

[Chairman: Mr. Bogle]

[8:50 a.m.]

MR. CHAIRMAN: Let's officially declare the meeting open. With that, a special and a very warm welcome to our two guests today. David Elton and Peter McCormick are here to give us their input on a very challenging issue facing us: electoral boundaries. Without any further fanfare, as we've had some preliminary discussions prior to the actual official opening of our meeting, I think we'll turn it over to you, David and Peter.

DR. ELTON: Thank you, Mr. Chairman. Let me say that as a resident of the smallest constituency in Alberta and therefore the one around this table whose vote counts the most in provincial elections, coming from the constituency of Cardston, my comments are not based on that privileged position which I have of having a vote that really counts in the sense of its relative weight in terms of deciding who our member of the Legislature will be from Cardston. So in our presentation today I don't want you to think that these are a couple of city slickers who are trying to make a case on behalf of those who live in large population centres. Indeed, I have lived for most of the last 20 years in the town of Raymond, which is part of the Cardston constituency, and I have attended a number of nomination meetings with regard to the provincial elections, so I am familiar with how things work and how people feel in a small rural riding.

However, having said that – and I think I say that by way of a partial explanation for the kind of presentation that Professor McCormick and I have developed. We have done it basically on two criteria that your committee is interested in. We have taken a fairly close look at the B.C. court case, Dixon versus B.C., and then we have looked at that in light of the actual populations of the various Alberta constituencies. We've come up with a number of observations which we would like to share with you and maybe even a couple of warnings with regard to your deliberations. Professor McCormick has done most of the number-crunching, so I'm going to ask him to make the presentation, and then I'll participate in the discussion that follows.

DR. McCORMICK: I won't even pretend I'm ad-libbing. I'll just read off what we've prepared.

The next Alberta Electoral Boundaries Commission faces a stark choice between two radically different alternatives. First, it can recommend the most sweeping transformation of the electoral map in provincial history. Under this option the ranks of the rural ridings would be decimated, the present rural/urban balance within the Legislature would swing dramatically and irrevocably, and small-town and rural voters would be outraged and in despair. This is clearly an option that is not to be taken lightly.

Second, it can cleave to the political status quo, dividing the province into urban and rural ridings with different electoral quotas for each and leaving untouched as many of the long-standing electoral divisions as possible. This option would, of course, guarantee a Charter challenge that cannot fail and a collision with the courts that the commission cannot win. This is also an option not to be taken lightly, if only because its obvious conclusion would have to be a second try at redistribution that would accomplish the first.

Although this committee has already been urged by many of those who appeared before it to try to find a third option, it's our firm conviction that any such search is in vain. Whatever routes you follow and whatever justification you try to provide,

the journey must always end at the wall of section 52: "The Constitution is the supreme law of Canada," et cetera.

So welcome to the new world of democracy in Charterland, to which British Columbia has just been introduced and which Alberta now contemplates uneasily. We should have known all along that the Charter is not just about abortion and censorship and the language of science and breathalyzer tests; it also includes democratic rights that will reach into every provincial Legislature in the country and that cannot even be dodged, because democratic rights are not subject to the notwithstanding clause, even if any Legislature dared invoke it, which I doubt. Dixon v. Attorney General, B.C. will not be the last time disgruntled voters invoke the Charter to trigger judicial inquiry, and it will not be the last time the courts rap legislative knuckles. If there is a surprise, it's only that it took so long for the courts to become involved. More than one provincial election conducted since 1982 used electoral boundaries less equal than the scheme struck down in Dixon, and that list, of course, includes Alberta.

To make the point bluntly, the election that gave us the 22nd Legislative Assembly of the province of Alberta was conducted on the basis of electoral divisions that are clearly and without question unconstitutional. Electoral boundaries drawn in that way cannot possibly survive, cannot even come close to surviving, the analysis to which Madam Justice McLachlin subjected the B.C. proposals. Indeed, in many ways the ridings now represented in Edmonton do not even come as close to the acceptable standards as the B.C. scheme.

To give a few examples of how badly off we are right now, how badly our scheme fares in comparison: first, the largest electoral division in B.C. would have been 163 percent of the average; Alberta's largest district in '89 was 168 percent of the average. Only one B.C. electoral division would have been less than one-half the average riding size; five districts in Alberta fell below this level in 1989. Twenty-one of the 69 B.C. divisions varied from the average size by more than 25 percent; 43 of the 83 seats in Alberta varied by more than this range. Twenty-six of the 69 B.C. ridings would have fallen within 10 percent of the average; only 16 of the 83 Alberta seats did so in 1989. Assuming that a party won only the smallest seats – which is always a stupid assumption, but it's the way you're supposed to argue these things – it could have won a general election while taking ridings containing only 40.9 percent of the total population. Madam Justice McLachlin's figure is wrong; she said 38 point something, but it is 40.9 percent. For Alberta the same figure was 36.8 percent.

Finally, the proposed average departure from average riding size in the B.C. proposal was below 20 percent. In Alberta in 1989 it was over 27 percent, half again as large. The only criterion in which Alberta looks better than B.C. is the ratio of largest seat to smallest seat, and that's because of a single grossly atypical riding in B.C. Of course, it generates the headlines and the big – not that they're the most exciting – numbers. If you look instead at the ratio of second largest seat to second smallest seat, getting rid of the two extremes, then the B.C. figure was only 2.95 percent, and the Alberta figure in 1989 was 3.45 percent.

So I think it's absolutely clear on any of a variety of criteria that the style and standard of previous Alberta redistributions is no longer constitutionally acceptable. However, we would strongly recommend that any proposed distribution be measured, not just against the rather primitive measures used in Dixon v. Attorney General, B.C., but against some of the more sophisti-

cated devices that have emerged in the academic literature. To oversimplify slightly, the first generation of apportionment focuses on the extreme individual ridings in terms of a straight ratio of largest to smallest or in terms of departures from the norm; you know, plus 63, plus 68, whatever you are over the average. Madame Justice McLachlin based much of her argument on measures like this. The second generation looks beyond the most unusual extreme to be a bit more broadly based; for example, computing the minimum share necessary to win a majority. The B.C. decision refers to this briefly in passing. The third generation creates measures that include every single unit in the whole range, such as the Gini index, which is the area under a Lorenz curve generating a single number which can be compared to the 50 of perfect equality.

We think it's unwise to devise a redistribution scheme that would not survive third generation assessment. It's better to anticipate the increasing sophistication of judicial analysis of fairness as the jurisprudence develops rather than to suffer the embarrassment of getting caught sailing too close to the wind. For example, the B.C. Fisher commission recommended, and the B.C. Supreme Court endorsed in passing, the notion of a 25 percent maximum departure from average riding size. In the context of Alberta's electoral traditions and present expectations, which you've been exposed to over the last few months, this makes it very tempting to suggest or consider dividing the province into two blocks of ridings – here we go again – one urban and one rural, one clustered very tightly around a riding size 125 percent of the average and the other clustered around 75 percent. This meets the first generation tests, the ones that McLachlin leaned on so heavily. No departure from the average would exceed 25 percent, if you crunch your numbers finely enough, and the ratio of largest seat to smallest seat is only 1.67. So far so good, but it fails any of the more sophisticated tests. The minimum percent needed to win a majority would then be 38.25 percent, lower than the 40.9 percent rejected in B.C., lower even than the version of the number that McLachlin somehow arrived at using, obviously, a different computer from mine. The Gini index would only be 43.8, which is just marginally better than B.C.'s 42.9, and B.C.'s was thrown out. I don't think .9 is enough of a difference to be confident about.

It seems likely that future courts will refine the argument and push up the standards. I would suggest, for example, that if maximum departure from the average is 25 percent – and that's what has already been hinted at in B.C. – then the average departure can't be 25 percent. That will not be acceptable. It should be much lower, notionally 12.5 percent, half of the extreme. Half will be right close; some will be far away; it should balance out to an average somewhere in between. This would translate as a minimum-to-win figure of 44.4 percent – we've never run an election like that in Alberta yet – and a Gini index of 46.9. This standard is not outrageous, because at least three provinces, Manitoba, Saskatchewan, and Quebec, have already exceeded it. They've got electoral redistribution schemes that generate outcomes more even than the standard I'm suggesting. So we think it is unrealistic to assume that looser standards will be acceptable for long, if at all.

Although with some feeling that this is perhaps not what the committee wishes to hear, we would urge that it is time for Alberta to bite the bullet and to redistribute on the basis of one person, one vote. The rural communities and the small towns will not like this idea, and they will let you know about it. Possibly the province's present majority party will suffer from the effects as well and, ironically, in a way that they would not have

suffered in the past from a more rigidly egalitarian allocation. However, in the long run, nobody will gain from an attempt to live in the past and ignore the Charter. When someone tries to dodge their legal duties, only the lawyers get rich. We can either embrace the new world of constitutionally entrenched rights and principles, or we can have them forced on us by the courts. We can either devise our own nuanced version of fairness approaching equality, or we can have federally appointed judges read us a lecture on how a democratic people should conduct their business. As we said earlier, there is simply no other choice.

MR. CHAIRMAN: Thanks, Peter.

Anything you wanted to supplement, David?

DR. ELTON: No. I'd be pleased to respond to questions at this time.

MR. SIGURDSON: Thank you very much for the presentation. When you work towards, say, a zero variance instead of having a 25 percent plus or minus variance which would probably be challenged, and you had an anomaly, say, in the area of Chinook – we talked about Hanna-Oyen, Sedgewick-Coronation – where you've got very sparse population, limited access, degrees of difficulty . . . If that was the anomaly, as in Saskatchewan, where they have two constituencies in the north of the province that are 50 percent below the average, do you think that would withstand a challenge?

DR. McCORMICK: For one or two ridings, yes. If you try to make it a large category containing a significant portion of the total seats, then no, it won't wash.

MR. SIGURDSON: So working closer, then, to the average and then justifying the anomaly, it may withstand a challenge.

DR. McCORMICK: Yes, the extreme departure. Again, it wasn't a major part of the decision. It was just sort of in passing, but in passing the single most relevant decision we've got so far, which is Dixon, said that the 25 percent standard for the most extreme departure seems acceptable. Now, that doesn't bind any future court. They might say that 25 percent's an awfully big number. You can't take that one to the bank yet, but you better not try to go with 30 or 40 because that's clearly going to be frowned at. If you only do it with one or two ridings, then maybe you can pull it off. Like B.C.; that was crazy. Fine, Atlin's got to be small, and there is an extra argument for Atlin because you push up the chances of having the native population represented in the provincial Legislature by keeping Atlin really, really small. You could have made a roundabout minority's argument for it. I don't see any trace of that in the decision, but everybody in B.C. knows about it, so that had to be in the background. If anybody can get away with an argument for a really tiny riding in the present context of Canadian politics, Atlin's the best one to go in front of the courts with, and they got thumped for it. So don't go much over 25 percent and don't do it for too many ridings, and you'll be okay.

MR. SIGURDSON: Do you think the constituencies in Saskatchewan as they're currently drawn, with the two ridings in the north being 50 percent below the average, will withstand a court challenge?

DR. McCORMICK: We'll have to wait and see; 50 percent's an awfully big number. Okay, Saskatchewan has made such massive improvements, and that's one thing they can point to as well. In their redistribution they've been moving toward a much more equal weighting of voting. In the first generation test you look at the extreme and you say, "Hey, look at this: 3 to 1," or "Look at this: 3.5 to 1," or whatever. The more sophisticated reply is to look at the system as a whole, and on any of the more sophisticated measures, Saskatchewan has one of the three best electoral redistribution schemes in the country. If Saskatchewan is in trouble, then we haven't run very many truly democratic Charter-style elections in provincial politics in Canada in our history. If Saskatchewan is worried, then every other Legislature in Canada is really going to have to clean up its act or be dragged in front of the courts and humiliated.

DR. ELTON: My view is that the loopholes which were left in the decision we're referring to are such that they will allow, on historical basis, on ability of MLA to serve his constituents and so on, two or three, maybe four or five, constituencies that are outside of the general 25 percent rule. But if one pushed it beyond that two or three or four, and if you didn't have a very good rationale based on the other two criteria that your committee are looking at for those two or three, then anticipate a challenge and anticipate that the courts will give you a lot of trouble on it.

Peter's point is simply that we fully anticipate that the next time this kind of court case comes up, people will use more sophisticated criteria for establishing reapportionment. They won't be so concerned about one or two extreme cases. They'll be much more concerned about the overall distribution and whether we approximate the one man, one vote on a basis that looks at all voters in the province and not simply the people in Cardston or the people in Calgary east. So under those criteria and if you work with those guidelines, we think you'll be able to put together something. But, once again, given the existing position in Alberta, it needs to be changed dramatically. There are going to be a lot of people, obviously, who are going to be upset with it.

But, really, you only have one of two choices; that is, to go back and to explain to them that they now live in a country that has a Charter that specifies these requirements, or that you can anticipate that you'll have a court challenge.

DR. McCORMICK: Bearing in mind that the judge in B.C. who delivered this decision now sits on the Supreme Court of Canada. I mean, that's not necessarily an overwhelming extra consideration, but it strongly suggests that this precedent will not simply vanish, as it might have if Madam Justice McLachlin had stayed as Chief Justice of the Supreme Court of B.C. for another 20 years.

MR. LEDGERWOOD: I'm wondering if you've looked at the federal system and the senatorial clause, the 15 percent clause, the grandfather clause. If Alberta were to implement a similar clause, do you think it would stand the challenge?

DR. McCORMICK: No, not a chance. The reason the federal redistribution can work under those clauses is that the ones that are entrenched in the Constitution already, like the senatorial clause, cannot be touched. The Supreme Court, in the challenge to the Ontario legislation extending funding to the Catholic high schools, has already said that you can't use one section of the

Constitution to overturn another. The Constitution is the supreme law, but all of the Constitution is equally the supreme law. Therefore, the senatorial clause cannot be struck down by the Charter. However, if you try . . . You know, there are no comparable, constitutionally entrenched principles limiting the distribution in Alberta. There's conventional understanding that you don't move boundaries if you don't have to; you try to preserve as many of the districts as you can. It's not in the Constitution anywhere.

MR. LEDGERWOOD: But the grandfather clause was since the Charter was passed, and there was no challenge to the grandfather clause.

DR. McCORMICK: The primary way they've been able to run that in federally is by the device of constantly increasing the total size of the federal Parliament. Therefore, the provincial allocations can be held up by increasing other provinces' allocations. In sort of American style, you're limiting the total size of the House of Representatives. If somebody wins, somebody else has to lose. If your population is falling relative to the national total, stand by to lose a Congressman; it's just got to happen. In Canada we don't do that. We hold you where you are, and then we stay within the proportional representation, rep by pop, for provinces by adding seats somewhere else. Grandfathering can work in that direction. You could keep every single rural riding you've got right now if you made Cardston the quota and then ran the figures through. You would have the largest provincial Legislature in Canada, of course, if you did that.

MR. LEDGERWOOD: In the world.

DR. McCORMICK: If you wanted to preserve - you know, to grandfather - it in a way that would stand up in the courts, you make Cardston your smallest riding, you build everything else around it, and then you can hang on to most of the boundaries in the rural regions. You will wind up carving most of the city ridings into three new ridings and the numbers will be grotesque, but that's the way you'd have to run it, because the swing is so great. I mean, if two-thirds of the people in Nova Scotia moved somewhere else while the rest of Canada continued to grow, then the grandfather clause would be seriously rethought. That's the kind of swings in population that you're having to deal with in your redistribution.

MR. CHAIRMAN: Frank, and then Pat.

MR. BRUSEKER: Thank you for your presentation, gentlemen. I just wanted to ask you a little bit about what you were just talking about, which was the size of the Legislature. We've had presentations that vary all the way from reduce the size of the Legislature down to 69, to increase the size of the Legislature up to 95. I wonder if you might want to comment, especially in light of the fact that you have looked at other jurisdictions and probably have their consideration as to the ratio of electorate to MLAs. I wonder if you might want to comment a bit about the physical size of Alberta's Legislature the way it is currently, at 83. Should we keep it at 83, go up, go down? I wondered what your thoughts were on that.

DR. McCORMICK: Okay. Alberta is fairly high for the size of the province. B.C. is really small. I mean, compared to the size

of its population, B.C. packs a lot of voters behind a single MLA; then they pack them unevenly, another problem. The standard size for a provincial Legislature in Canada is more in the 50s, and Alberta is the smack, bang average province. Statistically, we're just about exactly 10 percent.

MR. BRUSEKER: What do you mean, 10 percent?

DR. McCORMICK: We're around 10 percent of the total population of Canada, so in a sense we are the average. Some provinces come in much smaller; some come in much larger. But if all of Canada were 10 Albertas, we'd have the same total population but a totally different political dynamic.

It always seemed to me that down in the 50s it's an awfully small provincial Legislature and it's got very cramped dynamics. That's one of the things which have tended to undermine democracy in provincial Legislatures. The numbers are so small that oppositions just get overwhelmed, outnumbered; there are too many things to deal with. It also permits cabinet domination of the caucus, because your cabinet gets so large relative to the average governing caucus in provinces. Part of the dynamics which democrats tend to deplore is related to size, so staying in the 50s strikes me as terribly cramping. Cutting down the size of the Alberta Legislature I personally think would be unfortunate.

You can't realistically let it grow to the size of Ontario and Quebec without getting all the obvious sneers. We already take a roasting for having such a large provincial cabinet compared with the larger provinces. I would think that raising it to somewhere under 100 would be plausible. If that's the price of trying to keep as many as possible of the rural areas represented with ridings they can recognize, that don't have quadruple-barreled names, then letting it rise towards 100 would seem perfectly acceptable to me. I think 100 is a psychological barrier that you should steer away from. Once you crack 100, you could let it grow quite a bit without anybody sort of noticing it in the beginning, but I think it's a psychological barrier to stay under. I think that would change the dynamics of the Legislature too dramatically the other way.

But a size in the 70s, 80s, low 90s, to me – I wasn't preparing for this directly. I did a lot of number-crunching once, comparing sizes and reading analyses of how some provincial Legislatures operated, and it seemed to me that the 70s to 80s created a nice dynamic. Anything much larger and you're headed toward the more formalized, bureaucratized, top-down style of Ottawa. Anything smaller than that and it's too folksy and too easily overwhelmed. There's a place in the middle that gives you a useful government/opposition, cabinet versus caucus balance most of the time. Landslides would change that; squeaky elections would change that. But, normally, winning parties take about two-thirds of the Legislature; normally, the cabinet is about half the size of the total caucus. Now you have three roughly equal groups, roughly equal in numbers, and now it's a nice dynamic for politics.

MR. BRUSEKER: Okay. The other question I had for you is that if we implement your proposal, some of the rural ridings would grow substantially. I know you didn't deal with this either, but I wonder if you might wish to comment in terms of members' services. For example, the constituency of Chinook would increase substantially and would get some new name. What is your feeling in terms of providing extra money for extra constituency offices, perhaps two or even three constituency

offices and a secretary or, you know, a person in each one and travel allowances and so on to deal with the problems which have been raised, as you've mentioned quite a number of times, that the rural MLA has got the large area, more travel, difficulty of reaching constituents and so forth?

DR. McCORMICK: Well, first of all, it's not so much our recommendations; it's simply our conclusions of what Dixon v. AG, B.C. means for Canada. I mean, I have a lot of sympathy for the argument that in a really nice world MLAs represent stable, ongoing communities that have psychological borders to them and an ongoing feeling of belonging to part of a single community that has a will to be expressed and represented by a member. You know, that was a nice world to live in. I think the Charter has taken us out of that world forever. The growth of large urban cities with totally artificial lines carving them up for ridings moved us away from that anyway. But the Charter means we can't even pretend we're there anymore, and I regret the passing of it. So it's not a problem that I feel any great joy about. It's one I fully acknowledge, but I think the Charter already had built into it . . .

Like I said, the mystery is that it took so long for the courts to get dragged in, for someone to get the obvious statement out of the courts. One person, one vote. Numbers are what count; live with the consequences of what the numbers mean. And that's it; that's the way democracy operates once you start saying numbers are the most important thing. And it's clear in the B.C. decision, which I don't think we modified in any major way later on – refined, yes, but not departed from or abandoned in any way – that numbers are the most important thing. Area is a reason to go for the extreme – you know, the 25 percent range. Really extreme area departures and you can go to the really extreme 25 percent and then ad hoc your solution to the problems that emerge there. But keeping the riding size really small . . .

In a way, B.C. has spoiled it for everybody – right? – by overdoing it with that ridiculous 13 percent or something of the average riding size. It's just lunatic to try to sneak something that small past the courts. They've spoiled it for everybody else, but any lawyer will tell you that's the way it operates. Some idiot, you know, tried to run something by so dumb the courts couldn't ignore it, and now people who want to try to sneak 50 percent by are less likely to succeed. If Saskatchewan had been the first one through the courts, we might be able to say that 50 percent for one or two ridings would be okay. But, no, B.C. went by first and had their knuckles soundly rapped, and now everyone's got to be more careful.

So I think additional members' services will be important, yes. It will probably cost us more money to serve the newly grown rural ridings, although we're saving by having one less MLA, so we can put some of that money into services.

DR. ELTON: There's another way to attack that, too, and that is to ensure that people understand that being an MLA is a full-time job and not a part-time job. Certainly I know all of you around this table have dealt with the 30 percent problem in whatever context. That's moving towards what I think is, in the long run, a better situation, where MLAs recognize that what they're doing is a full-time job. It's an unusual type of job. It doesn't take eight hours a day; it takes 10 or 12. And it doesn't take five days out of the week, thank you very much. When people run for public office, they've got to realize that.

So when we talk about services, maybe what we should do is

think of ways of freeing it up for that individual MLA to serve that larger area. Certainly I wouldn't think it's in terms of offices. I would think it's more in terms of travel. Because you can have an office and it will sit there for weeks on end and no one will visit or phone.

Telephoning, with regard to the RITE numbers and all that sort of thing, eliminates much of the contact. We have to recognize that we live in a modern society that has all kinds of convenience for communication purposes. Relative to where we will be 10 years from now, the communication revolution has just begun. People will have in their homes 10 years from now fax machines. They will have all kinds of electronic interaction which MLAs will be able to avail themselves of and use in terms of servicing that citizenry, and it won't matter whether they live in Hanna or whether they live on 8th Avenue in Calgary. Those kinds of things are there, the technology is in place, and it's just a question of distribution and competition to drive the prices down. All those things facilitate, in terms of communication, my ability as a voter to reach my MLA. So you've got to think of it in that context too.

We tend to think, in terms of electoral boundaries, of people riding around on horseback. We can't make it from one town to the next, so we've got to have a small, condensed riding. Well, that simply isn't the case. It's true that we haven't increased the speed limit in this province, so people like Bob still have a fair amount of travel to do. I don't know what speed he travels at, but those kinds of things don't need to take place as often because we can now use telephones and fax machines, and they do travel faster than any of us on the road. Those kinds of things have to be taken into consideration when you're considering those boundary changes, and that's going to allow you to have a larger rural constituency that can still be served just as well by an MLA who takes his job as being full-time and fully avails himself - and the government recognizes that he must avail himself - of modern communications techniques. Those things will collapse the importance of that distance issue.

MR. CHAIRMAN: Thank you.
Frank, anything else?

MR. BRUSEKER: No, nothing. That was it.

MR. CHAIRMAN: Pat.

MRS. BLACK: Thank you, Bob. Peter, you keep talking about the constitutional challenge, and I'm wondering how it is that federally Prince Edward Island has four Members of Parliament.

DR. McCORMICK: It's built into the Constitution. You can't use the Constitution to challenge another part of the Constitution.

MRS. BLACK: Well, you know, you're sitting there and you're looking at representation by population, and we have two seats up in the Territories that don't have the population to justify it. How do we get around that? We say on one hand that we don't have equal representation by population in our federal Legislature, and yet we have to have it here in our provincial Legislature. I guess the other part of it is that in Alberta we have been talking about regional representation through our Triple E Senate concept, that we aren't looking at representation by population. Are you saying we should be ignoring our Triple E concept and not looking for regional representation in the

upper House? Or are you saying that we should be looking at our traditions and our regional disparities and taking that into consideration when we make decisions on our own boundaries within our own province? Because one of the things I noticed in the McLachlin case is that certainly they dealt with the 25 percent rule, but she also said to keep in mind the historical, traditional, and cultural values of the region.

Historically in Alberta we have had more rural seats than we have had urban seats. Now we have moved to a point where we have almost a 50-50 split. We used to have about - I think it was a 70-30 split and then a 60-40 split, rural over urban. So our traditions have been in our rural communities, and now we're saying that we have to be modern, which I agree with. I'm from one of the large urban seats which is probably going to have to be chopped up a little bit because of the size of it, but I'm wondering: are we forgetting our traditions and our cultures and our heritage in Alberta by saying that our regional representation is very important to us? We have fought for 20 years for a Triple E Senate.

DR. McCORMICK: We never fought for a Triple E House of Commons.

DR. ELTON: Can I respond in another way?

MRS. BLACK: It's an upper House.

DR. McCORMICK: You're talking about a lower House though.

MRS. BLACK: Well, when you talk about whichever House, should we have an upper House in Alberta? Should we have one? Could we afford to have that?

DR. ELTON: Precisely; that's my point. That's the point I wanted to raise, because your argument leads you to that conclusion. I wouldn't accept that conclusion, but if you want to argue on the basis of regional representation within the province of Alberta . . . Because we don't make that argument; we have a unicameral system. Your argument leads to the conclusion of a bicameral provincial system, which there used to be. We did away with the last one in 1960. It wasn't that long ago in the province of Quebec that they had two Houses. We've never had one in Alberta. We've accepted a unicameral system, and we've accepted the thesis that the province of Alberta as a political entity is small enough that it does not require two Houses to serve its citizenry. We have also accepted historically and as part of our democratic tradition that the unicameral system within this province would be based on some notion of one person, one vote. That's the issue that we're facing now.

So when you talked about the history of Alberta and the ratios and so on, you were also talking about an Alberta where there was a much larger proportion of the population in the rural areas, when the range was 70-30 between the two, and that was much closer to one person, one vote than we currently have. The people of Alberta have by virtue of their own moving vans and half-ton trucks decided in part how they would like to see this province governed through MLAs' constituencies. They have decided to move into the Lethbridges and the Red Deers and the Calgarys and the Edmontons. Nobody forced them to do that. Now, what we're dealing with is a Legislature that you're talking about that will be elected in the 1990s, and it must reflect those historical movements, not simply the ratios you

think of when you look at the Legislature but also the movement of people within this province. That's really what this court decision is getting on about in part also, that you have to move forward as the population of a province moves around by its own logic for whatever reasons. Then the political system must adapt.

Now, in terms of the analysis you made of the federal system, they cannot be challenged, because it's part of the federal Constitution, the country's Constitution, in terms of Prince Edward Island, in terms of the northern seats, and so on. That isn't challengeable. I as a citizen can go to the court, and the court will come back, as Peter has indicated, and say: "Well, it's in the Constitution. As a court we aren't here to decide what's good and bad about the Constitution. We're here to apply the Constitution." But anyone in a provincial riding situation that comes before them can claim the Charter, and they can say, "Well, yes, it is true that the legislation in that province must meet the criteria; the redistribution must meet the criteria of the Charter." So it's unchallengeable at the federal level, but it's very challengeable at the provincial level.

Now, if the federal politicians decide not to, for example, leave the extremes at the 25 percent in their current legislation that they have and move even more ridings to either end, then they too would be challenged, because that isn't in the current Constitution. They would be challenged by that new redistribution, and they may be challenged by the existing redistribution. I mean, it's possible that you or I could take a case today to the courts and fight it through and find out that redistribution in this country on the basis of the House of Commons is unconstitutional. It's not clear that that can't be done at this point; it just hasn't been done yet. But that's in the cards. I mean, when we look south of the border, that's where much of the literature on this whole issue is developed. They've been going at it for 20 years, and you can see the movement they've made and the direction they've taken. It's pretty clear that we have an American style of constitution now with regard to one person, one vote, and it's slowly but surely going to make its impact on us.

DR. McCORMICK: Except for the extremes of P.E.I. and the Territories, the House of Commons is very even, extremely even. If you go back 20 years, it's laughable, but within the last 20 years they've really tightened up distribution in the House of Commons. Again, that's one thing courts will always look at: if you're making steady progress toward a really desirable outcome. I'm sure that's the first thing anybody would argue in defence of the House of Commons. We mightn't be at the goal yet, but boy, are we getting close. Remember the old figures for York-Scarborough, with 265,000 voters, and the Îles-de-la-Madeleine or Mille-Îles with 5,000 voters, and the ratios that used to run in the old days? You can only run those games now with the Northwest Territories and the Yukon Territory and P.E.I. As soon as you leave those, everything falls into a nice, pat district. They don't even use their 25 percent variation very often. Compared with every provincial Legislature in Canada except maybe Quebec and Manitoba, the feds are squeaky clean. If they can be challenged successfully, the provinces are in unbelievable trouble.

MR. SIGURDSON: So don't botch it. Is that a challenge?

MR. CHAIRMAN: Anyone else? Yes, Mike.

MR. CARDINAL: I guess just sitting back listening here and also attending a lot of hearings in the past, listening to rural Albertans bring forth their concerns about the possibility of them having less representation and having a system in Alberta where two major centres run the whole province, there's always the issue of regional disparities. But from what you've brought forward here today, if you are right in what you're saying, then the process of hearings of the nature we've been holding and will be holding in the future is actually a waste. We're wasting rural Albertans' dollars and their time by listening to them and hoping to come up with a system of reasonable and effective and equal representation for all Albertans. Because from what I hear, you're saying that regardless of what we come up with to try and set up an effective, equal representation for all Albertans, that would be challenged anyway, and we wouldn't have a hope in hell to ever set up a system with a variance like that.

So in a way it's good for me to hear that. In a way it's not so good, because I don't like wasting taxpayers' dollars to start with, and I don't like to go out and listen to rural Albertans with them thinking that we are going to come up with a system that's going to be fair and equal for all Albertans, regardless how poor rural Albertans may be. So it confuses me in a way, but I guess that's the facts. If courts are going to decide how our provinces are run, then I guess that's something we need to deal with at a different level.

DR. McCORMICK: Welcome to the brave new world of Charterland. We're gradually sorting out what it means to live in Charterland. I honestly don't believe that very many Canadians have the slightest idea what it would mean to live in Charterland. We're sort of fed the Charter in a way which suggests that to be against the Charter is to be against human rights and to want to gas Jews, and the only kind of person that ever opposed the Charter is the kind of person that thought Treblinka was a great idea. And the way you were vilified for daring to stand up in public and oppose the Charter was absolutely unreal. A whole set of concerns about life in Charterland, about judges taking over and courts deciding things that in a democratic society we're accustomed to having Legislatures decide for us, that whole dimension got left out, as if rights are these magic, glowing things you can't oppose.

If you study provincial politics, you look at provinces like British Columbia and Manitoba, the worst examples, where the whole dynamic of provincial politics is the huge metropolitan centre versus everybody else, and everybody else always loses. That's not a political dynamic that you enjoy reading about in the history books; it's not a dynamic you like seeing in practice. But I mean, I recognize the trend you're talking about. I regret it. I'm from a small town. I live in Lethbridge now; I'm originally from Lacombe. Lacombe will vanish. Lacombe will not be entitled to its own member in the future; I'm quite aware of that. I'll be sorry to see it disappear from the list of ridings. I'll be sorry on election night when I can't recognize the names of the candidates still running there because Lacombe will have gone. But you don't have to applaud it. All you do is say, "We approve the Charter; the Charter is now part of the Constitution." Our courts are taking it very seriously. Without getting too heavy-handed or too hysterical about it, they're taking it very seriously. And a redistribution even remotely like the last one in Alberta will not survive a Charter challenge.

Now, there are times when charging at windmills is the noble thing to do, you know. You don't necessarily laugh at people for trying to uphold older values. It's just that the older values will

get run over by the Charter this time, that's all, and it's sad. It doesn't mean the people who are standing up for other values are wrong and want to gas the Jews in Treblinka again; it doesn't mean that at all. It just means there are lots of values in a society such as our own, not all of which made it into the Charter. And the values you're speaking for now didn't get there. The equality – "equal" is the one word you used several times, and what you had in mind was an equality of communities. Sorry, that one didn't get in. Equality of people did.

DR. ELTON: There is an option. There is an alternative, and that's to go to a bicameral system in the province of Alberta. The state of Montana has one. Most U.S. states . . .

DR. McCORMICK: Forty-nine of 50.

DR. ELTON: There's only one unicameral system, and it is . . .

DR. McCORMICK: Nebraska.

DR. ELTON: So that is an option. You could decide to establish, and it's within the power of the provincial government to establish, a bicameral system and to work one.

DR. McCORMICK: Technically, we have one left in Canada. Technically, P.E.I. is still bicameral.

MR. CHAIRMAN: Yes.

DR. McCORMICK: But they just happen to sit in the same Chamber and all have one vote, so you overlook it all. But they've got Councillors and Assemblymen sitting in the same Chamber together.

MR. CHAIRMAN: They're coterminous boundaries?

DR. McCORMICK: Yeah. Everybody votes twice. The boundaries were coterminous; the electorates are now identical. That's the shift they made more recently. They used to have two different voters lists for Councillors and Assemblymen. Some people – the property qualification for the upper Chamber. That's been gone for quite a while.

MRS. BLACK: Peter, this is not really on the same topic, but you've mentioned the Charter several times. And I agree with you; it seems every time you turn around, the Charter is governing us. Do you feel that there should be some sort of movement afoot to make Charter changes so that we can deal with the Charter? It was never really dealt with in the public eye. It was brought in, and people were oblivious to what was in it or what, more importantly, was not in it, that it didn't cover. Do you think that's something in the future, in your field? You're in political science.

DR. McCORMICK: Well, two basic points. First of all – first of all, it's too late, because it's already there – the most important thing about the Charter is not the exact words you use inside; it's that the Charter exists. That's the revolution. In a sense the words, the sections, the commas: all of those are details. The huge step, the thousand miles, is entrenching the Charter. The six inches on the end is the punctuation, changing a few wordings here and there.

We live in Charterland. We've just got to accept that fact.

Legislatures now get their papers marked by judges; that's the new world. It used to be that in some areas Legislatures would get their papers marked by judges and sometimes they'd pass and sometimes they'd fail. But a lot of times nobody got to mark the Legislature's papers but the voters at the next election, and those days are gone. Now you get your papers marked twice: first of all, by judges, and then later on by the electorate the next time you go back and face them. And it's just that second set of grading that we have to accept, that you have to come to live with now. There are strengths and weaknesses to it. Sometimes it's wonderful. Sometimes the good guys win. Sometimes judges stand up and recognize rights that other people overlooked or that pragmatic calculation led people to duck away from, and they confront the issues that are just too hot for politicians to deal with right now. But other times Charter rights cut in directions that nobody anticipated and hurt things that people thought were important, even if they don't qualify as a Charter of Rights in themselves. And that's the world of Charterland; that's where we are now.

The Americans are still discovering what their Bill of Rights means. Well, we've got the same kind of journey of exploration ahead of us, except we're still coming to terms with the basic elements. You know, how come courts are telling us what our abortion laws should be? Well, the Charter; that's why. If the Charter wasn't there, we'd be saying what our abortion laws should be, and the judges would be trying to make sense out of the mishmash compromises we came up with, but that would be their only function. Now they get to sit back and say, "Sorry, not good enough; try again." They'd give you the same with redistribution: "Sorry, not good enough; try again." All kinds of polite stuff in it: the will of the people, the historic communities, da da da. But when it comes down to it, if the numbers don't measure up, "Sorry, not good enough; try again."

DR. ELTON: You're looking at two people who made this argument 10 years ago, against the Charter, against the entrenchment.

MRS. BLACK: You're looking at three people. I was on that group too.

DR. ELTON: But one has to accept that there are battles you lose in this process, and then you live with the results.

MR. CHAIRMAN: Any other questions or comments? Any concluding comments, David or Peter, you'd like to make?

DR. ELTON: No, not other than that we've both got places we've got to go, and I know you've got other things you want to do.

MR. CHAIRMAN: Well, on behalf of the committee, a special thank you for your sobering advice to us. We do appreciate the time you've taken and your input.

DR. McCORMICK: Thank you very much for breakfast and for the chance to speak to you, in ascending order of importance.

[The committee recessed from 9:39 a.m. to 9:44 a.m.]

MR. CHAIRMAN: Bob and Robin have some planning details to go over with us, to review with us.

MR. PRITCHARD: Robin is just going to go over some changes with the government aircraft.

MR. WORTMAN: We've reprinted revisions to parts of your itinerary for next week, and I'll just lead you through them. The covering memo addresses them. Government aircraft have assigned us the Dash 8 for the trip to Slave Lake and Fort McMurray. For committee members that means an earlier departure. The staff were going to leave earlier when we had two aircraft, so you'll have a little bit more time in Slave Lake than originally planned. It will also mean us leaving together from Slave Lake to Fort McMurray, and we had hoped to maybe get the committee into the air before staff because we have to wait to take down the room after the meetings. So we might be compressed for time in Fort McMurray once we land, which means that the committee members will probably go directly into the committee room. So we will have refreshments on the aircraft: sandwiches, fruit, salad, that sort of thing. So if you can just make note of the departure changes there.

As well, on Tuesday the 13th we'll be leaving from the Legislature Annex half an hour earlier at the request of the chairman. We reviewed some of the time estimations for travel, and we made that the suggested departure time from the city for those of you traveling privately. For the trip from St. Paul to Viking, we've allowed an hour's traveling time, but we've also made time available for dinner once you arrive in Viking. We've said that's optional. It depends, of course, on when the committee's able to adjourn in St. Paul. We once again might end up in a situation where we go directly into the committee room, and then that additional cushion for dinner will become a cushion for travel time.

If you look at the trip to Donnelly, government aircraft have notified us that we once again may be given the Dash 8 for travel to Donnelly, versus the two other aircraft, which again would alter the committee members' departure time to an earlier time.

MR. CHAIRMAN: Robin, we've got a problem. Stockwell Day, Pam Barrett, Pat Black, and I are all on Members' Services, and we have a scheduled meeting between 9 and 10 that morning, and that was on the premise that we were meeting . . .

MR. PRITCHARD: On the 14th?

MR. CHAIRMAN: . . . on Wednesday the 14th. So if need be, you'll have to back things up for Donnelly.

MR. WORTMAN: Okay. Thank you.

MR. BRUSEKER: You were aware that I was not going that day? I cannot attend that day.

MR. PRITCHARD: Yes. You said that earlier, Frank.

MRS. BLACK: And you know I won't be with you on the 13th?

MR. PRITCHARD: Yes. You said that earlier too.

MR. WORTMAN: We'll take a look at that, Bob. One of the advantages of the Dash 8 as well is that it travels faster once we're in the air, so we can make up some time there as well. So what would be your suggested departure time for the aircraft?

MR. CHAIRMAN: Weren't we originally 10:30?

MR. WORTMAN: That's right.

MR. PRITCHARD: It was 10:30.

MR. CHAIRMAN: Well, all right.

MR. WORTMAN: Let's stick with that then.

MR. CARDINAL: That's the 14th?

MR. WORTMAN: On the 14th. So we'll stay with the 10:30 departure time for the committee members' purposes, and you'll either have the King Air or the Dash 8 waiting for you.

MR. CHAIRMAN: All right.

MR. SIGURDSON: Do you need to know now whether or not we're going to be traveling privately to St. Paul? I can get an extra hour in my constituency office.

MR. PRITCHARD: That would be nice to know, if you've made up your mind.

MR. SIGURDSON: I've going to drive up so I can get some work done in my constituency office.

MR. PRITCHARD: On the 13th? Okay.

MR. CHAIRMAN: One other option is to meet, Tom, someplace near the outskirts of the city, if that would be helpful. Well, you work that out with Robin.

MR. SIGURDSON: Sure.

MR. WORTMAN: Any members wanting to travel with us, we'll make whatever arrangements we can to accommodate you, if you let the office know through Karen or myself. It'd be good to know who to wait for at the annex, or if we're meeting somewhere, that'd be fine.

MR. CHAIRMAN: Sure. Good. Okay.

MR. WORTMAN: Okay. That was everything with me, Bob.

MR. PRITCHARD: Now we have a little bit of detail on the continuation of the hearings in Hanna and Wainwright and Red Deer. We'll be letting you know where the one is in Wainwright, but I believe we're going to have it in the community centre there. I talked to the MLA, Butch Fischer.

MR. BRUSEKER: Wherever possible, Mr. Chairman, I would certainly support the concept of staying a little later rather than having to go back, because both from a time and a dollar standpoint, this is going to be an expensive procedure to follow, to go back.

MR. CHAIRMAN: I don't want to sound defensive, but can you think of a place we could have stayed later?

MR. BRUSEKER: I was thinking in particular of Hanna. I don't know what your time commitment is, but personally I

could have stayed later in Hanna when we were there that day.

MR. CHAIRMAN: We had other committee members who were pressing to break off. We extended our stay by – what?

MR. BRUSEKER: About an hour.

MR. CHAIRMAN: A little over an hour. I agree with you; wherever it's physically possible, that's our preferred course of action.

MR. BRUSEKER: Good.

MR. CHAIRMAN: We had – what? – 31 briefs in Hanna?

MR. PRITCHARD: Yes; there were 31.

MR. CHAIRMAN: And we find that if you're doing six an hour, 18 in three hours . . .

AN HON. MEMBER: It's difficult.

MR. BRUSEKER: No. I'm just thinking that as time had gone along, perhaps some of the briefs would have become more brief once you got into that fourth hour or so.

MR. CHAIRMAN: While we're on that subject, I might mention a recommendation. I asked a couple of people who were in the audience last evening if there were ways they could think of that we could improve the process. There were two suggestions that came from two different people. One was that we encourage presenters, rather than reading from the brief – if they would highlight the brief and give us their comments on the understanding that we will read their brief into the record word for word, still giving them the option to read from the brief if they so choose. The other recommendation was that if we had the presenters sitting at the ends of the tables rather than in a way which causes their backs to be to the audience, there would be better eye contact and the meeting would move more smoothly. So I've asked Bob to arrange our tables in Pincher Creek today so that we have the presenters on the two sides. We'll see how that works and then reassess it.

There was one other question that came up from a committee member last evening, and that was whether or not it was really appropriate to allow members of the audience to applaud when they were happy with something that was said by either a participant or a presenter or one of the panel members. I'm not sure how you as members feel. I said I would raise it, and we can get some reaction. Of course, as you know, in the Assembly we don't allow that.

MRS. BLACK: How can you stop it at a public meeting?

MR. SIGURDSON: I think you can ask people just to refrain, because there was one point last night – I think it was when Don Ferguson was making his presentation – there were people in the audience who were disagreeing verbally, and I don't think you want to get into a situation where you start creating arguments. So if you ask people to refrain from applause, I think they'll understand that they're also to refrain from making comments in the back.

MR. CHAIRMAN: Anyone else? Yes, Mike.

MR. CARDINAL: To me, it's not a big issue. We have open hearings, and they're open to the public. It's not a big deal, however . . .

MR. BRUSEKER: We're here to hear opinions, so I don't see any problem with it.

MR. CHAIRMAN: I guess I'm more sensitive to a presenter who's giving views that are not well received by others in the audience, and a negative response. We'll try to be more sensitive to that and make sure that doesn't happen.

The other thing I felt badly about yesterday was that we've been making an effort since Red Deer to ask those who are coming with detailed suggestions or recommendations on boundary changes to refrain from giving them. I didn't mention it last evening, and lo and behold, we had a brief with a couple of very detailed proposals for changes between two urban ridings. So that has to be stressed, I think, at each and every meeting so that we do not get into that kind of thing.

MR. LEDGERWOOD: Simply include it in your opening remarks.

MR. CHAIRMAN: In the opening remarks. We'll be sensitive to that.

MR. SIGURDSON: We'll have this down pat by Donnelly.

MR. CHAIRMAN: By the time we finish.

MR. PRITCHARD: Everything will be perfect by then.

MR. CHAIRMAN: All right. Any questions?

MR. BRUSEKER: Mr. Chairman, just another comment, too, to talk about facilitating the process. I would urge committee members to keep questions to questions rather than long soliloquies that may lead into debate. I'm sure we will have substantial debate once we sit down to write the report, and I think it will just speed up the entire process if we just ask a question with as short a preamble as possible.

MR. CHAIRMAN: Yeah; I echo that. I know it's difficult if we disagree with something that's said by a presenter. If we get into debate with them, then we're encouraging the whole process to spin out considerably.

MRS. BLACK: But you have to admit that sometimes it's difficult to sit there when it's getting . . .

MR. BRUSEKER: There's no doubt it's difficult, but I think at this point we're here to listen and we need to bite our tongues and be very cognizant of that.

MR. CHAIRMAN: Okay. Anything else?

MR. PRITCHARD: I have members' allowance claim forms for the last four hearings. I'd like to give them to you and ask you to fill out your travel time, and then you can give them back to me.

MR. CHAIRMAN: Okay. Great.

MR. SIGURDSON: For the last four, or the last . . .

MR. BRUSEKER: Are you talking just since Monday?

MR. PRITCHARD: Yeah. That includes the meeting this morning.

MR. WORTMAN: If I could just make mention for you of the changes to your itinerary in the covering memo. In the last paragraph, if you could change that to 10:30 from 9:30 a.m., just in case the memo gets into your staff's hands, that they're aware of the change.

MR. BRUSEKER: Which day are you talking about here, Robin?

MR. WORTMAN: I'm talking about the last paragraph in the covering memo to the itinerary that we handed out, the revised itinerary for the week beginning February 12. In the last paragraph we referred to a 9:30 a.m. departure time for Donnelly. If you could just mark that on the memo so that if you happen to give it to your staff, they're aware of the change. Thank you.

MR. CHAIRMAN: I might as well give these back to you right now, Bob, eh?

You were writing in the time of the meetings, Bob?

MR. PRITCHARD: Yes.

MR. CHAIRMAN: All we need to give you are the travel times?

MR. PRITCHARD: The travel times, and then I'll get them back to you again for your signatures. So fill in your times.

MR. CHAIRMAN: Well, for Hanna it's a full day because we started in Red Deer in the morning.

MR. BRUSEKER: We've got two hours' travel there, a three-hour meeting . . .

MR. CHAIRMAN: And the travel back home.

MR. BRUSEKER: . . . and the two hours back.

MR. CHAIRMAN: Yeah. But remember we're starting when we - like, today will be a full day.

MR. BRUSEKER: Oh, yeah.

MR. PRITCHARD: Yeah, and this meeting is part of the

meeting times that we'll be putting down. So it's the meeting, the time in between, and the following meeting this afternoon, to give you a full day plus your travel time back home. Right.

MR. BRUSEKER: So for Hanna we just get a full day besides?

MR. PRITCHARD: In your travel time you should actually put hours.

MR. BRUSEKER: Oh, okay.

MRS. BLACK: Four hours.

MR. CHAIRMAN: Now, let's get this clear. Cardston, Lethbridge: we're counting from the time the meeting started in Cardston until it concluded last night. That's inclusive; there's not a break in between for travel.

MR. SIGURDSON: But aren't we only writing down our travel time?

MR. CHAIRMAN: Yeah. All we're writing down - I'm uneasy that we don't have the meeting time written down, Bob, before we're filling this out. Members should not - for instance, I spent a little over an hour traveling to Cardston, and then it's an hour between Cardston and Lethbridge. But we've already established a practice in the past, as have other committees, that you count your meeting time from the time you start, and if there's a break in between, the clock continues to run. In other words, yesterday's a full day.

MR. PRITCHARD: Right. But you still have to, where you put the time - well, if you want, I'll put the time of the meeting on first.

MR. CHAIRMAN: I'm just concerned that we ensure we've got apples and apples, not apples and oranges.

MR. BRUSEKER: Good point.

MR. CHAIRMAN: Because members are not going to know that, seeing a blank piece of paper.

MR. PRITCHARD: Okay. I'll take them back. I'll put the hours of the meeting down, and then you can put the time on afterwards.

MR. CHAIRMAN: That's what we did before. Okay.

[The committee adjourned at 9:59 a.m.]