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The Honourable Paul DeVillers

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Thursday, May 5, 2005

• (0905)

[*Translation*]

The Chair (Hon. Paul DeVillers (Simcoe North, Lib.)): We'll start this meeting of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness.

Pursuant to Standing Orders 110 and 111, we move to the study of the certificate of nomination of Yves Le Bouthillier to the position of President of the Law Commission of Canada, referred to the committee on April 4, 2005.

Welcome, Mr. Le Bouthillier. You may begin your presentation. Please give us the highlights of your curriculum vitae and the objectives you want to achieve in this position.

Mr. Yves Le Bouthillier (As an Individual): Thank you, Mr. Chairman and distinguished committee members, for the opportunity you've afforded me today to meet with you and to discuss my nomination to the Law Commission of Canada.

I hope this first meeting will be followed by a number of others, so that the Commission can dialogue with you regularly in order to better determine your views on law reform needs and to inform you of progress made on the Commission's various projects.

I also hope I'll have occasion to meet with each of you individually to discuss reform issues of particular concern to you.

I've emphasized consultation and exchange at the outset because I believe this is an essential aspect of the Commission's role. To identify reform needs, the Commission must broadly consult Canadians at all times. To conduct credible studies on what those reforms might be, the Commission must be able to document them in light of its consultations. It must also determine real needs from the experience of Canadians.

I believe I have the necessary skills to continue the dynamic and inclusive approach that has become the Commission's. In my work, I've always advocated team spirit, consultation and openness to various ideas from various groups. My experience has shown me that this approach produces results, and this would also be my approach at the Commission.

[*English*]

The way the commission was structured indicates the importance of dialogue, teamwork, diversity, and inclusiveness. There are five commissioners coming from the various regions of the country, exercising different professions, and with jurists from both common

law and civil law. Moreover, the commission has set up an advisory council of 24 members, which, again, by its diversity, hopes to capture a wide area of views about law reform in Canada. I look forward to working with all these individuals committed to law reform, as well as with the numerous partners the commission now has.

In my view, the success of someone's tenure as president of the commission should be measured in part on his or her ability to draw various individuals and groups to work together to further forge productive partnerships that can make a real difference for Canadians.

I was told that you all received my CV in advance. I'm sure we will have a fruitful discussion and I will have the opportunity to talk about my past accomplishments that you would feel are relevant for this position.

[*Translation*]

Consequently, Mr. Chairman, I'll be pleased to answer committee members' questions.

The Chair: Thank you very much for your presentation. We'll now move on to the question period.

[*English*]

Mr. Moore, for five minutes.

Mr. Rob Moore (Fundy Royal, CPC): Thank you for being here. This is a good opportunity for us to hear about your qualifications and what you plan to do.

One thing you mentioned was increasing dialogue, and there was also the 24-member advisory council. You mentioned there is a broad and diverse background among these people. I'm wondering if you can expand a bit on that as to how we have input into the Law Commission and how you're going to facilitate hearing from all Canadians and getting all points of view.

Also, I'd like your comments on past experience with the Law Commission. How have recommendations and reports been handled by government over the past several years when recommendations did come forward, and how would you like to work with government to see those ultimately implemented?

But most of all, on the dialogue, how do you intend to perhaps do a better job of dialoguing than has been done in the past, and do you think there have been any deficiencies in the past in getting input from Canadians? As we all recognize, the law is there to serve Canadians and it should be reflective of their values, of course.

If you could, please comment on those things.

● (0910)

Mr. Yves Le Bouthillier: From what I know, the commission has been quite successful since its creation in 1997 in dialoguing with many Canadians, with various groups and individuals. That is part of the mandate of the commission as provided for in the act.

The act provides for the setting up of this advisory council precisely because Parliament felt it was crucial to have, as a start, a body that would be diverse, composed of men and women representative of all the diversity of Canadian society, not just lawyers, and coming from all the different regions of the country.

From what I know, the advisory council meets twice a year currently with the five commissioners, and I must add that I see myself as part of a team with the five commissioners. These five commissioners also have a variety of experience.

Those two meetings a year are useful, but I myself would want—and I think it has been done in the past too—to communicate more frequently with the members of the advisory council. These days, with new technology, someone can actually ask for advice from members of this council on a weekly basis if need be. I think members of this council should play a really important part in advising the commission not only on a biannual basis but on a regular basis by various means.

The commission has gone further than that and has also established partnerships with universities—which is not surprising as in fact it is provided for in the act too—but also, I think, with various non-governmental organizations and various provincial agencies. The commission has had workshops and round tables, and my predecessor criss-crossed the country quite often to talk about the various projects of the commission.

I want to continue in that vein; frankly, I think it is a very good approach. To do more dialogue is certainly my intention. My point is, I will try to get views from a lot of Canadians.

Mr. Rob Moore: I just have one question further to that. Now, I have an advisory board in my own riding on some issues, but I'm wondering about one thing. You mentioned universities and NGOs, and oftentimes if you're working on the law such as with the Law Commission, you're going to get what I would call the “usual suspects”, people who are interested in coming forward and filling these advisory roles. You're going to have people who have taken it upon themselves to be involved.

Because the law and the proposals you're going to be putting forward affect all Canadians, I'm wondering if you think there are any steps further—and this is what I'm suggesting—to ensure the input of everyday Canadians, people who don't necessarily want to sit on a commission and don't necessarily give those kinds of input but who are impacted by the laws we pass as a Parliament. I know from being around this place for a year now and from being in university—and even in school, take a student council—there are

always certain people who want to be involved, but oftentimes what they come up with is not reflective of the ideas of the mass population.

I'm probably out of time, but I want to know if you're going to take steps to ensure everyday Canadians' values are reflected in the commission's work.

● (0915)

Mr. Yves Le Bouthillier: Yes, I'm very sensitive to that, and you raise an important issue. I am currently in a university setting, and I want to get out of this university setting and reach out to Canadians.

I would say maybe this. Recently I organized a conference, to which 200 people came. I thought it was important to have Canadians there from coast to coast, so I took some measures to find some funding so not only speakers but also participants, the people attending, could come from various regions. But when I looked at it, I thought, you know what? There are a lot of people here, but maybe it's not diverse enough, since I felt this was about minorities, constitutionalism, and language. I felt maybe there were not sufficient numbers of what I would call the majority, whether they were representatives of some governments or whether they were Canadians who should have listened to these very good presentations.

So for me it's not only numbers; it's also diversity. The majority are not always, as you say, the first ones to come to various meetings. In some ways you don't expect to have to make an effort to reach the majority. The fact is, you're right that for every issue there are experts and people who have various interests and it's very important to widen the dialogue, and I would do that.

The Chair: Thank you, Mr. Moore.

[*Translation*]

Mr. Ménard, you have five minutes.

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Thank you, Mr. Chairman.

Mr. Le Bouthillier, when I attended the birth of the Law Commission of Canada, I had the impression I was seeing a rebirth. It succeeded the Law Reform Commission, which had been suspended for budgetary and other reasons.

What differences do you see between the role of the Law Commission of Canada and the one the Law Reform Commission had taken on?

Mr. Yves Le Bouthillier: Are you referring to the former Law Reform Commission that was abolished in 1992?

Mr. Serge Ménard: Yes.

Mr. Yves Le Bouthillier: First, I believe that the act constituting the new commission gave it a mandate to consider law reform in a much broader sense. That act conferred a mandate on the new commission to consider societal problems and, from there, to see what role the law could play in the context of a specific problem, that is to say whether it could make a positive or negative contribution, what could change, what would be the role of the law on a given issue.

In addition, I believe law reform used to consist in taking existing law and regulations as a starting point and seeing, for example, whether a judge had mentioned in a decision that an act didn't appear to be working and to examine the situation.

So I believe the starting point was more the written text, the existing law, not a much broader view. The new approach was much more to consider the needs felt by society. In other words, there was a desire to reform the law based on issues, the starting point being society — not the text of the law — and Canadians, not just lawyers.

In fact, lawyers only played one of a number of roles in the exercise of law reform. That's the difference, in my view. If you consider what's been done since 1997 — I believe Roderick Macdonald was the first president, followed by Nathalie DesRosiers — you see that this is the approach that has been adopted. It's an approach that entirely suits me.

I believe there's always room for a balance between a more law-centred approach and a broader approach in which the law is viewed as one of a number of factors in the search for justice, of formal law.

Mr. Serge Ménard: The former Law Reform Commission carried out an extensive and comprehensive project of reforming the Criminal Code. Would the Law Commission of Canada resume that ambitious work, or do you think the fate of that project is an indication that legislators ultimately don't want to be told or advised as to how they should act — depending on one's viewpoint — on such fundamental reforms?

● (0920)

Mr. Yves Le Bouthillier: I would say two things. First, no approach to this kind of proposal is taboo. So that's a suggestion that would deserve to be studied. I would also say that what previously happened, at another time, is not a...

Mr. Serge Ménard: It was another millennium.

Mr. Yves Le Bouthillier: It was another millennium, indeed.

That shouldn't prevent us from returning to that type of thought process if there is a need for it. That said, all kinds of factors would obviously have to be considered.

First, the existing program should be considered. I haven't arrived in a void. A number of projects are already under way; I saw that in looking at the report on plans and priorities. As I indicated, this would call for a broad consultation of various players to determine where we should allocate our resources. The budget would obviously also have to be considered, although it's much less important. In operational terms, the Law Commission of Canada is not what the previous commission was. It's another model.

That said, the broader question that must be asked is this: to what extent could the Commission anticipate taking a specific field of law

and vetting the existing legislation? I believe that might be consistent with this Commission's present mandate. Moreover, that would probably be done differently from what was previously done.

I would add, Mr. Chairman, that it's difficult to measure the success of the Commission simply based on legislative changes, by considering whether recommendations have been followed to the letter.

In my view, the fact that we're still referring today to this effort by the Commission and that we're talking about considering this subject again is valid in itself.

The Chair: Your next question will have to be brief.

Mr. Serge Ménard: I note from your CV that you seem to be very interested in comparative law. In a number of your presentations, you've compared foreign legislation with ours.

Under the Charter, one of the justifications that may be given for the need to legislate is that legislation must be admissible in a free and democratic society. Do you believe that one of the Commission's roles is to inform Parliament on major social issues such as euthanasia and so on? Your commission can play a role based on what's being done in other countries that we consider free and democratic.

Mr. Yves Le Bouthillier: First, I'm flattered you think there's a significant comparative element, since, in fact, I'd like there to be even more. I believe it's a mistake in today's world to limit ourselves to a single system. Other systems are obviously not binding on us, but I believe it's still very instructive to see what's going on elsewhere.

In the discussion paper on vulnerable workers, which is available on the Law Commission's Web site, we advocate not only a multidisciplinary approach, but also a comparative approach in order to learn from what's being done elsewhere.

The Chair: Thank you, Mr. Ménard.

[*English*]

Mr. Comartin, for five minutes.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair.

[*Translation*]

Mr. Le Bouthillier, thank you for being here.

[*English*]

The commission issued a report, I think about a year or a year and a half ago, on electoral reform. I don't think there's been a pattern of the commission doing this, but are there any plans for further study or reports on that particular topic?

Mr. Yves Le Bouthillier: That's a very good question. It's a question I ask myself. I think you are right to say that in the past the commission has tabled a report and then moved on and let the report speak for itself.

This report, I must say, is very much talked about. If you read the editorial in *The Globe and Mail* today, it mentioned that report. Also on Monday, as you probably know, there was a series in *The Globe and Mail* on editorial reform. I think that should actually be discussed with the commissioners, the advisory council. I think that's the kind of question that is worth asking, whether you put further effort.

The commission wants to give its input by giving well-researched reports, background papers, and so on, to which extent then it wants to continue the debate. It's something I think you have to be a bit careful of. You want to keep your independence and you want to acknowledge the fact that this is the best thing you could give at that given time. Things can also change very quickly in terms of what the needs are. If a need is perceived from a different angle for the input, I think that could be done.

That being said, there are also many other important issues you would not want to neglect. It could very well be that in that particular case the commissioners would feel that the contribution is sufficiently rich. At this point, it's up to the public and the legislatures and so on to make decisions. And that was the contribution of the commission.

● (0925)

Mr. Joe Comartin: Let me respond by saying that the work that's going in the provinces right now—and it is much more active than what it is at the federal level—might benefit from an analysis from the commission, maybe not this year or even two or three years from now, but over the next five years. I think there would be something the commission could contribute. I don't know if they've ever done that in the past. I don't think they have gone back and revisited an issue or a topic. So I don't know if it's actually within your mandate for them to say, “Okay, we issued this report, this is what's transpired in the interim, and this is our analysis of what's transpired”, and perhaps make further recommendations from the experience.

Mr. Yves Le Bouthillier: There's nothing in the act that I can see that would prevent us from doing that.

The report on editorial reform also looked at what was going on in various provinces, and I think, rightly so, it focused on federal reform. It was instructive and I think it's useful for other provinces to look at the report. For example, when British Columbia is looking at one model, they can also look at the commission's report and can find it instructive even though it was done by this commission. It could be that things evolved, as you just mentioned, so that maybe the commission would feel it could enrich the debate further.

Mr. Joe Comartin: I'm not clear. You made a bit of reference to it in terms of topics, but within the commission, how do you determine priority for what issues or topics are going to be addressed?

Let me just ask a supplementary. Have you done that since you've started in your mandate?

Mr. Yves Le Bouthillier: I have not started. I do hope to start on June 1; I have the feeling I'll just go from one office to the next. From what I can see, some of the issues came directly from either what the commission heard from all Canadians or from its advisory council. For example, there is right now one study on the relationship between law, youth, and older age. It is basically how it cuts across, what the impact is of legislation that provides for

various age limits and so on, and what the positives and negatives are for the whole Canadian population.

That came, I believe, from the advisory council. They felt that to focus only on the elderly would not be a good idea. It would be a better idea to focus on the whole of the population, and look at age, which could cut right across. That is one example.

The act provides, in section 5, that the justice minister can refer particular questions to the commission. The minister did so in 1997; it was on the abuse of children in a publicly sponsored institution, and the commission made a report on that.

There are various ways. Frankly, I see the big challenge to be that you don't want to get it wrong. You only have so many resources. I suspect that when I get to the commission, there will be a list of 50 possible issues waiting for me. I myself could think of a few.

But you have to be very careful. My first priority is to ensure that what's already there gets well done too.

● (0930)

The Chair: Thank you, Mr. Comartin.

Next is Mr. Cullen, for five minutes.

Hon. Roy Cullen (Etobicoke North, Lib.): Thank you, Mr. Chair.

Thank you, Mr. Le Bouthillier, and congratulations on your nomination—and your appointment, I'm sure.

Not being a lawyer myself, I presume that the Law Reform Commission of Canada has a mandate to look at the whole justice system, including the role and functioning of the judiciary. Would that be correct?

Mr. Yves Le Bouthillier: That could be part of a—

Mr. Vic Toews (Provencher, CPC): I have a point of order.

The Chair: On a point of order, Mr. Toews.

Mr. Vic Toews: I just want to know with what certainty Mr. Cullen is speaking about this appointment.

Hon. Roy Cullen: It is just conjecture.

The Chair: That's not a point of order. It's a point of optimism.

Hon. Roy Cullen: Presumably that would include, then, the functioning and the role of the judiciary. Is that correct? It's not just focused on law-making. Is that right?

Mr. Yves Le Bouthillier: Yes.

Hon. Roy Cullen: Okay, because one thing I'd hope you'd have a look at is something that is certainly concerning me.

Last night, for example, I supported a private member's bill that would include tougher sanctions for gun crime. In my riding, in Toronto, we've had maybe 12 gun murders in the last 15 months or so. I supported the bill even though I think the sanctions will not meet the test of the charter. But at least if we can get it to committee maybe we can work on it. We've heard testimony in this committee about child pornography and conditional sentences for very heinous types of activity, and I find myself thinking there are tools the judiciary has and from time to time they don't seem to be using them.

There's another example. The Criminal Code says there has to be a recommendation from the crown prosecutor—I don't know all the ins and outs of it technically—that any DNA relating to convictions of primary offences must be sent to the DNA lab. There is a very high hurdle for an exception to that. It's a very high hurdle, but we're only getting about 50% of the DNA for primary offences, murder and rape, coming into the DNA lab. I think that is a big problem. So what I find myself doing is thinking, if the judiciary is not using the tools that are there already—and we find this in a lot of thinking that's permeating Parliament—maybe we need to write tougher laws or maybe we need to have mandatory sentences. I am troubled by that, because I think the judiciary needs to have some degree of flexibility and discretion, but I am sometimes appalled with the way that some of these decisions are applied. I'll just throw that out as a topic.

Also, concerning the area of judicial appointment, these judges are making some very important decisions on behalf of Canadians. I'm speaking as an individual Canadian and a member of Parliament, not as the official government position. Bill C-38 is in the House now, and we'll vote on it, but frankly the Supreme Court has decided on that. I'm wondering how we can balance the appointment process in which these appointments can be scrutinized very carefully by elected people so we can achieve that kind of balance, rather than ending up in the type of circus that can develop in the United States.

I just throw those out as areas that certainly trouble me. If they ever come up as topics for pursuit at the Law Reform Commission, they'd certainly get my vote.

Maybe you can just flat out react to that, if you can.

• (0935)

Mr. Yves Le Bouthillier: Yes.

The Chair: Mr. Le Bouthillier, go ahead, please.

Mr. Yves Le Bouthillier: On the second topic, on judicial appointments, I just want to be careful with regard to government policy in the sense that I know the justice minister came to this committee and put forward his proposals. So I think I will address that very generally.

In Canada there are obviously changes in the air. In other words, I think what we used to hear in the past was that in the broad picture, what we got as a result of our existing appointment system gave us good results. I think a lot of Canadians could say, well, let's look at the results, and I guess we could all agree or disagree on that, but obviously there are proposals to change, independent of what people felt about the status quo. The question is, of course, how far do you want to go?

This question of judicial appointment is one that potentially—we're not talking about one specific court or another—I imagine could be looked at and also could fall within the realm of what the commission would do. Maybe, coming back to the question of a member earlier, the comparative element there would be that it would be a mistake not to look at it, whatever that comparison is. So that's my answer to the first question.

Coming back to the first question, I guess what you're raising more generally is what's the law and how does it really work? That is the concern of the Law Commission of Canada in all its studies, whether you talk about the criminal justice system or whether you talk about vulnerable workers. You can put all the laws in the book, and you have the impression that they're good laws and they're accessible, and so on, but when you look at the reality, because of various factors, it doesn't actually work.

With regard to whether we could look at sentencing, again this is something that certainly the commissioners could consider. Obviously, if I do start this position, I would inform the commissioners of all the various issues that have been raised here today. I would invite them to actually read also the transcript of this meeting. But the commission has one report on restorative justice—in other words, what kind of sentencing would further rehabilitation, would involve the community. The commission right now has a discussion paper on what is a crime—why is some conduct a crime and why is other conduct not a crime? So in a sense you can see there that the approach of the commission is much wider than maybe it has been in the past.

All this is to say that on these issues I would have to look more closely at this report, but it could be that some of the answers to these types of questions cannot really be found in the existing reports and background papers of the commission—it certainly can help—because the commission did not look at maybe one very narrow question but looked at more general principles that, again, could be of help to your concern, I guess.

The Chair: Thank you, Mr. Cullen.

Mr. Toews.

Mr. Vic Toews: Thank you very much for coming here today.

One of the issues I would like to hear from you on is what you see as your role. You've mentioned certain general topics, yet I don't get a firm idea of where you actually want to take this commission and what you bring to this position. We've heard some general comments.

Quite frankly, I've been a minister of the crown. When I was appointed, the clerk of the executive council came to me and said, "Look, as a minister you're only going to get a few things done. Pick two or three things. What do you think is important? What do you want to accomplish during the course of your tenure, whether it's one year, two years, or whatever?"

What agenda do you bring? I think it's important that we simply not have a facilitator here, but indeed someone who has a very specific idea of where he or she wants to go with this commission. I think all of us are sophisticated enough to understand that each individual, especially an individual of your calibre and your background, brings certain qualities, certain ideas. What's your agenda?

• (0940)

Mr. Yves Le Bouthillier: Again, maybe because of the way the commission is structured with the four other commissioners, I certainly see my role as coming to the commission and framing an agenda together. Having said that, I don't want to use that to give the impression that I do not want to answer this question directly.

The first thing is that there already are quite a few topic teams in the works that are all important, and I will get involved with each of these topics. But there's no doubt that if you were to ask me, as a commissioner, which one of the existing topics I feel I will probably have more of an input on, because of my background I think it would be the one on the impact of globalization on domestic law, to clarify to what extent Canada plays a role in the world but also when Canada, for example, accepts international delegations, how this impacts on our national law.

I was looking at text of a conference given by Stephen Toope, who was president of the Canadian Council on International Law, in 1998. At that time he said that it was not clear for judges, not clear for lawyers, what the real impact is of all these things that are happening to the world, all these treaties and so on, on Canadian law. We need to clarify that. In 1998 he said that if the judiciary or the legislature cannot help us with this, maybe it is something that should be looked at by the Law Commission.

Right now it just happens that the Law Commission in fact is looking at this particular issue and will release a discussion paper, and I feel that I can help to clarify these issues in this area for the next three years.

Because I have worked on international environmental law in the past, it would be very difficult, I think, if you were to ask anybody here to what extent we really implement and how we implement our international environmental obligations. It would be a tough question to answer in the federal states, where it's a shared competence. How do we do it? To what extent is Parliament involved prior to accepting international obligations? To what extent is Parliament involved in the review? Are we doing a proper job on that? Should we accept all these various obligations? That is one issue where I feel I would be involved.

Mr. Vic Toews: That's one issue the commission is presently addressing that you feel could be a priority for you, but pretend that you're a kid in a candy store and there are no boundaries; everything is at your disposal. What do you think you would do if you weren't bound by what the commission has taken on? Certainly you must have some drive to change the way the world operates, change the way Canada operates, aside from what the commission might already be examining.

This is not a trick question. I agree with Mr. Cullen that it is probably a forgone conclusion that you're going to be appointed, and

I see nothing in your credentials to suggest you shouldn't be, but I want to know what you want to bring.

If you're simply regurgitating the agenda that's already there, why don't we just hire somebody who's already there? What do you bring that's new, what thrust? What do you want to do? You're an individual, you're a person, you've got brains, you've got talents. What are you going to bring that's new?

• (0945)

Mr. Yves Le Bouthillier: I'd say I would want to make sure to take the time to consult and to pick the right issues, because frankly I am sure that we could think about ten different issues. But what I bring—and why I'm here, I think—is my ability to bring people together and to get the job done. I think that's why I'm here in front of you.

Mr. Vic Toews: Let's hope you can do that. But what ideas do you bring other than what's already there? If you're just somebody who is going to be a caretaker, shepherding ideas contained in old programs, then I don't know about the value.

Mr. Yves Le Bouthillier: Each of the ideas that are there are in need of being developed. One of the challenges of this position is to have someone who, along with other commissioners, can make a contribution on every one of these topics. After all, we make recommendations in these reports. I have shown that I can acquaint myself with various fields and make a significant impact on all of them. When I went to the Department of Foreign Affairs, international environmental law was a new field for me. I worked on many files, and I got the job done.

I have taught public, private, and international law. So I've touched on various fields. I believe I can contribute by linking various areas of law. The commission would benefit from someone who is not ultra-specialized, although I myself have a lot of expertise in international law.

The Chair: For your information, my answer to the kid in the candy store would have been “chocolate”.

[*Translation*]

Mr. Ménard, you have five minutes.

Mr. Serge Ménard: I don't know whether it's because we've occupied similar positions, but I admit my concerns are very similar to those of Mr. Toews.

I note from your CV that you have interests that are useful to the modern world and to the world in which we'll be living in the future. In particular, I note a great interest in international issues. Among the issues on which light should be shed, I note the future use of force between nations. This is all the more necessary since our neighbour seems to have forgotten that it founded the League of Nations and wrote an international charter of rights and freedoms.

You haven't mentioned what I'm about to say, but my impression is this is consistent with your remarks. You said you were interested in all issues raised by globalization. I see from a number of projects in which you've taken part that that's obvious. In fact, if I think of a law commission, I see a commission that will inform us about the problems we'll have to face.

However, there's one problem you won't mention: the increasingly controlling effects of technology on our lives. I'm referring here to the possibility of choosing the gender of children, which won't be long in coming, and to a form of eugenics, the practice of rejecting embryos at the outset in order to obtain better ones. In fact, genetic manipulations in general definitely represent a problem that we'll have to face.

We can also anticipate the problems caused by the ability to extend the lives, but vegetative lives, of patients who would otherwise die. You see that the enormous progress made in biotechnologies will raise legal problems that we'll have to face.

Perhaps I'm helping you answer Mr. Toews' question. However, I don't think I'm wrong in saying that, in general, you've always been interested in considering the various legal responses that people have come up with in the past to similar problems. I imagine that's because you're an Acadian and you did common law in French and thus probably civil law as well.

Do you foresee any priority action program in the three areas I've just mentioned to you: Canada's role in the international use of force, the consequences of globalization, and also all the new problems caused by the progress achieved through technologies, particularly biotechnologies?

●(0950)

Mr. Yves Le Bouthillier: Those are all important questions. As regards the use of force, I believe the Commission must consider how to address this question in the Canadian context. I wouldn't at all want to give the impression that I would follow what might be called a program under which I'd be on the lookout for international rules. Instead we would have to look at what Canada's contribution might be, as well as how we can address these issues. That's indeed an important question.

You also rightly referred to globalization in general and biotechnologies. Your question enables me — and you've invited me to do so — to go back to the question of the previous speaker. I have to prove that, in fact and in all honesty, I'm not here to outline my program to you.

Does new technology have an impact on privacy or access to information? These are fundamental questions, as are those raised by biotechnologies. A commission was previously established to examine those questions, which does not prevent the Commission from continuing to address them.

Questions relating to fundamental rights and state security are currently raising fundamental questions. A decision was recently rendered. The laws were changed in England. Here our experience may be more recent.

Is the relationship between economic and social rights and civil and political rights in Canada clearly understood?

Let's talk about the concept of precaution in the environment. How can risks be assessed? This is an important issue which the Commission is already considering.

I don't mean it's not important to have a program. My approach is more to say that we'll have to choose among these important themes that are of potential interest to the Commission. If I were asked right now to tell the committee what I'd like to accomplish in the next three years, here's what I'd say. First, I'd want to complete work already under way because that's a matter of responsibility. Second, I would like to make a commitment to make the right choice among all the themes that may be of interest to us. A number of challenges may arise.

In that sense, the effects of biotechnologies, which you referred to, are a fertile topic, which has great potential. However, choices will have to be made. It's true that I'm open to various ideas right now. I didn't come here with a preconceived idea about a particular topic, knowing that the existing plan on priorities already provides for a three-year program. If you want to know whether I'm limiting myself to working on what's already under way, the answer is no.

On each of these issues, I can put the stamp of the Commission, that of the commissioners, that of the advisory council and my own. With the help of commissioners, the advisory council and Canadians, I'll be able to identify other themes. In fact, as I said earlier, I also hope, with the members of this committee, to adopt an approach on a both individual and collective basis.

However, I want to emphasize the fact that I think it perhaps premature to come here with a particular issue in mind. I believe you've clearly noted that I have various interests. Indeed, I've never limited myself to one issue in particular.

●(0955)

[English]

The Vice-Chair (Mr. Garry Breitkreuz (Yorkton—Melville, CPC)): Thank you.

Mr. Comartin, do you have a question?

Mr. Joe Comartin: Yes, thank you, Mr. Chair.

Mr. Le Bouthillier, regarding the process you've gone through to get to this point in front of the committee, do you know all the stages? Do you know what the minister went through in terms of selecting you as opposed to other candidates?

Mr. Yves Le Bouthillier: I was interviewed by people from the Privy Council, and then I was asked to provide references. Then I was asked to come here in front of this committee. So in fact I have no idea of the number of other candidates and so on.

Mr. Joe Comartin: Were any criteria shown to you? Do you have to be a university graduate? Do you have to be a law professor? Are there criteria to be head of the commission—that you've seen in writing?

Mr. Yves Le Bouthillier: No, there was simply a posting for the position, and I don't remember that there were any particular criteria.

Mr. Joe Comartin: Do you know if you went through any other screening by an advisory committee or some kind of screening committee other than the PCO?

Mr. Yves Le Bouthillier: I don't know.

Mr. Joe Comartin: Thank you, Mr. Chair.

The Vice-Chair (Mr. Garry Breitkreuz): Mr. Maloney, please.

Mr. John Maloney (Welland, Lib.): I'm looking at your CV, and as has been mentioned by previous members of the panel here, you have extensive publications in international law, public law. You have certainly a background in academia, but—and I don't mean this in a disparaging way—you don't have much experience in what I would call “the trenches”. Do you feel this is a liability?

Mr. Yves Le Bouthillier: I guess one would always wish that he or she had more experience in all these dimensions, but having said that, I guess on the positive side I can say that I was two years in the Department of Foreign Affairs. I worked within the government for two years in the legal division of the foreign affairs department. I also worked at the Francophonie in Paris, in an international organization. I also have done some volunteer work with organizations where I was, I would say, in the trenches, where I had to take responsibilities in terms of being a board member who had to negotiate and find funding, negotiate leases, negotiate with employees. I was asked to do that to help that particular organization and turn things around with two or three other people.

But I think it is fair to say that I come basically from the academic community. Having said that, I've been the vice-dean for three years, and I think what I accomplished in those three years has been very positive, not only for the program I was vice-dean of, but also for the faculty. In other words, I've always been engaged in what I do.

I will also, of course, rely on the very competent, excellent staff at the commission, so I know that I'll arrive at a place where it's not starting from scratch. It already has a very good record.

So those are the things I would look at.

• (1000)

Mr. John Maloney: From time to time I've seen some of the reports of the Law Reform Commission, and I think there's certainly some very innovative thinking, but not necessarily on issues that I feel are on the radar screen and are really of concern to or impact on the people I represent.

Again, it's interesting the subjects that are picked for consideration. Are they picked out of a vacuum? How are subjects chosen? I know we've discussed this before, but it's still perhaps a little murky for me.

Mr. Yves Le Bouthillier: Not having been to the commission before, my understanding is the way it was set up, aside from the advisory council, which involves right off 29 persons.... I was looking at an article by the first president, who said that when they first looked at the issues, hundreds of topics were suggested to the commission.

The commission felt that the way to handle it would be to create general teams and to explore various issues within those teams. For example, under the team of conjugality they explored personal relationships. If you look at the report on conjugality, then it's one team and it cuts across conjugality or interdependence between individuals. Then that team, interdependence between individuals, is used to look at the series of federal legislation and to examine to what extent that legislation meets or does not meet the needs of

Canadians—in other words, who should get which benefits, in what kind of relationship, whether it's the so-called nuclear family, or whether it's two sisters living together for 40 years.

This has been the approach of the commission: to take a look at general topics, and in some ways to leave itself some leeway within those wide topics to address more specific issues.

The commission has also looked at amendments to the Bank Act. So it does look at more narrow issues, but I wouldn't say it's the rule. The idea is not to start from an existing particular provision in most cases.

Mr. John Maloney: Are all of your five commissioners and 24 advisory board members chosen?

Mr. Yves Le Bouthillier: The other commissioners are chosen on the recommendation of the Minister of Justice to the Governor in Council. The 24 advisory board members are chosen by the commission on application.

I have not been involved in that process, but this is how it has been done.

Mr. John Maloney: You've mentioned the consultative process. How do you envisage the consultative process for the public, and how do you define public?

How do you perceive the consultative process with the provinces? And how do you perceive the consultative process with this committee, which is a little bit of innovation, certainly? How do you prevent these falling out or how do they exist right now?

The Vice-Chair (Mr. Garry Breitkreuz): We will have to come back to Mr. Maloney, but you may answer that.

Mr. Yves Le Bouthillier: I indicated before that I want to continue with what has been done before, because in some ways if something is already using all the various methods that one would use to consult, I think all you can do then is to increase the pace, do it better, present it better, and learn from past experiences.

The reason I'm saying that is if you look at the way the commission has, for example, developed reports, it has an identified team. Now, granted, once it is under the commission maybe the way this team is identified has to be looked at. But then the commission would have a discussion paper. The commission would retain a group of experts. Each commissioner would be involved in particular reports.

The members of the advisory board would also be involved. A partnership would be created with not only universities, but with provincial agencies. There would be town hall meetings, a website, tapes—in other words, all the various technological means or various consulting means that we have would be used. I think the commission has put a great effort into using these.

So whether I can think of something that would get even more Canadians in is certainly a challenge, but it is certainly something I would like to endeavour to do. But given the fact that they have already used the multi-approach to that, it is already a good starting point, I guess.

• (1005)

Mr. John Maloney: Thank you, Mr. Chair.

The Vice-Chair (Mr. Garry Breitkreuz): Before we go to Mr. Toews, I want to follow up on something that Mr. Maloney asked.

As a non-lawyer, I look at your CV and all the articles you have written, and they all are in French. My understanding is that the approach to law in Quebec with its French tradition is quite different from that in the rest of Canada with its tradition based on the British framework. How will this impact on the direction you would take the Law Commission of Canada? I'm looking at your CV and the angle you have come from. How will this impact on your work at the Law Commission?

Mr. Yves Le Bouthillier: I think there are two answers.

To clarify, my background is that I am a common law lawyer. I am originally from New Brunswick; that's where my roots are, although I lived in Quebec for five years. All my training is in common law. Having said that, I'm fortunate to be a member of a faculty where we have civil and common law sections. We interact on a weekly if not daily basis, with colleagues from French common law, English common law, civil law, and so on.

I think the concern is more to make sure that both of these great legal traditions in Canada have an input in the work of the commission. In order to do that the commissioners have to be trained in either common law or civil law, or both, and it's the same with the advisory council. Certainly for me, when I think about its impact, I think I'm very sensitive to the need to have input from the best that can be provided by the two legal systems. It's something I've always been aware of, even though my training is only common law. It's a sensitivity that, frankly, my predecessors, Nathalie Des Rosiers and Rod Macdonald, had also.

The Vice-Chair (Mr. Garry Breitkreuz): Thank you.

Mr. Toews.

Mr. Vic Toews: Thank you.

I was actually interested in many of the things that Mr. Maloney brought forward. I know the comment was made that you might not have experience in the trenches, but I've taught part-time at a university for about eight years. There are trenches even in a university.

Hon. Roy Cullen: University politics.

Mr. Vic Toews: Yes.

It's not that you aren't experienced in trench warfare. Perhaps it's another kind of trench warfare that Mr. Maloney and I are concerned about.

I think his point is a good one. What we've seen in the last 12 or 15 years, in western Canada especially, is the public being engaged in the whole idea of law reform, especially democratic reform. That was I think the fundamental basis on which we saw the rise of the Reform Party. It was not a party I would ever join, but certainly as a westerner I saw that phenomenon develop. There was a real thirst and a real hunger by people to know how our country operates: the Senate, the House of Commons, proportional representation. I have seen a good piece done by the Law Reform Commission of Canada on proportional representation, and that was yours.

One of the things I found, though—and I'm a lawyer, perhaps not the best lawyer—is that it was very difficult to read that document on proportional representation. It was complex. It was difficult. It was good, but it took me a couple of times going through that document to really understand what was being said. I think the Law Reform Commission has a natural audience out there. People are interested in how their country is being run and the laws, the framework, whether it's constitutional or simply statutory.

I'm wondering, how do we engage this thirst on the part of the public? I've made one suggestion. We need to speak perhaps in a more non-legalistic way so that we reach out to more people who have ideas and who are concerned about this. Have you considered this issue at all?

● (1010)

Mr. Yves Le Bouthillier: I guess I completely agree with you on many of these issues. You know people want to get involved, but if they do get involved and the first contact is “What is this about?” you will not be successful. So to make the report, the discussion paper, and so on accessible is always a challenge.

I was looking at the discussion paper on vulnerable workers, and I think the way it is written is very accessible. It starts with the experience of four individuals in four different situations. I think everybody could read that and then say, “What kinds of benefits do they get? How did they get there?”

On electoral reform, first of all it is true that there is thirst for democratic reform in the country, in general. Frankly, that is why we talk a lot about transparency in how the government works. I was talking about my interest in how norms that are created maybe somewhere else—accepted by the executive, I'm talking about international norms—become norms in Canada. It is not as transparent as one would think.

I was reading about the Senate committee on human rights, and we don't know at this point why we're not party to this or that convention. Senators don't know because the information is confidential. I think that is an important issue.

On electoral reform, I took a course on that issue way back in 1978 at university. It was a complex topic at the time, and it remains a complex topic. Again, to be fair about the report of the commission, when you look at these various systems, there are some that are pretty simple to understand, and others you really have to read and reread. Frankly, even in yesterday's *Globe and Mail* on the B.C. system, one of the comments put forward was on whether people can understand how the system will work or not.

It's an area that's intrinsically difficult, because there are seven, eight, or ten different options. My guess is that when you live under that system it gets easier. It's like law. You know, when you take civil procedure in class, you understand better when you practise.

Mr. Vic Toews: In conclusion, my only point here is to remember that you're not simply speaking to law professors. I think that's what Mr. Maloney might have suggested as well. But we want to make sure the taxpayers are generally getting value for their money for the work you do.

There are good ideas and good reports that come out of commissions like yours. I like your use of the word “accessible”. We want to see that these ideas are accessible and can be discussed in a way that everyone feels comfortable discussing them, in terms of being able to understand them.

I'll just leave you with that comment.

• (1015)

Mr. Yves Le Bouthillier: Thank you very much for reinforcing that. I totally agree.

The Vice-Chair (Mr. Garry Breitkreuz): Mr. Macklin is next, for five minutes.

Hon. Paul Harold Macklin (Northumberland—Quinte West, Lib.): Thank you, Chair.

I must admit part of the joy of being further down the list is a few of your questions become eroded as you sit waiting for your opportunity.

However, going back to where we started today, you're appearing before us seeking a position, and you have provided to us a curriculum vitae. For the moment let's assume we have a number of candidates sitting at the end of that table.

I'd like you to provide to me from your CV what you're most proud of. What are the attributes you'd like to be known for, based on your CV, and why do you think we should choose you over those other candidates who are sitting beside you?

Mr. Yves Le Bouthillier: Maybe what I will say is not transparent from my CV. My CV is an article.

I think what I am proud of, or capable of, is to take the time to work with the various individuals involved in a project, to take all the time that is needed so that everybody gets involved, everybody gets excited about a project, and to take the extra step that is needed to make it a success.

Ever since I went back to the university three years ago, I have only looked at how I can improve our faculty, our program, and how I can make the excellence of my colleagues more visible. Also, looking at the positive.... I think that's what I can bring.

I do have a lot of energy. Now, what I want to do is to put that energy to the service of the commission, and more rightly to the Canadian public. I think that's a plus that I bring.

When I was at the Department of Foreign Affairs, it was the same thing. I guess I have this sense of getting the result that I am either setting for myself, or that I was asked to do. It has always served me well.

Generally, I think I am a person who.... My guess is that I'm here because some people felt this is the kind of approach that would be of benefit to the commission. So I don't want to pick one particular achievement. I think when you are looking back at your life, your ideas about what you have accomplished or not can actually change over the years.

In terms of this question of going into the trenches—and I could not agree more that there are trenches to the universities—I am quite proud, and I won't go into any details, but I was referring to this

experience I had last year where I was asked to go into the trenches to help a worthwhile non-government organization, which had deep financial problems, and where we had to make all kinds of decisions. It just happened that I was picked with two other individuals to do that, and they stayed there and did it. That is something I am proud of, too.

I know I can inspire people by saying we've got to get this done, or we've got to renegotiate this lease for this organization, which was involved in human rights.

Hon. Paul Harold Macklin: I have one other question, just going back. Let's suppose all of the commissioners came to you and said “We want you to give us guidance.” This goes back to what was said earlier. “Give us a list of the top three issues that you'd like to see us consider.” I don't think we've more or less settled on where you might go with that, but what would be your reaction to that? What would you suggest?

• (1020)

Mr. Yves Le Bouthillier: Then, I would—

Hon. Paul Harold Macklin: In other words, we'll do a brainstorming, and you come up with your list.

Mr. Yves Le Bouthillier: These days I would look at security and fundamental rights. These are important issues for Canadians. We see ourselves as a society with a constitution, a charter that places a high value on human rights, but we also have to protect the rights of the collectivity. Where do you find the equilibrium? This is something that will need to be looked at.

Another issue would be how far we go in economic or social rights. This issue is important to me. The question of privacy and access to information is becoming more and more complicated, whether it's in criminal proceedings, civil proceedings, or inquiries.

These are all important issues. I can discuss them with the commissioners. But there are so many important issues that I don't regard any of them as the basis of my agenda. We don't want to duplicate the work of other bodies. So this is also something that would need to be looked at.

As much as these three issues interest me, I could easily be convinced to consider others. I have my views, but we have to respond to what will resonate with Canadians. After all, our job is to hear from Canadians, to get them involved. Otherwise, we will not accomplish much, and we will not get useful results.

The Vice-Chair (Mr. Garry Breitkreuz): I don't have anyone else on my list.

Does anyone have any further questions?

No? Then we'll go into recess.

Hon. Paul Harold Macklin: The witness could be excused.

The Vice-Chair (Mr. Garry Breitkreuz): Yes.

I'd like to thank the witness for coming before this committee and answering our questions. We appreciate that very much.

Mr. Yves Le Bouthillier: Thank you.

I hope we will see each other often.

Merci.

The Vice-Chair (Mr. Garry Breitkreuz): We'll recess for a moment, and then we can go in camera.

[*Proceedings continue in camera*]

• (1020) _____ (Pause) _____

• (1040)

The Vice-Chair (Mr. Garry Breitkreuz): Are you ready? We're back in public session.

Mr. Macklin.

Hon. Paul Harold Macklin: Thank you, Chair.

In light of the fact that we have had this hearing this morning, I would like to move, Mr. Chairman, that you report to the House that this committee has examined the qualifications and competence of Yves Le Bouthillier as president of the Law Commission of Canada and finds him competent to perform the duties of the position to which he has been nominated.

I have circulated this motion in both official languages, but I would note for the record that I think *commune* likely should be capitalized.

Mr. Serge Ménard: It's not capitalized.

Hon. Paul Harold Macklin: Not capitalized?

Mr. Serge Ménard: No, it's small.

Hon. Paul Harold Macklin: It's small? So just an *s* on the end would be a correction that I think would make this motion appropriate.

The Vice-Chair (Mr. Garry Breitkreuz): Okay. Do we have to review whether it's in order? It's okay?

The Clerk of the Committee: It's okay.

If you commence with Mr. Comartin for the debate—

The Vice-Chair (Mr. Garry Breitkreuz): Is there any discussion or debate?

Mr. Comartin.

Mr. Joe Comartin: It's probably an appropriate time to mention that our member from Ottawa Centre, Mr. Broadbent, has been circulating a motion to a number of the committees—some of which have accepted this, and some have not—that has set out how appointments should be dealt with when they come before committees for review. It basically sets out that if an appointment is coming before the committee, the committee should have explained to it what criteria were used, what screening process was gone through, whether other candidates were considered, a number of points in there. All that information should be shared with the committee.

I have not, up to this point, brought that motion to this committee, because quite frankly it would not be applicable to judicial appointments, any of those that we might review. I've been looking to try to reword it, so I haven't brought it. But I just want to put the committee on notice, or perhaps put the government on notice, that at some point that motion is going to be coming forward.

I think we saw that this morning, that all of us would feel more comfortable if we knew whether there were other candidates, even if

we didn't know who they were, but why this particular candidate stood out in terms of his qualifications over the other candidates. I think that type of a recommendation and information would be much more useful in making this decision that we have to make today.

I guess I have to say that although I'm going to support the motion today because we haven't moved to set up the criteria for this committee, in the future if we get this type of a presentation I would not find it acceptable and I would not support a nomination like this in the future.

• (1045)

The Vice-Chair (Mr. Garry Breitkreuz): Thank you.

Are there any other comments?

Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard: This is the first time I've heard about this motion. Personally, I find it quite reasonable. I think it will help the committee make a decision and prepare the questions that must be asked. So I agree on the principle. In fact, I don't see why we should be deprived of this information, since it can only help the committee make an informed decision.

[*English*]

The Vice-Chair (Mr. Garry Breitkreuz): Thank you.

Mr. Warawa.

Mr. Mark Warawa (Langley, CPC): Thank you, Mr. Chair.

I would agree with the comments that if we do not have criteria...

I was impressed with the CV that was presented to the committee today, but what are the criteria for this person? What are we looking for, and how many other applicants were there? To be able to do a comparison, to see if this person is the best choice, I think it's relevant.

I don't have a problem with approving this individual, but is that the best choice? Should we first be looking at the criteria and have some of these questions answered? To defer this decision to approve may be wise.

The Vice-Chair (Mr. Garry Breitkreuz): Thank you.

Mr. Cullen.

Hon. Roy Cullen: Thank you, Mr. Chairman.

I haven't actually seen the wording. I guess the wording might be coming forward at some future time—not on this one, but Mr. Comartin's. But all I would say is that I think we need to be careful that we don't attempt to micromanage the selection process.

The question really before the committee is, given the role and responsibilities and the mission of this particular organization, how do the qualifications of this person stack up against the set of responsibilities?

If we're going to get into the process of the selection criteria and process and try to micromanage this, I think there are some pitfalls, but I'm looking forward to any motion that Mr. Comartin could bring forward so that we can have a discussion and debate on it.

The Vice-Chair (Mr. Garry Breitkreuz): I think that's a good point.

Is there any other discussion before we proceed?

Mr. Mark Warawa: Mr. Chair, this is just in response to Mr. Cullen on the roles and responsibilities. Would he or somebody else be able to provide us with those roles and responsibilities and the list of other candidates? I agree that you don't want to micromanage; I don't think that's the spirit there or the intent. But he did recommend that we look at the roles and responsibilities. I don't think that has been provided to the committee.

The Vice-Chair (Mr. Garry Breitkreuz): Mr. Macklin.

Hon. Paul Harold Macklin: I understand that at the moment the procedure and House affairs committee is actually looking at this very matter, this process, and we may get some advice and counsel from them as well.

It's appropriate that we look at this. I certainly don't see it to be inappropriate, but there is a question, ultimately, of how deep you drill in this particular process before you get so engaged. We know how many appointments are made in government. We don't want to get ourselves into a position where we basically lose control of the role we're supposed to play. I think it's a somewhat limited role in terms of approving certain nominations, and in this case we chose specifically to limit ourselves, as I recall, at the beginning of this session.

It's important that we examine that thought. I think it's a good thought, but I think we should also take Mr. Comartin's comments and suggestions along with whatever the procedure and House affairs committee may bring forward as well.

The Vice-Chair (Mr. Garry Breitkreuz): Thank you, Mr. Macklin.

All of our discussion here has been on process and not really on this motion.

Mr. Comartin, you had another comment.

Mr. Joe Comartin: I do, and it's still on process, Mr. Chair. Thank you.

The last thing I want as a member of this committee is to impose on other members of the committee now or in the future the responsibility to review literally hundreds of appointments. We can't do that, and in fact the motion specifically is trying to put in place a meaningful process that would not impose that duty on committee members, because we simply could not perform it. I'm quite cognizant of that, as was Mr. Broadbent in preparing this.

The Vice-Chair (Mr. Garry Breitkreuz): I'll call for the question.

(Motion agreed to)

●(1050)

Mr. Mark Warawa: Mr. Chairman, in the spirit of the comments that have been made, I think it would be helpful not to micromanage but to provide a little more information when we have a presentation like this. It would be helpful to know very generally the roles, responsibilities, and criteria of this position.

Thank you.

The Vice-Chair (Mr. Garry Breitkreuz): I see the chair has returned. We will suspend for 30 seconds.

[*Proceedings continue in camera*]

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