[Chairman: Mr. Bogle] [6:02 p.m.]

MR. CHAIRMAN: We'll officially declare the meeting open. We have three agenda items this evening. We have presentations by, first of all, Vince Lammi, on a constitutional law matter; then Vaughn Myers on the same general topic; and then, third, we'll review our September scheduling. There may be other business items members wish to raise.

I'd like to first turn to Vince Lammie, who has a presentation to give us.

MR. LAMMI: At Bob's request I reviewed the decision in Dixon and the Attorney General of British Columbia with a view to the question of what time frame all this reform has to take place in. Then the second matter he asked my opinion on: the Edmonton-Whitemud submission about what percentage should be used, whether the 25 percent from B.C. was mandatory.

First of all, Dixon and the Attorney General of British Columbia. That's the only case that has been decided dealing with redistribution. I'm sure you've heard about it a number of times. In my opinion, it's an excellent decision. I think it's very well reasoned by a well-respected judge who is now on the Supreme Court of Canada. I think she came down basically between the two extremes. B.C. was trying to justify a distribution of seats that was wildly skewed, and Dixon, on the other hand, was trying to get absolute equality, which, as Justice McLachlin indicated in her reasons, is not the Canadian way. In the States, in their House of Representatives, the congressional districts almost have to have exact equality, but she ruled that in Canada we can have a variation depending on geographical factors and regional interests.

I think the main principles she set out in her decision are that there does not have to be absolute equality, but the dominant consideration must be population. It is up to the Legislature to set a maximum limit to permissible deviation. So I think one of the most important things that this committee will do is recommend what that maximum limit is. Once you've set the limit, and if there are any court challenges, once it's passed those court challenges, you've really carved that limit in stone. I think it becomes part of the constitution of Alberta, if you like. Once that limit has been set and tested, I don't think it'll ever be subject to change. So I think it's a very important task that you have, setting that limit.

She went on to rule that you have to justify every deviation from absolute equality up to that limit, and you could look to regional issues and geographic considerations. So that's the second thing that this committee, I think, is really facing: what factors are you going to consider? The present Election Act has some factors, and I think there are others that could be considered. For instance, West Yellowhead is a very big riding, but I think most of the population in that riding lives within a few miles of Highway 16. So in addition to geographical considerations, just absolute area, you might want to look at, say, round trip distance to each major centre in the riding. Because if you compared West Yellowhead with, say, Bob's riding, where he has a kind of triangle of population, in touring his riding Bob might put in more time than the MLA for West Yellowhead.

Justice McLachlin was pretty clear that she did not feel it was the court's place to determine what factors or to pick a limit. She feels that it's up to the Legislature to determine these factors, and then it's up to the court to look over the Legislature's shoulders and see if they comply. Now, in the B.C. case, the Fisher commission, which had already reported, chose 25 percent, and she said that she thought that was okay for B.C. She didn't say the B.C. Legislature had to take the 25 percent, but she hinted very broadly that if they chose 25 percent, it would be okay with her. That does not mean that 25 percent is necessarily the right figure for Alberta. I would guess that it would be very justifiable.

B.C. and Alberta aren't that much different in total area. Actually, with Alberta's population being spread out a little bit more, perhaps you could argue that it could be a little higher, but I don't think significantly higher. If we were a province as compact as Prince Edward Island, I don't think you could justify 25 percent. Ten percent is probably pretty high for Prince Edward Island. The Northwest Territories: 50 percent might be reasonable. I understand you can't fly from one end of the Northwest Territories to the other. You have to go through Montreal and across and up, so maybe 50 percent deviation for that. But once you pick that figure and if it is challenged and passes the challenge, I think you're carving it in stone. I don't think there's ever going to be another commission like this in Alberta, because from now on, once you've set these factors, the commissions are just going to say: "Okay; here are the new population figures. You know the rules. Do it." There's never going to be another traveling show. From the looks of that map, you've been all over.

As far as the time frame that you have to do all this in, I've read suggestions that, you know, it has to be in place by the next election. That's not necessarily so. Justice McLachlin said that if she threw out the B.C. Act, you would have no elections Act, you couldn't run an election, and she said that defeats the whole purpose. What's the purpose of having a right to vote if you can't exercise it? So she said she would allow it to remain in place until the Legislature could get around to carrying out the necessary amendments so that if an election had to be held, it could be held. So if an election were called tomorrow, it would go under the present Act.

You must remember that in B.C. the Fisher commission had already reported. Fisher took 21 months. The present Alberta Act says 18 months, but I would think that 18 to 21 months would be reasonable. So even if you amended the Act today and sent out a judge tomorrow, it would probably be close to a year and a half, two years, before you could have an election under the new scheme. I believe Trudeau ran a federal election under an old scheme when a redistribution was going on in the early '70s. So if the redistribution is not done, if there is an election called for one reason or another, it would run under the old Act. Justice McLachlin says, "I will not throw the old Act out in case . . ." She was very plain on that. So as far as time frame, keeping in mind that you're not under the gun of any court decision right now – the B.C. case is not legally binding in the narrowest technical sense, but it's highly persuasive, and I can't see any Alberta court choosing to ignore it. But, you know, there is no court order in effect in Alberta saying you have to have this done by a certain date.

If there was a court challenge, courts have that power. That flows from the Manitoba case, where the Supreme Court said you have to translate all those statutes into French by a certain date. So they have the power to set a deadline for the Legislature to do it. They haven't done it yet. But even if there was a court order in effect, you would still have to go through the same process you're going through right now. So basically you're doing it voluntarily as opposed to with a judge's order aimed at you.

The steps you would have to do: you have to amend the electoral boundaries Act. I believe you have a problem with the differentiation between urban and rural. I don't believe that's justifiable under her reasoning, because basically what you have right now is X number of seats for urban, Y number of seats for rural, and then you have two ways of differentiating the deviation. I believe you have a deviation for urban and not for rural. Her reasoning is that they're all the same. Again I emphasize that I believe this is the most important thing you can do: set this maximum deviation. You have to do that.

Then you have to, I believe, set out the factors. In the present Act the factors are just community or diversity of interests, means of communication, physical features, sparsity or density of population. I don't believe that those are explicit enough. I don't think it's capable of scientific formula, but I think you should have quite a number more factors; for instance, travel distance between population centres, number of municipalities, et cetera, that you have to deal with. I attended the Lethbridge meeting, and I recall somebody pointing out that Bob had 25, 30 different municipalities and boards and stuff to deal with, whereas somebody, say, in Edmonton is dealing with one city, two school boards, maybe a hospital board.

Once you've made your recommendations and assuming that they're passed or introduced, I don't think it would be out of line, in view of obvious interest in this, for you to take your show on the road once again, once you have the figures set and the factors. If the presentations in Lethbridge were any indication, there is an awfully high level of anxiety amongst rural people as to what could happen, and I would think it would be fair to them. This first set of meetings, you said: "We're going to do something. What do you think we should do?" I think you should say to them the second time: "This is what we propose to do. Here are what our formulas are." You work it out. Then they can say in Little Bow, "Gee, this doesn't look good for Little Bow" or Cardston. I think those are the two smallest ridings down south.

Whether or not you do that, after you've amended it, you have to appoint your Electoral Boundaries Commission. Again, I think it's going to take the full 18 months. You're going to have to justify the deviation on a constituency-by-constituency basis. If you have Little Bow at minus 25, you just can't say that every rural riding is going to be at minus 25. You're going to have to justify it case by case. You're going to have to say why Little Bow is minus 25, why Edmonton-Whitemud is plus 25. If you have enough factors, you can say that Edmonton-Whitemud is plus 25 because it's an urban riding, it has community of interest, and they only deal with one municipality, whereas in Little Bow you've got 25 different municipalities or boards and stuff. You know, Ray Speaker, on a round trip, has to travel 200 miles, that kind of thing. So you have to do that for every riding, I would argue.

Once that commission reports – and, again, I would say that it's 18 months to 2 years. You know, you debate it, introduce its recommendations, amend your Electoral Divisions Act, and then the Chief Electoral Officer has to implement that. You're a better judge of that, but if there are wholesale riding boundary changes, I imagine that's a little more complicated than your usual thing. I can't really tell you time frames, but I think those are the steps you have to go through.

The Manitoba language case said that the Supreme Court gave the Manitoba government the minimum time necessary to find these translators – and it was a hard job to find legal French translators – translate all this stuff, and enact it before the deadline. The initial case said: okay; you guys go find out this information. And the Supreme Court actually did set a time line. So you're going to have to do all this anyway, and I think those four steps – the committee, the amendment of the statute, the boundaries commission, and then the implementation – are the four minimum steps.

I really can't see how you could cut any of those steps out of the process. So for that whole process I think you're looking at two to maybe three years. If an election has to be called – and the last few have been going on a three-year cycle – I think it can be called and held under the old system. I don't believe there is a judge that would stop an election if one were called. If the Lieutenant Governor called an election, I can't see any judge issuing an injunction to say: stop; you have to wait three years for this process to be finished before you can have this election. So I think it's important, and I think you have to go through all these steps, but I can see that an election could be held.

MR. CHAIRMAN: Anything else, Vince?

MR. LAMMI: No.

MR. CHAIRMAN: Thanks very much.

We've got a couple of speakers, but just before going to Pam and then Tom, would you give us an overview, Pat, of how long past commissions have taken to do their work, keeping in mind that Vince has said that the job may be a little larger. Refresh our memories on how long it's taken in the last couple of redistributions, if you can.

MR. LEDGERWOOD: Okay. The last commission, as I recall, had about 10 meetings. The commission was struck in December, and they started their deliberations in January. They asked for submissions from the public, which had to be in, as I recall, about April. They then took these submissions, and because they were only increasing by four seats, they were able to break the province into areas so that they started with Calgary, then they went to Edmonton, and then they went rural. So there was very little delay at the mapping, in that they were able to give them the information piecemeal, and they had their interim report available by July. They published and disseminated the report and then held public hearings in late August. They had six public hearings. They took the submissions from the public hearings, reviewed them, and then came in with their final report. I think they published that in about late October, early November. Unfortunately, I don't have any documentation with me now.

MR. CHAIRMAN: That's fine. It's close enough.

So just under a year from time of creation until the final report was submitted.

MR. LEDGERWOOD: Yes.

MR. CHAIRMAN: All right. Pam and then Tom.

MS BARRETT: Okay. I have five questions. Do you prefer I read them all out to you?

MR. CHAIRMAN: Do them one at a time.

MS BARRETT: One at a time? Okay.

My first question is not related to the substance at hand, but do you present yourself as a constitutional authority? Have you done a fair amount of work in this area?

MR. LAMMI: I've had an interest. In law school I did quite well in it.

MS BARRETT: But you don't . . .

MR. LAMMI: I don't present myself as an expert.

MS BARRETT: All right.
The other question is: have you read the Meredith decision?

MR. LAMMI: Yes, I have.

MS BARRETT: Okay; good.
All right. Would you not assess that the 21-month time frame related to the Fisher commission was because there was a lack of a rule with respect to the variation or deviance allowed?

MR. LAMMI: They left it wide open to Fisher. Fisher was just told to go out and fix it, and he did. He made the recommendations.

MS BARRETT: So in other words, you're acknowledging that he was doing two jobs at once, not just the job of a commission.

MR. LAMMI: He was doing the job partly of this commission . . .

MR. CHAIRMAN: Excuse me. His original mandate was to go out and take the dual ridings and break them into single ridings. He came back to the government and indicated that his mandate was an impossible task, that they needed to broaden the mandate.

MS BARRETT: That is precisely what I'm asking, Bob. Do you not acknowledge that one of the reasons that commission took as long as it did – a lot longer, for instance, than the last commission struck in Alberta – is because of the constitutional wrangles in which they ultimately found themselves?

MR. LAMMI: Fisher had to justify these ridings case by case, which is what the previous commissions haven't had to do. They just say, "You've got X number of seats; divide it up." On this one, Fisher said that you can't justify – what was it? – the 86 percent variance with that one in B.C. So he said: "Well, you know, what can we justify? Twenty-five, for these reasons." So that's why it's this next one that's going to be the real hard one.

MS BARRETT: But you acknowledge that he was operating without legislation that ultimately took that direction?

MR. LAMMI: Yeah.

MS BARRETT: Thank you.

MR. LAMMI: I would say that in part he was doing what this committee is doing. They didn't have a committee like this in B.C.

MS BARRETT: Correct. I understand.

Okay. So you've read the Meredith decision. Are you not of the same perspective that that decision requires timely action as opposed to undefined parameters for action?

MR. LAMMI: The Meredith decision is an embarrassment. Like, Meredith totally missed the point. I think he just washed his hands of McLachlin's decision. He didn't want to do anything. I think the key decision is the Manitoba language reference case, which is a Supreme Court of Canada case, which says: in this emergency situation where you've got legislation that is contrary to the Charter but if you throw it out, the result is even worse than what you've got right now, we'll give you time to fix it. Meredith didn't even refer to that.

MS BARRETT: Why would he refer to a language decision when the topic under consideration was electoral boundaries?

MR. LAMMI: But the constitutional principle is not, you know, whether it's electoral boundaries or language; it is: what happens if you throw out a statute and when you throw it out, it makes things worse, not better? In Manitoba if they'd thrown out all the statutes, you'd have had no laws.

MS BARRETT: So you are arguing that they are entirely parallel cases, that taking a whole number of statute books, not only translating them but testing them for the subtleties of the translation to make sure they are an accurate reflection of the English, would not be a more time-consuming task than establishing principles and a commission to redefine electoral boundaries.

MR. LAMMI: As it turns out, I think that in Manitoba it took them three years, and I think this is what would take this . . .

MS BARRETT: Okay. Can you explain how it is that Saskatchewan and Manitoba have been able to redo their electoral boundaries without going through a subsequent election on the old boundaries?

MR. CHAIRMAN: This is question three?

MS BARRETT: Yeah.

MR. CHAIRMAN: All right.

MR. LAMMI: Okay. First of all, in Saskatchewan there is a challenge coming. It hasn't been filed, but there has been an announcement that the equivalent of Dixon is going to happen in Saskatchewan.

MS BARRETT: Uh huh.

MR. LAMMI: So there are certain people, I understand that they're law professors at the law school in Saskatchewan, who feel that this redistribution in Saskatchewan didn't accomplish what it was supposed to accomplish.

MS BARRETT: I infer from your answer, then, that just because there's a possibility of a challenge, one should not act in a timely fashion.
Actually I have several more questions, but I should let someone else in.

MR. CHAIRMAN: We'll take two now.

MS BARRETT: I'll just do one more for now.

MR. CHAIRMAN: All right.

MS BARRETT: You said that this committee itself should go back on the road again. Two questions follow from that. First of all, why can't the commission do it? Secondly, why cannot the legislation as recommended by this committee follow the normal course, in fact the adamantly upheld course, of the government, which is to introduce it and allow some time to elapse between first reading and second reading and usually thereafter it proceeds rather quickly? Why is that not adequate?

MR. LAMMI: The first question: the reason I think it should be done as a legislative committee rather than a commission is that the commission isn't going to be doing it until this thing is already passed. Then if anybody's got any complaints, all they can do is quibble about the boundaries; they can't argue against the principle. The second thing is that I don't think this is just an ordinary, run-of-the-mill statute. For all intents and purposes you are writing the constitution of Alberta. Okay? It's nothing you can put on parchment, but you're going to carve this in stone. Once you establish these principles – if you say 25 percent; these are the only factors we're going to consider – I can't conceive of how some new government could just come in and willy-nilly say: we're going to amend this.

MS BARRETT: I'd like a closing comment on this. I don't see how it is that you can have it both ways. Either we're carving it in stone or your argument about the anticipation of a challenge in Saskatchewan holds. I don't see how it can be both.

MR. LAMMI: I think Saskatchewan didn't take the necessary time to do it.

MS BARRETT: Then you're arguing that it is not carved in stone.

MR. LAMMI: No. I think that once this Alberta Legislature passes this thing . . .

MS BARRETT: Just as Saskatchewan did.

MR. LAMMI: And if it passes a court challenge – you know, that's a big if. If this statute is passed and somebody takes it to court and a judge puts his seal of approval on it, how can it ever be changed? Like, this is not a run-of-the-mill statute. Look at that map behind you. I would guess that your average statute does not get one-tenth the number of little dots . . .

MS BARRETT: Well, I would suggest to you that your logic is contradicting itself between Saskatchewan and Alberta.

MR. CHAIRMAN: Okay. Well, we'll have an opportunity to carry on this dialogue a bit later.

MS BARRETT: Okay.

MR. CHAIRMAN: Tom, you're passing?

MR. SIGURDSON: Yes.

MR. CHAIRMAN: All right.
Then Pat and then Frank.

MR. LEDGERWOOD: All I was agreeing with, Mr. Chairman, was that the Saskatchewan challenge is coming. They anticipate that it will be heard by the appeals court sometime early this fall.

MR. CHAIRMAN: All right.
Frank and then Stock.

MR. BRUSEKER: Thanks. I just wanted to ask a couple of questions. You made a comment about the current legislation having references to urban and rural, and I thought I understood you to say that those references should be eliminated. Can you expand on that?

MR. LAMMI: I don't think that you can differentiate, just purely say that urban gets – what is it? – 42 and rural gets 41, and just say: okay, we'll divide all the urbans up among the 42 and all the rurals up amongst the 41, and there's no connection. Justice McLachlin is saying that a vote in Atlin, B.C., is the same as a vote in Vancouver, B.C. She's saying: we'll allow some variation, but it's case by case. So if Atlin is going to get some kind of extra consideration, you've got to say why: it's because it's big and it's hard to get to and stuff. I don't think you can just do it as simply as urban and rural. You're going to have to go case by case. I think that's too cut and dried a distinction.

MR. BRUSEKER: So you're recommending that however it's worded, the new legislation should not make any particular reference to urban and rural in Alberta.

MR. LAMMI: I would recommend that you say: there are going to be X number of seats, that the maximum permissible deviation from absolute equality is Y percent, and you can go plus or minus Y percent according to these factors. Now, I think it will work out, just in the nature of the way a city is and stuff, that all the minuses will be urban and all the plus deviations will be rural. But you've got to have all these factors. You just can't say that they're rural. I mean, maybe the acreage communities around Edmonton and Calgary are technically rural, but I don't think they're rural the same way Milk River is rural. So I think that distinction has to go by the wayside. As a matter of practice, as I say, I think it will probably end up that way, but I don't think you can just baldly say: urban and rural.

MR. BRUSEKER: Okay. The other question I wanted to ask you about: you have come to the conclusion that another election could be held under the old boundaries and that that would be deemed to be constitutional. I have to wonder about that a little bit. If indications seem to be that our current boundaries are not abiding by the Constitution, according to the McLachlin decision, would not then there be a possibility that election results could be struck down if we went to another election based upon current boundaries?

MR. LAMMI: That argument came up in the Manitoba language case, and the argument in that case was: well, if all these laws are unconstitutional, the property settlement I had to give my wife under the Marital Property Act is no good anymore, or I should get the fine back for that speeding ticket. Basically, they have a de facto doctrine that says that once it's

been done, we're not going to go back and overturn everything in the past. So in the Manitoba case they said that just because these laws have been invalid since 1870 doesn't mean that we're going to go back to 1870 and overturn everything that depended upon them. McLachlin makes the point a number of times that, sure, all of this has to be done, but it takes time. She acknowledges that it takes time. In the meantime, if an election has to be called, it has to run under something.

Look at the flip side. Say that it's invalid; you can't run an election. Well, what happens if the Premier goes to the Lieutenant Governor and wants an election called? Like the federal thing. Say, Mulroney wants, you know, to have an election on Meech Lake: "Oh, no. You haven't finished this redistribution." Does that mean that until it's finished, which could take three years, you've got a government that obviously feels it doesn't have the confidence of the people?

MR. BRUSEKER: Well, you've used a couple of interesting words. You used: suppose Premier Getty "wants" to call an election and "has" to call an election. I mean, he doesn't have to have an election occur until five years since the previous one. Theoretically, for example, for argument's sake, let's suppose Mr. Getty returns from Toronto tomorrow to the Legislature and says: "This is it, guys; we're going to the polls." An election is called, and the next election is June 24, 28 days from today. [interjection] God forbid, yeah. Would there not be a possibility that someone could get up and say: "Wait a minute, Mr. Getty. We don't have to have an election. You have a five-year mandate, and you still have X number of months or years in your mandate. Let's not hold the election until this is in place." That would be kind of a bizarre situation, I'm sure, but . . .

MR. LAMMI: Okay. Look at it: how could you stop him from calling an election? First of all, legally he does not call the election; the Lieutenant Governor does, basically.

MR. BRUSEKER: Well, technically.

MR. LAMMI: These technicalities still form the fundamental basis of our Constitution.

MRS. BLACK: She does.

MR. BRUSEKER: But she calls it at the direction of the government.

MR. LAMMI: Yeah, but how do you stop her? She is the Queen's representative. Now, there's a thing in law called mandamus, where you can force somebody holding an office to do their duty, and the Supreme Court of Canada has extended that all the way up to cabinet ministers. But I don't think that mandamus touches the Crown, the actual Crown, the Queen herself, and the Lieutenant Governor, for all intents and purposes, is the Queen when this election is called. So I don't think there's a judge that can force the Lieutenant Governor not to dissolve Parliament or the Legislature.

It's a catch-22, because this process is not capable of being resolved instantly. If somebody went into court tomorrow, Friday, and filed the papers to have this Act thrown out, a judge couldn't rule by Monday that this is the new situation. Even if the judge threw it out on Monday – and the way our court system works, you'd be lucky if you got a decision out of a judge until the fall – all the judge would say is what McLachlin said: that the Act is no good, you've got to replace it with something, and you've got the minimum time necessary to do it. That minimum time is going to eat up two or three years.

MR. BRUSEKER: But our current legislation says that we have to re-examine electoral boundary distributions after every second election, and we've had those two.

MR. LAMMI: Okay.

MR. BRUSEKER: So then you would have two pieces of legislation that seem to be me to be working in opposition to one another. I know you probably can't answer the question, but how would a judge, then, determine which is the superior legislation, if I can use that word? Which one takes precedence over the other one?

MR. LAMMI: Well, first of all, there would never be two pieces of legislation in existence at the same time, because obviously the second one would void the first one. But the thing is that you've got the Election Act, and you've got the electoral boundaries Act. The election is run on the electoral boundaries Act, and that's not amended until this commission is finished its work.

I think you're just caught in the fact that you've got an old system. We're all acting on the assumption that the present Act is invalid. Now, you might be able to get a more conservative judge in Alberta who says that this Act is perfectly good, but we're going on the basis that our Act is just as much at fault as B.C.'s Act. The fact of the matter is that it takes a long time to get this thing changed. We're not like the American system where elections are at definite times. Under our system the Lieutenant Governor can call an election anytime. Say Quebec quits. You know, what's Alberta going to do if Quebec's leaving the country? I can see where that is the kind of thing where the Premier of any province would want to go back to the electorate and say, "What do we do?" That might come up within the next six months.

So just because you've got a maximum five years, there are lots of things that could happen before.

MR. CHAIRMAN: Okay, thank you. Frank, that's it?

MR. BRUSEKER: No, that's fine for now, thanks.

MR. CHAIRMAN: Stockwell.

MR. DAY: Frank dealt with part of my question, but I want to explore a little further on the urban/rural thing, that, you know, you couldn't justify saying that just because this is an urban riding or just because it's rural, therefore this is how it's going to go. If you can go riding to riding and say, "This riding will vary 25 percent because . . . ", then in your estimation could you say, "Urban ridings will have this consideration because" point, point, point, point, and "Rural ridings will have this consideration because" point, point, point? In other words, you don't just say urban/rural, but you say urban because of these, rural because of these. That's sort of one general overlay, and then go ahead and look at each one individually.

MR. LAMMI: If you had the factors but didn't use the words urban and rural, didn't assign a specific number of seats to urban

ridings. I think that if you say that the distance an MLA has to travel around his riding is a consideration and if you have to travel a big distance, you get a big deviation, and if you have a minimum distance, you go underneath, then obviously the urban ones are going to have a small distance, so you're going to be underneath anyway, and in the rural ones, where you've got a big riding and you've got to travel 200 miles to get around it, you're going to have a big deviation.

I think the problem with the present Act – you say that Edmonton, Calgary, Red Deer, Lethbridge, Medicine Hat are the urban ones. They get 42 seats. The problem there is that if you're dividing those 42 seats, which is just slightly more than half, amongst – what's the population, about two-thirds urban? If you're dividing half the seats amongst two-thirds of the people, already you're skewing it. So I would not say 42 to urban; I would say: you've got just 83 seats, but this is how you divide it.

MR. DAY: It's a matter of semantics really.

LAMMI: Well, no. I think it's more than semantics because right now you're saying that these 42 seats go to this population, and that population could be 70 percent of the population, whereas I'm saying it might work out that way; it might not.

MS BARRETT: So you're saying deviations on voter equality shall be allowed or determined by the following factors, without identifying what are urban and what are rural factors.

MR. LAMMI: Yes. See, it might work out that way, but once you say that 60 or 70 percent of the population gets a fixed number of seats, then you're not really considering any factor other than the urban/rural split.

MR. DAY: On the timing, you used Manitoba, and you said that courts have the power to set some kind of time line, but you're simply dismissing Meredith as just a bad ruling.

MR. LAMMI: Meredith says, "I'm not going to tell the Legislature what to do," and that's totally wrong.

MR. DAY: Of course, that's your opinion, and it may be right on. An Alberta judge, then, could lean either towards Meredith or towards Manitoba in looking for a precedent, or would they go with Manitoba because of . . .

MR. LAMMI: Well, it's a Supreme Court of Canada decision. McLachlin, who did the original one on the Dixon case, is on the Supreme Court of Canada. That shows you how well respected she is.

I'll tell you something about Meredith: the B.C. government did not appeal. You know, there were appeal papers filed.

MR. DAY: Obviously the government wouldn't appeal.

MR. CHAIRMAN: Why would they appeal?

MR. LAMMI: Well, I'm not privy to their considerations, but I think that they looked at the two decisions and said, "We can't go any farther with Meredith." He ignored the Supreme Court of Canada. McLachlin gave a closely reasoned case, and they threw in the towel. They said, "Okay, we're going to adopt Fisher and that's it." So I think that if they felt they had anything to hang a hat on, they would have gone for it. They didn't. So, you know, from a litigation point of view I would say that they felt they were going to lose. So Meredith, I think, is an anomaly; it's a judge that just didn't do his homework or didn't care. I think it's a real poor decision.

MR. CHAIRMAN: Okay, thank you. Anything else, Stock? Other questions for Vince? Okay, Vince; thanks very much.

MR. LAMMI: Thank you.

MR. CHAIRMAN: If you'd like to stay a bit longer, you're welcome to, or if you feel you need to get away to get to catch a plane, we understand.

MR. LAMMI: Maybe I'll listen to Vaughn. He's probably got all the other sides of the arguments.

MR. DAY: Lawyers listen to each other, then.

MR. MYERS: I'll try to miss and not go over the stuff Vince talked on. What I did was talk to Bob about setting six sort of factors or issues that I would look at and then detail. What I did was analyze the decision on Dixon and the AG of B.C. I reviewed similar Canadian legislation under section 3 of the Canadian Charter of Rights and Freedoms. I reviewed similar Commonwealth decisions touching on the electoral boundary question. I reviewed our current Alberta legislation with that of British Columbia's. I reviewed the Canadian Charter cases with respect to appropriate remedies, and I think I spent a fair bit of time on what are appropriate remedies where legislation has been found contrary to the Charter and in particular what remedies are available. I didn't touch at all in depth on the timetabling of that, but I do just talk briefly about the timetables they've set in other cases. Then to determine whether or not the notwithstanding clause is applicable to this question.

Again, the facts in Dixon are simply that section 19.1(2) of the Constitution Act of B.C. sets no guidelines for population for an electoral district. Deviations from the equal population or average population varied extremely widely: 63.8 above, 86.8 below, a total deviation of 150 percent. The allegation is that it enhanced rural vote power, and indeed the court held that. Further, the court talks about a rural vote being worth some 12 times the weight of an urban vote. The argument was then: if that was found as such a substantial deviation from proportional representation, does it infringe the right to vote? In that case, they held yes.

Under section 3 every citizen of Canada has the right to vote in an election for members of the House of Commons or a Legislative Assembly and to be qualified for membership therein. So the remedy sought was an order of declaration. There is a series of remedies that you can get; Vince touched on one, that being mandamus, compelling someone to do something. Prohibition is another form of remedy in which they prohibit a government from doing something. The order here is one of declaration, declaring section 19 in schedule 1 of the B.C. Constitution Act invalid and of no effect.

The issues they attempted to determine in the case: does the Charter apply to the electoral boundaries? They held that, yes, it did. I won't go into that. The meaning of the right to vote and whether B.C.'s electoral distribution offends the Charter: yes, they held it did. It defines the right to vote and held that

it did, in fact, violate it. If B.C.'s electoral district violates it, can it be saved by section 1 of the Charter? There they held no.

Finally, the remedies available to the petitioner in this case, and then I'd like to touch on three and four because Vince has gone through the primary consideration in considering what is appropriate when you're choosing electoral boundaries and, of course the equality of voting power, which is essential to the fundamental democratic guarantee of representation by pop. They stayed away from the American slavish adherence to absolute voting equality, but they hold that that is the guiding principle. The only permissible deviations were those that could be justified on regional, geographic grounds as contributing to the better governing of the populace as a whole. That's the guiding principle that you've got, as well as your only permissible deviation. Surveying the permissible deviations allowed in other legislation, they come up with the 25 percent above or below the average norm, which is the maximum amount legislated. They looked, of course, at a series of them. They found, I believe, one that had 10 percent, but the rest fall into that 25 percent. And they picked it. I mean, it's not totally arbitrary, but they picked 25 percent.

Section 1 of the Canadian Charter is that section which can save impugned legislation if it is a reasonable limit which can be demonstrably justified in a free and democratic society. There's a two-pronged test to decide if it can be demonstrably justified. Number one involves examining the importance of the objective of the underlying concept of the legislation. Here the objective must relate to concerns which are pressing and substantial. The court held that they were pressing and substantial: better government. It passed that test.

The second test is the proportionality test. Could B.C.'s large variations in all of their ridings . . . Is the wide variation they have proportional to the desired result? Their desired result, of course, is better government, and the courts hold that you don't have to have an optimal scheme. They weigh the benefit of the current system with the serious infringement of one of our most fundamental rights, which is the right to vote, and what they hold to be the equality of the right to vote. And they say: "No, it's not. It's too far out. It doesn't meet the test of better government," and they suggest that it cannot stand. So section 1 doesn't help our legislation, I don't believe. The court held in that case: for most cases "no good end seems to be served by existing population inequities."

The court then talks about what type of remedy. Vince has touched on that. The Charter holds that impugned legislation, to the extent of the inconsistency, is of no force and effect. The Supreme Court of Canada, in Operation Dismantle Inc. and Regina, rejected the notion that the courts couldn't get involved in a decision that has public policy or political overtones; they held that they could. So the courts aren't going to bow out because there's a political aspect to this decision. The remedies under the Canadian Charter of Rights are broad, but they're not unlimited. "Such remedy as the court considers appropriate and just in the circumstances" is under section 24(1) of the Canadian Charter of Rights.

A declaration, as Vince pointed out, that it's null and void could have thrown B.C. into a crisis, because you'd have no constituencies. To hold that that legislation is simply invalid – there's nothing to replace it. The courts bend over backwards to avoid a legislative vacuum, which that would, of course, leave. It held it was a breach of the Charter. It held the legislation should stand provisionally pending submissions as to how long it would take to redraft the legislation.

In a sense it followed the reference in the Manitoba language rights case in the Supreme Court of Canada in that there, once they held that the legislation was invalid, they of course couldn't scrap all of Manitoba's legislation. So they said, "Come back in four months, or 120 days, and give us your submissions as to how long you believe it's going to take to validate or change the legislation." The petitioner in that case waited and then sought an order that the court-ordered stay cease and have no effect and to establish a deadline. So the petitioner in the B.C. case in the second portion of the decision said, "Let's set a timetable," and the court wouldn't. They simply held that to place a deadline would compel the majority of the Legislature to agree on legislation. Compelling that action of the Legislature is beyond the inherent and remedial powers of the courts. The court simply – and it's quite a baldfaced statement – held that the Legislature will do what is right in its own time. That reasoning that the Legislatures will do what is right in their own time, I believe, sort of pervade some of the decisions that they have, in particular – and I'll get to it – Mahe versus Alberta, which was the recent Supreme Court of Canada decision with respect to the School Act.

The similar Commonwealth decisions don't assist a lot. One out of England, R and the boundary commission for England, was a 1983 decision. The court wouldn't touch certain boundaries despite the fact that they had twice as many individuals in certain ridings as they did outside of the larger London ridings, but simply because of the way the legislation was drafted. There were points in there that talked about equality of voters as far as practicable, but then they also had guiding principles that the constituencies would not cross certain county or London borough boundaries. So there were guidelines in there that allowed them to get out of that.

The attorneys general of the Commonwealth and the Commonwealth of Australia put in criteria for what should be a criterion for establishing electoral boundaries – my handwriting's pretty bad here – community of interests, means of community and travel within divisions, population changes and trends, physical features of the division, and existing divisions. There they go on the 10 percent. Based on all of that, it was found that 10 percent as opposed to the 25 percent was appropriate.

Reviewing B.C.'s legislation versus Alberta's: Alberta's is tighter. I don't think it's unfair to say that B.C. had the most unprincipled legislation respecting it, because there were just wide variations that it allowed. There were just almost more no rules than there were rules. There were two groups: they had the mainland and the islands. They had further subcategories. There was no minimum limit for each group. The district would never lose representation no matter how low their population base went. A population increase of 60 percent over the established quota could result in the promotion of another representative, but it didn't have to. It really was ruleless. They changed their legislation, section 9 of the Electoral Boundaries Act. Again, their commissions must consider geographical, demographic factors, the legacy and history of the community, interests of the province, and further establish the maximum permitted deviation from the population norm as 25 percent.

They have an interesting concept in theirs in that the Dixon decision talks about 25 percent, and it seems to set that as a limit – 25 percent over, 25 percent under – with no deviations outside of that. Their legislation, particularly section 9(c), allows for exceeding the 25 percent where the commission considers that "very special" circumstances exist. Dixon didn't deal with that, but they put it in anyway. Whether or not that would pass,

Dixon didn't consider that other than discussing the 25 percent. Whether that will stand or not we don't know. I don't believe that the Alberta legislation in total would survive a Charter challenge, based on those decisions. So somewhere down the line something's going to have to be done.

Again looking at appropriate remedies, the court will give the type of remedy depending on the relief sought and the nature of a breach of a Charter right. For instance, in a reverse onus clause, where in criminal law sometimes they will set a rule down that if you're found in a community during a certain period of time – say, late at night – with housebreaking tools, tools that can be used to break into a house, with no explanation, you're deemed to have these tools for a certain evil purpose. Well, they can strike out those reverse onus clauses yet still maintain that possession of housebreaking tools is illegal. So they can take certain portions of laws out. The seven-year minimum penalty for importing narcotics: that has been successfully challenged. What they do is simply get rid of the minimum penalty while still allowing penalties and while still allowing the crime against importing narcotics. But they are always loath to leave a legislative vacuum.

The Manitoba language rights case is somewhat different in that all of the statutes of Manitoba not published in English and French are invalid by section 23 of the Manitoba Act, 1970. When they held that, of course, they see a legislative vacuum and say, "We can't have that." So what they then do is give the 120 days to agree on an appropriate time, and then they set what would be a guide, what was a timetable. But that was upon agreement of both the Manitoba government and the parties that were challenging, so it was really not a court order but a court sanction on what two parties had agreed to.

I'll just close here. The decision in Mahe – and I'll just refer to it as Mahe – in Alberta is a 123-page decision that touches on a series of issues. The court held there that sections 13, 158, and 159 of the Alberta School Act did not prevent the authorities from acting in accordance with the Charter. Neither do they guarantee that complying with the Canadian Charter would occur. It reviewed what was an appropriate remedy and held that a declaration of invalidity wouldn't help the individual. So they looked at that declaration and said, "No, that's not appropriate," because if the legislation were invalidated, public authorities in Alberta would presumably be temporarily precluded from exercising their powers so as to change the existing system in order to comply with section 23 of the Charter. So they look at what we're trying to do, what we're trying to effect, and say, "Look; invalidating that legislation isn't going to assist us."

Then they held that the problem was the inaction of the public authorities. The court held that the Legislature of Alberta had failed to discharge section 23 obligations, and then it puts words in quotation marks: "It should delay no longer putting into place the appropriate minority language education scheme." They again held the effective declaration of invalidity should be considered, that it was impossible for the court to rewrite the impugned legislation, so they're not coming up and going to legislate something in that case. And the government, they held again, could implement a scheme within the existing legislation to ensure Charter rights, the problem being that they haven't done so. They said the courts should restrict themselves to making a declaration in respect of infringed rights.

> Such a declaration will ensure that the appellant's rights are realized while at the same time, leave the government with the flexibility necessary to fashion a response which is suited to circumstances.

Again, that's what they're saying. They're saying the Legislature is going to do what's right, and they don't give a timetable on it.

The final question that I reviewed was the notwithstanding clause, and it's simply not applicable. Section 33 of the Charter, the notwithstanding clause, does not apply to democratic rights of citizens as outlined in section 3. So you can't opt out.

Touching on some of the points that Vince just touched on, the biggest one, I guess, is the timetable. All of the cases talk about it. They feel compelled to declare that it's invalid and that the Legislature will fix it in its own time. And that's the best I can come up with for the timetable answer. So, to touch on Vince's point: can you run an election on the old or current legislation? It's quite clear they're not going to put you on a timetable. They won't force you to legislate, but you always run the risk of not acting as expediently as you can.

MR. CHAIRMAN: Thanks, Vaughn. Any questions or comments?

MR. BRUSEKER: Yeah, I've got one question. Both you and Vince referred to travel within the constituency as a consideration, yet neither of you mentioned travel from the constituency to Edmonton, and I was wondering if you . . .

MR. CHAIRMAN: I think Vince did earlier on.

MR. DAY: Vince talked about travel to major centres.

MR. BRUSEKER: Did you?

MR. LAMMI: I think I referred to both, but both would be factors.

MR. BRUSEKER: Are you suggesting that in establishing the size of constituencies, one or the other or both of those should be factors?

MR. MYERS: I think they're appropriately factors, but again I think the courts aren't going to step in and say that that is a factor. They're going to stay away from making those types of decisions. They're going to allow you to justify them. But I think it's a factor if they're not going to say, "No, it's an inappropriate factor; we're going to allow you to determine what factors are appropriate for the government." I don't think they're going to touch the factors you choose, but they will look in total at whether you've complied with the 25 percent guidelines, or the guidelines they set once you've done it.

MR. BRUSEKER: Okay. I just had one other question. You've obviously looked at our current legislation. Do you believe it would withstand a Charter challenge if it were to go to a Charter challenge the way it is currently written?

MR. MYERS: The sections you have now . . . Just to be sure, the legislation I've reviewed still has your sections with respect to rural and urban.

MR. BRUSEKER: Forty-two and 41. That's what's in place right now.

MR. MYERS: I'm quite sure that it would not survive a Charter challenge.

MR. BRUSEKER: Thank you.

MS BARRETT: Saskatchewan has done something really unusual. They've decided that you can still make this distinction between urban and rural and in fact have designated the numbers and then at the same time said, "But we're going to have approximate voter equality to a certain tolerance point." Is that a defensible position? I mean, if you have a change in the population, a shift from one area to another, you may already have disqualified the urban/rural defined split. Would you agree with that?

MR. MYERS: Yeah. When Vince mentioned the rural/urban, there are certain criteria, such as in an urban centre you're simply closer and you have more of your constituents. But to give a bald-faced assertion of urban and rural without taking into consideration population, which is the guiding principle: no, I don't think that would succeed; I don't think that would survive a Charter challenge.

MS BARRETT: Thanks.

MR. DAY: Our present legislation probably wouldn't survive a Charter challenge. That's your estimation?

MR. MYERS: Yes.

MR. DAY: Yet you said that our legislation is tighter than B.C.'s; B.C. is probably the worst example.

MR. MYERS: Yeah, I think that's correct.

MR. DAY: So would you base your opinion on the fact that we're over the 25 percent? Would that be the main factor, do you think, or are there other factors?

MR. MYERS: The major factor, I think, is that there's such a wide deviation. We deal with variations in urban ridings, yet we don't in rural. We can allow a rural riding to become considerably less populated than an urban yet still send an equal number of members to the Legislature. So, no, I think the major problem we have is that we have a large deviation and we're not within acceptable guidelines. I think that's the point.

MR. DAY: Okay.

According to what you were saying, Vaughn, in Manitoba the court said, "Okay, take four months, think about a timetable, and come back."

MR. MYERS: That's right.

MR. DAY: They came back with a timetable. Now, this is obviously just an opinion, but what if their timetable, in the minds of the court, had been excessive, or would they have suggested there was a timetable that was excessive?

MR. MYERS: Just going on a gut reaction, they're really loath to push anybody into a timetable. But there the mechanics of translating legislation are far less policy-oriented than actually coming down and saying, "This group of individuals is going to send one." Like, it's something that can be done.

MR. DAY: Something they could figure out in a mechanical way.

MR. MYERS: That's right, and more so than actually forcing you to legislate. I think they're really loath to do that. Had they come up with something they felt was not appropriate, I think they would have gone and said: "No, that's too long. We know that there are these people . . . "

MR. DAY: Given what we know about translating, et cetera.

MR. MYERS: Yeah, and the capabilities in the country.

MR. CHAIRMAN: Vince, on this point.

MR. LAMMI: Just to clarify. I've got the text of the order, and basically what it said is that, okay, there was an agreement. You know, they were sent away to work it out, and they worked it out. But it said that any of the parties may further apply, so basically they said, "We're here, and if you feel that the government's dragging their feet, you come in and you argue it in front of us." So they don't want to step into it, but they're saying, "We're here."

MR. BRUSEKER: How much time was the government given to translate all those laws? Do you remember what the time frame was?

MR. MYERS: No, I don't. There was certain legislation. It was broken into two groups.

MR. LAMMI: It's three years.

MR. MYERS: Pardon me?

MR. LAMMI: The order was dated November 4, '85; the deadline was December 31, 1988.

MR. MYERS: So they gave them three years, and then all current legislation after a certain period is the current legislation.

MR. LAMMI: And the rest of the stuff, December 31, 1990.

MR. MYERS: Right. Okay.

MR. CHAIRMAN: Any other questions?

MRS. BLACK: I'd just ask a question. First of all, I want to thank both of you for your presentations. It was very interesting. From what I gather, you're saying that if we went in with a recommendation that said that in Alberta we could have a variance of X percentage and justify on a riding-by-riding basis that other factors needed to be considered and listed those as legitimate factors without talking urban/rural, then that would be potentially justifiable in the eyes of the court.

MR. CHAIRMAN: Vince, go ahead. You start it.

MR. LAMMI: I would say that they're going to look at what number you pick, and I would say from the B.C. case 25 percent is probably very defensible; over 25 is probably less so. But they

courts in Saskatchewan? It's a narrow area, as I recall, but I can't recall the specifics. Can either of you?

MR. LEDGERWOOD: Mr. Chairman, they have not phrased the question. They're looking at three questions, and basically they're framing the question first of all on the redistribution process itself and also the variance: does the variance infringe? So it's going to a constitutional test of section 1 of the Charter. I think they're working, actually, on three separate questions.

MR. CHAIRMAN: But we're still dealing with smoke and mirrors, and it may never go.

MR. SIGURDSON: Oh. I'm just looking for an opinion.

MR. CHAIRMAN: Sure.

MR. LEDGERWOOD: Well, it certainly won't go before sometime this fall, long after I would think you would have your report ready for the Legislature.

MR. CHAIRMAN: Okay. Any other questions of Vaughn? Okay.

To Vaughn and Vince, thank you very much. We appreciate you taking your time and sharing your thoughts with us.

I wanted to spend a bit of time on our September schedule. You recall when we last met . . .

MS BARRETT: Mr. Chairman?

MR. CHAIRMAN: Yes.

MS BARRETT: May I be excused, please? I'm committed to a previous commitment.

MR. CHAIRMAN: All right. You're comfortable with the fall schedule?

MS BARRETT: If I might just note that our convention was moved up by a week, and I believe our convention starts October 12 now.

MR. CHAIRMAN: Friday the 12th?

MS BARRETT: Yeah. So that if we were done early enough – it starts that evening.

MR. CHAIRMAN: Okay. Let's make a note of that.

MS BARRETT: I'm sorry, but I got myself committed, so I must go.

MR. CHAIRMAN: All right. Thank you.

MS BARRETT: Thanks. You're a good cook, as always, Mr. Chairman.

MR. CHAIRMAN: There was another question about possibly holding some meetings in Calgary to coincide with . . . Was it ASTA?

MR. PRITCHARD: It was AUMA.

MR. CHAIRMAN: And what dates were those, Tom?

MR. SIGURDSON: I didn't bring my calendar.

MR. PRITCHARD: I think it's September 27 and 28, Thursday and Friday. It's the Thursday lunch.

MR. CARDINAL: Well, there's no location anyway on this, you know.

MR. CHAIRMAN: Well, no. The assumption was that the meetings would all be in Edmonton, but to accommodate the AUMA we thought we'd go down to Calgary to the government centre. All right?

MR. CARDINAL: Sure. No problem.

MRS. BLACK: No problem there.

MR. CHAIRMAN: All right. Everyone's got a copy of the memo? I just wanted to go through it in a very general way today. We were looking at trying to get some dates set in.

Stock, did you mention to me that your cabinet planning session was in mid-September?

MR. DAY: It is, Mr. Chairman: September 11 through to 14. It starts on a Tuesday. I'm available during the day, though, on the 11th. So for me it would be the 12th to 14th inclusive.

MR. CHAIRMAN: Any other problems for members on these dates?

MR. BRUSEKER: Well, if I could, Mr. Chairman. I look to sort of tag onto what Vince was talking about earlier on, which is the idea of going back around again a second time after the report is written, and I think that probably is not a feasible thing to do. Having said that, however, I do think he has a point, that people should have the opportunity to look at the report before the legislation is brought in.

MR. CHAIRMAN: Our obligation is to report to the Assembly. We cannot speak to anyone until we have reported to the Assembly. Once our report is tabled, it becomes public, and then we cease to exist as a committee. So whatever the Assembly chooses to do with our report and the creation of legislation and a commission is in the hands of the Assembly, not ourselves.

MR. BRUSEKER: Fair enough.

MRS. BLACK: Mr. Chairman, I gathered from Vince's comments that he was really referring to a recommendation that we would recommend that the commission go back out and review.

MR. CHAIRMAN: No, I think he meant this table. I read that he meant this table.

MR. BRUSEKER: I did too.

MR. LEDGERWOOD: He specifically said that.

will look at the number, and they'll say, "Is that justifiable?" They'll look at your factors. You know, if you've got some factor that allows you to gerrymander a riding, like have a real long, spaghetti-like riding, they'll say, "Well, that factor's invalid." But they'll look at each one.

MR. CHAIRMAN: Pat, anything else? Don't let Tom distract you. He's next on the list.

MRS. BLACK: No.

MR. SIGURDSON: No finger in Red Deer-North. I mean, that's the most spaghetti-like . . .

MR. CHAIRMAN: My understanding from what's been said, Pat, is basically that you can't use, you know, the kinds of terms that we've traditionally used: urban, rural. Whatever you do, you have to justify. You have to build a case around it, population being the strongest factor.

MR. MYERS: See, I think just in dealing with a rural riding, the problem is that what you've done is you've given an allotment not based on anything other than the definition "rural" or "urban" and not dealing with the population base, which is the underlying. If you wanted to call all of your rural ridings rural, or whatever designation they were, and your urban ones urban, that would be fine. It's just how you construct them and say, "We're going to give one-half of them as rural simply because they are 41 out of 83, regardless of or despite the population they have." You can't. That won't survive.

MR. CHAIRMAN: Vaughn, one of the things we've had difficulty in explaining to people in the various hearings is that there's nothing magic about 42/41. There's been a slow evolution that I suggest goes back to 1905, where we've seen more of the newly created ridings go to the cities, and the proportion where there are purely rural ridings, with small towns as their key centre, containing a smaller percentage of the pie, if you like, of the total legislative makeup. But unfortunately we're at this point in time where the figures that are visible are 42 urban/41 rural, which looks like an even split between the two. Therefore, we get a number of people arguing, "Maintain the current balance."

Pat.

MRS. BLACK: I just thought of a couple of other things here. Vince, you stressed in your presentation the fact that we could be carving in stone almost a constitutional factor on distribution. That's something that I have a bit of a concern on, the fact that how else would you deal with distribution but through legislation? But you have to be able to leave it open. Down the road things could dramatically change in the province, and another review as comprehensive as this one may have to take place. How else would you leave the door open so that down the road 20 years another massive review would have the ability to go in and change that?

MR. LAMMI: Well, legally you have that right, and it's really not the distribution that you're carving in stone; it's the rules that you set, how we do it.

MRS. BLACK: That's what I'm referring to.

MR. LAMMI: I think that because it's so fundamental and because you know that if you don't do it right this time, someone's going to take a run at you – and somebody might take a run at you anyway – once that court has approved that and you've gone through this whole, entire process, as a matter of practice it's going to become one of these unwritten constitutional conventions: you know, "Boy, we did it, and it's been challenged, and it's been approved, and nobody wants to touch it again." So that's why I say it's carved in stone. Look at the time you've spent already. Look at what you've got ahead of you, plus, like I say, litigation – and Vaughn and I as lawyers know that nobody ever wants to get into litigation, and once you survive it, well, God, you never want to go back again.

So once you've gone through that whole process, it's going to take something really major before anybody wants to touch it again. That's why I think once you've got these rules set, you're going to be stuck with them for an awful long time. It's going to be like Meech Lake or something.

MRS. BLACK: Just one last question. You know, traditionally in Alberta we have based our distribution on enumerated voters. Is it your opinion that we should be basing it on full population, when you talk about representation by population?

MR. LAMMI: I would say. Every citizen, even though you can't exercise a vote until you're 18, has a right to representation, and actually, you know, you can almost say that even noncitizens, landed immigrants, have a right to consult their MLA and stuff.

MR. CHAIRMAN: Vaughn, on this point.

MR. MYERS: Yeah, I would agree with that too.

MR. CHAIRMAN: Thank you.

MR. SIGURDSON: In British Columbia Justice Meredith has suggested that 25 percent off the mean is permissible. In Manitoba we've got their legislation, their redistribution as seen in constituencies that fall within 10 percent. In Saskatchewan we've got pretty much 25 percent plus or minus, other than the two northern constituencies. That legislation is being challenged now, and it may very well be the case that we may have a decision handed down at a point in time when we're going to be trying to determine what recommendations go back to the Legislature here in our province. If the courts in Saskatchewan don't agree, or offer that boundaries as they currently exist under the new distribution are invalid or unconstitutional, what kind of effect would that have on this committee? If they were to say, "All right; you've gone through redistribution, and you've come up with a formula that says plus or minus 25 percent with the exceptions of two," which they've justified – if that's struck down, what kind of effect would that have on this committee?

MR. LAMMI: I would say that this process, until it gets to the Supreme Court of Canada . . . Basically, you've got a decision here, and you've got another decision there, and you look at the Saskatchewan decision. If you agree with it, then you modify your process; if you don't, you go your own way.

MR. CHAIRMAN: First of all, Pat, can you or Bob just bring us up to date on the specific question that's being put to the

MR. BRUSEKER: What I was getting at, though, was . . . And again it's tied back to Motion 14, which is in the Legislature right now, and the amendment that's before the Legislature. What I was going to suggest is: would it be possible – I know we talked about it before and it didn't seem to go through very easily, but the idea of having a timetable addressing . . . Assuming that the motion as amended goes and is passed, we need to have another timetable, and that would entail our meeting in July instead of September so that a report could be tabled, as the motion says, by the end of July. The upside of that, if I could use that term, is that it would then allow – whatever it says on July 31, assuming that July 31 is the final day – the public to have an opportunity to look at the report we produce from July 31 until whenever the fall session is resumed, and that would give the public an opportunity to have more input after we've completed our initial hearings process. So I would urge that we give a July timetable some serious consideration.

MR. DAY: Just first on your point, Mr. Chairman. I can't see how this committee could do another round of hearings after a report. But on Frank's point, I think to look at timetables now is hypothetical and academic. Let's see what happens with the motion and then look at that.

MR. CHAIRMAN: Yeah, and I draw to everyone's attention that the reason the committee is not meeting in July and August is because of the schedules, both holiday and workwise, of the seven members and the ex officio member of the committee. We sat down to find dates in July and August, as you recall, and we couldn't find any. To have everyone present, which was our objective, we were missing someone during that entire eight-week period.

Now, if the Assembly were to adopt the amendment which is currently before the House, which would require the committee to report by – what was the date?

MR. BRUSEKER: July 31.

MR. CHAIRMAN: . . . then obviously we have to come back and adjust because we take our marching orders from the Assembly. But I think Stockwell's made a very important point: let's not get ahead of ourselves and prejudge what the Assembly might do.

MR. BRUSEKER: Oh, obviously we can't.

MR. CHAIRMAN: All I'm doing with this schedule is trying to nail down what we've previously agreed to as a committee for September and October, recognizing that there would be some glitches; i.e., the AUMA convention in Calgary, a cabinet planning session, which I know is extremely important, and Stock sits in on those sessions as the Whip. So we're just trying to pull it together, and God willing, we won't have to go until the middle of October in this process. But we're trying to ensure there are enough days set aside so that we won't be short of time.

So subject to the way the Assembly deals with our motion and the amendment yet to come, we're on standby as a committee.

MR. BRUSEKER: Well, along that line, Mr. Chairman, I just wonder if I can just sort of back up another step. We've agreed to a tentative schedule for the end of June, and I know it's probably hypothetical, but do we have any kind of indication that we will in fact be able to implement that timetable? In other words, are we going to be out by then?

MR. CHAIRMAN: Well, it's all on the premise that the Assembly will conclude its business on or before June 15. Bob and I will have to make a critical decision with our communications people in that last week.

MR. PRITCHARD: They need to know by the 8th or 9th.

MR. CHAIRMAN: The 9th. All right; by Saturday the 9th. Because if we find that it appears we may not be finished by the 15th, then we have to take that first set of hearings, the meetings in Rycroft . . .

MR. PRITCHARD: It starts off Rycroft on the 19th, Wetaskiwin, then St. Albert, and Mayerthorpe.

MR. CHAIRMAN: . . . and Mayerthorpe, and flip that down to the first week in July and pick up those members of the committee who are able to come; in other words, leave the second week where it is, because arrangements have already been made with the towns and the local groups, but flip the first week down two weeks. Hopefully that won't be necessary. We'll have a smaller number of MLAs traveling if we're into early July.

Tom.

MR. SIGURDSON: Well, maybe we can get a commitment if we are in session on those dates. You know, surely to goodness, if we're in session that week of the 18th, and we think there might be . . . We've got a hearing scheduled for the 19th, I believe?

MR. CHAIRMAN: Yes.

MR. SIGURDSON: The 21st and the 22nd?

MR. PRITCHARD: That's right.

MR. SIGURDSON: If we're going to be that close to the end of the session, it might be an opportunity for the government to say: "Fine; we will allow members to leave the Assembly and travel to those communities." Let's get the hearings over with by the end of this month. Let's not send any more messages out that we're going to have another meeting held in September. We've got some commitments now. I think that may be an opportunity just for the government Whip to say, "Fine; I'll free up certain members to go."

MR. DAY: Again, Mr. Chairman, I think the discussion's hypothetical. I don't think we want to send out any messages to these communities. Let's wait and see what happens.

MR. CHAIRMAN: I was responding to the question: what happens if . . . And the game plan we've developed to this point in time I've explained to you. If we get other directions from the three parties, then we'll change course.

MR. DAY: I guess as time wears on it's fair to say we all worry about getting this done, but let's see what happens.

MR. CHAIRMAN: Okay. Any other matters on our scheduling? Are there any other subject matters you wish to raise this evening? We're ready for a motion to adjourn then.

Tom.

MR. SIGURDSON: So moved.

MR. CHAIRMAN: Thank you. All in favour?

HON. MEMBERS: Agreed.

[The committee adjourned at 7:28 p.m.]