that the provinces now, without C-81, have full run of the field in terms of gaming or lottery. In fact, I think you equate the two. Would you not agree with that statement?

Mr. Binavince: Senator, I was proceeding on the basis of the statement that Mr. Mosley has given by way of interpretation on the Loto Quebec case. That is the way I proceeded on this. I have my own thoughts on the Loto Quebec case, but I do not think they would be relevant at this point in time. It is probably not even good for me to express an opinion on it, because of the appeal. However, taking the opinion already given, the provinces have the whole field in any event and that is clear. How can we clarify what is already clear? I think that would probably be overkill. That is all I can say.

Senator Nurgitz: As I understand the evidence of Mr. Mosley and Mr. Gagnon yesterday, it is that as a result of the Loto Quebec case, which says that the province really has the run of the field, that Bill C-81 then sort of delineates, or is clearer in terms of what, precisely, the province has the run of the field in. Would you not agree with that statement?

Mr. Binavince: As I have said, senator, I have very consciously chosen not to take any position relating to the scope of Bill C-81, because of possible disagreements in interpretation. I have a little hesitation in expressing an opinion on it because of the possible appeal. I would prefer to zero in on my characterization of the agreement, and that is my submission to you today. That is, what is this agreement about? That is all I would like to say.

Senator Nurgitz: I will leave the Loto Quebec case. In your view, the agreement of June 3 is not a legally-binding agreement. That is, legally binding as if it were between two persons, but only a political commitment of the federal and the ten provincial governments?

Mr. Binavince: That is right.

Senator Nurgitz: Very well, that is clear. I take it if one looks at page 4 of your submission, the seventh question you have raised says:

> If Bill C-81 is not passed, as contemplated by the Agreement . . .

[*Traduction*]

Madame la présidente, honorables sénateurs, voilà qui met fin à mon exposé. Je vous remercie de votre attention.

La présidente: Je vous remercie, monsieur Binavince. Dans la mesure où l'exposé que nous venons d'entendre traite très directement du contrat lui-même et diffère par là des autres interventions et témoignages que nous avons entendus, je propose que nous posions d'abord nos questions à M. Binavince avant de passer aux autres témoins. Voulez-vous commencer, sénateur Nurgitz?

Le sénateur Nurgitz: J'ai plusieurs questions, monsieur Binavince. À la page 2 de votre mémoire, vous dites que le jugement rendu dans l'affaire de la Société Loto-Québec a clarifié l'interprétation de la législation en matière de loterie et que ce projet de loi n'apporte aucune amélioration puisqu'une interprétation judiciaire est préférable à une loi nouvelle. Convenez-vous avec moi que le jugement rendu dans l'affaire Loto-Québec est à l'effet que les provinces aujourd'hui, sans le projet de loi C-81, ont déjà toute compétence en matière de jeu ou de loterie? D'ailleurs, vous ne semblez pas faire de distiction entre les deux. Êtes-vous d'accord avec ce point de vue?

M. Binavince: Monsieur le sénateur, je ne faisais que reprendre, aux fins de mon argumentation, l'interprétation que M. Mosley a donnée du jugement dans l'affaire Loto-Québec. J'ai ma propre opinion de l'affaire Loto-Québec mais elle importe peu en l'occurrence et il ne vous servirait à rien que je vous en fasse part puisqu'un appel a été interjeté. Toutefois, si l'on admet l'opinion que ce jugement a déjà donné pleine compétence aux provinces dans ce domaine, si cela est tenu pour établi, pourquoi clarifier encore ce qui est déjà parfaitement clair? C'est tout ce que je puis dire.

Le sénateur Nurgitz: J'ai bien compris le témoignage de M. Mosley et de M. Gagnon hier, ils nous disent que, par suite du jugement dans l'affaire Loto-Québec qui dit que la province a déjà toute compétence, le bill C-81 délimite en quelque sorte mieux, définit plus clairement, la sphère de compétence provinciale. N'êtes-vous pas d'accord avec cela?

M. Binavince: Ainsi que je l'ai dit, monsieur le sénateur, j'ai choisi sciemment de ne pas prendre position sur la portée du projet de loi C-81 en raison des divergences d'interprétation possibles. J'hésite quelque peu à exprimer une opinion là-dessus à cause de la possibilité d'appel. Je préfère m'en tenir à ma discription du caractère de l'entente, qui est le sujet de mon exposé, à savoir la question de savoir sur quoi porte la convention. Je préfère ne rien dire d'autre.

Le sénateur Nurgitz: Laissons là l'affaire Loto-Québec. À votre avis, la convention du 3 juin n'est pas un accord juridiquement contraignant, du moins pas aussi contraignant que s'il s'agissait d'un contrat entre deux personnes, n'étant qu'un engagement politique pris par le gouvernement fédéral et les dix gouvernements provinciaux.

M. Binavince: C'est exact.

Le sénateur Nurgitz: Très bien, c'est clair. Si je regarde la page 4 de votre mémoire, la septième question que vous posez est celle-ci:

> Si le projet de loi C-81 n'est pas adopté tel que prévu par la convention . . .

[*Text*]

I just want to be clear: are you suggsting to us that C-81 is contemplated by the agreement?

Mr. Binavince: It makes a specific reference in some fashion there. That is my understanding of what the assumption of this committee has been all along.

Senator Nurgitz: Let us be clear on this: Could all such agreements, then, between the federal government and the provinces be characterized in the same way as you have done in this opinion?

Senator Frith: It depends what you mean by "all such agreements".

Senator Nurgitz: For instance, all agreements between the two levels of government.

Senator Barootes: Tax transfers, for instance.

Senator Nurgitz: Senator Barootes says "tax transfers". Is that an agreement to exert your best efforts to have Parliament pass a statute to do it, or is it an agreement requiring the federal government to do it?

Mr. Binavince: Let me explain my position, senator, because probably this is a point which requires some further explanation. Let us take a simple case where the federal government owns some land and the federal government would like to sell that land to the province. Let us take that as an example. They enter into a contract; there is failure to pay on the part of the province, or there is failure to deliver on the part of the federal government, which is a usual thing among private persons. The question that would arise there would be: What kind of contract is this that we are looking at?

Before I answer that, if one looks at the Constitution Act, 1967, there are public property provisions in that act. I did not bring enough copies with me, but there are public property provisions in the Constitution. For instance, 108:

> The Public Works and Property of each Province , enumerated in the Third Schedule to this Act, shall be the Property of Canada.

So there are property provisions.

Both the Supreme Court of Canada and the Privy Council were puzzled by one question in that kind of contract, and that is this: If the Crown is indivisible, how can the Crown be contracting with itself? They resolved that problem in a constitutional way. They said: "This is not really a conveyance that you are talking about; what you are doing is transferring the constitutional right to control, manage and benefit from that property from one level of government to the other level of government. So that the terms on which you sell are not the same by which private persons do that." As a result of that, in fact, during earlier days, the transfer of properties would occur by way of an Order in Council or a dispatch or something else, rather than by means of a conveyance as we know it.

Such was the case when governments did not consent to be governed by the law of contract. The question today is that there are statutes now in each of the provinces, and, judging

[*Traduction*]

Je voudrais seulement préciser ceci: Nous dites-vous que le projet de loi C-81 fait partie de la convention?

M. Binavince: Il est mentionné spécifiquement quelque part. Cela me semblait entendu depuis toujours.

Le sénateur Nurgitz: Allons donc plus loin: Est-ce que tous les accords de cette sorte passés entre le gouvernement fédéral et les provinces présentent le même caractère que celui que vous avez indiqué dans cette opinion?

Le sénateur Frith: Cela dépend de ce que vous entendez par «tous les accords de cette sorte».

Le sénateur Nurgitz: Par exemple, tous les accords passés entre les deux niveaux de gouvernement.

Le sénateur Barootes: Les transferts fiscaux, par exemple.

Le sénateur Nurgitz: Le sénateur Barootes donne comme exemple les «transferts fiscaux». Est-ce qu'un tel accord exige seulement que le gouvernement fasse ses meilleurs efforts pour faire adopter une loi donnée par le Parlement ou bien le gouvernement est-il tenu de la faire proclamer?

M. Binavince: Permettez-moi d'expliquer mon point de vue, monsieur le sénateur, car c'est là un point qui mérite d'être mieux expliqué. Prenons un exemple simple: Le gouvernement fédéral possède un terrain et voudrait le vendre à la province. Un contrat est conclu mais la province n'effectue pas le paiement ou bien le gouvernement fédéral ne transfère pas le titre de propriété, chose qui arrive fréquemment entre particuliers. La question qui se posera alors est de savoir de quelle nature est le contrat en question.

Avant de répondre, si l'on regarde la Loi constitutionnelle de 1867, on y trouve des dispositions intéressant les biens publics. Je n'ai pas suffisamment de copies ici pour en distribuer à tout le monde mais la Constitution contient des dispositions sur les biens publics, par exemple à l'article 108:

> Les travaux et propriétés publics de chaque province, énumérés dans la troisième çédule annexée au présent acte, appartiendront au Canada.

Il existe donc des dispositions constitutionnelles sur la propriété.

Tant la Cour suprême du Canada que le Conseil privé ont buté sur une difficulté dans ce genre de contrat et qui est celle-ci: Si la Couronne est indivisible, comment la Couronne peut-elle passer contrat avec elle-même? Ils ont résolu le problème d'une manière constitutionnelle, disant: «Il ne s'agit pas là réellement d'une cession de propriété, mais du transfert du droit constitutionnel de contrôler, d'administrer et de jouir de cette propriété d'un niveau de gouvernement à un autre niveau de gouvernement». Ainsi, les modalités de la vente ne sont pas les mêmes que lorsqu'il s'agit de particuliers. De ce fait, jadis, le transfert de propriété pouvait se faire par décret en conseil ou par dépêche plutôt que par le moyen d'un acte de vente comme ceux que nous connaissons.

On procédait ainsi à l'époque où les gouvernements ne consentaient pas à se soumettre au droit contractuel. La question qui se pose aujourd'hui est que toutes les provinces ont des sta-

[*Text*]

from the Federal Court Act one would assume that the governments have now consented to be bound by the law of contract. If that is so, what they are really saying is that there will be an aspect of our intergovernmental dealings in which we will adopt the private law institution in order to do that, so that we will not be talking as if we are constitutional institutions at the higher level. In a number of ways, that has facilitated billings between various levels of government so that today my answer to your question would be this: That kind of contract, by virtue of an expressed consent by the sovereign in her two capacities, would now be governed by the private law of contract.

The question that arises with the agreement here is: Can we analogize this with property of the kind we are talking about, or with the tax transfer problem, which is a revenue source. My answer to that is that, in my submission, as long as the federal government has the property powers under the Constitution, the power to tax under the Constitution, the power to enact a law that would change the criminal law of this country, what agreement could create an obligation on the federal government to say: "We will forever forbear to exercise it." That is the effect of this one. It may be possible to say: "I will forbear for this occasion", which is probably less obtrusive from the constitutional side of the obligation of governmental responsibility, but one cannot give a black and white answer. We are dealing here with a spectrum from one end, which is very clear, to the other, which is probably not very clear.

Senator Nurgitz: I hear what you are saying, but what is the obligation of the Government of Canada with respect to this document, the agreement of June 3?

Mr. Binavince: If the senator thinks of the word "obligation" as legally binding, enforceable under the civil code of Quebec or Ontario, my answer to that is that there is no obligation. If one considers "obligation" in political terms, which means that we will lose face with the provinces or the electorate or in terms of whatever political recourse, if any, is available to government, then I would say that there is a political obligation.

Senator Nurgitz: Is there that same obligation that you have just mentioned that the nonlegal but political obligation is the same obligation on the provinces?

Mr. Binavince: Yes, I would assume that, yes.

Senator Nurgitz: Does that obligation extend to being supportive of C-81, for example?

Senator Frith: Politically, you mean?

Senator Nurgitz: Yes, politically.

Mr. Binavince: Yes, politically, but I would like to give you some analogy on this one. As a rather crude analogy, if I promised to meet my wife today for lunch and I did not appear, I don't think that she could go to court and make a case for specific performance on my failure to appear; but I would probably lose her affection for the next few days.

Senator Barootes: As a supplementary, you made it quite clear, in connection with your tenth question and answer, that there is no liability other than political. Let us go back to that

[*Traduction*]

tuts à cet égard et, à en juger d'après la Loi sur la Cour fédérale, on peut considérer que les gouvernements aujourd'hui consentent à être régis par le droit contractuel. Si tel est le cas, tout se passe comme si les gouvernements avaient adopté l'institution du droit privé pour certains aspects des relations intergouvernementales renonçant à cet égard à leur rang d'institutions constitutionnelles de niveau supérieur. Cela a facilité à bien des égards la facturation de services entre niveaux de gouvernement, si bien qu'aujourd'hui ma réponse à votre question est celle-ci: Ce genre de contrat serait aujourd'hui régi par le droit contractuel privé, par consentement du souverain en ses deux capacités.

La question que pose cet accord-ci est de savoir s'il y a analogie entre son objet et le genre de propriété dont nous parlions tout à l'heure ou les tranferts fiscaux, qui sont une source de recettes. Je réponds à cela que, aussi longtemps que le gouvernement fédéral détient les pouvoirs de propriété en vertu de la Constitution, le pouvoir d'imposer en vertu de la Constitution, le pouvoir de proclamer une loi qui modifie le droit pénal du pays, quelle sorte d'accord pourrait créer une obligation telle que le gouvernement fédéral doive renoncer à tout jamais à l'exercice de ses pouvoirs! C'est justement cela l'effet de cet accord. Il serait peut-être possible de dire: «Je me désiste dans ce domaine précis», ce qui serait probablement une soustraction moindre à la responsabilité gouvernementale conférée par la Constitution. Par conséquent, il n'est pas possible de donner une réponse tranchée, la réalité se situant entre deux termes, dont l'un est très clair et l'autre pas très clair.

Le sénateur Nurgitz: Je vous suis bien, mais quelle est l'obligation du gouvernement du Canada découlant de ce document, de cette convention du 3 juin?

M. Binavince: Si le sénateur entend par le mot «obligation» une contrainte juridique pouvant faire l'objet de poursuites en vertu du code civil du Québec ou de l'Ontario, ma réponse est qu'il n'y a pas d'obligation. Si l'on entend par «obligation» un engagement politique, dont la non-exécution entraînerait une perte de face vis-à-vis des provinces ou de l'électorat ou un recours politique quelconque, alors je dirais qu'il y a une obligation.

Le sénateur Nurgitz: Est-ce que les provinces sont sous la même obligation politique, non juridique?

M. Binavince: Oui, je pense.

Le sénateur Nurgitz: Est-ce que cette obligation va jusqu'au devoir d'appuyer le projet de loi C-81, par exemple?

Le sénateur Frith: Politiquement, voulez-vous dire?

Le sénateur Nurgitz: Oui, politiquement.

M. Binavince: Oui, politiquement, mais je voudrais ici faire une analogie. Si je prends une analogie assez grossière, disons que j'ai promis à ma femme de la rencontrer aujourd'hui pour déjeuner et que je ne vienne pas. Je ne crois pas qu'elle puisse me traîner en justice pour autant mais je perdrais probablement son affectation pendant quelques jours.

Le sénateur Barootes: À ce sujet, vous avez dit très clairement, en réponse à votre dixième question, qu'il n'y a pas de responsabilité autre que politique. Revenons au cas d'un trans-

[*Text*]

land transfer arrangement by consent. If that agreement becomes in default, from one party or the other—let us take the province and the question of breaches and defaults on the arrangement—is there any recourse for that?

Mr. Binavince: With the land transfer situation?

Senator Barootes: Yes. Take the particular situation which you used as an analogy.

Mr. Binavince: In that case, because the provinces and the federal government have consented by law to be bound by the law of contract, there would be recourse under the law of contract. But it is not because of the law of contract; it is because of the law they have enacted that they say "I now feel bound by the law of contract". In this case, what is the law? Do we find any statute under which this agreement was entered into?

Senator Barootes: I thought you said that it was by mutual consent that the transaction was possible. That mutual consent has been breached by one of the parties. Does the other party have recourse to any judicial or legal redress; and, if so, how? You said, in your answer to question number ten, "No".

Mr. Binavince: If I make the assumption—and it is the big "if" that I am always trying to explain—that it is indeed governed by the law of contract, then it follows that the remedies are under the contract law. So we have to go back to the first question: Is the "if" a justifiable "if"? My answer to you has been—and I insist on it—that that is not an "if" that has been passed by this agreement, because I cannot see the proceedings under, for example, the Federal Court Act provisions relating to a suit on property, and so on, as being something that would be suitable for the allocation of the exercise of criminal law powers—unless, of course, we have now a new doctrine that would say that constitutional powers are properties; and I would suspect that that is probably not going to fly.

Senator Barootes: It appears to me, then, that there is a bit of a conflict between law and justice, in the case I was trying to discuss.

Senator Nurgitz: There always is.

Senator Fairbairn: To get down to dollars and cents, did I understand you correctly, when you were discussing your answer at page 15 of your brief, to indicate that whether or not this bill passes, the whole money transaction here—and this is what the agreement is all about: to see that the Calgary Olympics will get a certain amount of money—the payment of money under this agreement, can take place whether or not this bill passes? Did I understand you to say that?

Mr. Binavince: You understood me right. But I have to make it very clear that we had to make the distinction that that is a political commitment. If it is a political commitment of the federal government, obviously it is a two-way street and it will also be a political commitment on the part of the provinces. Otherwise it is a one-way street. It follows from there that, if the federal government is not bound, then the provincial governments are equally not bound.

Then, if we make the assumption—that is the assumption that has been put forward, probably even by the authors of this

[*Traduction*]

fert de terrain par consentement. S'il y a défaut d'exécution par l'une ou l'autre partie—par exemple par la province, un recours en justice est-il possible?

M. Binavince: Dans le cas d'un transfert de terrain?

Le sénateur Barootes: Oui. Prenons l'exemple que vous avez vous-même cité.

M. Binavince: Dans ce cas précis, les provinces et le gouvernement fédéral ayant consenti par des lois de se soumettre au droit contractuel, il y aurait un recours en droit contractuel mais non pas parce que le droit contractuel l'exige mais parce qu'il existe une loi disant: «Je me considère maintenant lié par le droit contractuel». Dans le cas présent, quelle est cette loi? Existe-t-il une loi en vertu de laquelle cette convention a été signée?

Le sénateur Barootes: Je pensais que vous aviez dit que la transaction était rendue possible par le consentement mutuel. Si l'une des parties revient sur ce consentement, est-ce que l'autre partie possède un recours judiciaire et, si oui, quel est-il? Dans votre réponse à la question numéro dix, vous avez dit qu'il n'y en a pas.

M. Binavince: Si je pose l'hypothèse—et c'est toujours le «si» qui est difficile à expliquer—que l'accord est effectivement régi par le droit contractuel, alors il s'ensuit que le recours se trouve dans le droit contractuel. Il faut donc revenir à la première question: Le «si» est-il un «si» justifiable? La réponse que je vous ai donnée—et j'insiste là-dessus—est que cette hypothèse n'est pas confirmée par cette convention car je ne peux pas admettre qu'une procédure judiciaire intentée en vertu de la Loi sur la Cour fédérale puisse porter sur l'exercice des pouvoirs en matière de droit pénal—à moins, évidemment, que l'on pose comme nouvelle doctrine que les pouvoirs constitutionnels sont des biens et j'ai bien l'impression que cela ne passerait pas.

Le sénateur Barootes: Il semble donc bien qu'il y a là quelque conflit entre le droit et la justice, dans l'exemple que je viens de donner.

Le sénateur Nurgitz: Il y en a toujours.

Le sénateur Fairbairn: Pour en revenir aux basses questions matérielles, vous ai-je bien compris et dites-vous bien dans votre réponse à la page 15 de votre mémoire que, que ce projet de loi soit promulgué ou non, la transaction monétaire—et finalement c'est de cela qu'il s'agit: faire en sorte que les Jeux de Calgary disposent d'un certain montant d'argent—pourrait intervenir de toute façon?

M. Binavince: Parfaitement. Mais il faut bien distinguer s'il s'agit d'un engagement politique. S'il s'agit d'un engagement politique du gouvernement fédéral, il doit manifestement jouer dans les deux sens c'est-à-dire engager également les provinces politiquement. Autrement, ce serait une voie à sens unique. Il s'ensuit donc que si le gouvernement fédéral n'est pas lié, les gouvernements provinciaux ne le sont pas non plus.

Donc, si l'on postule — et c'est le postulat qui semble avoir été posé par les auteurs mêmes de la convention — qu'il s'agit

[*Text*]

contract or agreement—that it is really a matter of contract law that governs, it will then follow from that that there will be a liability. The only question would be: Would the failure to enact the bill be breached, assuming it is a contract? There would be a two-step analysis on that. The first, of course, is to determine whether actually this agreement obligates the enactment of a bill. I think that even Mr. Mosley agrees that this is only a best effort situation and there would be no breach by their failure to enact the bill.

Let us assume that there is a deliberate attempt on the part of the federal government not to enact the bill at all—so there is no best effort. The question then is: Would there be a liability for the payments by the provinces? It could be argued—I am not fully prepared to say as a definite opinion, but there is a good argument on the part of the federal government to say "Nonetheless, even if we fail to enact the bill, or even take the best effort to enact it, we are nonetheless entitled to that payment, because the quid pro quo had really occurred here". The argument would run like this: "Why do you need the bill? You are already tapping the revenue sources, anyway. You are getting the money". So the purpose of the bill is an unnecessary gesture, totally unconnected with the operation of betting or gaming as contemplated. All it does is to formalize it. But the daily contracts that we are making today are not contained in papers. If I go and buy a newspaper, I give the money and I get the paper. The same applies when I eat in a restaurant. All that governments would like to have is a piece of paper in which would be contained a right of action; that is, to force the government probably to put it in writing—or, assuming that the writing itself could be a breach, sue for damages. Therefore my conclusion would be: Go to the substance of the case: the obligation to pay. There is an argument on the part of the federal government to say, "As long as we do not impede you from gathering those revenues, we have essentially complied with what we are undertaking. All that we have failed to do is to formalize it in a law". That is an argument which carries a little bit of weight. Whether it will be something that the courts will sustain is another question.

Senator Fairbairn: Another related question concerns the agreement itself. It says that this agreement may only be amended or terminated by the unanimous consent of the provinces and the Government of Canada. As you know, our testimony has been that there are some difficulties in the mind of the current Ontario government. Is it possible for the current Government of Ontario to withdraw its signature from this agreement?

Mr. Binavince: Using the political commitment scenario, since it is a political commitment the signature does not really carry very much legal weight. Therefore it does not need to be withdrawn. All they need to say is "No". If one assumes that it is actually a contract, then we will have more of a problem. I would suspect that, in a case like that, in effect what the Government of Ontario is doing—assuming this is a contract—is not so much withdrawing a signature as breaching the agreement—which would probably trigger a civil liability. I think the better view is that this is not an agreement.

[*Traduction*]

là d'un contrat de droit privé, il s'ensuit qu'il est assorti d'une responsabilité civile. La seule question qui se pose est alors de savoir: Est-ce que la non-proclamation du projet de loi serait une rupture de contrat, à supposer que la convention en soit un? Il faut faire là une analyse en deux étapes. La première, évidemment, est de déterminer si la convention contraint effectivement la proclamation d'une loi. Je crois que même M. Mosley convient que les meilleurs efforts suffisent et que l'échec du projet de loi ne serait pas une rupture de contrat.

Supposons que le gouvernement fédéral fasse en sorte délibérément que le projet de loi ne soit pas adopté — c'est-à-dire qu'il n'exerce pas ses meilleurs efforts. La question devient alors: Les provinces seraient-elles tenues de payer? On pourrait arguer — je ne suis pas tout à fait décidé à adopter cette opinion mais le gouvernement fédéral pourrait arguer avec quelque raison que, même sans proclamer la loi ou même sans exercer ses meilleurs efforts en ce sens, il aurait droit au paiement puisque le premier terme de l'échange est de toute façon assurée. L'argumentation irait comme ceci: «Pourquoi avez-vous besoin de ce projet de loi? Vous touchez déjà les recettes de toute façon, c'est à vous que va l'argent». Le projet de loi constitue ainsi un geste inutile, tout à fait séparé de l'exploitation du jeu ou du pari tel qu'envisagé. Ce qu'il fait est de l'officialiser. Mais les contrats quotidiens que nous faisons tous les jours ne sont pas couchés sur papier. Si je vais acheter un journal, je donne de l'argent et je prends le journal. La même chose se passe lorsque je vais manger au restaurant. Tout ce que les provinces demandent c'est un bout de papier instaurant un droit de recours. C'est-à-dire, contraindre le gouvernement à coucher l'engagement par écrit — ou, à supposer que la mise sur papier soit déjà une rupture en soi, intenter une action en dommages-intérêts. Par conséquent, la conclusion que je tire est qu'il faut regarder la substance de l'affaire: l'obligation de payer. Le gouvernement fédéral peut arguer qu'aussi longtemps qu'il n'empêche pas les provinces de percevoir ces recettes il s'acquitte de son engagement. Tout ce qu'il aurait omis de faire est de l'officialiser par une loi. C'est un argument qui a pas mal de poids. Est-ce que les tribunaux l'accepteront, cela est une autre question.

Le sénateur Fairbairn: Une autre question découle de la convention elle-même. Il est stipulé qu'elle ne peut être modifiée ou révoquée qu'avec le consentement unanime des provinces et du gouvernement du Canada. Comme vous le savez, nous avons entendu des témoignages à l'effet que le gouvernement de l'Ontario voudrait revenir sur la convention. Le gouvernement actuel de l'Ontario a-t-il la possibilité de retirer sa signature?

M. Binavince: Si je reprends mon scénario de l'engagement politique, dans la mesure où il s'agit d'un engagement politique, la signature n'a guère de signification au plan juridique. Il n'est donc même pas nécessaire de retirer la signature, il suffit à l'Ontario de dire «Non». Si l'on considère, par contre, qu'il s'agit bien d'un contrat, alors ce sera plus difficile. Le gouvernement de l'Ontario, dans ce cas, ne retirera pas tant sa signature qu'il rompra le contrat—ce qui mettrait probablement en cause sa responsabilité civile. Il est toutefois plus probable qu'il ne s'agit pas d'un contrat.

[*Text*]

Senator Frith: I refer you to page 11. My question is a little bit outside the main purpose of your opinion, which is dealing with the agreement. However, part of our problem is our concern as to whether this bill expands the possibilities for legalized gambling. At page 11 you say:

> The function of section 190 of the Criminal Code (which makes it lawful for the government of Canada or of a province to conduct and manage a lottery) is not to provide immunity to the Crown in Right of Canada or a province. That immunity exists independently of section 190. The purpose of the section is to make the conduct and management of lotteries lawful and thus immunize those persons who cannot claim Crown immunity.

Am I right in saying that what we are concerned with here is that we assume that provinces can run lotteries and gambling, and that it will be legal if they are running it themselves; but if they license someone else to do so, then those people could not claim Crown immunity by any inheritance, or in any delegated way; is that right?

Mr. Binavince: The answer to that is a little more fussy, because drawing the line where immunity ends and liability begins is not always very clear. If you turn to page 10, you will see the name "Bank voor Handel en Scheepvaart N.V. v. Administrator of Hungarian Property". The House of Lords held that to the extent that you can trace the Crown purpose, the Crown immunity will also exist. That is a tracing problem: How far can you trace the Crown purpose in that case? Let us take the case of Uranium Canada. As the honourable senator knows, in that case the prosecution was on the basis of the Combines Investigation Act. Uranium Canada is a crown corporation. All of the shares are owned by the minister, and most of the decisions and agreements were under the direction of the Governor in Council. There, there is a direct relationship between the Crown and the corporation itself. So one can see the Crown's purpose, the implementation of the control of energy and uranium, manifesting itself at that level. Crown immunity could easily be sustained.

Senator Frith: Let us extend that to the Province of Ontario and the Knights of Columbus—to whom the Province of Ontario gives authority to run a casino. How would you apply that?

Mr. Binavince: That is where my difficulty starts. I think it is very difficult to find, from the Uranium Case, that in the Knights of Columbus case , because of lack of direction by the government in the internal management of the Knights of Columbus, there is probably no Crown immunity.

Senator Frith: But they would get immunity under Bill C-81.

Mr. Binavince: That's right.

Senator Frith: That is all I have on that question. Thank you.

On the other question, I would like to try to evaluate your evidence. I think it is an excellent paper. We have a constitu-

[*Traduction*]

Le sénateur Frith: Je vous renvoie à la page 11. Ma question déborde un peu du cadre de la convention elle-même mais notre problème est justement la crainte que ce projet de loi ne constitue une légalisation du jeu d'argent. Vous dites à la page 11:

> La fonction de l'article 190 du Code criminel (qui permet légalement au gouvernement du Canada ou d'une province de conduire et d'administrer une loterie) n'est pas de donner immunité à la Couronne du chef du Canada ou d'une province. Cette immunité existe indépendamment de l'article 190. L'objet de cet article est de légaliser la conduite et l'administration de loteries et d'immuniser ainsi les personnes qui ne peuvent revendiquer l'immunité de la Couronne.

Ai-je raison de dire que les provinces peuvent organiser des loteries et des jeux légalement, à condition de le faire elles-mêmes mais que si elles donnent licence à quelqu'un d'autre pour le faire à leur place, ces autres ne pourront invoquer l'immunité de la Couronne, ni une immunité directe ni une immunité déléguée; est-ce exact?

M. Binavince: La réponse est un peu plus compliquée car il n'est pas toujours facile de dire où l'immunité s'arrête et où la reponsabilité commence. Si vous revenez à la page 10, vous verrez le nom «Bank voor Handel en Scheepvaart N.V. v. Administrateur des propriétés hongroises». La Chambre des lords a arrêté que l'immunité existe aussi loin que s'étend la volonté de la Couronne. Le problème consiste donc à en retracer le fil. Jusqu'où peut-on tracer la volonté de la Couronne en l'occurence? Prenons l'affaire d'Uranium Canada. Comme vous le savez, des poursuites avaient été intentées en vertu de la Loi sur les enquêtes sur les coalitions. Uranium Canada est une société de la Couronne, dont toutes les actions sont détenues par le ministre et dont la plupart des décisions étaient prises sous les directives du gouverneur en conseil. On peut déceler dans ce cas précis un lien direct entre la Couronne et la société elle-même et voir se manifester, à ce niveau, la volonté de la Couronne de contrôler le marché de l'énergie et de l'uranium. Il était facile alors de faire prévaloir l'immunité de la Couronne.

Le sénateur Frith: Essayons d'appliquer ce principe à la province de l'Ontario et aux Chevaliers de Colomb auxquels la province donnerait l'autorisation d'exploiter un casino.

M. Binavince: C'est là que commencent les problèmes. Il serait difficile d'arguer, dans l'affaire des Chevalier de Colomb, en se fondant sur l'affaire Uranium Canada, qu'en l'absence d'intervention du gouvernement dans la gestion interne des Chevaliers de Colomb il n'y a pas immunité de la Couronne.

Le sénateur Frith: Les Chevaliers bénéficieraient donc de l'immunité en vertu du bill C-81.

M. Binavince: C'est cela.

Le sénateur Frith: C'est tout sur ce sujet et je vous remercie.

Pour ce qui est de mon autre question, j'aimerais évaluer la portée de votre témoignage. Je trouve votre document excel-

[*Text*]

tional and political decision to make, not really a legal decision. However, we have been concerned that in making a political decision or failing to make it, there may be some legal,contractual consequences. May I evaluate your evidence for our purposes by giving an example. Some of us might say, "I would like to take more time on this bill and amend it, but I had better not because the consequences of exercising that constitutional and political decision will result in some legal liabilities." In effect what you are saying is, "Don't worry about the legal consequences. Make your decision in whatever way you like, including deciding that because this agreement has political consequences I had better exercise my decision taking into account those political consequences, but don't worry about the legal consequences."

Mr. Binavince: That is right. My personal view, based on what I have presented here today, is that I do not think that legal liability should be a sword that dictates to you how to decide the political judgment you are about to make. It should remain a political judgment.

Senator Robertson: These agreements and their interpretation in law is especially confusing for those who do not have legal training. I have three questions that I would like Mr. Gagnon to address with regard to his testimony. Let us not get into the details of the beginning of his statement, but the answers in general that the witness has provided and specifically the answer to number ten. Third, I would like Mr. Gagnon to comment on how he sees federal-provincial agreements and how we should make such agreements in the future. I am thoroughly confused by the comments of the witness.

Mr. Michel A. Gagnon, Associate, Ogilvie and Renault, representing the Interprovincial Lottery Corporation: I must plead guilty here. I have probably been a bit redder than usual at times this morning. I am guilty of drafting this agreement. I agree that there are a number of questions that leave one wondering over the agreement. That is because, as it has been mentioned a number of times here, the agreement was approached form all different angles. Both sides wanted to cover as much as possible to make it as binding as possible between these entitites which have a special standing in law. It may be that a court would interpret certain of the clauses as not enforceable on one side or the other. However, what counts is the bottom line. No matter how you look at it, we have parties that have agreed to certain obligations. There is a series of obligations for the federal government and there is a series of obligations for the provinces. If either party was to fail in the fulfilment of its obligations, be it from a political point of view or a contractual point of view, the consequences would be the same—the other party would not perform. It is clear in the agreement that the payment obligations of the provinces are made in consideration of the federal government fulfilling its series of obligations. That same clause provides that if there is a dispute between the parties, the provinces would withhold payments. So, practically speaking, whether we call it a political agreement or a legal agreement, the consequences will be the same. That is my comment on both aspects of your question. Whatever qualifications we put on the obligations of the parties, the end result is the same. I agree that it is not clear

[*Traduction*]

lent. Nous avons une décision constitutionnelle et politique à prendre, et non pas réellement une décision juridique. Toutefois, on nous a fait valoir qu'en prenant une décision politique, ou en omettant de la prendre, des conséquences juridiques, contractuelles, pourraient s'ensuivre. J'aimerais évaluer votre témoignage à cet égard, en vous soumettant un exemple. Certains d'entre nous peuvent penser: «J'aimerais consacrer un peu plus de temps à ce projet de loi et le modifier mais il vaut mieux que je ne le fasse pas car les conséquences de cet exercice de mon droit constitutionnel et politique entraîneraient des conséquences juridiques». Vous répondez à cela: «Ne vous inquiétez pas des conséquences juridiques, prenez la décision qui vous paraît bonne, en fonction des conséquences et des considérations politiques mais ne vous inquiétez pas des conséquences juridiques.»

M. Binavince: C'est cela; mon avis personnel, fondé sur ce que je vous ai soumis ici, est qu'il n'y a pas de considération juridique qui puisse vous dicter le jugement politique que vous allez faire. Votre jugement restera politique.

Le sénateur Robertson: Ces accords et leur interprétation en droit sont particulièrement déroutants pour ceux d'entre nous qui n'ont pas de formation juridique. J'aimerais poser trois questions à M. Gagnon découlant de ce témoignage. Je ne veux pas entrer dans les détails de son exposé, je veux m'en tenir uniquement aux réponses générales qu'il a données, et particulièrement la réponse à la question dix. J'aimerais que M. Gagnon nous dise comment il voit les accords fédéraux-provinciaux et comment ils devraient être conclus à l'avenir. Je suis totalement dérouté par les remarques du témoin.

M. Michel A. Gagnon, partenaire, Ogilvie et Renault (Montréal), représentant la Corporation interprovinciale de loteries: Je dois plaider coupable à ce sujet. J'ai rougi à plusieurs reprises ce matin. Je suis coupable de la rédaction de cette convention et je reconnais qu'elle manque un peu de clarté. La raison est que l'entente a été approchée sous divers angles, chaque partie voulant couvrir toutes les possibilités pour le rendre aussi contraignant que possible à toutes ces entités qui ont un statut juridique particulier. Il se peut qu'un tribunal interprèterait certaines des clauses comme inapplicables: l'un ou l'autre. Toutefois, ce qui compte, c'est l'intention. Par quelque bout que vous preniez cette affaire, vous avez là des parties qui ont assumé certains obligations. Il y a une série d'obligations pour le gouvernement fédéral et une série d'obligations pour les provinces; si l'une ou l'autre des parties devait manquer à ses obligations, que celles-ci soient politiques ou contractuelles, les conséquences seraient les mêmes: l'autre partie s'abstiendrait d'exécuter les siennes. La convention dit clairement que les obligations de paiement des provinces sont prises en échange de l'exécution par le gouvernement fédéral de sa série d'obligations. La même clause stipule que s'il y a un différend entre les parties, les provinces retiendraient leurs paiements. Ainsi, au plan pratique, que cette convention soit un accord politique ou un contrat juridique, les conséquences seront les mêmes. Voilà ce que j'ai à dire sur les deux aspects de votre question. Quelle que soit la façon dont on qualifie les obligations des parties, le résultat final est le même. Je recon-

[*Text*]

and that there are many ways of arguing a given case that might come out of the agreement.

Generally those involved in the drafting of inter-provincial agreements, have to consider all the angles to ensure that the intent of the parties will be clearly set out in the agreement so that, practically speaking, no matter how the contract is regarded, the end result will be what the parties intended.

The Chairman: Mr. Binavince, would you expand on Senator Robertson's general question about the enforcability of federal-provincial agreements?

Mr. Binavince: Let me begin by classifying the two kinds of agreements for the purposes of answering the question. First, let me take an agreement where there is a statutory provision authorizing entry into the agreement and the consequences that will flow from the agreement, as embodied in the statute. These are the tax agreements and such agreements as the Canada Health Act where there are transfers of monies involved. If there is a failure on the part of one government to enter into the agreement, all it means is that a major part of the scheme is not in place, and the whole scheme falls down. For example, let me use the case of the Energy Administration Act with respect to fixing the price of gas under section 51. There should be an agreement between the minister of the gas producing province and the federal government, and pursuant to that agreement the Governor in Council will fix the price of gas outside the province. If there is an absence of agreement, the fixing of the price cannot occur and, thus, a substantial part of the scheme is not in place and, like a car, the scheme will not work. That is all it means. The question is, would it be possible to coerce one party to enter into the agreement, and my answer is that you can only do that by way of law.

Let's suppose for a moment that there was an agreement in that case, but instead of fixing the price of the gas at the level determined by both parties, the price of the gas was determined solely at the descretion of the Govenor General; that would be a one-sided determination, and would not reflect truly the agreement of the parties. Would there be a right on the part of the provincial government to challenge it and say there was a breach of contract? To my way of thinking, the remedy he has is not to sue on the basis of a breach of contract but to say the fixing of the rate is invalid because the precondition of the power to fix is not there. Therefore, it was a useless gesture.

It is this lack of schemes in place that makes it uncomfortable for both the provincial and federal governments and drives them together to make a go of it. This is what we have here, in my submission. One would not run to the courts with a writ on this. This is an occasion where there would be more of a political difference—and I agree with Mr. Gagnon—than practical questions. So I would run away from that because I think that that is a judgment that you have to make. My legal position is very simply one of the factors that you have to look at in making that political wise judgment you think you have to make.

The Chairman: Senator Nurgitz.

[*Traduction*]

nais que ce n'est pas très clair et que toutes sortes d'argumentations seraient possibles en cas de litige.

De manière générale, les rédacteurs des accords interprovinciaux doivent couvrir tous les angles afin que l'intention des parties soit clairement énoncée de telle manière que le résultat final soit celui voulu par les parties, peu importe la nature—politique ou juridique—de l'accord.

La présidente: Monsieur Binavince, voudriez-vous nous donner votre point de vue sur la question générale du sénateur Robertson concernant l'applicabilité des accords fédéraux-provinciaux?

M. Binavince: Commençons par distinguer entre deux types d'accords. Premièrement, prenons un accord couvert par une disposition statutaire autorisant sa conclusion et les conséquences qui en découleront. Dans cette catégorie on trouve les accords fiscaux et d'autres tels que la Loi sur l'assurance maladie qui mettent en jeu des transfets de fonds. S'il y a omission de la part d'un gouvernement à signer l'accord, tout ce que cela signifie est qu'un élément essentiel du système n'est pas en place, c'est-à-dire que tout le système s'écroule. Prenons le cas de la Loi sur l'administration de l'énergie dont l'article 51 intéresse la fixation du prix du gaz. Un accord doit intervenir entre le ministre de la province productrice de gaz et le gouvernement fédéral, le gouverneur en Conseil fixant le prix du gaz en dehors de la province conformément à l'accord. S'il n'y a pas accord, le prix du gaz ne peut être fixé si bien qu'une partie substantielle du système fait défaut et qu'il ne peut fonctionner. Il n'y a rien d'autre. La question est de savoir s'il serait possible d'obliger une partie à conclure un accord et ma réponse à cela est qu'on ne peut le faire que par une loi.

Prenons pour hypothèse qu'un accord est conclu mais que, au lieu de fixer le prix du gaz au niveau déterminé par les deux parties, le gouverneur général le fixe, unilatéralement, à un niveau autre que celui convenu par les parties. Le gouvernement provincial serait-il fondé à intenter des poursuites, invoquant une rupture de contrat? À mon sens, le remède ne serait pas de poursuivre pour rupture de contrat, il suffirait à la province de dire: Votre fixation du prix n'est pas valide car la condition préalable du pouvoir de fixer le prix n'est pas remplie. Par conséquent, vous avez fait un geste inutile.

C'est pour cette même raison que les gouvernements, tant provinciaux que fédéral, hésiteront à se précipiter en cour en cas de litige. Si différend il y a, il sera davantage politique—et je suis d'accord avec M. Gagnon—que pratique. C'est donc affaire de jugement. Mon avis juridique est simplement l'un des facteurs dont vous devez tenir compte en formulant le jugement politique que vous devez rendre.

La présidente: Sénateur Nurgitz.

[*Text*]

Senator Nurgitz: Mr. Binavince, you have told us there is no legal obligation on the part of the Government of Canada to enact C-81. I suppose what you would tell a province if they did not, there is no legal obligation pursuant to paragraph 2, subparagraph 2.1, that they would not pay the $100 million either. If you had to advise the provinces, there is no question in your mind; is that not true?

Mr. Binavince: I said that, yes.

Senator Nurgitz: Or the other monies payable under the agreements?

Mr. Binavince: That is true.

Senator Nurgitz: Legally, that is.

Mr. Binavince: I am not going to carve out certain aspects of this agreement and quote some as enforceable while the others are not.

Senator Nurgitz: So, in essence, for us here as we look at this thing, if we are talking about the financing of the Calgary Olympics, for instance, which is what the $100 million is for—that is a political consideration, you are saying—there is no question in your mind, if you were counselling the provinces or speaking to us, not as legislators in the federal field, but in the provincial field, that you would no doubt tell us there is no obligation to pay.

Mr. Binavince: That is right, Senator.

Senator Frith: No legal obligation.

Senator Nurgitz: Yes, I meant legal obligation, enforceable obligation.

Mr. Binavince: That is right.

The Chairman: Senator Stanbury.

Senator Stanbury: Just to follow that up, Madam Chairman: I think we all understand the distinction you are drawing between the legal and political obligations, and we, in this chamber, certainly do not downgrade the importance of political obligations. But, just to turn Senator Nurgitz's question around: Even if Parliament passes Bill C-82, there is no obligation on the provinces to put the money in.

Mr. Binavince: It follows, yes.

Senator Stanbury: So that we may pay the price without getting the consideration; that is a possibility. That is politically, perhaps, not very wise on the part of the provinces, but I think the emphasis on the political nature of the obligation throws our minds over to the question of the nature of politics. As we have been learning, some of us to our pain and some to our pleasure, politics shift. The law flows a little bit too, but not quite as dramatically as politics. So that if a provincial government were to change, as some of our provincial governments have in terms of their politics, and if they were to decide that in political consideration it was not wise to pursue this agreement, then there would be nothing invalid about them making a decision not to pursue it.

Mr. Binavince: That is right.

Senator Stanbury: Nothing legally valid, that is. It sounds to me as though we may be hearing some of that, and the sugges-

[*Traduction*]

Le sénateur Nurgitz: Monsieur Binavince, vous nous avez dit qu'il n'y a pas d'obligation juridique pour le gouvernement fédéral de promulguer le projet de loi C-81. S'il ne le faisait pas, j'imagine que le conseil que vous donneriez à une province est qu'elle n'a pas non plus d'obligation de payer les 100 millions prévus à l'article 2.1 Cela ne ferait pas de doute dans votre esprit, n'est-ce pas?

M. Binavince: Non, je l'ai déjà dit.

Le sénateur Nurgitz: Ni non plus les autres sommes payables en vertu de la convention?

M. Binavince: Non.

Le sénateur Nurgitz: Du point de vue juridique, s'entend.

M. Binavince: Je ne vais pas extraire certains aspects de la convention pour leur donner une valeur juridique, et non aux autres.

Le sénateur Nurgitz: Donc, pour ce qui vous concerne, s'agissant du financement des Jeux olympiques de Calgary, par exemple, auxquels cette somme de 100 millions est destinée—vous dites que c'est là une considération politique et il ne fait pas de doute dans votre esprit qu'il n'y a pas d'obligation de payer.

M. Binavince: C'est exact, monsieur le sénateur.

Le sénateur Frith: Pas d'obligation juridique.

Le sénateur Nurgitz: Oui, pas d'obligation juridique contraignante.

M. Binavince: C'est cela.

La présidente: Sénateur Stanbury.

Le sénateur Stanbury: Pour poursuivre dans cette veine, madame la présidente, je crois que nous comprenons tous la distinction que vous établissez entre les obligations juridiques et les obligations politiques et loin de nous, dans cette Chambre, de vouloir minimiser l'importance des obligations politiques. Mais, pour inverser la question du sénateur Nurgitz: Même si le Parlement adopte le projet de loi C-82, il n'y a pas obligation pour les provinces de payer?

M. Binavince: Cela va de soi, oui.

Le sénateur Stanbury: Si bien que nous risquons de payer le prix sans obtenir la contrepartie; c'est une possibilité. Ce ne serait peut-être politiquement pas très sage de la part des provinces mais je pense que l'accent mis sur la nature politique de l'obligation nous fait réfléchir à la nature de la politique. Ainsi que nous en avons fait l'expérience, certaines fois à nos dépens et d'autres fois à notre avantage, la politique est chose changeante. La loi varie également mais pas autant que la politique. Si donc un gouvernement provincial succède à un autre, comme cela arrive souent, le nouveau gouvernement pourrait juger, se fondant sur des considérations politiques, qu'il ne serait pas sage d'exécuter cet accord et rien ne l'empêcherait.

M. Binavince: C'est exact.

Le sénateur Stanbury: Il n'y aurait aucun empêchement juridique, en tout cas. Il me semble que cela pourrait bien arri-

[*Text*]

tion has been that that would just be a terrible thing if a province now did not go through because it had signed the document. But, if it signs a document and commits itself to a political obligation and the political situation changes, then surely it is legitimate, at least, for that province to rethink the situation.

The other thing that is bothering me is that it seems to me that the main thing that Mr. Gagnon, Mr. Mosley, and Mr. Jelinek have been arguing is that really this is not changing anything as far as gambling is concerned; that the Loto Quebec case settles it and, therefore, we are not really changing anything. Therefore, when Mr. Gagnon talks about the bottom line, what is the bottom line? The bottom line, generally-and I appreciate there are additional peripheral things—is the federal obligation not to enter into lotteries. That is what the provinces want out of it. Now what you are telling us is that that obligation in the agreement is no good legally, and it is as thin as the next election, politically.

Mr. Binavince: That's right.

Senator Stanbury: The bottom line, as far as the federal government is concerned, is the $100 million for the Olympics. What you are telling us is that even if we pass this legislation within the time limit, there is no legal obligation on the part of the provinces to pay the money, and since we have had at least two changes in the political situation since the agreement was signed, there may well be political objections. Ontario says it is a bad bill, so why would they pay for a bad bill. So there may be what might be considered, normally. political obligations which are no longer valid as obligations.

Mr. Binavince: That's right.

Senator Stanbury: Thank you, Madam Chairman.

The Chairman: Senator Nurgitz.

Senator Nurgitz: Just as a follow-up, and more of a comment that anything else: The provinces then face the prospect of the federal government being back into the lottery business, because two provinces are a collective entity under the agreement.

Senator Stanbury: They have no assurance that the Federal Government is not going back into it anyway.

Senator Nurgitz: $35 million a year is a nice assurance.

Senator Frith: No legal assurance. All this has done is clear the air so that we do not need to worry about legal consequences. We have to make our political decisions.

The Chairman: Mr. Gagnon.

Mr. Gagnon: A point of clarification, Madam Chairman: Before this goes any further, honourable senators may want to realize that there is an interprovincial agreement that provides that the payments to be made under the agreement are to be made by the Inter-Provincial Lottery Corporation, so it would

[*Traduction*]

ver et l'on nous a dit que toutes sortes de choses terribles arriveraient à la province qui se désisterait après avoir signé le document. Mais si, en signant le document, une province prend un engagement politique, lorsque la situation politique change il serait légitime qu'une province repense la situation.

L'autre élément qui me gêne est que l'argument principal de M. Gagnon, de M. Mosley et de M. Jelinek est que cette convention ne change absolument rien à la situation en ce qui concerne le jeu, que l'affaire Loto-Québec a réglé la question et que l'on ne change absolument rien. Par conséquent, lorsque M. Gagnon parle de la substance, qu'est-ce que la substance? La substance, et je reconnais qu'il y a des considérations auxiliaires, est l'obligation fédérale de ne pas exploiter de loteries. C'est cela que les provinces voulaient. Vous me dites maintenant que cette obligation n'a aucune valeur juridique et risque de ne plus tenir après la prochaine élection.

M. Binavince: C'est exact.

Le sénateur Stanbury: La substance, du point de vue du gouvernement fédéral, sont les 100 millions pour les Jeux olympiques. Vous nous dites que même si nous adoptons cette législation dans le délai imparti il n'y aura pas d'obligation juridique pour les provinces de verser l'argent et que puisqu'au moins deux gouvernements ont changé depuis la signature de la convention, certaines provinces pourraient même élever des objections politiques contre ce paiement. L'Ontario dit que c'est une mauvaise loi, pourquoi devrait-il payer pour une mauvaise loi? Nous avons donc là des obligations politiques qui pourraient bien n'être plus considérées comme des obligations à l'avenir.

M. Binavince: C'est vrai.

Le sénateur Stanbury: Je vous remercie, madame la présidente.

La présidente: Le sénateur Nurgitz.

Le sénateur Nurgitz: Pour continuer là-dessus, et je fais là une remarque bien plus que je ne pose de question: Les provinces risquent donc de voir le gouvernement fédéral réintégrer le domaine des loteries, parce que deux provinces sont une entité collective aux termes de la convention.

Le sénateur Stanbury: De toute façon, elles n'ont aucune garantie que le gouvernement fédéral ne va pas le faire.

Le sénateur Nurgitz: Trente-cinq millions par an est une jolie assurance.

Le sénateur Frith: Pas de garantie juridique. Tout ce que cela fait c'est déclarer les choses et de nous montrer que nous n'avons pas à nous inquiéter des conséquences. Nous avons à prendre une décision politique.

La présidente: Monsieur Gagnon.

M. Gagnon: Une précision, madame la présidente: Avant d'aller plus loin, les honorables sénateurs doivent savoir qu'un accord interprovincial a été signé stipulant que les versements payables en vertu de la convention seront faits par la Corporation interprovinciale des loteries, si bien qu'il sera extrêmement

[*Text*]

be extremely hard for a province to back out of its payment obligations.

Senator Fairbairn: Whether the bill goes through or not?

Mr. Gagnon: No, for one province. It is a common front, so that one province could hardly come out of its payment obligations because the payments are made by a third party.

Senator Frith: But the Federal Government could not enforce an agreement to which it was not a party. I agree with you that practically it would be hard to do it, but if we are staying with the legal question, they are not a party to the contract. They cannot go to the provinces and say, "You agreed amongst yourselves to pay me". They have to say, "You agreed with me to pay me". But, I do not quarrel with what you say. It would be very hard, I agree. But, legally, the situation is still immaculate.

Mr. Gagnon: I would not go so far as to say that there would not be any contractual obligations that the courts would not uphold. I would not go that far. I would agree that there is a doubt, and to that extent, as you know, there was another case where all the provinces were suing the federal government under the 1979 agreement. It was before the Federal Court and it would have been a good occasion to test this kind of agreement to see if perhaps obligations in a contract could be enforced in court. Practically speaking, this agreement provides that that case will also be withdrawn, so that we will not have a judicial decision on it. However, there is still the possibility that the federal government could sue the provinces for the payment, assuming that the federal government has fulfilled its own obligations.

The Chairman: Mr. Binavince, do you wish to comment on this section?

Mr. Binavince: I agree with Mr. Gagnon, we can always sue someone. The question is whether or not we succeed at the end of the day.

The Chairman: Mr. Binavince, may I ask a question? On page 6 of your brief, you say:

> The right of the provinces that is being ensured in Article 1.1 is the right to tap gaming and betting as sources of revenue . . .

Would it be implicit in that phraseology that you assume that the provinces now have all the rights that are necessary to enter into any lottery scheme or gaming, betting or whatever it may be? I recall you did say something to the effect that you felt perhaps this bill was unnecessary to ensure that the rights were already in place.

Mr. Binavince: Madam Chairman, my answer to that, I think, is that it one looks closely at Article 1.1., this is an obligation not to do somethinng; to refrain from doing something, to just be what you are; do not do anything more. Therefore, in order to have an effective obligation not to do anything, one would assume that what is in place is really in operation, and that is the assumption of this clause.

[*Traduction*]

difficile pour une province de ne pas s'acquitter de ses obligations de paiement.

Le sénateur Fairbairn: Que le projet de loi soit adopté ou non?

M. Gagnon: Non, pour une province. C'est un fonds commun, si bien qu'il serait très difficile à une province de se soustraire à ses obligations de paiement car les versements sont effectués par une tierce partie.

Le sénateur Frith: Mais le gouvernement fédéral ne pourrait faire appliquer un accord dont il n'est pas signataire. Je reconnais avec vous que ce serait difficile au plan pratique, mais pour rester au plan purement juridique, le gouvernement fédéral n'est pas partie à ce contrat. Il ne peut pas aller voir les provinces et leur dire: «Vous vous êtes mises d'accord entre vous pour me payer». Il doit dire: «Vous avez convenu avec moi de me payer». Mais je ne conteste pas ce que vous dites, ce serait très difficile. Mais juridiquement, cela ne change rien.

M. Gagnon: Je n'irais pas jusqu'à dire qu'il n'y a pas d'obligation contractuelle qu'un tribunal ne confirmerait pas. Je n'irais pas jusque là. Je reconnais qu'il y a un doute et vous savez d'ailleurs qu'un autre cas est survenu où les provinces poursuivaient le gouvernement fédéral en vertu de la convention de 1979. La Cour fédérale en était saisie et cela aurait été une bonne occasion pour mettre à l'épreuve ce genre d'accord, pour voir si les obligations d'un tel contrat sont juridiquement contraignantes. Mais, la nouvelle convention stipule que cet appel sera retiré si bien qu'il n'y aura pas de décision de justice là-dessus. Toutefois, la possibilité subsiste que le gouvernement fédéral fasse procès aux provinces en cas de non-paiement, le gouvernement fédéral s'étant acquitté, lui, de ses obligations.

La présidente: Monsieur Binavince, souhaitez-vous ajouter quelque chose?

M. Binavince: Je suis d'accord avec M. Gagnon, on peut toujours faire un procès à quelqu'un. La question est de savoir si on va le gagner.

La présidente: Monsieur Binavince, pourrais-je vous poser une question? À la page 6 de votre mémoire, vous dites:

> Le droit des provinces qui est garanti à l'article 1.1 est le droit de tirer des recettes du jeu et du pari . . .

Est-ce que cela entraîne nécessairement que les provinces dorénavant jouissent de tous les droits nécessaires pour organiser des loteries ou des jeux ou des paris etc.? Je ne souviens que vous avez dit quelque chose à l'effet que ce projet de loi était inutile, ces droits existant déjà.

M. Binavince: Pour répondre à cela, madame la présidente, il faut regarder de près l'article 1.1 de la convention. Il énonce une obligation de ne pas faire quelque chose, de s'abstenir de faire une chose, de conserver l'état actuel des choses et de ne rien faire de plus. Par conséquent, pour que l'obligation de ne rien faire soit efficace, il faut supposer que ce qui est en place fonctionne et c'est le postulat sur lequel est construit cette clause.

[*Text*]

The Chairman: That is an assumption that you realize is being argued here, or at least discussed to some extent.

Mr. Binavince: What bothers me, very simply, with this clause is whether an undertaking not to do it, that is to enter into gaming and betting or the second branch, not to restrict the right—I am a little bit puzzled by the words "to ensure the rights". That is something that puzzled me when I read it at first. In looking at this, I originally thought that they were correlative terms. When it says that the federal government should not re-enter, the re-entry, of course, is immediately a reduction because there is just finite money outside and I suspect it will provide competition.

The second thing is to ensure that the rights of the provinces in this field are not reduced. There are a number of ways in which they can be reduced. In fact, I ran out of time thinking of the possibilities of doing that and I am a little concerned as to what could manageably be a breach of this. Let us assume, for instance, that there is licensing with respect to movement of trucks, and a movement of one of these slot machines was required, or whatever. Would there be an obligation upon the federal government to give the license? It goes on and on. What about the enforcement of import and export laws and customs duties? In any event, there is something there that bothers me. I suspected originally that that should be a correlated part; that the way in which "ensured" would only occur was not to re-enter. But if one looks at it, it is broader than that.

The Chairman: I just have perhaps one further question. Looking at the provisions of Bill C-81 and some of the sections of the proposed revisions to 190 to empower individual persons to carry on and manage lotteries, is there any element of subdelegation there that might be at issue in this matter? Is that power fully recognized for the federal government to hand over to provincial governments who, in turn, may delegate to individuals who might be encompassed in these sections?

Mr. Binavince: Without going into the wisdom of the policy that is being attempted to be implemented here, a delegation that is made by a delegatee of the power, as long as it is authorized, would be a valid one, and that I suspect—

Senator Frith: I am sorry, would be what?

Mr. Binavince: Would be valid; would be sustained. As a general rule, the recipient of a delegated power is not authorized to subdelegate further, the assumption being that a delegation is built on the confidence and trust of the delegatee, the one who receives the delegation and that that would be abridged if it was subdelegated because the delegator does not change. However, I suspect that the purpose behind this is to authorize further subdelegation, so that the doctrine against subdelegation will not apply.

The Chairman: If there are no further questions of Mr. Binavince, then I will say thank you very much on behalf of the committee for appearing here this morning.

Mr. Binavince: Thank you very much, Madam Chairman and honourable senators.

The Chairman: Honourable senators, I think that Inspector Donald Wilson of the Criminal Intelligence Service would like

[*Traduction*]

La présidente: C'est un postulat qui est quelque peu contesté ici.

M. Binavince: Très simplement, ce qi me gêne dans cette clause est de savoir si un engagement de ne rien faire, c'est-à-dire de ne pas réintégrer le domaine du jeu et du pari, ou, le deuxième élément, faire en sorte que les droits des provinces ne soient pas réduits . . . Je me suis posé des questions quand j'ai lu ce texte la première fois, à première vue les termes me paraissaient synonymes. Lorsqu'il est dit que le gouvernement va s'abstenir de réintégrer, une telle réintégration évidemment entraînerait une réduction des revenus des provinces car les revenus que peuvent dégager les loteries sont limités.

Le deuxième élément consiste à faire en sorte que les droits des provinces dans ce domaine ne soient pas réduits. Il y aurait toutes sortes de moyens d'opérer une telle réduction. En fait, les possibilités sont presque infinies et je n'ai pu les répertorier toutes et le nombre d'actions qui pourraient être interprétées comme une infraction m'inquiète d'ailleurs un peu. Supposons, par exemple, qu'une machine à sous doive être transportée par camion. Le gouvernement fédéral serait-il tenu d'octroyer un permis à un tel transport? La liste est interminable. Qu'en est-il des lois sur l'importation et l'exportation et des droits de douane? Quoi qu'il en soit, il y a là quelque chose qui me gêne. J'aurais pensé au début qu'il s'agissait là d'un corollaire, que la façon de «faire en sorte» consisterait siplement à ne pas réintégrer le domaine mais, si l'on regarde de près, cela va beaucoup plus loin.

La présidente: J'ai encore une dernière question. Lorsqu'on regarde les dispositions du projet de loi C-81 et certaines des modifications à l'article 190 donnant pouvoir à certaines personnes d'exploiter et d'administrer des loteries, n'y a-t-il pas là un élément de sous-délégation contestable? Le gouvernement fédéral a-t-il toute latitude de confier ses pouvoirs à des gouvernements provinciaux qui, à leur tour, peuvent les déléguer à des particuliers?

M. Binavince: Sans vouloir me prononcer sur la sagesse de cette politique, une délégation de pouvoir faite par le bénéficiaire d'une délégation de pouvoir est valide si elle est dûment autorisée et j'ai l'impression . . .

Le sénateur Frith: Je vous demande pardon, serait quoi?

M. Binavince: Serait valide, serait confirmée. En règle générale, le bénéficiaire d'un pouvoir délégué n'est pas autorisé à sous-déléguer plus bas, le principe étant que la délégation est fondée sur la confiance en le premier bénéficiaire de la délégation, et que cette relation de confiance ne peut pas exister entre le délégateur et le sous-délégataire. Toutefois, j'ai l'impression que l'objet de ces dispositions est d'autoriser la sous-délégation, si bien que cette doctrine ne s'appliquerait pas en l'occurrence.

La présidente: S'il n'y a pas d'autres questions, je vous remercie, monsieur Binavince, au nom du comité, d'avoir comparu ce matin.

M. Binavince: Je vous remercie, madame la présidente et honorables sénateurs.

La présidente: Honorables sénateurs, je crois que l'inspecteur Donald Wilson du Criminal Intelligence Service voudrait

[*Text*]

to speak again briefly to the committee. I understand some or all of what he has to say will be *in camera*.

Inspector Wilson, is there anything that you would like to put on the record, and then we can go *in camera*.

Mr. Howard Morton, Ontario Ministry of the Attorney General: Madam Chairman, if I might at this time comment on Inspector Wilson's presentation, we would like to be i*in camera*. However, I think the rest of our presentation will be brief and can be open.

The Chairman: Then let us have the open presentation first, if we can.

Senator Fairbairn: Will there be time today, Madam Chairman, to question the various witnesses?

The Chairman: There will be time, yes.

Mr. Morton: Madam Chairman and honourable senators, just before Chief Basse introduces the other speakers, if I could have one minute to make something as clear as I can, I apologize if my inarticulateness earlier led to certain questions that were indicating that Ontario is here with an intention to breach this agreement. That is not Ontario's intention. It is the furthest thing from Ontario's intention.

The gist of the agreement is that the federal government will abandon the lottery field and turn over jurisdiction with respect to lotteries to the provinces. In our submission, that is the gist of the agreement, and I think all parties to the agreement believe that to be a good agreement.

Ontario is here through the Attorney General and through police officers to express concern with the bill amending the Criminal Code, and that is solely why we are here. If that was not made clear earlier, I would like to do so now.

As we indicated, clause 1.2 required consultation, and we have tried to indicate how, in our view, there has not been the consultation required by that provision. I would like to express a response to Mr. Gagnon's testimony this morning with respect to provinces breaching the agreement. It is my understanding that there is no information of any sort whatsoever that any province intends to breach the financial aspects of this agreement; and if Mr. Gagnon has any such information, that any province has indicated that it intends not to make any payment if this bill does not go through—because we are here making submissions in a democratic fashion—then I wish that Mr. Gagnon would indicate that information to the committee.

Chief Harold Basse, Waterloo Regional Police Force: Madam Chairman, we appear here this morning perhaps to clarify some misconceptions that are out in the media. Unfortunately, I did not have an opportunity, nor did any members of my committee, to read the transcript of Deputy Commissioner Jensen's submission the other day. The appearance is that the RCMP are going down one street and the rest of the police community are going down another. From reading briefly the transcript of his submission this morning, while the proceedings were continuing, I did not get that impression. The Ontario Association of Chiefs of Police, and the Criminal

[*Traduction*]

prendre de nouveau brièvement la parole. Je crois qu'une partie ou la totalité de ce qu'il nous dira sera *à huis clos*.

Monsieur l'inspecteur Wilson, y a-t-il quelque chose que vous souhaitez voir figurer au procès-verbal, avant de siéger à huis clos.

M. Howard Morton, ministère du Procureur général de l'Ontario: Madame la présidente, nous souhaiterions que la déclaration de l'inspecteur Wilson soit faite *à huis clos* mais le reste de notre exposé sera bref et pourra être fait publiquement.

La présidente: Commençons donc par l'exposé public, si vous voulez bien.

Le sénateur Fairbairn: Aurons-nous le temps aujourd'hui, madame la présidente, de poser des questions aux divers témoins?

La présidente: Oui, vous aurez le temps.

M. Morton: Madame la présidente, honorables sénateurs, avant que le chef Basse ne présente les autres intervenants, j'aimerais consacrer une minute à préciser une chose et je vous présente mes excuses si, par manque de clarté, j'ai pu donner à penser que l'Ontario aurait l'intention de rompre cette entente. Cela n'est pas l'intention de l'Ontario, bien au contraire.

La substance de l'entente est l'abandon par le gouvernement fédéral du domaine des loteries et la dévolution aux provinces de son pouvoir à l'égard des loteries. Cela constitue, à notre avis, la substance de l'accord et je pense que toutes les parties signataires considèrent qu'il est bon.

L'Ontario est représenté ici par le bureau du Procureur général et par des officiers de police pour exprimer leurs craintes à l'égard du projet de loi modifiant le Code crminel et cela est la seule raison de notre présence. Si nous ne l'avons pas montré clairement auparavant, je tiens à le faire maintenant.

Ainsi que nous l'avons fait ressortir, la clause 1.2 prévoit une concertation et nous avons voulu montrer que, à notre sens, la concertation exigée par cette disposition n'a pas eu lieu. J'aimerais répondre au témoignage que M. Gagnon a donné ce matin concernant une rupture du contrat par les provinces. Pour autant que je sache, aucune province n'a la moindre intention d'enfreindre les aspects financiers de cette entente; si M. Gagnon a des renseignements contraires, à l'effet qu'une province aurait indiqué son intention de n'effectuer aucun paiement avant l'adoption du projet de loi—et puisque nous sommes ici dans une enceinte démocratique—je souhaite que M. Gagnon fasse part de ces renseignements au comité.

Le chef Harold Basse, chef de la Police régionale de Waterloo: Madame la présidente, nous comparaissons ici ce matin pour rectifier peut-être certaines idées fausses qui sont répandues dans la presse. Je n'ai malheureusement pas eu l'occasion, pas plus qu'aucun des autres membres de mon comité, de lire le procès-verbal du témoignage que le sous-commissaire Jensen a donné l'autre jour. On en a conclu que la GRC aurait une position divergente de celle des autres corps de police. Ayant parcouru rapidement la transcription de ce témoignage ce matin, au début de la séance, mon impression est toute différente. L'Association ontarienne des chefs de police et le Crimi-

[*Text*]

Intelligence Service of Ontario—and I am Chairman of both—are on the same wavelength as the RCMP on most issues, although not all. I wish to make that clear. I again reiterate that we are not here for political reasons, nor for interests of self-interest. We feel that there are approximately five issues that we would like to address. The members of my committee will do that, if you will permit us.

The Chairman: Certainly.

Chief Basse: The first issue concerns changes in the law.

Senator Frith: I think you started with a very good summary. You piqued our curiosity by saying that you are on the same wavelength. Are you now going to tell us how you are on the same wavelength?

Chief Basse: Not exactly.

Senator Frith: But you will do that?

Chief Basse: Yes. We will tell you where we are in agreement and where we are not. On some issues we are in agreement, but the wording is somewhat different and gives the wrong impression. If you leave out one word, it has a different meaning.

Senator Frith: Tell us about it.

Chief Basse: We will. Regarding the amendments to the Code, the perception is that it will clarify the law for the police and make it easier to understand. We are perhaps not in agreement with that, and we will address ourselves to that. Regarding the other issue, that we cannot rely solely on the U.S. experience, we agree with that. However, we wish to show you that we base our fears not only on the U.S. experience but also on other aspects. Regarding the increase in street crime and the involvement of organized crime, Deputy Commissioner Jensen stated that there was no involvement to this point. We also agree with that. I have spoken to Chief Reimer of Calgary. May I relate what he told me? Is it proper for me to do that?

The Chairman: Yes. This is not a court of law.

Chief Basse: I spoke to him by telephone this morning. He agrees that the casinos that have been held in Calgary have been held only periodically and have been held in different locations. He agrees that the street crime surrounding them has not increased in those locations; nor is there any indication of organized crime involved with those specific casinos. However, he has done a study on the involvement of organized crime and street crime, and has convinced his Police Commission, and also his municipal government, to outlaw the world type casinos, or whatever they might be called—in other words, the establishment of a one-casino building as a casino. The basis of his submission was the potential involvement of organized crime, the increase in street crime, and the demand on the police force. I have just reiterated what he told me this morning.

[*Traduction*]

nal Intelligence Service of Ontario—et je préside les deux—sont sur la même longueur d'onde que la GRC sur la plupart des points, sinon sur tous. Je tiens à le faire savoir. Je répète également que nous ne sommes pas ici pour des raisons politiques, ni pour servir nos intérêts propres. Nous aimerions traiter de cinq points environ et, si vous le permettez, je vais demander aux membres de mon comité de le faire.

La présidente: Certainement.

Le chef Basse: Le premier point concerne les modifications à la loi.

Le sénateur Frith: Je trouve que vous avez commencé par une très bonne introduction. Vous avez piqué notre curiosité en disant que vous êtes sur la même longueur d'onde. Allez-vous maintenant nous dire à quel propos?

Le chef Basse: Pas exactement—

Le sénateur Frith: Mais vous allez le faire?

Le chef Basse: Oui. Nous allons vous dire sur quels points nous sommes d'accord et sur lesquels nous sommes en désaccord. Nous sommes d'accord sur certains points mais le libellé n'est pas identique et dégage une fausse impression. Il suffit de supprimer un mot pour changer le sens.

Le sénateur Frith: Parlez-nous en.

Le chef Basse: Nous le ferons. En ce qui concerne les amendements au Code, on a dit qu'ils précisent le sens de la loi et la rendront plus facile à comprendre. Nous ne sommes pas nécessairement d'accord avec cette perception et nous en parlerons. En ce qui concerne l'autre point, à savoir l'argument que nous ne pouvons pas nous reposer entièrement sur l'expérience américaine, nous sommes d'accord. Toutefois, nous voulons vous montrer que nos craintes se fondent non seulement sur l'expérience américaine mais également sur d'autres aspects. En ce qui concerne la recrudescence de la criminalité de rue et le rôle des syndicats du crime, le sous-commissaire Jensen a déclaré qu'il n'y a pas de lien apparent pour le moment. Nous partegeons également cette opinion. J'ai parlé au chef Reimer de Calgary. Puis-je vous répéter ses paroles? Suis-je autorisé à le faire?

La présidente: Oui. Nous ne sommes pas un tribunal.

Le chef Basse: Je lui ai parlé au téléphone ce matin. Il reconnaît que les maisons de jeu qui ont été tenues à Calgary ne sont que des phénomènes périodiques et étaient installées dans des endroits différents. Il reconnaît que la criminalité de rue aux alentours n'a pas augmenté et que rien n'indique que les syndicats du crime aient tenu un rôle dans ces maisons de jeu. Toutefois, il a réalisé une étude sur la criminalité organisée et la criminalité de rue et a persuadé sa commission de police, de même que son conseil municipal, d'interdire les casinos véritables—je ne sais trop comment les appeler—c'est-à-dire l'ouverture d'un casino officiel. Il fonde sa position sur le risque de voir entrer en scène les syndicats du crime, sur la recrudescence de la criminalité de rue et sur le fardeau qui en résulterait pour les forces de police. Je vous répète là ce qu'il m'a dit ce matin.

[*Text*]

Senator Nurgitz: You are saying that Chief Reimer is against a permanent location of a casino, where casinos would be permanently located at one site?

Chief Basse: That is what he told me.

Senator Barootes: He likes roving crap games!

Chief Basse: I am not sure that he likes the roving casinos. He didn't tell me about that.

Senator Nurgitz: But he is against a permanent site?

Chief Basse: That is correct. We will also give you some additional information on that. Regarding the opportunity for organized crime to become involved, Chief Harding will provide a little more information on that. We would also like to tell you about the expertise in the police community of Ontario, in relation to the organized crime enforcement section of the Criminal Code, to better qualify our people. Staff SErgfeant Peter Benge will do that for you.

The RCMP does not share the grave concern of the Ontario police community—and I understand that. If I were in their position, I think I would hold the same view. However, we in Ontario do have that grave concern because of the presence of organized crime in Ontario and because of the density of the population. I believe that Deputy Commissioner Jensen said that we would be more vulnerable than perhaps other provinces. I am not sure whether those were his words, but it was something similar. I would now like to ask Corporal Durno to start off.

Corporal Andy Durno, Ontario Provincial Police: Madam Chairman and honourable senators, I have been a member of the Ontario Provincial Police for approximately 20 years. In 1972 I attended a gambling seminar held at Dorset, Ontario for police officers throughout the Province of Ontario. Members of the RCMP, from the gaming section at Edmonton, we also in attendance. From 1975 to 1981 I was involved in the enforcement of illegal gambling activities in the areas of bookmaking, gaming houses, pyramid schemes, lotteries, pools selling and slot machines. I have personally been involved in several hundred prosecutions relating to illegal gaming activity. I have provided expert evidence before the courts. I have appeared on radio talk shows and in a television show. Members of the Ontario Provincial Police, Gaming Section, have lectured on gaming at the Ontario Police College and at the Ontario Police Academy. In 1981 I was transferred to a joint forces unit out of Toronto. I was not involved in gambling enforcement. The office to which I was on loan worked out of the Royal Canadian Mounted Police "O" Division headquarters in Toronto. It was a unit made up of seven RCMP officers, seven Metropolitan Toronto police officers and seven Ontario Provincial Police officers.

The mandate of this unit was enforcement of organized crime subjects in Toronto and the Southern Ontario area. I was there until May, 1985, at which time I returned to the Ontario Provincial Police gaming section, and since that time I have been involved in several illegal gambling investigations which have resulted in approximately 40 charges to date. I am also involved in several ongoing investigations at the present

[*Traduction*]

Le sénateur Nurgitz: Vous dites que le chef Reimer est opposé à l'ouverture d'un casino permanent dans un endroit fixe?

Le chef Basse: C'est ce qu'il m'a dit.

Le sénateur Barootes: Il préfère les jeux de dés à la sauvette.

Le chef Basse: Je ne suis pas sûr qu'il préfère les casinos itinérants. Il ne m'en a pas parlé.

Le sénateur Nurgitz: Mais il est opposé à un site permanent?

Le chef Basse: C'est cela. Nous en reparlerons plus loin. En ce qui concerne les risques d'entrée en scène de la criminalité organisée, le chef Harding vous en parlera plus en détail. J'aimerais également vous faire part de l'expérience des forces de police de l'Ontario à l'égard de la mise en application de la partie du Code criminel concernant le crime organisé, afin de nous situer. Le sergent Peter Benge le fera.

La GRC ne partage pas la grande inquiétude des forces de police de l'Ontario, et je comprends cela. Si j'étais à leur place, je crois que je penserais la même chose. Toutefois, nous, en Ontario, nourrissons ces graves craintes en raison de la présence de la criminalité organisée en Ontario et de la densité de notre population. Je crois que le sous-commissaire Jensen a reconnu lui-même que nous serions plus vulnérables que d'autres provinces. Je ne sais pas si ce sont ses paroles exactes mais il a dit quelque chose dans ce sens. Je voudrais maintenant demander au caporal Durno de commencer.

Le caporal Andy Durno, Police provinciale de l'Ontario: Madame la présidente et honorables sénateurs, je fais partie de la Police provinciale de l'Ontario depuis près de 20 ans. J'ai assisté, en 1972, à un séminaire sur les jeux qui s'est tenu à Dorset en Ontario et auquel assistaient des officiers de police venant de toute la province, de même que des membres de la GRC appartenant à la section des jeux d'Edmonton. De 1975 à 1981, j'ai travaillé à la répression des jeux illégaux, plus particulièrement du bookmaking, des maisons de jeu, des systèmes de pyramides, des loteries, des paris collectifs et des machines à sous. J'ai participé personnellement à plusieurs centaines de procès intéressant des jeux illégaux. J'ai déposé comme expert devant les tribunaux. J'ai participé à des émissions radiophoniques et télévisées. Des membres de la section des jeux de la Police provinciale de l'Ontario ont donné des conférences sur les jeux au Collège ontarien de la police et à l'Académie ontarienne de police en 1981, et j'ai été muté à une section de police mixte à Toronto de la Division «O» de la Gendarmerie royale du Canada et elle était constituée de sept officiers de la GRC, de sept officiers de la Police métropolitaine de Toronto et de sept officiers de la Police provinciale de l'Ontario.

Le mandat de cette unité était la lutte contre la criminalité organisée à Toronto et dans le sud de l'Ontario. J'y ait travaillé jusqu'en mai 1985, date à laquelle je suis retourné à la section des jeux de la Police provinciale de l'Ontario et, depuis lors, je me suis occupé de plusieurs enquêtes sur des jeux illégaux qui ont résulté jusqu'à présent en une quarantaine d'inculpations. J'ai en outre plusieurs enquêtes en cours. J'ai reçu récemment

[*Text*]

time. I have recently received a request from law enforcement agencies in New York State to provide information to them about Bill C-81. They are concerned and want some clarification on the bill and on what impact the legislation would have on American authorities as it relates to slot machine parlours or casinos. These same concerns have been expressed by Michigan law enforcement authorities as they relate to areas such as Windsor-Detroit and Sarnia and the Port Huron and Sault Ste Marie areas.

Various municipal law enforcement agencies throughout Ontario call upon our gaming section for assistance and advice on illegal gambling investigation matters almost on a daily basis. We are not an intelligence gathering unit. However, we are an enforcement unit on illegal gambling matters and on control of licensed events. As such, we work closely with members of the gambling section of the Metropolitan Toronto Police Force morality bureau, which, in my opinion, is the most knowledgeable force on gaming matters, as it is one of the few police departments in all of Canada that enforce the gaming laws on a full-time basis.

As I mentioned during my last appearance before this committee, the interpretation of Part V of the Criminal Code is difficult because of the deficiencies in language, which have resulted in varying interpretations across the country. I have had the opportunity to discuss these differences with persons from various jurisdictions and I can appreciate why there are these varying interpretations. We in Ontario are all in agreement that slot machines are illegal. I cannot support the view that Bill C-81 clarifies existing legislation. It only adds more ambiguity to the existing legislation. Also, I cannot support the view that Bill C-81 is not an expansion of existing laws. Bill C-81 is, in my opinion, an expansion of the existing provisions of Part V of the Criminal Code and, in particular, in the areas of slot machines, wheels of fortune, pool selling and casino type operations as they relate to charitable and religeous organizations.

Earlier this morning I had the opportunity to read a transcript in which there is a letter from the Honourable Leonard Penner, Attorney General of the Province of Manitoba. It is referred to in pages J-9, K-1 and K-2 in the unrevised transcript. My opinion of this letter is that it clearly shows that Bill C-81 in its present form is an expansion of the existing gaming laws, particularly as they relate to slot machines. Clearly, the letter contradicts statements made by the Honourable John Crosbie and the Honourable Otto Jelinek before this committee, that Bill C-81 does not promote the expansion of gambling.

Staff Sergeant Peter Benge, Metropolitan Toronto Police: Madam Chairperson, honourable senators, you may find my presentation similar to that of Corporal Durno's, but I feel that, for clarification from your point of view, we should outline our qualifications. I have been a police officer for over 20 years, some of them in England where I saw legalized gambling start. I have worked all facets of criminal law and criminal intelligence. As previously stated, I am the head of one of the largest gambling squads in Canada. I have held this position for three years. This year alone my squad has laid over

[*Traduction*]

une demande de renseignements concernant le projet de loi C-81 émanant d'organismes de police de l'État de New York. La police s'y inquiète et voulait des précisions sur le projet de loi et les répercussions qu'il pourrait avoir sur les autorités américaines, et notamment à l'égard des machines à sous et des maisons de jeu. Les forces de police de l'État du Michigan ont exprimé les mêmes inquiétudes concernant les régions voisines de Windsor, de Detroit, de Sarnia, de Port Huron et de Sault Ste. Marie.

Diverses forces de police municipales de l'Ontario font appel presque quotidiennement à l'aide et aux conseils de notre section des jeux aux fins de leurs enquêtes sur les jeux illégaux. Nous ne sommes pas un service de renseignements, nous nous occupons de réprimer les jeux illégaux et de contrôler les manifestations autorisées. Pour cela, nous travaillons en coopération étroite avec la section des jeux de la brigade mondaine de la Police municipale de Toronto qui est, à mon avis, celle qui possède le plus d'expérience en ce domaine étant l'un des rares services de police dans tout le Canada qui s'occupe des jeux à temps plein.

Ainsi que je l'ai dit lors de ma dernière comparution à ce comité, l'interprétation de la Parvie V du Code criminel est malaisée en raison de l'imprécision du libellé, imprécision qui a donné lieu à diverses interprétations dans notre pays. J'ai eu l'occasion de discuter de ces divergences d'interprétation avec des personnes de juridiction différente et je peux comprendre pourquoi les interprétations diffèrent. En Ontario, nous sommes unanimes à considérer les machines à sous comme illégales. Je ne partage pas l'avis voulant que le projet de loi C-81 précise le sens de la législation actuelle et je considère qu'il ne fait qu'accroître son ambiguïté. De même, je ne puis partager le point de vue voulant que le projet de loi C-81 ne constitue pas un assouplissement de la législation actuelle. A mon sens, il assouplit les dispositions actuelles de la Partie V du Code criminel, notamment en ce qui concerne les machines à sous, les roues de fortune, les paris collectifs et les jeux de type casino exploités par les organisations charitables et religieuses.

J'ai eu l'occasion ce matin de lire un procès-verbal reproduisant une lettre de l'honorable Leonard Penner, Procureur général de la province du Manitoba. Elle est mentionnée aux pages J-9, K-1 et K-2 du procès-verbal non révisé. A mon avis, cette lettre montre clairement que le projet de loi C-81, dans sa forme actuelle, assouplit la législation existante concernant les jeux d'argent, et particulièrement dans le cas des machines à sous. Cette lettre contredit à l'évidence les déclarations de l'honorable John Crosbie et de l'honorable Otto Jelinek à ce comité, affirmant que le projet de loi C-81 n'assouplit pas la législation des jeux.

Le sergent Peter Benge, Police métropolitaine de Toronto: Madame la présidente, honorables sénateurs, vous trouverez peut-être une similitude entre mon exposé et celui du caporal Durno mais je pense qu'il vous est utile que nous indiquions nos qualifications. Je suis officier de police depuis plus de 20 ans, dont un certain nombre en Angleterre où j'ai assisté à la légalisation des jeux d'argent. J'ai travaillé dans tous les aspects du droit pénal et du renseignement judiciaire. Ainsi qu'on l'a déjà dit, je dirige l'une des plus importantes brigades de répression des jeux au Canada et j'occupe ce poste depuis

[*Text*]

1,000 charges in relation to illegal gambling enterprises such as bookmaking, pool selling, including the printing of tickets—mainly on American football—common gambling houses—both in the ethnic star stationary games and the floating black-jack crap games that have been referred to—pyramid lotteries and gaming machines. With regard to gaming machines for example, the heart and stress machines are used to dispense scratch and win tickets. There are 12 members in my squad, including myself. We lecture on gambling techniques at our own police college, the Ontario Police College and also the RMCP Police College in Ottawa. Currently four RCMP officers are working with my squad to gain expertise and information. Our expertise is sought by police officers across Canada, including the RCMP. Given these facts, I respectfully suggest that we are experts in our own right because we enforce the law. We enforce it as Parliament writes it, and this hands-on approach is like no other expertise anybody can acquire.

To this point, we have had excellent rapport with the RCMP gaming specialists, who talk to us approximately once a month. Their purpose is to gather information from us on current gambling trends. I must point out that we and other forces across Canada seem to have a different mandate to the RCMP gaming specialists. We enforce and try to test the laws, whereas their job is to interpret and inform police officers across Canada of their interpretation. We often have different points of view in the interpretation of the law. Usually they have the western, more liberal point of view whereas we in Ontario seem to take the more conservative view. As far as we know, the RCMP supports the view that these amendments are an enlargement of gambling, given the inclusion of slot machines.

This committee heard me talk of slot machines in my presentation last week. My presentation still stands. Slot machines, as I mentioned to you, acccount for 50 per cent of gambling revenue in casinos. The other games account for the other 50 per cent. Surely, if slot machines are put in any type of casino, they are an enlargement of gambling. In conclusion, gambling enforcement officers and officials across Canada are a tight knit group.

Part V of the Criminal Code is a very controversial subject. If this bill was meant to clarify the law, I think you should ask yourself this question: Why have you had so many witnesses before this committee giving conflicting views?

The Chairman: We have heard testimony on more than one occasion as to the number of charges that have been laid with respect to illegal gambling. Can any of the witnesses give me some numbers on the number of successful prosecutions. I do not want a great deal of detail, but I think this question bears on one of the questions just raised as to the enforceability and clarity of the present law.

[*Traduction*]

trois ans. Rien que cette année, ma brigade a prononcé plus de 1000 inculpations intéressant des activités illégales telles que bookmaking, paris collectifs, y compris l'impression des bordereaux de pari, principalement pour les maisons de jeu où l'on parie sur les matchs de football américain, les jeux de dés clandestins, les loteries pyramidales et les machines à sous. En ce qui concerne ces dernières, on se sert des machines à mesurer le rythme cardiaque pour distribuer des billets de loterie instantanée. Ma brigade compte 12 membres, moi-même compris. Nous organisons des conférences sur les techniques de jeux clandestins à notre collège de la police, au Collège de la police de l'Ontario et également au Collège de la police de la GRC à Ottawa. A l'heure actuelle, quatre agents de la GRC travaillent avec ma brigade pour accumuler expérience et renseignements. Des corps de police du pays tout entier font appel à notre savoir-faire, GRC comprise. Étant donné tous ces faits, je fais valoir respectueusement que nous sommes des experts dans notre domaine car c'est nous qui faisons respecter la loi. Nous l'appliquons telle que le Parlement la rédige et cela fait de nous les meilleurs experts que l'on puisse trouver.

Nous avons eu jusqu'à présent d'excellents rapports avec les spécialistes des jeux de la GRC que nous rencontrons environ une fois par mois. Ils nous demandent des renseignements sur les tendances du moment en matière de jeux clandestins. Je dois signaler ici que nous-mêmes et les autres corps de police à travers le Canada semblons avoir un mandat différent de celui des spécialistes des jeux de la GRC. Nous faisons respecter la loi et la mettons à l'épreuve, tandis que leur travail est d'interpréter et d'informer les agents de police à travers tout le Canada de leur interprétation. Nous avons souvent des points de vue divergents quant à l'interprétation de la loi. En général, la GRC est partisane d'une interprétation plus libérale, typique de l'Ouest, puisque nous en Ontario semblons avoir des vues plus conservatrices. Pour autant que nous sachions, la GRC partage notre avis que ces amendements constituent un assouplissement des jeux étant donné qu'ils englobent également les machines à sous.

J'ai longuement parlé à ce comité la semaine dernière des machines à sous. Je maintiens ce que j'ai dit alors. Les machines à sous, ainsi que je l'avais indiqué, représentent près de la moitié des recettes des casinos et les autres jeux rapportent l'autre moitié. Il n'est pas douteux que si l'on autorise les machines à sous dans un casino d'une sorte ou d'une autre, cela constitue une expansion des jeux d'argent. En conclusion, les forces de police et les responsables de la répression des jeux du Canada tout entier constituent un groupe étroitement uni.

La Partie V du Code criminel fait l'objet de nombreuses controverses. Si ce projet de loi est destiné à clarifier la loi, il me semble que vous devez vous poser la question suivante: Pourquoi tant de témoins ont-ils comparu devant votre comité pour donner des points de vue divergents?

La présidente: On nous a cité à plusieurs reprises les chiffres du nombre d'inculpations. L'un ou l'autre des témoins pourrait-il nous donner le chiffre des condamnations? Je ne demande pas une grande masse de détails mais je crois que cela est en rapport avec ce qui vient d'être dit concernant la clarté et l'applicabilité de la loi actuelle.

[*Text*]

Staff Sergeant Benge: Perhaps I can answer that question. My conviction rate for this year stands at 90 per cent or more.

The Chairman: So, you said you have laid over a thousand charges.

Staff Sergeant Benge: Correct.

The Chairman: And you have a 90 percent conviction rate in terms of the present law interpretation.

Staff Sergeant Benge: That is right.

Senator Frith: Those are the kind of subjects that you have mentioned?

Staff Sergeant Benge: The subjects that I mentioned are: bookmaking related offences, pool selling common gaming houses, pyramid schemes, blackjack games, crap games, professional type games and the stationary ethnic style games. When I say "stationary", I mean that these common gaming houses are run out of one fixed point as opposed to the floating games that go from hotel to hotel or premises to premises in an attempt to thwart the police.

Chief W. I. James Harding, Halton Regional Police Force: Madam Chairman, Honourable Senators, hopefully my remarks will clarify where there might be varying degrees of concern between the RCMP and the Ontario Police Forces for the infiltration of organized crime into gaming casinos.

I reiterate the remarks of Chief Basse in saying that I am not here today to stand in opposition to what has been said by senior officers of the RCMP, because it is now my understanding that their remarks were more in respect of the experience elsewhere in the Dominion of Canada than in the Province of Ontario, mainly in Manitoba.

In my support of my previous statements to the Senate subcommittee, I would draw your attention to the fact that on February 20, 1985, RCMP gaming experts from the western provinces appeared before Zone 3 of the Ontario Association of Chiefs of Police and spoke of the dangers of casino gambling, and advised caution in its approach. I am of the opinion that their cautionary remarks were made from an understanding that they had of the presence of organized crime in the Province of Ontario.

That statement brings me to a very important fact that there must be a very clear understanding that there are very significant differences between the policing problems of the Province of Manitoba, in particular, and the Province of Ontario. I am not competent, Madam Chairman and Senators, to make a comment upon the organized crime scene in the Province of Manitoba, but I am given to understand, on what I consider reliable authority, that it is practically non-existent when compared to Ontario. Therefore, the crime chart I last produced before this body might well not be applicable to the Province of Manitoba. But, Madam Chairman and Senators, let me most clearly assure you that the chart is eminently applicable to the Province of Ontario as it relates to both our present and potential experience. I reiterate through my recorded transcript all I have said in relation to it.

As a further illustration of our concern, I offer you additional information. I have a confidential document in front of

[*Traduction*]

Le sergent Benge: Je pourrais peut-être répondre. Mon taux de condamnations pour cette année s'élève à 90 p. 100 ou plus.

La présidente: Et vous dites que vous avez prononcé plus de 1,000 inculpations?

Le sergent Benge: C'est exact.

La présidente: Et vous avez eu un taux de condamnations de 90 p. 100 en vertu de la loi actuelle?

Le sergent Benge: C'est exact.

Le sénateur Frith: Concernant le genre d'infractions que vous venez de mentionner?

Le sergent Benge: Les infractions que j'ai mentionnées: bookmaking, paris collectifs, maisons de jeu, loteries pyramidales, blackjack, dés, jeux de type professionnel et jeux stationnaires des communautés ethniques. Lorsque je parle de jeux «stationnaires» j'entends les jeux organisés dans un endroit fixe par opposition aux jeux itinérants d'hôtel en hôtel ou qui se déplacent d'un endroit à l'autre pour déjouer la police.

Le chef W. I. James Harding, corps de police régionale de Halton: Madame la présidente, honorables sénateurs, j'espère que mes remarques indiqueront clairement quelles sont les divergences entre la GRC et les corps de police de l'Ontario concernant l'infiltration des jeux clandestins par les syndicats du crime.

Je reprends à mon compte les propos du chef Basse et réitère que je ne suis pas venu ici aujourd'hui pour contredire de hauts responsables de la GRC car il m'apparaît que leurs propos intéressaient surtout d'autres provinces du Canada que l'Ontario, et principalement le Manitoba.

A l'appui de mes déclarations précédentes au sous-comité du Sénat, j'attire votre attention sur le fait que, le 20 février 1985, des experts des jeux de la GRC travaillant dans les provinces de l'Ouest, prenant la parole à une réunion des chefs de police de la Zone 3 de l'Ontario ont évoqué les dangers des casinos et conseillé la prudence dans l'approche de ce problème. Je crois que c'est une mise en garde contre la présence en Ontario des syndicats du crime.

Cela m'amène à affirmer qu'il existe indubitablement de grandes différences entre les problèmes de police qui se posent dans la province du Manitoba, par exemple, et celle de l'Ontario. Je n'ai pas compétence, madame la présidente et honorables sénateurs, pour parler du crime organisé dans la province du Manitoba mais je crois savoir, de source autorisée, qu'il y est pratiquement inexistant, contrairement à l'Ontario. Par conséquent, le tableau de la criminalité que je vous ai remis précédemment ne s'appliquait peut-être pas à la province du Manitoba mais je vous assure, madame la présidente, qu'il décrit très bien la situation en Ontario telle qu'elle existe et telle qu'elle pourrait apparaître. Je maintiens tous mes propos à ce sujet tels qu'ils ont été consignés au procès-verbal.

Pour préciser encore davantage les motifs de notre inquiétude, je vous apporte des renseignements supplémentaires. J'ai

[*Text*]

me. This document was compiled for a crime conference in relation to organized crime.

The Chairman: Do you want that on the record?

Chief Basse: It is on the record. That is all right, Madam Chairman. He will use caution.

Senator Barootes: When was that conference held?

Chief Harding: It was held in May of this year in Ontario.

Senator Barootes: Thank you.

Chief Harding: This is the submission from the Halton Regional Police Force and the Hamilton-Wentworth Regional Police Force. The forces that participated in building this submission are: The Royal Canadian Mounted Police, the Hamilton-Wentworth Regional Police Force, the Halton Regional Police Force. This report identifies six active organized crime families operational within our particular jurisdiction.

Senator Nurgitz: In gaming matters?

Chief Harding: Yes, including gaming matters. I will speak further to the report, if required, in the confidential portion.

I would point out, Madam Chairman and Senators, that we do not look solely to the experience of other countries, but rather combine their experience with our own in ensuring accuracy in our particular decision-making process. Not to weigh all that available experience and intelligence carefully in the balance of decision-making would be to expose our Ontario public to short-sightedness.

At this particular time, the Peel Regional Police Force is heavily committed in its investigation of the murder of Paul Volpe, whose body was found in a trunk at the then Toronto International Airport. That investigation is now ongoing. Paul Volpe has been described by the media as a key organized crime figure.

Within my own jurisdiction of the Regional Municipality of Halton, we have just concluded what the media described as an organized gangland slaying of Dominic Racco. This should be enough to convince the Senate, I would hope, that just because Manitoba cannot speak of similar experiences, our experience in Ontario should not be married with theirs in your decision-making role. Madam Chairman and Senators, thank you very much for your consideration.

Chief Basse: Madam Chairman, if you have any further questions on this subject we would be glad to answer them at this time, and then I would ask respectfully that we go *in camera*.

The Chairman: I propose that we ask the questions now that can go on the record from anyone who wishes to pose them, and then we will go *in camera*. Senator Nurgitz.

Senator Nurgitz: Chief Harding, I appreciate the information from your investigation that the mafia does not go to depressed areas. I don't know whether it is too cold for them or what the problem is. Did your investigation include, for example, the once more prosperous areas of Alberta, such as Calgary?

[*Traduction*]

sous les yeux un document confidentiel qui fut compilé pour une conférence sur la criminalité organisée.

La présidente: Voulez-vous que cela figure au procès-verbal?

Le chef Basse: C'est enregistré. Cela ne fait rien, madame la présidente, il fera attention.

Le sénateur Barootes: A quelle date s'est tenue cette conférence?

Le chef Harding: Elle a eu lieu en mai de cette année en Ontario.

Le sénateur Barootes: Je vous remercie.

Le chef Harding: Il s'agit là de la communication du Corps de police régional de Halton et du Corps de police régional de Hamilton-Wentworth. Les corps de police qui ont participé à sa rédaction sont la Gendarmerie royale du Canada, le Corps de police régional de Hamilton-Wentworth et le Corps de police régional de Halton. Ce rapport identifie six syndicats du crime actifs dans notre secteur de compétence.

Le sénateur Nurgitz: Organisant des jeux clandestins?

Le chef Harding: Oui. Je traiterai plus avant de ce rapport à huis clos, si besoin est.

J'ajoute, madame la présidente, que nous ne nous fions pas exclusivement à l'expérience de l'étranger mais combinons plutôt celle-ci avec la nôtre aux fins de nos décisions propres. De ne pas faire entrer en ligne de compte toutes les expériences disponibles et tous les renseignements soigneusement amassés dans la prise de décisions serait faire preuve d'une myopie que le public ontarien serait en droit de nous reprocher.

En ce moment même, le Corps de police régional de Peel est profondément occupé par son enquête sur l'assassinat de Paul Volpe. Son corps fut découvert dans le coffre d'une voiture à l'Aéroport international de Toronto. Cette enquête se poursuit. Paul Volpe était qualifié par la presse de personnage clé de la criminalité organisée.

Dans mon propre secteur, la Municipalité régionale de Halton, nous venons de conclure l'enquête sur le meurtre de Dominic Races que la presse a qualifié de règlement de compte entre gangsters. Cela devrait suffire, je l'espère, à convaincre le Sénat que rien de tel ne se passant au Manitoba, on ne peut assimiler la situation qui règne en Ontario à celle-ci. Madame la présidente, sénateurs, je vous remercie de votre attention.

Le chef Basse: Madame la présidente, si vous avez d'autres questions à nous poser à ce sujet, nous nous ferons un plaisir d'y répondre mais je vous prie respectueusement de décréter le huis clos.

La présidente: Je propose de poser maintenant les questions qui peuvent figurer au proès-verbal, ensuite de quoi la séance se poursuivra à huis clos. Monsieur le sénateur Nurgitz.

Le sénateur Nurgitz: Monsieur Harding, je conclus des renseignements émanant de votre enquête que la mafia ne s'installe pas dans les régions en crise. Je ne sais pas s'il y fait trop froid ou ce qui la retient. Est-ce que votre enquête en englobé, par exemple, les agglomérations jadis plus prospères de l'Alberta, telles que Calgary?

[*Text*]

Chief Harding: My investigation?

Senator Nurgitz: Yes.

Chief Harding: No.

Senator Nurgitz: But you are fully aware that ongoing casino activities are far more extensive in the cities of Calgary and Edmonton than they are in Winnipeg.

Chief Harding: Yes, I am, and I am also aware of the fact, Senator, that in those jurisdictions they have taken great pains to prepare themselves to embark upon that enterprise.

Senator Nurgitz: "They" being organized crime?

Chief Harding: No, "they" being the organizations who run the casinos.

Senator Nurgitz: Chief Harding, I have just a little difficulty understanding who is preparing. I am not clear on what you meant by your last statement; I apologize.

Chief Harding: My last statement in relation to what?

Senator Nurgitz: You said someone was preparing.

Senator Frith: You said "they" prepared themselves.

Chief Harding: I mean the provinces of Alberta and Manitoba have probably prepared themselves to deal competently with the aspects of casino gambling.

Senator Nurgitz: Regarding these organized crime families—and we understand each other when I call them organized crime families—your concern is that there are six operating in or about your region of Ontario, and they are engaged in illegal gaming activities.

Chief Harding: Yes.

Senator Nurgitz: Are you aware of any of them being engaged in legal gaming activities, for example, Wintario? Is there any involvement in legal gaming activities that you can attribute to those families?

Chief Harding: Not to my knowledge, Senator.

Senator Nurgitz: Because they are certainly, from my reading experience—and I have no other experience in this—certainly more interested in the illicit or illegal kind of gaming activities.

Chief Harding: That is illustrated by the history.

Senator Nurgitz: Very well then, just quickly

Senator Frith: But they run slot machines.

Senator Nurgitz: No, they run a lottery.

Senator Barootes: The Knights of Columbus run bingo games and lotteries, do they not?

Chief Harding: There is evidence that they do, yes.

Senator Barootes: I think that is what Senator Nurgitz is getting at.

Senator Nurgitz: Now Corporal Durno, I would like to ask you what your experience is with respect to illegal gaming.

[*Traduction*]

Le chef Harding: Mon enquête?

Le sénateur Nurgitz: Oui.

Le chef Harding: Non.

Le sénateur Nurgitz: Mais vous savez parfaitement que les jeux clandestins sont beaucoup plus répandus dans des villes comme Calgary et Edmonton qu'à Winnipeg.

Le chef Harding: Oui, je le sais, monsieur le sénateur, et je sais également qu'ils se sont préparés avec grand soin à cette entreprise.

Le sénateur Nurgitz: Par «ils» vous entendez les syndicats du crime?

Le chef Harding: Non, «ils» sont les organisations qui tiennent ces casinos.

Le sénateur Nurgitz: Je n'avais pas très bien compris, monsieur Harding, qui prépare quoi. Je ne comprends pas très bien ce que vous voulez dire par votre dernière réponse et je vous en demande pardon.

Le chef Harding: Ma dernière réponse sur quoi?

Le sénateur Nurgitz: Vous disiez que quelqu'un se prépare.

Le sénateur Frith: Vous avez dit: «Ils» se préparent.

Le chef Harding: Je voulais dire par là que le provinces de l'Alberta et du Manitoba se sont probablement préparées à lutter avec compétence contre les jeux clandestins.

Le sénateur Nurgitz: Concernant ces familles du crime organisé—et vous savez de qui je peux parler—vous dites qu'il y en a six qui sont actives dans votre région de l'Ontario et qu'elles organisent des jeux clandestins?

Le chef Harding: Oui.

Le sénateur Nurgitz: Avez-vous connaissance qu'elles interviendraient dans les jeux légaux, Wintario par exemple? Peut-on attribuer à ces familles une activité quelconque dans les activités de jeu légales?

Le chef Harding: Pas à ma connaissance, monsieur le sénateur.

Le sénateur Nurgitz: Il me semble—d'après ce que j'en ai lu et je ne sais rien d'autre que ce que j'ai lu—qu'elles s'intéressent bien davantage aux jeux illicites ou clandestins.

Le chef Harding: L'histoire le prouve.

Le sénateur Nurgitz: Très bien donc, je voudrais rapidement—

Le sénateur Frith: Mais elles exploitent des machines à sous.

Le sénateur Nurgitz: Non, elles organisent une loterie.

Le sénateur Barootes: Les Chevaliers de Colomb organisent des loteries et des jeux de bingo, n'est-ce pas?

Le chef Harding: Il semble que oui.

Le sénateur Barootes: Je crois que c'est de cela que voulait parler le sénateur Nurgitz.

Le sénateur Nurgitz: Monsieur le caporal Durno, j'aimerais maintenant vous demander quelle est votre expérience vis-à-vis

[*Text*]

Can you tell me what, if anything, your departmennt has done with respect to licensed gaming. What is your experience in that field?

Corporal Durno: The police forces in Ontario are not involved in the licensing of lottery events. That responsibility goes to the province, and each municipality is provided the opportunity to pass a bylaw which would enable it to license its own events.

Senator Nurgitz: Very well, so you have no practical experience in that field?

Corporal Durno: We do investigations into irregularities in relation to licensed events.

Senator Nurgitz: I would like to know again about your examination, for instance, of the Manitoba and Alberta experience. How much time have you spent, for instance, in Calgary and Edmonton, or in Winnipeg, with respect to licensed casino operations there?

Corporal Durno: I spent two days in Winnipeg in September of this year, and attended the casino at the convention centre. The people from the Manitoba Lottery Foundation showed me the inner workings of the casino on site there.

Senator Nurgitz: What about Calgary or Edmonton?

Corporal Durno: I attended the Calgary Stampede in 1984, and attended very briefly at the casino.

Senator Nurgitz: What was your view of the operation of the Manitoba Lottery Foundation in terms of completeness of controls, and I suppose what we refer to in every day language as the cleanness of the operation? What can you tell me about that?

Corporal Durno: The Manitoba Lottery Foundation casino in Winnipeg was a very professionally run casino in every conceivable aspect of prevention of cheating and of manipulation by dealers. Everything seemed to be covered. It was very professionally run in my opinion.

Senator Nurgitz: What was your view of the surrounding area? As you walked through the convention centre, as I do often, did you have a notion that there was a concern about what we commonly refer to as street crime?

Corporal Durno: Not in the convention centre itself, senator, no. One observation I did make was that the clientele attending the casino were not people wearing shirts and ties, or dresses. It seemed to be catering to the lower elements of society.

Senator Nurgitz: As determined by you by their dress?

Senator Frith: I hope you were properly dressed when you were there.

Senator Nurgitz: I will certainly make sure of that the next time. Are you really sincere about that last comment; about that answer that the convention centre is catering to the lower elements of society?

Corporal Durno: Not the convention centre, senator.

[*Traduction*]

des jeux licites. Pouvez-vous me dire ce que votre service a fait à l'égard des jeux licites. Quelle est votre expérience dans ce domaine?

Le caporal Durno: La police en Ontario n'a rien à voir avec les permis de loteries. Cette responsabilité appartient à la province et chaque municipalité peut promulguer des arrêtés qui lui permettent de réglementer les loteries qui se tiennent sur son territoire.

Le sénateur Nurgitz: Donc vous n'avez aucune expérience pratique dans ce domaine?

Le caporal Durno: Nous faisons enquête sur les irrégularités qui peuvent se produire dans les manifestations autorisées.

Le sénateur Nurgitz: J'aimerais revenir sur ce que vous avez dit de la situation au Manitoba et en Alberta. Combien de temps avez-vous passé, par exemple, à Calgary et à Edmonton, ou à Winnipeg, en rapport avec les casinos autorisés qui y sont exploités?

Le caporal Durno: J'ai passé deux jours à Winnipeg en septembre de cette année et je me suis rendu au casino du Centre des congrès. Les gens de la Manitoba Lottery Foundation m'ont expliqué sur place le fonctionnement interne du casino.

Le sénateur Nurgitz: Et à Calgary ou Edmonton?

Le caporal Durno: J'ai assisté au Calgary Stampede en 1984 et me suis rendu brièvement au casino.

Le sénateur Nurgitz: Que pensez-vous du fonctionnement de la Manitoba Lottery Foundation, sur le plan du contrôle exercé et de ce que l'on appelle en langue commune la «propreté» de l'exploitation? Pouvez-vous nous en parler?

Le caporal Durno: Le casino de la Manitoba Lottery Foundation à Winnipeg était géré de façon très compétente sur tous les plans, et notamment celui de la prévention de toutes les formes de tricherie et de manipulation par les donneurs. Ils semblent avoir pensé à tout et ce casino était géré de façon extrêmement compétente, à mon avis.

Le sénateur Nurgitz: Et dans les environs? En déambulant dans le Centre des congrès, comme je le fais souvent, avez-vous eu l'impression que ce que nous appelons couramment la criminalité de rue y prolifère?

Le caporal Durno: Pas dans le Centre des congrès lui-même, non, monsieur le sénateur. L'une des observations que j'ai faites est que les clients du casino n'étaient pas des gens portant veston et cravate. Il paraissait attirer surtout les bas éléments de la société.

Le sénateur Nurgitz: A en juger d'après leur tenue?

Le sénateur Frith: J'espère que vous même étiez correctement habillé.

Le sénateur Nurgitz: Je vais certainement vérifier la prochaine fois. Votre dernière réponse était-elle vraiment sincère lorsque vous disiez que le Centre des congrès attire les bas-fonds de la société?

Le caporal Durno: Pas le Centre des congrès, monsieur le sénateur.

[*Text*]

Senator Nurgitz: No, the casino in the convention centre.

Corporal Durno: The people that it was catering to, for the most part, yes.

Senator Nurgitz: I wanted to ask you, Mr. Benge, with respect to your particular squad—I take it that your squad is really concerned with this 90 per cent conviction rate. It is not that I am unimpressed with that. It is indeed an impressive record. However, it deals a lot with illegal bookmaking, does it not?

Staff Sergeant Benge: Bookmaking, yes sir.

Senator Nurgitz: Is that the largest part of your operation?

Staff Sergeant Benge: No sir, the largest part is common gaming houses.

Senator Nurgitz: Common gaming houses range anywhere from crap games to poker games?

Staff Sergeant Benge: That is correct sir, all types of card games, including ethnic rummy games such as Thanasis and that sort of thing.

Senator Nurgitz: And all of that is not licensed?

Staff Sergeant Benge: Correct. It is illegal gambling. All of those thousand charges that I mentioned are from illegal gambling, rather than from licensed gambling.

Senator Nurgitz: Mr. Durno, you made reference to licensed events?

Corporal Durno: Yes, sir.

Senator Nurgitz: What do you mean by "licensed events"?

Corporal Durno: Events that are licensed pursuant to section 190 of the Criminal Code by the province or by a municipal council, such as bingos, lotteries, Monte Carlo events.

Senator Nurgitz: A Monte Carlo event is a casino-type of operation or a casino-type of event?

Corporal Durno: Yes it is. In Ontario, it is restricted to wheels of fortune and blackjack.

Senator Nurgitz: Can you give me a rough idea of the frequency of those in Ontario?

Corporal Durno: I do not have the exact numbers, sir. However, there would be Monte Carlo events run throughout every municipality in Ontario on given days, but they are restricted. The betting limit has just been increased from $1.00 to $2.00 on these events.

Senator Nurgitz: But there is no particular difficulty that you would care to tell us about with respect to those?

Corporal Durno: No sir. The betting limits are restricted. It was $1.00 and it was just recently increased to $2.00.

Senator Nurgitz: So, because it is so small, there is no particular concern?

Corporal Durno: That is correct.

Senator Nurgitz: Because of the small limits in Ontario and Quebec. Very quickly, I will leave you with this: As a result of

[*Traduction*]

Le sénateur Nurgitz: Non, mais le casino du Centre des congrès.

Le caporal Durno: La plus grande partie de la clientèle, oui.

Le sénateur Nurgitz: Je voulais vous demander, monsieur Benge, au sujet de votre brigade—je suppose que vous êtes très fier de votre taux de condamnations de 90 p. 100. Ce n'est pas que cela me laisse froid, c'est effectivement un résultat impressionnant. Toutefois, il s'agit surtout de bookmaking, n'est-ce pas?

Le sergent Benge: Oui, de bookmaking.

Le sénateur Nurgitz: Est-ce que c'est là l'essentiel de votre activité?

Le sergent Benge: Non, monsieur, la majorité des enquêtes intéressent les maisons de jeu.

Le sénateur Nurgitz: Les maisons de jeu font un peu de tout, depuis les dés jusqu'au poker?

Le sergent Benge: C'est exact, tous les types de jeux de cartes, y compris les jeux ethniques tels que le Thanasis et ce genre de chose.

Le sénateur Nurgitz: Et tout cela est clandestin?

Le sergent Benge: Oui. Ce sont des jeux clandestins. Tout ce millier d'inculpations que j'ai mentionné porte sur des jeux clandestins et non sur des jeux autorisés.

Le sénateur Nurgitz: Monsieur Durno, vous avez parlé également de manifestations autorisées?

Le caporal Durno: Oui, monsieur.

Le sénateur Nurgitz: Qu'entendez-vous par «manifestations autorisées»?

Le caporal Durno: Des jeux autorisés en vertu de l'article 190 du Code criminel par la province ou par un conseil municipal, tels que les bingos, les loteries, les jeux de Monte Carlo.

Le sénateur Nurgitz: Par jeux de Monte Carlo vous entendez les jeux de casino?

Le caporal Durno: Oui. En Ontario, seuls les roues de fortune et le blackjack sont autorisés.

Le sénateur Nurgitz: Pouvez-vous me donner une vague idée de la fréquence de ces autorisations en Ontario?

Le caporal Durno: Je ne connais pas les chiffres exacts, monsieur. Cependant, des jeux de type Monte Carlo sont organisés dans toutes les municipalités de l'Ontario certains jours, mais avec des limites. La limite des enjeux vient de passer de $1 à $2.

Le sénateur Nurgitz: Mais ces jeux ne présentent pas de difficulté particulière que vous pourriez mentionner?

Le caporal Durno: Non monsieur. Les enjeux sont limités. La limite était de $1 et elle vient récemment d'être portée à $2.

Le sénateur Nurgitz: Les enjeux étant si bas, ils ne posent pas de problème particulier?

Le caporal Durno: C'est cela.

Le sénateur Nurgitz: À cause des plafonds d'enjeux très bas en Ontario et au Québec. Une dernière question, très rapide-

[*Text*]

your visit to Manitoba—and as you can see I have a preoccupation with that—did you, for your own department, write a report on the operation of the Manitoba Lottery Foundation casino?

Corporal Durno: Yes, I did.

Senator Nurgitz: I have two questions arising out of that. First, could we have the benefit of that report? If you do not wish to let us have it, then would you give us an indication of what you would have reported on that?

Corporal Durno: I do not have a copy of it with me and I would have to check with my superiors on releasing it. However, basically the contents were that there was lengthy discussion with members of the casino division as it related to the interpretation of the present Criminal Code with respect to dice games, slot machines, blackjack, wheels of fortune and basically on the operation of a casino itself.

Senator Nurgitz: Perhaps I could ask you in general terms whether your report was positive or negative on the operation of that casino?

Corporal Durno: It was very positive, sir, on the operation of the casino. As I said, it was professionally operated.

Senator Nurgitz: Thank you, Madam Chairman.

Corporal Durno: Madam Chairman, could I read into the record the letter that I referred to earlier?

The Chairman: I am sorry, which letter is that?

Corporal Durno: It is the letter from Mr. Penner.

Senator Nurgitz: That is on the record.

The Chairman: It is on the record. We read it in the other day. Sergeant Benge, for my own edification, when you referred to those legal gambling activities in connection with which you laid charges, whether it is poker or any of the other games you mentioned, is the illegality the fact that someone, outside of the players, gets a rake-off, and that a friendly little game of poker at my house would not be considered illegal, so long as I did not profit from it?

Staff Sergeant Benge: Usually you can say that if a man is making money from gambling and does not share the risks taken by the other players, then it is illegal.

The Chairman: Thank you.

Senator Frith: First, gambling is held by some people to be immoral—not just in a spiritual sense, but in the sense that it is a bad thing for society to permit gambling, because psychologically it is undesirable to have people think that they can make money without earning it. Secondly, it has a lot of very unattractive and undesirable social consequences. Are there any organized antigambling organizations other than law enforcement agencies?

Chief Basse: I will attempt to answer that. Some church groups invited me to a meeting last week and expressed their

[*Traduction*]

ment: À la suite de votre visite au Manitoba—vous pouvez voir que cela m'intéresse de près—avez-vous rédigé un rapport pour vos propres services sur le fonctionnement du casino de la Manitoba Lottery Foundation?

Le caporal Durno: Oui.

Le sénateur Nurgitz: J'ai deux questions à ce sujet. Premièrement, pourriez-vous nous communiquer ce rapport? Dans la négative, pourriez-vous nous donner une idée de sa teneur?

Le caporal Durno: Je n'en ai pas d'exemplaire ici et il faudrait que je demande l'autorisation à mes supérieurs avant de vous en remettre une. J'y dis principalement que j'ai eu un long entretien avec les membres de la Division des casinos concernant l'interprétation du Code criminel actuel à l'égard des jeux de dés, des machines à sous, du blackjack, des roues de fortune et le fonctionnement d'ensemble d'un casino.

Le sénateur Nurgitz: Pourriez-vous nous indiquer si, dans l'ensemble, votre rapport sur le fonctionnement du casino était positif ou négatif?

Le caporal Durno: Il était très positif quant au fonctionnement du casino, monsieur. Comme je l'ai dit, il était géré de façon très compétente.

Le sénateur Nurgitz: Je vous remercie, madame la présidente.

Le caporal Durno: Madame la présidente, pourrais-je lire aux fins du procès-verbal la lettre que j'ai mentionnée tout à l'heure?

La présidente: Je vous demande pardon, de quelle lettre s'agit-il?

Le caporal Durno: De la lettre de M. Penner.

Le sénateur Nurgitz: Elle figure au procès-verbal.

La présidente: Elle est au procès-verbal. Elle a été lue l'autre jour. Monsieur Benge, pour ma propre gouverne, les jeux clandestins à l'égard desquels vous avez prononcé des inculpations, qu'il s'agisse de poker ou des autres jeux que vous avez mentionnés, est-ce que leur caractère illégal est dû au fait que quelqu'un d'autre que les joueurs en tire un profit, c'est-à-dire qu'une partie de poker amicale chez moi ne serait pas considérée comme illégale à condition que je n'en tire pas un profit?

Le sergent Peter Benge: On peut dire, de façon générale, que si quelqu'un tire un profit du jeu sans partager les risques courus par les autres joueurs, le jeu est illégal.

La présidente: Je vous remercie.

Le sénateur Frith: En premier lieu, certains tiennent les jeux d'argent pour immoraux—pas seulement au plan spirituel mais en ce sens qu'il n'est pas bon que la société autorise les jeux d'argent car, psychologiquement, il est néfaste que les gens puissent compter amasser de l'argent sans le mériter; en second lieu, ils entraînent des conséquences sociales très néfastes. Existe-t-il des organisations constituées de lutte contre les jeux d'argent autres que les forces de police?

Le chef Basse: Je vais tenter de répondre à cela. Un certain nombre d'associations religieuses m'ont invité à une réunion la

[*Text*]

concern. How organized they are, I really don't know. The police are not attempting to set the morality of the community. That is up to the community itself. We, as law enforcement officers, are not attempting to do that.

Senator Frith: I appreciate that. I merely wanted to know for the record, whether, perhaps, the United Church, the Anglican Church, or any other church, is on record as being against gambling? There is no way that we can invite them to give evidence.

Chief Basse: If you look at the newspaper clippings that we filed last week, you will see that there are organizations out there that are very concerned about it.

Senator Frith: And they are in those clippings?

Chief Basse: Yes.

The Chairman: Mr. Morton, did you want to clarify that?

Mr. Morton: I would add that I believe the newspaper article refers to a brief filed by a confederation of churches to the then Attorney General Chretien, opposing the existing gambling law. That would be one group that, had there been the normal consultative process, would have had a right to be heard, whether or not we agreed with their position.

Senator Frith: They would have been heard in connection with the eighth or tenth step that you outlined in your evidence?

Mr. Morton: Yes.

Senator Frith: My next question is addressed to Staff Sergeant Benge. In the course of your introduction you mentioned that you saw how legalized gambling started in England. I am curious to know how it did start, but we should keep it as relevant as possible. Is there anything in your experience, or in the experience of England, that would be relevant to our concerns here? In other words, did it start in a way which may be an example of something that we should not approve of here?

Staff Sergeant Benge: When you talk about England, I suppose that the English have been gamblers from way back. When they legalized gambling in England, a lot of gambling was already taking place. For instance, there were the football pools, which everyone used to dream of winning, just as they dream of winning lotteries here. I don't think that you can compared the two countries right now, because Canada would probably be at least 15 to 20 years behind England in the field of gambling. England has always had gambling. They have at least six or seven racehorse meets a day and most of them are on TV. Gambling is a way of life in England, whereas I do not think that is so in Canada. I should speak for Ontario and not Canada.

Senator Frith: Thank you. That is a good answer, although I would say, from my point of view, that I think we are not behind them. We are ahead of them. I say that because of my own bias about gambling. My last question is central to the evaluation of your evidence. The first proposition that I believe we are convinced of is that there is very heavy organized crime

[*Traduction*]

semaine dernière pour me faire part de leurs soucis. Je ne sais pas à quel point elles sont organisées. La police ne veut pas régenter la moralité de la collectivité. Cela n'est pas de notre ressort, c'est à la collectivité de fixer ses propres normes.

Le sénateur Frith: Je le sais bien. Je voulais simplement savoir si, par exemple, l'Église unie ou l'Église anglicane ou tout autre culte se prononce publiquement contre les jeux d'argent? N'y en a-t-il pas que nous puissions inviter à témoigner?

Le chef Basse: Si vous lisez les coupures de presse que nous avons déposées la semaine dernière, vous verrez que diverses organisations s'en soucient.

Le sénateur Frith: Leurs noms figurent dans les coupures de presse?

Le chef Basse: Oui.

La présidente: Monsieur Morton, souhaitez-vous ajouter quelque chose?

M. Morton: Je crois que l'article de journal parle d'un mémoire remis par une fédération d'églises au Procureur général Chrétien pour s'élever contre la législation actuelle régissant les jeux d'argent. C'est donc là un groupe qui, si un processus de consultation normal avait été tenu, aurait eu droit à se faire entendre, que l'on soit d'accord ou non avec sa position.

Le sénateur Frith: Il aurait été entendu dans la huitième ou dixième étape que vous avez esquissé dans votre mémoire?

M. Morton: Oui.

Le sénateur Frith: Ma prochaine question s'adresse au sergent Benge. Vous avez mentionné, dans votre introduction, que vous avez assisté au début de la légalisation des jeux en Angleterre. Y a-t-il quelque chose dans votre expérience, ou dans l'expérience britannique, qui serait pertinent pour notre propos ici? Autrement dit, est-ce que cela a débuté d'une manière qu'il faudrait éviter de reproduire chez nous?

Le sergent Benge: Dans le cas de l'Angleterre, je suppose que les Anglais sont de grands joueurs depuis toujours. Lorsque les jeux ont été légalisés en Angleterre, énormément de gens jouaient déjà. Il y avait par exemple les paris sur les matchs de football, ou tout le monde rêvait de gagner, un peu comme les gens rêvent ici de gagner à la loterie. Je ne pense pas que l'on puisse comparer la situation dans les deux pays car le Canada a au moins 15 à 20 ans de retard sur l'Angleterre en matière de jeux d'argent. L'Angleterre a toujours connu les jeux d'argent. Il y a au moins six ou sept courses de chevaux par jour, la plupart télévisées. Les jeux d'argent sont un mode de vie en Angleterre, ce qui n'est pas le cas au Canada, en tout cas pas en Ontario.

Le sénateur Frith: Je vous remercie. C'est une bonne réponse, encore que je pense plutôt que nous sommes en avance sur les Anglais et non pas en retard. Je dis cela à cause de mon propre préjugé contre le jeu d'argent. Ma dernière question est importante pour notre compréhension de votre témoignage. La première proposition qui rallie, je pense, notre conviction à

[*Text*]

activity in Ontario. That is something that we have to accept as a fact. Moreover, there is not very much evidence of organized crime in either Manitoba or Alberta—or perhaps I cannot go that far. At least, it is not as intensive as in Ontario.

Senator Nurgitz: I think the evidence has been that there is not in Manitoba— I am satisfied and pleased with the answer given. I think there has been virtually no evidence with respect to organized crime in Alberta. Perhaps, senator, that is helpful to the question you have raised.

Senator Frith: Is it true that compared to Ontario there is not the same level of organized crime in Alberta?

Chief Basse: That is quite correct. There is more organized crime in Ontario than there is in all those western provinces put together.

Senator Barootes: It depends on the concentration of population.

Chief Basse: I am not saying there is no organized crime. I suggest that there is organized crime right across the country—it affects every province—but certainly not to the extent that it exists in Ontario.

Senator Frith: As Senator Barootes said, essentially it is because of the concentration of population. Because of your evidence, we are concerned about the effect of more permissive gambling—that you say is made possible because of this bill—and its effect on organized crime, and so on. It seems to me that logically I, or any other senator, could say, "Well, if there is a problem with this bill, Ontario does not have to permit it". In other words, there are two stages. If there is a problem with Bill C-81 and its effect on Ontario, then the only one who can use slot machines, under the bill, is the government, and so the Government of Ontario could say, "Well, Manitoba and Alberta do it, but we just won't do it, because we only are given the right to run casinos. So we just won't run casinos in Ontario".

So there are two stages. First, what is your response to that and, second, is there a spillover effect if there is gambling in one province and not in another? Can you isolate it in that way?

Chief Basse: I would suggest that the two questions go together. I am not sure that we mentioned this the last time, but if we put a casino in Hull it will have an effect on the Province of Ontario and particularly on the City of Ottawa. With all that money flowing across the river, the City of Ottawa would be hard pressed not to go into the casino business. As well, if someone in the Province of Quebec were allowed to run a casino under the constitution, would Ontario not also be allowed to run one?

Senator Frith: Yes, but I am saying that you do not have to.

Chief Basse: But would the Province of Ontario not be hard pressed or even forced into allowing it, though?

[*Traduction*]

tous, est que les syndicats du crime sont très présents en Ontario. C'est un fait incontestable. Par ailleurs, il y a peu d'activité criminelle organisée au Manitoba ou en Alberta—peut-être vais-je trop loin. En tout cas, elle n'est pas aussi intensive qu'en Ontario.

Le sénateur Nurgitz: Ce que le témoin a dit c'est qu'il n'y en a pas au Manitoba. Je suis satisfait de la réponse donnée à ce sujet mais je pense qu'aucune indication ne nous a été donnée concernant la criminalité organisée en Alberta. Cela répond peut-être à votre question, monsieur le sénateur.

Le sénateur Frith: Est-ce exact, le niveau de la criminalité organisée est-il moindre en Alberta qu'en Ontario?

Le chef Basse: C'est tout à fait exact. La criminalité organisée est plus répandue en Ontario que dans toutes les provinces de l'Ouest mises ensemble.

Le sénateur Barootes: Elle est fonction de la concentration de la population.

Le chef Basse: Je ne dis pas qu'il n'y a pas de criminalité organisé. Au contraire, je pense qu'on la rencontre partout dans le pays, qu'elle affecte toutes les provinces mais certainement moins les autres que l'Ontario.

Le sénateur Frith: Ainsi que l'a dit le sénateur Barootes, cela est dû principalement à la concentration de la population. Par suite de votre témoignage, nous nous inquiétons des conséquences d'une législation plus laxiste concernant les jeux—résultat de ce projet de loi d'après vous—et des conséquences sur la criminalité organisée etc. Il paraîtrait logique que moi-même, ou un autre sénateur, dise: «Eh bien, si ce projet de loi pose un problème, l'Ontario ne doit pas laisser faire». Autrement dit, il y a deux étapes. Si ce projet de loi C-81 pose un problème, en raison de ses conséquences en Ontario, alors les seuls autorisés à exploiter des machines à sous aux termes de ce projet de loi sont les autorités ontariennes et le gouvernement de l'Ontario pourrait dire: «Si le Manitoba et l'Alberta veulent le faire, qu'ils le fassent mais nous ne le ferons pas et nous sommes les seuls à avoir le droit d'exploiter des casinos. Et nous décidons de ne pas exploiter de casinos en Ontario».

Quelle est votre réponse à cela et, ensuite, y a-t-il un effet de contamination si les jeux sont autorisés dans une province et pas dans une autre? Pourrait-on circonscrire le problème de cette façon?

Le chef Basse: Il me semble que les deux questions sont indissociables. Je ne sais pas si nous l'avons mentionné la dernière fois mais si l'on ouvre un casino à Hull, il y aura des répercussions sur la province de l'Ontario et particulièrement sur la ville d'Ottawa. Avec tout cet argent traversant la rivière, la ville d'Ottawa aura bien du mal à refuser les casinos chez elle. En outre, si la Constitution autorise quelqu'un au Québec à ouvrir un casino, est-ce que l'Ontario n'aura pas le même droit?

Le sénateur Frith: Oui, mais il n'est pas obligé de l'exercer.

Le chef Basse: Mais est-ce que la province de l'Ontario pourrait résister aux pressions ou, même, ne serait-elle pas contrainte à les autoriser?

[*Text*]

The Chairman: You are referring to it from an economic point of view.

Senator Frith: So you think that someone would say that they were being deprived of equal rights and so on?

Chief Basse: Yes.

Senator Frith: So your answer, in a nutshell, is that you cannot insulate it. For example, Ontario cannot insulate itself against the consequences of this bill, even if it tried to not have provincially run casinos?

Chief Basse: That is right.

The Chairman: If there are no further questions, we will continue *in camera.*

The committee continued *in camera.*

[*Traduction*]

La présidente: Je suppose que vous parlez là de considérations économiques?

Le sénateur Frith: Vous pensez que quelqu'un se pourvoirait en justice disant qu'on le prive de l'égalité des droits, etc.?

Le chef Basse: Oui.

Le sénateur Frith: Votre réponse, en bref, est donc qu'on ne peut circonscrire les jeux. L'Ontario ne pourrait pas s'isoler des répercussions de ce projet de loi même s'il n'exploite pas de casinos?

Le chef Basse: Oui.

La présidente: S'il n'y a pas d'autres questions, nous allons siéger à huis clos.

La séance se poursuit à *huis clos.*

TAB 21

First Session
Thirty-third Parliament, 1984-85

SENATE OF CANADA

Proceedings of the Standing Senate Committee on

Legal and Constitutional Affairs

Chairman:
The Honourable JOAN NEIMAN

Monday, December 16, 1985
Tuesday, December 17, 1985
Thursday, December 19, 1985
Friday, December 20, 1985

Issue No. 35

Third and Fourth proceedings on:

The Examination of Bill C-49, "An Act to amend the Criminal Code (prostitution)".

Seventh and Eighth proceedings on:

The Examination of Bill C-81, "An Act to amend the Criminal Code (lotteries)".

INCLUDING

Reports of the Committee on Bills C-49 and C-81.

Première session de la
trente-troisième législature, 1984-1985

SÉNAT DU CANADA

Délibérations du Comité sénatorial permanent des

Affaires juridiques et constitutionnelles

Présidente:
L'honorable JOAN NEIMAN

Le lundi 16 décembre 1985
Le mardi 17 décembre 1985
Le jeudi 19 décembre 1985
Le vendredi 20 décembre 1985

Fascicule nº 35

Troisième et quatrième fascicules concernant:

L'étude du projet de loi C-49, «Loi modifiant le Code criminel (prostitution)».

Septième et huitième fascicules concernant:

L'étude du projet de loi C-81, «Loi modifiant le Code criminel (loteries)».

Y COMPRIS

Les Rapports du Comité sur les projets de loi C-49 et C-81

29094—1

mittee of the House of Commons, to be undertaken within three years of its coming into force, and to be completed within a year (or such further time as the House may authorize). In light of our concerns about certain elements of the Bill, we view this review process as a positive element of it, particularly in relation to monitoring its application to young persons. Some members of the Committee would go so far as to recommend that the time period for commencement of the review be abridged to eighteen months, and that it be completed within six months of this being undertaken. On the other hand, we realize that the collection and analysis of data on prosecutions under the Bill may take some time, and that comprehensive review may not be feasible in so short a period, given the uncertainties and vagaries of the Parliamentary calendar. Clause 2(1) of the Bill may be so broadly worded, however, that it would be possible for the review committee to be designated or established immediately upon the coming into force of the Bill, and it would be possible for that committee to begin an immediate interim analysis of the operation of the legislation far in advance of its ultimate report date four years (or more) hence. Even if this is not possible, we would urge that consideration be given by the Department of Justice to an early and continuous release of information and statistics on the operation of the Bill to Parliamentarians, or to committees such as, our own, or the House of Commons Standing Committee on Justice and Legal Affairs.

The Committee does have serious concerns about Bill C-49. However, we are prepared, on balance, to approve it without amendment in view of the provisions for review which are included, and having regard to the assurances of the Minister of Justice that further legislation dealing with other aspects of prostitution will be forthcoming.

Respectfully submitted,

Friday, December 20, 1985

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

TWELFTH REPORT

Your Committee to which was referred Bill C-81, intituled: "An Act to amend the Criminal Code (lotteries)", has, in obedience to the Order of Reference of Wednesday, November 27, 1985, examined the said Bill and now reports the same without amendments but with the following observations and recommendations:

Bill C-81 is a proposed Act to amend the *Criminal Code* in relation to "lotteries", or gaming and betting in general. But it is also one element of the federal government's fulfillment of its perceived obligations pursuant to an agreement entered into with the provinces in June 1985. Under that agreement, the provinces promise to pay, through the agency of the Interprovincial Lottery Corporation, $100,000,000 to the federal government and to discontinue certain litigation between the Cor-

prévoyant la revision et la modification par un Comité de la Chambre des communes de l'article 195.1 du *Code criminel* trois ans après l'entrée en vigueur de la présente loi et le dépôt du rapport dudit Comité dans l'année qui suit le début de son étude (ou dans tout autre délai que la Chambre pourrait autoriser). Compte tenu de nos restrictions au sujet de certains éléments du projet de loi, nous considérons que cette procédure d'examen consitue un élément positif du projet de loi, en particulier en ce qui concerne la surveillance de la façon dont il est appliqué à l'endroit des jeunes. Certains membres du Comité iraient même jusqu'à recommander que le délai prévu pour le début de l'étude soit ramené à dix-huit mois, et que cet examen soit terminé dans les six mois suivant son début. Par ailleurs, nous sommes conscients que la cueillette et l'analyse des données sur les accusations qui auront été portées en vertu de cette loi pourraient exiger d'assez longues recherches, et qu'il ne serait peut-être pas possible de réaliser une étude complète en si peu de temps, compte tenu des imprévisibilités et des fantaisies du calendrier parlementaire. Il serait toutefois possible de reformuler le paragraphe 2(1) du projet de loi en termes plus vagues pour permettre de former ou de créer un comité de révision dès l'entrée en vigueur du projet de loi. Ce comité pourrait amorcer une analyse provisoire sur les effets immédiats de cette loi bien longtemps avant la production de son rapport final (qui serait déposé dans quatre ans ou plus). Même si cela n'est pas possible, nous prierions le ministère de la Justice de songer à fournir, peu après l'entrée en vigueur de la loi et de façon périodique, des renseignements et des statistiques sur le fonctionnement de la loi aux parlementaires, ou à des comités comme le nôtre ou le Comité permanent de la Chambre des communes de la justice et des affaires juridiques.

Notre Comité entretient de sérieuses réserves au sujet du projet de loi C-49. Nous sommes par ailleurs prêts à l'adopter sans amendement compte tenu qu'on y a inclus une procédure de révision et que le ministre de la Justice nous a donné l'assurance qu'une autre loi portant sur d'autres aspects de la prostitution serait présentée plus tard.

Respectueusement soumis,

Le vendredi 20 décembre 1985

Le Comité sénatorial permanent des affaires juridiques et constitutionnelles a l'honneur de présenter son

DOUZIÈME RAPPORT

Votre Comité, auquel a été déféré le Projet de loi C-81, intitulé: «Loi modifiant le Code criminel (*loteries*)», a, conformément à l'ordre de renvoi du mercredi 27 novembre 1985, étudié ledit projet de loi et en fait maintenant rapport sans amendement mais avec les observations et recommandations suivantes:

Le Projet de loi C-81 vise à modifier le *Code criminel* pour ce qui a trait aux loteries, c'est-à-dire les jeux de hasard et les paris en général. Mais il s'agit également d'un élément dans la réalisation des obligations apparentes du gouvernement fédéral découlant d'une entente conclue avec les provinces en 1985. En vertu de cette entente, les provinces s'engagent à verser par l'entremise de la Société de la loterie interprovinciale Inc. la somme de 100 millions de dollars au gouvernement fédéral et à

poration and the federal government. In exchange, the federal government has promised to do several things:

(i) to introduce amendments to Part V of the *Criminal Code*, removing the permission therein for the federal government to conduct lotteries and other forms of gaming; and to make changes to other provisions dealing with gaming;

(ii) to refrain from re-entering the field of gaming and betting, and to ensure that the rights of the provinces in that area are not reduced or restricted;

(*iii*) to use its "best efforts" to ensure that the winding up of the Sports Pool Corporation and Loto Canada Inc. are accomplished; and

(iv) to discontinue the appeal to the Supreme Court of Canada of the decision of the Quebec Court of Appeal in the case of Attorney General of Canada v. Loto-Quebec.

The proposed amendments to the *Code*, under the agreement, are to be subject to "consultation" with the provincial attorneys general, and the federal government is to use its "best efforts" to ensure that they are passed and proclaimed in force no later than December 31, 1985. One of the principal objectives of the agreement is to provide funding for the Winter Olympics in Calgary, Alberta in 1988.

The Committee has a number of concerns with regard to Bill C-81, and with regard to the agreements from which it derives. These concerns have reference to both its substance, and the process by which it was developed. At the outset, however, we wish to make it clear that we do not feel legally constrained by the "deadline" of December 31, 1985 contained in the agreement. The advice the Committee has received convinces us that the agreement is a political arrangement between the federal government and the provinces, and is not legally enforceable as such, in the sense that there could be justiciable remedies for default of any of the "obligations" in it. Thus, we do not feel that the Committee could put the federal government in legal jeopardy by the manner in which we deal with the Bill. In any event, we are also satisfied that, in presenting this Bill to the Senate, after having secured passage in the House of Commons, the government has used its "best efforts", as required in the agreement, to have the amendments proclaimed.

We now turn to the question of process—how this legislative initiative developed and was submitted to Parliament. The genesis of the proposed amendments to the criminal law embodied in Bill C-81 was unusual, to say the least. They first appeared, in draft form, in a schedule to the June 1985 agreement. That agreement was signed not by the federal Attorney General and his provincial counterparts; but by the Minister of Fitness and Amateur Sport and the ten provincial ministers under whose authority permitted lotteries and gaming fall. Notwithstanding the reference in that agreement to consultation with ministers responsible for the administration of justice, we are not satisfied that this was ever adequately done.

mettre fin au litige qui existe entre la société et le gouvernement fédéral. En échange, le gouvernement fédéral a promis:

(i) d'apporter des modifications à la partie V du *Code criminel*, en y supprimant la permission que détenait le gouvernement d'organiser des loteries et d'autres formes de jeux de hasard; et d'apporter des changements à d'autres dispositions touchant les jeux de hasard;

(ii) de ne pas se relancer dans le domaine des jeux et paris, et de veiller à ce que les droits des provinces dans ce domaine ne soient ni réduits ni restreints;

(*iii*) de mettre «tout» en œuvre pour s'assurer de la dissolution de la Société canadienne des paris sportifs et de Loto-Canada Inc.; et

(iv) d'abandonner les procédures en appel qu'il a entreprises auprès de la Cour suprême du Canada relativement au jugement de la Cour d'appel du Québec dans l'affaire du Procureur général du Canada vs Loto-Québec.

En vertu de l'entente, les modifications qui devaient être apportées au *Code* doivent faire l'objet de «consultations» avec les procureurs généraux des provinces, le gouvernement fédéral étant également tenu d'utiliser «tous les moyens à sa disposition» pour veiller à ce que ces modifications soient adoptées et proclamées en vigueur au plus tard le 31 décembre 1985. Un des grands objectifs de l'entente est d'assurer le financement des Jeux Olympiques d'hiver à Calgary (*Alberta*) en 1988.

Le Projet de loi C-81 ainsi que l'entente qui a précédé cette mesure législative comportent certains aspects qui préoccupent le Comité aussi bien sur des questions de fond que sur la façon dont on a procédé pour mettre le projet de loi au point. Cela dit, nous aimerions affirmer que, sur le plan légal, nous ne sommes pas tenus de respecter la «date limite» du 31 décembre 1985 spécifiée dans l'entente. Sur la foi des renseignements fournis au Comité, nous sommes convaincus que l'entente est le résultat d'un arrangement politique intervenu entre le gouvernement fédéral et les provinces qui, comme tel, n'est pas légalement exécutoire, en ce sens que la non exécution de l'une quelconque des obligations qu'elle contient pourrait bien se prêter à d'éventuels redressements fort justifiables. Ainsi, nous estimons que par la façon dont nous avons abordé le projet de loi, le Comité ne pourrait compromettre le gouvernement sur le plan légal. De toute manière, nous sommes convaincus qu'en présentant ce projet de loi au Sénat, après en avoir assuré l'adoption à la Chambre des communes, le gouvernement a «tout mis en œuvre» comme c'est stipulé dans l'entente, pour que les modifications soient adoptées.

Nous passons maintenant à la question de procédure, c'est-à-dire à la manière dont cette mesure législative a été élaborée et présentée au Parlement. L'origine des modifications incorporées au Projet de loi C-81 que l'on se proposait d'apporter au droit pénal était, pour le moins, peu commune. Elles ont apparu, pour la première fois, dans une annexe à l'entente de juin 1985. Plutôt que d'être signée par le procureur général fédéral et par ses homologues provinciaux, cette entent a été paraphée par le ministre d'État, Condition physique et Sport amateur et par les dix ministres provinciaux dont relèvent les loteries et les jeux autorisés. Nonobstant l'allusion à la consultation, faite dans cette entante, avec les ministres responsables de l'administration de la justice, nous ne sommes pas certains que cette consultation ait eu lieu de façon adéquate.

In an appearance before the Committee a representative of the Attorney General of Ontario took the position that the customary process by which changes to the *Criminal Code* are made was not respected in the case of this Bill. He outlined the usual process which accompanies such amendments including the following:

—An idea for change is studied by the Law Reform Commission or the Criminal Code Review Section of the Department of Justice. The idea can originate within the government, from the public, or from a body such as the Uniform Law Conference.

—Formal substance is given to the idea in the form of study papers, working papers or reports from the Law Reform Commission or the Department.

—There are multilateral and bilateral consultations among federal and provincial departments of justice, involving telephone communications, formal meetings and written exchanges. Often, there is also extensive consultation with the public at this stage.

—The federal Department of Justice prepares a position with respect to provincial or public concerns. That position is presented to the Cabinet.

—Following approval by the Cabinet, a legislative draft is prepared, and then a draft bill. The draft bill is often circulated through the forgoing process again.

—Finally, the bill is introduced in the Senate or House of Commons, where again there can be input from the public and provincial governments in either or both Houses of Parliament.

According to that official, this customary process was not followed with respect to Bill C-81. In his view the amendments were prepared in haste, without very much consultation. While he does not expect that entire process to be necessary with every change to the *Code*, he took the position that at least some of its elements could have been respected. He was, however, careful not to lay the blame for this at the door of the federal Department of Justice.

The Committee finds itself in substantial agreement with the submissions made by the representative of the Attorney General of Ontario with respect to this issue of process. We believe that even minor amendments to the *Criminal Code* (*and we, as will be seen, do not believe that the amendments in Bill C-81 are in any way "minor"*) should be the subject of thorough and careful consultation with the law officers of the provinces who are directly responsible for the administration of justice in their jurisdictions. The process described above should be abridged only in very exigent circumstances. Those circumstances did not exist with respect to this Bill. A representative of the federal Department of Justice who appeared before us took the position that no formal or even informal process is required before the federal government can exercise its jurisdiction over substantive criminal law. This is no doubt constitutionally correct, but surely, in our federation, it makes eminent good sense to have and foster cooperation between

Lors de sa comparution devant le Comité, un représentant du procurer général de l'Ontario a affirmé que la procédure normale utilisée pour apporter des modifications au *Code criminel* n'a pas été respectée dans le cas du présent projet de loi. Il a exposé la procédure habituelle suivie dans des modifications de ce genre et qui comprend notamment ce qui suit:

—La Commission de réforme du droit ou le bureau de révision du Code criminel du ministère de la Justice étudie une idée en vue d'une modification. L'idée peut provenir du gouvernement, du public ou d'un organisme comme la Conférence sur le droit uniforme.

—L'idée est concrétisée au moyen d'un document d'étude, d'un document de travail ou de rapports émanant de la Commission de la réforme du droit ou du ministère.

—Les ministères de la justice fédéral et provinciaux entreprennent des consultations multilatérales et bilatérales au moyen de communications téléphoniques, de réunions officielles et d'échanges de lettres. À ce stade ci on a souvent recours à une consultation exhaustive auprès du public.

—Le ministère fédéral de la Justice prépare sa position par rapport aux préoccupations de gouvernements provinciaux ou du public. Cette position est exposée au Cabinet.

—Une fois que le Cabinet approuve cette position, on procède à la préparation d'un avant-projet législatif puis d'un projet de loi. Bien souvent, le projet de loi est mis en circulation, une nouvelle fois, à travers les étapes prédédentes.

—Enfin, le projet de loi est déposé au Sénat ou à la Chambre des communes alors que, une fois encore, le public et les gouvernements provinciaux peuvent y exprimer leurs points de vues, dans l'une ou l'autre des Chambres ou dans les deux à la fois.

Selon ce représentant, cette procédure habituelle n'a pas été suivie dans le cas du Projet de loi C-81. À son avis, les modifications ont été préparées à la hâte, avec très peu de consultation. Bien qu'il ne s'attende pas à ce qu'il soit nécessaire de suivre toutes les étapes pour chaque modification apportée au *Code*, il estime qu'on aurait pu, au moins, tenir compte de quelques-uns de ces éléments. Il s'est, toutefois, bien gardé d'en jeter le blâme sur le ministère fédéral de la Justice.

Le Comité est foncièrement d'accord avec les motifs allégués par le représentant du procureur général de l'Ontario en égard à cette question de procédure. Nous estimons que même des modifications mineures au *Code criminel* (*et, comme on le constatera d'ailleurs, nous ne croyons pas du tout que les modifications au projet de loi C-81 puissent être qualifiées de «mineures»*) devraient donner lieu à des consultations très approfondies avec les juristes-conseils des provinces directement chargés de l'administration de la justice sur leur territoire. Ce processus ne devrait être abrégé que dans des circonstances tout à fait exceptionnelles. Or, aucune circonstance semblable n'existait à propos de ce projet de loi. Un représentant du ministère fédéral de la Justice qui a comparu devant nous a soutenu que le gouvernement fédéral pouvait exercer son pouvoir en matière de droit pénal, sans avoir à respecter un processus, officiel ou autre. C'est vrai d'un strict point de vue constitutionnel, mais, dans notre fédération, il est bien plus

federal law officers who formulate our laws and their counterparts who administer those laws. In this regard, it is instructive to note that even the federal justice official who appeared before us expressed some frustration with the process in this case, particularly in relation to the inclusion of the deadline in the agreement.

sensé de maintenir et de favoriser la coopération entre les conseillers juridiques fédéraux chargés d'élaborer nos lois et leurs homologues provinciaux qui doivent veiller à leur application. À cet égard, il est révélateur que même les fonctionnaires fédéraux du ministère de la Justice qui ont comparu devant nous se sont dit insatisfaits de la façon de procéder au moins sous un rapport, à savoir l'inclusion du délai dans l'Entente.

The Committee has taken steps to consult with the provinces on this Bill. As noted above, we heard submissions from the Province of Ontario. We also communicated with the attorneys general of the other provinces. Only one other attorney general, the Honourable Roland Penner of Manitoba, has directly contacted the Committee to inform us of his general satisfaction with the Bill. We proceed on the assumption that the other provinces also do not have significant objection to it. We would urge that, in the future, ministers responsible for the administration of justice be involved in the formulation and consideration of all amendments to the criminal law, and that the customary consultative process with the provinces with respect to such amendments should only be disregarded or abridged in exceptional circumstances.

Le Comité a fait des démarches pour consulter les provinces au sujet de ce projet de loi. Comme nous l'avons déjà indiqué, nous avons entendu les mémoires de la province de l'Ontario. Nous nous sommes également mis en communication avec les procureurs généraux des autres provinces. Un seul d'etre eux, l'honorable Roland Penner du Manitoba, s'est mis directement en rapport avec le Comité pour l'informer qu'il était en général satisfait de ce projet de loi. Au point où nous en sommes, nous supposons donc que les autres provinces n'y voient pas d'objection majeure. Nous demandons néanmoins avec insistance qu'à l'avenir les ministres responsables de l'administration de la justice participent à l'élaboration et à l'étude de tous les amendements du droit pénal; et qu'on n'évite ou n'abrège le processus normal de consultation avec les provinces concernant ces amendements seulement dans des circonstances exceptionnelles.

We now turn to the substance of the Bill. In his appearance before the Committee, the Minister of Fitness and Amateur Sport indicated that the Bill would essentially do two things: remove the exemption which the federal government now enjoys from certain lottery and gaming offences, and "clarify" the law with respect to other provisions in Part V of the *Criminal Code*. In subsequent testimony from officials of the Department of Justice, however, it was submitted that the amendments to Part V would impose further restrictions with respect to some gaming offences; and on the other hand, somewhat widen the scope of gaming which can be conducted, or permitted, by the provinces.

Passons maintenant au contenu du projet de loi. Quand il a comparu devant le Comité, le ministre d'État—Condition physique et Sport amateur a signalé que le projet de loi aurait essentiellement deux effets: faire disparaître l'exemption de l'application du *Code criminel* dont jouit le gouvernement fédéral en ce qui concerne l'exploitation des loteries et des jeux, et «clarifier» le texte de loi en ce qui concerne les autres dispositions de la partie V du *Code criminel*. Au cours de témoignages subséquents, les représentants du ministère de la Justice ont toutefois signalé que les amendements à la partie V imposeraient des restrictions supplémentaires en ce qui concerne la définition des infractions relatives à l'exploitation des jeux de hasard, mais du même coup élargiraient l'éventail des jeux de hasard qui peuvent être exploités par une province ou par tout autre détenteur d'une licence délivrée par elle.

On this issue of the real effect of the amendments the Committee heard a considerable amount of conflicting interpretative evidence. An understanding of the issues in this area is rendered difficult by the almost impenetrable language of Part V. It is a complex and confusing part of the *Code*, and we look forward to an early revision which we understand is part of a larger project to review the whole statute.

Concernant les effets qu'auraient en pratique ces amendements au *Code criminel*, le Comité a entendu des opinions fort variées qui dénotaient une interprétation souvent contradictoire. Le libellé pratiquement impénétrable de la partie V du *Code criminel* rend très difficile la compréhension de cette question. Cette partie du *Code* est rédigée dans des termes complexes et qui prêtent à confusion et il serait souhaitable que le gouvernement reformule très bientôt ce chapitre dans le cadre de son projet de refonte globale du *Code criminel*.

As we understand it, Bill C-81 would do the following, in addition to removing the federal government from lotteries and gaming:

1. It would broaden the exemption in s.189(3) in respect of certain games to apply to "annual fairs and exhibitions" rather than only to agricultural fairs or exhibitions, so that fairs involving fish products could take advantage of the exemption.

Si notre interprétation est juste, en plus de ne plus permettre au gouvernement fédéral d'exploiter des loteries et des jeux de hasard, le projet de loi C-81 aurait pour effet:

1. D'étendre les exemptions décrites au paraphe 189(3) aux jeux exploités dans une «foire ou exposition annuelle» plutôt que de n'exclure que les foires et les expositions agricoles comme le prévoit la loi actuelle; par conséquent, toute foire où l'on exposerait des produits de la pêche serait désormais exemptée.

2. It would allow all those who are provincially licensed to conduct gaming under s.190 to use wheels of fortune. At present, only a restricted few licencees are so permitted.

3. It would forbid betting or pool-selling on a race, fight or single sporting event under s.190. At present, it is arguable that, those who are permitted to conduct lottery schemes or games may become involved in such betting and pool-selling.

4. It would restrict the availability of gaming computers and video devices, as well as slot machines, to lottery schemes actually conducted and managed by the provinces. At present, it is arguable that, those who may conduct gaming under provincial licence are not precluded from using these devices.

These last two matters are a subject of some controversy. According to officials of the federal Department of Justice, the 1983 decision of the Quebec Court of Appeal in the case of *Attorney General of Canada v. Loto Quebec* has resulted in betting and pool-selling, as well as slot machines and similar devices, being legally available to those who are permitted to conduct gaming and lottery schemes under s.190. Thus Bill C-81 would place new restrictions on their use. The representative of the Attorney General of Ontario takes the position, however, that that decision is far from clear on these issues and that the permission to use slot machines, in particular, is a significant expansion of the law. The Committee heard extensive evidence from officials of the Ontario Provincial Police, and received submission from other law enforcement authorities as to some possibly serious consequences that might flow from the enactment of Bill C-81. Reference was made to the possible involvement of organized crime in casino-type enterprises which might be established. They expressed particular concern with the possibility of the legitimate use of slot machines. In their view, this would be a major step towards Nevada-style gambling, and all the problems of violence and corruption which might result.

We recognize the seriousness of these concerns, and would not wish to minimize them. However, gaming and lottery schemes which would be permitted under revised s.190 are under provincial control. It should be noted, in addition, that slot machines would only be available when under the direct management of a province. If a province wants to avoid the potential effects of the use of such devices it is within its power not to allow their use.

These witnesses did make a valid point when they stressed that the degree to which the negative consequences of gaming and lottery schemes are avoided is dependent on the rigour of provincial control. We heard evidence to the effect that, in those provinces where substantial legitimate gaming is carried on, the control is quite effective and that there has been no perceptible change in the incidence of criminal behaviour

2. De permettre à tous les détenteurs d'une licence provinciale autorisés à exploiter des jeux aux termes de l'article 190 du *Code criminel* d'utiliser des roues de fortune. Actuellement, ce privilège n'est réservé qu'à certains détenteurs de permis.

3. D'interdire la prise de paris ou la vente de mises collectives sur une course, un combat ou une manifestation sportive aux termes de l'article 190. Actuellement, on peut se demander si ceux qui sont autorisés à exploiter une loterie ou des jeux peuvent prendre des paris ou vendre des mises collectives.

4. De réserver aux seuls organismes provinciaux qui exploitent et gèrent actuellement une loterie, la possession et l'exploitation de jeux à l'aide d'ordinateurs ou de dispositifs életroniques de visulisation, de même qu'à l'aide d'appareils à sous. Actuellement, on peut se demander si les détenteurs d'une licence provinciale leur permettant d'exploiter des jeux ont le droit d'utiliser de tels appareils.

Ces deux derniers points semblent controversés. Selon certains représentants du ministère fédéral de la Justice, le jugement rendu en 1983 par la Cour d'appel du Québec dans l'affaire mettant en cause le *Solliciteur général du Canada vs Loto Quebec* a eu pour conséquence d'autoriser légalement les détenteurs d'un permis leur donnant droit d'exploiter des jeux ou des loteries aux termes de l'article 190 du *Code criminel*, à prendre des paris ou à vendre des mises collectives, de même qu'à utiliser des appareils à sous et des dispositifs analogues. Le projet de loi C081 imposerait de nouvelles restrictions quant à l'utisation de ces appareils. Par ailleurs, le représentant du Solliciteur général de l'Ontario est d'avis que ce jugement est loin d'être évident à cet égard et que la permission d'utiliser les appareils à sous, en particuier, constitue un élargissement sensible de la loi. Le Comité a entendu d'importants témoignages de la part de représentants de la Police provinciale de l'Ontario et a reçu des mémoires d'autres autorité d'application de la loi selon lesquels la promulgation du Projet de loi C-81 pourrait avoir de graves conséquences. Ces personnes ont, entre autres, signale la possibilité que le crime organismé s'infiltre dans des entreprises de type casino qui pourraient être établies. Elles craignent plus particulièrement que ces mesures donnent lieu à l'utilisation légitime d'appareils à sous qui, à leur avis, pourraient fort bien mener à l'instauration du jeu selon le style du Névada souvent associé à de la violence et de la corruption.

Nous prenons ces inquiétudes au sérieux et ne voulons pas en minimiser l'importance. Toutefois les jeux et les loteries qui seraient mis sur pied en vertu de l'article 190 révisé relèvent des provinces. À noter également que l'exploitation d'appareils à sous ne serait permise que sous la surveillance directe des provinces. Une province qui voudrait prévenir toute conséquence de l'utilisation de ces dispositifs aurait le droit d'en interdire l'usage.

Ces témoins ont bel et bien soulevé un point valable en soulignant que les conséquences fâcheuses des jeux et des loteries ne seront évitées que dans la mesure où les provinces exerceront une surveillance plus ou moins rigoureuse. Selon certains témoins, dans les provinces où on exploite énormément le jeu et qu'une surveillance assez efficace est exercée, il n'y a pas eu de changement perceptible dans la fréquence des crimes qui, sem-

which might be thought to accompany that activity. The Committee notes that the province of Manitoba has introduced a system of control of permitted gaming that might well be emulated by other provinces.

Another matter which concerns the Committee is the scope of licenced gambling. We would urge the provinces to apply strict and, as far as possible, uniform criteria with respect to identifying those charities, religious, and non-profit organizations which should be permitted to conduct and manage lottery schemes. This would contribute to the exclusion of any potential participation by organized crime. The Committee also recommends that consideration be given to amending sub-section 190(3) to make it an offence to contravene the conditions or requirements of a provincial licence.

The Committee has concluded that Bill C-81 should be approved without amendment. Our concerns with respect to the process of its development and passage in the House of Commons remain, however. We have felt constrained to go into some detail in this report, because these issues were not canvassed in an adequate fashion in the House, where the Bill was considered, in Committee of the Whole and on third reading, in one afternoon. We would also reiterate our plea that, in the future, the federal government should allow for as much consultation as is possible with respect to amendments to the criminal law. Although we recommend no amendment to the Bill we would urge the Department of Justice to monitor the operation of the changes very closely. In the future, if some of the negative consequences alleged to flow from the Bill should come to pass, we believe that the federal government should not hesitate to take initiatives to re-enter the area and bring them to a halt with appropriate amendments to the *Criminal Code*.

Respectfully submitted,

ble-t-il, accompagnent normalement cette activité. Le Comité fait remarquer que la province du Manitoba, plus particulièrement, a mis sur pied un système de surveillance des jeux légaux dont pourraient s'inspirer d'autres provinces.

Le Comité est également préoccupé par la portée des mesures relatives à la délivrance de licences pour le jeu. Nous exhortons les provinces à appliquer des critères sricts et autant que possible uniformes pour déterminer les organismes de charités, religieux et à but non lucratif qui devraient avoir l'autorisation de mettre sur pied et d'exploiter une loterie. Il serait ainsi plus facile d'en exclure le crime organisé. Le Comité recommande également d'envisager la possibilité de modifier le paragraphe 190(3) de sorte que toute dérogation aux conditions d'une licence provinciale constitue un délit.

Le Comité conclut que le Projet de loi C-81 devrait être approuvé sans amendements. Mais les faits entourant son élaboration et son adoption à la Chambre des communes continuent néanmoins à nous préoccuper. Nous nous sommes sentis obligés de donner certains détails dans ce rapport, parce que ces questions n'ont pas été adéquatement traitées à la Chambre, où le projet de loi fut examiné en Comité plénier et fit l'objet d'une troisième lecture au cours de la même après-midi. Nous demandons de nouveau avec instance au gouvernement fédéral de favoriser au maximum les consultations sur les amendements au droit pénal. Bien que nous ne recommandions aucun amendement au projet de loi, nous prions instamment le ministère de la Justice, cependant, de surveiller de très près les effets concrets de ces amendements. Et si ce projet de loi devait avoir les conséquences néfastes qu'on lui prête, le gouvernement fédéral ne devrait pas hésiter, à notre avis, à s'en occuper une nouvelle fois et à modifier le *Code criminel* pour y mettre fin.

Respectueusement soumis,

Le président

JOAN B. NEIMAN

Chairman

EVIDENCE

Ottawa, Tuesday, December 17, 1985

[*Text*]

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 11 a.m. to consider Bill C-49, to amend the Criminal Code (Prostitution).

Senator Joan Neiman (*Chairman*) in the Chair.

The Chairman: For the information of honourable senators, I did what I was instructed to do. On behalf of the committee I attempted to speak to the Attorney General of Ontario, to convey to him the burden of our thoughts as expressed in committee yesterday. Unfortunately he was unavailable as he was attending another important meeting. However, I was able to speak to Mr. Peter Lukasiewicze, his Executive Assistant. I believe that I explained to him fully and fairly the position and concerns of senators in regard to their consideration of Bill C-81. I asked him to convey those concerns to the Attorney General as quickly as possible, and particularly to let us know if he had been in touch with any other attorneys general, or whether he had raised the matter in any way with the Minister of Justice when they met recently; also, that if they wished to make any formal presentation, or make any revelation to this committee, they should let us know as quickly as possible. I have not heard from him. I told him that this committee would be meeting at 11 a.m. this morning.

I am now in the hands of the committee. I would suggest that, out of courtesy, we should give him until tomorrow, and that today we could perhaps deal with the prostitution aspect. We could then deal with Bill C-81 tomorrow.

The committee will not continue in camera.

Ottawa, Thursday, December 19, 1985

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 9:30 a.m. to give consideration to the subject matter of Bill C-81, to amend the Criminal Code.

Senator Joan Neiman (*Chairman*) in the Chair.

The Chairman: Honourable senators, I propose that we go on the record for a few minutes with respect to our ongoing study of Bill C-81 to record a couple of events and a communication that I received this morning. Then, we will continue *in camera* with our discussions about what we would like to do. While the committee was *in camera* the other day, several members recorded their concerns over the evidence we heard from officials and police officers from the Province of Ontario with respect to the process and certain substantive provisions in Bill C-81. The committee is also aware that the Attorney General of Ontario and the Minister of Justice have been in communication. The committee was not certain as to whether any further steps would be taken, either by the Province of Ontario or, indeed, any other provinces. Therefore, I was instructed to convey these concerns in those simple terms to the Attorney General of Ontario and to inquire whether he had shared his concerns with any other attorneys general with a view to making further representations to the Minister of

TÉMOIGNAGES

Ottawa, le mardi 17 décembre 1985

[*Traduction*]

Le Comité sénatorial permanent des affaires juridiques et constitutionnelles se réunit aujourd'hui à 11 heures pour étudier le projet de loi C-49, Loi modifiant le Code criminel (prostitution).

Le sénateur Joan Neiman (*présidente*) occupe le fauteuil.

La présidente: Pour l'information des honorables sénateurs, j'ai fait ce qu'on m'avait demandé de faire. Au nom du Comité, j'ai essayé de parler au procureur général de la province de l'Ontario pour lui faire part des préoccupations qui avaient été exprimées lors de la séance que le Comité a tenue hier. Malheureusement, il n'était pas disponible, étant retenu ailleurs par une importante réunion. Toutefois, j'ai pu m'entretenir avec M. Peter Lukasiewicze, son adjoint exécutif. Je crois lui avoir suffisamment expliqué la position et les préoccupations des sénateurs au sujet du projet de loi C-81. Je lui ai demandé de transmettre ces observations, aussitôt que possible, au procureur général et de nous dire s'il avait vu à ce sujet d'autres procureurs généraux ou s'il avait discuté cette question avec le ministre de la Justice, lors d'une récente réunion; j'ai ajouté que, s'il souhaitait faire des représentations formelles à notre comité, de nous en prévenir aussitôt que possible. Il n'a pas encore répondu. Je lui ai dit que notre comité se réunissait ce matin à 11 heures.

Je m'en remets maintenant au comité. Je suggérerais pourtant, à titre de courtoisie, de lui accorder jusqu'à demain. Nous pourrions, aujourd'hui, discuter de l'aspect prostitution, et entreprendre demain l'étude du projet de loi C-81.

Le Comité poursuit sa séance à huis clos.

Ottawa, le jeudi 19 décembre 1985

Le Comité sénatorial permanent des affaires juridiques et constitutionnelles se réunit aujourd'hui à 9 h 30 pour étudier l'objet du projet de loi C-81, Loi modifiant le Code criminel (loteries).

Le sénateur Joan Neiman (*présidente*) occupe le fauteuil.

La présidente: Honorables sénateurs, je propose qu'il soit consigné au compte rendu, dans le cadre de notre étude du projet de loi C-81, que nous consacrons un certain temps à enregistrer quelques événements qui se sont déroulés et une communication que j'ai reçue ce matin. Après quoi, nous poursuivrons à huis clos nos discussions au sujet de la marche que nous aimerions suivre. L'autre jour, lorsque le Comité siégerait à huis clos, quelques membres ont exprimé leurs préoccupations au sujet des témoignages recueillis des hauts fonctionnaires et des agents de police de la province de l'Ontario, au sujet de la procédure et de certaines dispositions importantes du projet de loi C-81. Le comité n'ignore pas non plus que le procureur général de l'Ontario et le ministre de la Justice ont communiqué entre eux. Le Comité ne savait trop si d'autres mesures devraient être entreprises, par la province de l'Ontario ou par toute autre province. On lui a donc demandé de faire part simplement de ses préoccupations au procureur général de l'Ontario et de lui demander s'il les partageait avec

[*Text*]

Justice. I tried to get in touch with the Attorney General of Ontario following that meeting on Monday. I was not able to speak to him personally but I spoke to his executive assistant, Mr. Peter Lukasiewicze, who undertook to convey my message to the Attorney General. I did not hear from him on Tuesday, but yesterday while I was in the house, my secretary, unfortunately, left the office momentarily and when she returned a message was on my telephone machine to the effect that the Attorney General had called and would phone back some time between 4.30 and 5 o'clock. I simply wish to report I was in my office until about 6.30 p.m. and did not hear from him and have not heard from him since.

This morning I received a telegram addressed to me as chairperson of the committee. It reads as follows:

Regarding Bill C-81

The Government of Saskatchewan views with concern comments on Bill C-81 which cast doubt on the effect of the draft legislation. As a party to the federal/provincial lottery agreement, Saskatchewan supports the legislation as passed by the House of Commons. We would urge that the committee view it in a similar favourable light so as to insure final passage and assent prior to December 31st, 1985.

Hon. Rick Folk,
Minister of Culture and Recreation
Province of Saskatchewan

And a copy was sent to the Honourable Sid Dutchak, Minister of Justice of Saskatchewan.

Senator Buckwold: I might point out that the Minister of Justice has just been appointed in a recent Cabinet shuffle.

The Chairman: Mr. Bélisle has received some telephone communications from persons such as Mr. Michel Gagnon, who appeared before us as a witness last week, to the effect that we would be receiving other communications and telexes with respect to the passage of this bill. However, so far this is the only one we have received.

That completes the formal part of my report.

The committee adjourned *in camera*.

[*Traduction*]

d'autres procureurs généraux, en vue d'adresser de plus amples doléances au ministre de la Justice. J'ai essayé à nouveau d'entrer en rapport avec le procureur général de l'Ontario, à la suite de cette séance du lundi. Je n'ai pu lui parler personnellement, mais j'ai parlé avec son adjoint exécutif, M. Peter Lukasiewicze, qui c'est chargé de transmettre mon message au procureur général. Je n'avais pas eu de ses nouvelles mardi, mais hier, tandis que j'étais à la Chambre, ma secrétaire a malheureusement dû laisser le bureau pour un moment puis, lorsqu'elle est revenue, elle a trouvé sur mon répondeur un message disant que le procureur général avait appelé et qu'il rappellerait entre 16 h 30 et 17 heures. Je tiens simplement à vous dire que j'étais à mon bureau jusqu'à environ 18 h 30 et que depuis, je n'ai reçu de lui aucune nouvelle.

Ce matin, j'ai reçu un télégramme qui m'était adressé à titre de présidente du comité et qui se lit comme suit:

Au sujet du projet de loi C-81

Le gouvernement de la Saskatchewan s'inquiète des commentaires faits sur le projet de loi C-81 qui laissent planer un doute sur son objet. En tant que partie à l'accord fédéral provincial sur les loteries, la Saskatchewan appuie la mesure législative adoptée par la Chambre des communes. Nous recommandons fortement que le Comité l'envisage sous un même jour de façon à assurer l'adoption finale du projet de loi, avant le 31 décembre 1985.

L'honorable Rick Folk,
ministre de la Culture et des Loisirs
Province de la Saskatchewan

L'Honorable Sid Dutchak, ministre de la Justice de la Saskatchewan, a reçu une copie de ce télégramme.

Le sénateur Buckwold: Je vous signale que le ministre de la Justice vient d'être nommé lors d'un récent remaniement du cabinet.

La présidente: M. Bélisle a reçu certaines communications téléphoniques de personnes comme M. Michel Gagnon, qui a comparu devant nous la semaine passée, nous prévenant que nous recevrons d'autres communications et télex au sujet de l'adoption de ce projet de loi. Toutefois, nous n'avons jusqu'ici reçu que celui-là.

Ainsi se termine la partie officielle de mon rapport.

La séance se poursuit à huis clos.

APPENDIX "LEG-35-A"

Senator Joan Neiman,
Chairperson
Senate Committee on legal
and Constitutional Affairs
House of Commons
Ottawa Ont
K1A 0A6

Regarding Bill C-81

The Government of Saskatchewan views with concern comments on Bill C-81 which cast doubt on the effect of the draft legislation, as a party to the Federal/Provincial lottery agreement, Saskatchewan supports the legislation as passed by the House of Commons. We would urge that the Committee view it in a similar favourable light so as to insure final passage and assent prior to December 31st 1985.

Hon. Rick Folk
Minister of Culture and Recreation
Province of Saskatchewan

CC: Honourable Sid Butchak
Minister of Justice

APPENDICE «LEG-35-A»

Sénatrice Joan Neiman
Présidente du Comité sénatorial des
affaires juridiques et
constitutionnelles
Édifices du Parlement
Ottawa (Ontario)
K1A 0A6

Objet: Projet de loi C-81

Le gouvernement de la Saskatchewan s'inquiète des commentaires formulées sur le projet de loi C-81 qui jettent le doute sur les effets du projet tel que rédigé. En tant que partie à l'accord fédéral/provincial sur les loteries, la Saskatchewan appuie le projet de loi tel qu'adopté par la Chambre des communes. Nous souhaitons instamment que le Comité étudie ce projet de loi du même œil favorable, afin d'en assurer l'adoption finale et l'assentiment avant le 31 décembre 1985.

Honorable Rick Folk,
Ministre de la Culture et
des Loisirs
province de Saskatchewan

c.c.: Honorable Sid Butchak
Ministre de la Justice

APPENDIX "LEG-35-B"

Attorney-General of Manitoba
Winnipeg R3C 0V8

December 5, 1985

Honourable Joan Neiman,
Chairperson,
Senate Committee on Legal
and Constitutional Affairs,
Senate of Canada,
Ottawa, Ontario.
K1A 0A4

Dear Madame Chairperson:

This refers to your telex message of November 26th, 1985 in respect to Bill C-81.

Through a crown agency, the Manitoba Lotteries Foundation, casinos are operated by the Government of Manitoba. Net revenues from these casinos presently operated under the existing Section 190(1)(b) are, by provincial government policy, earmarked for community programs.

In planning the future of government-run casino gaming in this jurisdiction, we may want to consider introduction of certain highly secure dice games such as Sic Bo, etc.

If Bill C-81 is adopted in its present form, it will significantly affect our casino industry development, which we intend, with the passage of time, to be Canada's finest. It is currently the only government-operated facility in the country.

You can appreciate the deleterious implications for Manitoba of prohibiting "dice games".

We are therefore asking that you consider deleting the words "dice game" from the proposed Section 190(4)(a) of Bill C-81 so as to allow provincial governments to decide if such games are appropriate. After all, we understand the intent of Bill C-81 was to remove federal government involvement in lotteries and gaming (excluding bookmaking, pool selling, etc.) and permit the provinces greater flexibility. This has been done in the case of slot machines and video games. We seek the same accommodations in respect of dice games.

In sum, we would be obliged if you would consider our position.

Yours sincerely,

Roland Penner, Q.C.

RP/mh
c.c.: Hon. Eugene Kostyra,
Minister responsible for Lotteries.

APPENDICE «LEG-35-B»

Procureur-Général du Manitoba
Winnipeg R3C 0V8

Le 5 décembre 1986

L'honorable Joan Neiman
Présidente
Comité sénatorial permanent
des affaires juridiques et
constitutionnelles
Sénat du Canada
Ottawa (Ontario)
K1A 0A4

Madame la présidente,

Je vous écris en réponse à votre telex du 26 novembre 1985 au sujet du projet de loi C-81.

La Manitoba Lotteries Foundation, un organisme de la Couronne, exploite les casinos du Manitoba au nom du gouvernement de la province. Les recettes nettes de ces casinos exploités en vertu de la disposition actuelle 190(1)(*b*) de la Loi, sont, par décision du gouvernement provincial, réservées aux programmes communautaires.

En planifiant l'activité des casinos exploités par le gouvernement manitobain, nous envisagerons peut-être d'introduire certains jeux de dés à l'épreuve de tous risques, comme le Sic Bo et autres.

L'adoption du projet de loi C-81 est sous sa forme actuelle affectera considérablement l'expansion de nos casinos, dont nous voulons faire, avec le temps, les meilleurs établissements au Canada. C'est actuellement la seule industrie du genre exploitée par un gouvernement canadien.

Vous conviendrez, sans doute des conséquences fâcheuses que l'interdiction des «jeux de dés» entraînerait pour le Manitoba.

Nous vous prions donc d'envisager la suppression des mots «jeux de dés» de l'alinéa 190(4)*a*) du projet de loi C-81, de façon à laisser aux gouvernements provinciaux le soin de décider si de tels jeux sont appropriés. L'objet du projet de loi C-81 n'est-il pas, après tout, de mettre fin à la participation du gouvernement fédéral aux loteries et aux jeux (à l'exception du bookmaking, de la vente de mises collectives, etc.) et de donner aux provinces plus de latitude, comme on l'a fait pour les appareils à sous et les jeux-vidéo. Nous cherchons à obtenir les mêmes arrangements pour les jeux de dés.

En somme, nous vous serions reconnaissants d'examiner notre point de vue à cet égard.

Veuillez agréer, Madame la présidente, mes salutations distinguées.

Roland Penner, c.r.

c.c.: Hon. Eugene Kostyra
Ministre responsable des loteries

APPENDIX "LEG-35-C"

Connected
FAS OTT
Finance QBC
Quebec City

December 20, 1985

Mr. John Horricks
Parliamentary Committee on Fitness
and Amateur Sport ?
Ottawa

Here is a copy of the Telex sent yesterday at 6:27 p.m. to Senator Joan Neiman, Standing Senate Committee on Legal and Constitutional Affairs, Ottawa:

Dear Madam:

The purpose of this Telex is to indicate the support of the Government of Quebec for Bill C-81.

Without enlarging in any way the legal limits on gaming and betting, the Bill establishes exclusive provincial jurisdiction in matters of games of chance, and defines the restrictions needed to prevent abuses.

It is urgent that a stop be put to Federal-Provincial squabbling over this area.

Gérard D. Lévesque
Minister of Finance
Quebec

cc: Mr. Otto Jelinek
Minister of State for Fitness
and Amateur Sport
Ottawa

Mr. David Clark
President, Loto-Quebec

APPENDICE «LEG-35-C»

Connected
FAS OTT
Finance BC
Quebec

Le 20 décembre 1985

M. John Horricks
Commission parlementaire
Sur la condition physique et le
sport amateur
Ottawa

Voici une copie du telex qui a été expédié hier, a 18 h 27, a madame le sénateur Joan Neiman, comité permanent du Sénat sur les affaires juridiques et constitutionnelles, Ottawa.

Madame le sénateur,

Le present telex a pour objet de manifester l'appui du gouvernement du Québec au projet de loi fédéral C-81.

Sans élargir d'aucune facon le champ des jeux et des paris légaux, ce projet de loi établit la compétence exclusive des provinces en matière de jeux de hasard et détermine les restrictions nécessaires pour prévenir les abus.

Il est urgent de mettre fin aux querelles fédérales-provinciales en cette matière.

Le Ministre des Finances
du Québec
Gérard D. Lévesque

c.c.: M. Otto Jelinek
Ministre d'État à la condition
physique et au sport amateur
Ottawa

M. David Clark
Président de Loto-Québec

IN THE MATTER OF A REFERENCE to the Court of Appeal pursuant to section 8 of the *Courts of Justice Act*, RSO 1990, c. C.34, by Order-in-Council 210/2024 respecting permitting international play in an online provincial lottery scheme

COA-24- CV-0185

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

RECORD OF THE ATTORNEY GENERAL OF ONTARIO

Vol. 2 of 2

ATTORNEY GENERAL OF ONTARIO
Crown Law Office - Civil
720 Bay Street, 8th Floor
Toronto, ON M7A 2S9
Tel. 416-908-7465

Josh Hunter, LSO No. 49037M
joshua.hunter@ontario.ca

Ananthan Sinnadurai, LSO No. 60614G
ananthan.sinnadurai@ontario.ca

Hera Evans, LSO No. 66269Q
hera.evans@ontario.ca

Jennifer Boyczuk, LSO No. 70838L
jennifer.boyczuk2@ontario.ca

Counsel for the Attorney General of Ontario