

[Chairman: Mr. Stewart]

[7:36 p.m.]

MR. CHAIRMAN: Will the committee come to order, please. I would declare that we have a quorum in accordance with Standing Order 53(4).

The first item on the agenda is the approval of the agenda which was circulated to all members. I would like to make one small amendment to the agenda, and that is to insert as item 4.1, Tabling of Documents. With that change, I would request a motion.

MR. GOGO: I so move as amended.

MR. CHAIRMAN: I beg your pardon?

MR. GOGO: I so move as amended.

MR. CHAIRMAN: Moved by Mr. Gogo. All those in favour, say aye.

HON. MEMBERS: Aye.

MR. CHAIRMAN: The motion is carried.

Item 3 on the agenda, the Approval of Minutes of May 6, 1987, meeting. Minutes have been circulated to all members. May I have a motion?

MR. SCHUMACHER: Mr. Chairman, I move that they be adopted as circulated.

MR. CHAIRMAN: Moved by Mr. Schumacher. All those in favour, say aye.

HON. MEMBERS: Aye.

MR. CHAIRMAN: I declare the motion carried.

Item 4 on the agenda, Motions re Production of Witnesses.

MR. WRIGHT: I would like to move, Mr. Chairman, that Professor Kenneth Munro of the Department of History of the University of Alberta be received as a witness.

MR. CHAIRMAN: Discussion on the motion? Are you ready for the question? All those in favour of the motion, please say aye.

HON. MEMBERS: Aye.

MR. CHAIRMAN: Contrary? I declare the motion carried.

MR. WRIGHT: On item 4(a), if I can move that some documents be filed and circulated, there are two documents. The first is Dr. Munro's article in *Prairie Forum*, spring edition, which is relevant to his disquisition, I believe, Mr. Chairman. And the second is the 10th report of the Royal Commission on Bilingualism and Biculturalism, called the Law of Languages, copies thereof as exhibits -- if that's the word, or items -- the next two in order.

MR. CHAIRMAN: That's a motion from Mr. Wright. Are you ready for the question?

MR. GOGO: Mr. Chairman, I believe Mr. Wright said 4(a). I

think you indicated the agenda would read 4.1. Is that correct?

MR. CHAIRMAN: I guess I did, yes. All those in favour of the motion, say aye.

HON. MEMBERS: Aye.

MR. CHAIRMAN: Contrary? I declare the motion carried. Perhaps you might distribute those then at this time.

MR. WRIGHT: A question on the documents, Mr. Chairman. Are we keeping track of them by number? Might that be a convenient way of doing it?

MR. CHAIRMAN: I think that would be a very convenient way, and I thank you for your suggestion.

MR. WRIGHT: So we can assign numbers to these in sequence with the ones already filed.

MR. CHAIRMAN: We will do that, and that will be reported in the next minutes.

While the clerk is circulating those documents, perhaps I might first welcome Dr. Ken Munro to the meeting and indicate to you that there will be, first of all, a swearing in of the witness by our counsel, and then that will be followed by a presentation from you to the committee. Just for purposes of clarity, I might just read to you the motion of our committee that deals with the procedure on the calling of expert witnesses:

That expert witnesses will be expected not to exceed 30 minutes in their opening statement and should not do so except for good reason,

and the Chair shall be the judge of whether there is good reason for an extension of the 30-minute time period. So we will endeavour to accommodate as your needs may be as we approach the 30 minutes.

As another matter of procedure following your presentation, Dr. Munro, our counsel to the committee will ask you questions on behalf of all members. Following that, the meeting will be open to questions from any member to you. The member is entitled to one question plus two supplementaries. However, any member is entitled to speak as often as he or she wishes. I'll form a list here, and we'll see if we can keep track of the questions and handle it in that fashion. So I would ask the counsel now to swear in the witness.

[Dr. Kenneth Munro was sworn in]

MR. CHAIRMAN: Of course, you may remain seated as you give your presentation, Dr. Munro.

DR. MUNRO: Mr. Chairman, thank you very much for inviting me here this evening. It is a great privilege for me to speak to the legislators of this province.

What I would like to do is address the question: is the use of the French language in the Legislative Assembly of the province of Alberta a right or a privilege for Albertans? I will argue in my presentation that it is a right and not a privilege.

In examining this question, I take an historical approach, going back to the time when this area entered Confederation on July 15, 1870, when the government of Canada bought this area from the Hudson's Bay Company. As you will recall, at that time the area of the North-West Territories and Rupert's Land

was bought by the federal government but did not enter as one single unit. A small section was carved out, and the province of Manitoba was created. It entered Confederation on July 15, 1870, as a bilingual province.

The remainder of the territory was governed by a temporary Act. The government of Canada had very little idea of what existed in this territory and thus did not feel that it should establish and impose upon this area a constitutional structure before they had some knowledge of the extent and nature of this area, had, for example, extinguished native land claims, before they had done a certain amount of surveying, this type of thing. And thus it was that when we entered Confederation, we entered as a territory under a temporary Act. In 1875 the North-West Territories Act was passed by the Mackenzie Liberal government in Ottawa.

This Act was silent on the question of language. Not until two years later in 1877 were various amendments proposed, which passed through the House of Commons. When they went to the Senate, Senator Girard, who represented the province of Manitoba, proposed an amendment to make this territory bilingual. He proposed that

Either the English or the French language may be used by any person in the debates of said Council, and in the proceedings before the Court, and both those languages shall be used in the records and journals of the said Council, and the ordinances of the said Council shall be printed in both languages.

Neither the opposition Conservatives under John A. Macdonald nor the Liberals under Alexander Mackenzie were exactly pleased with this proposal, mainly because both mainline parties in Canada wanted the local option established. In other words, they wanted really the Territories to decide themselves what the language of the Territories should be.

Nevertheless, this motion was proposed in the Senate. It was late in the session; the government didn't want to jeopardize the other amendments to the North-West Territories Act and thus accepted this measure. They did so not because they were opposed to French and English being used but because they wanted to allow the territory to establish its own language law. As I say, however, after 1877 this area was officially bilingual in the council, for there was no Assembly -- in other words, equivalent to the cabinet -- in the courts, and ordinances of course had to be published in French and English.

This measure was amended in 1880 once a Legislative Assembly was established for the Territories in order to make certain that the Assembly was bilingual. In other words, French and English were to be the languages used in the Assembly and, for example, the journals were to be in both French and English.

In 1886 the federal government revised the statutes of Canada, and this bilingual clause in the North-West Territories Act became the famous section 110 at that time. Thus I suggest that this was the first phase of bilingualism in the Territories. After this point, in the 1880s -- there had been a great boom in the early '80s, in the west in particular, but by 1883 the Depression had set in, even though the railway had pushed across the country. There was a feeling of despair in the country and economic crisis. Many Canadians were looking around to try to find the reason for this.

There was a group, particularly in Ontario, who had come to the conclusion that the reason for this was because Canada was not like the United States. We were not unilingual and unicultural. Of course, the unilingual aspect meant that we were not English and thoroughly British. So they began to point their

fingers at French Canadians. One of these individuals was D'Alton McCarthy, who was really a leading light within the Conservative Party and appeared to be Macdonald's lieutenant. He came out to the west in 1889 and spoke at Portage La Prairie, Manitoba, urging the Manitobans to change the Manitoba Act. Then he moved on to Calgary and urged members of the Assembly in the North-West Territories to change the language law in the Territories.

This gained a certain amount of acceptance in the Territories, one of the reasons being that there were very few French Canadians in the northwest by this time. At the time of Confederation they were about equal, if not a majority if you exclude the Amerindians. But by the late 1880s they were a small minority. Not only were they a small minority but there didn't seem to be many French-speaking Canadians moving out to the west. Most of the new immigrants came from Ontario, a few from Europe at this time, but mainly English-speaking Ontario. Ontario was always a little annoyed that the west was not hers. Even as early as the 1850s Ontario had hoped to take the west, to buy the west. They had sent agents out here -- for example, Charles Mair -- in the 1850s and '60s to encourage westerners to advocate union with the Canadas and to establish a little Ontario. They really were annoyed that in 1870 when the northwest did join, they joined not as a little Ontario but as a little Quebec. Riel and George Cartier had seen that it wasn't Ontario who had won that battle, but it was the province of Quebec.

They were equally annoyed that by 1877 Quebec seemed to have been winning the battle against Ontario to make the northwest bilingual. So for all these reasons there was a great deal of support in Ontario in particular and, as I say, in the North-West Territories, where whenever people talked about it -- most people didn't talk about it; it wasn't a major issue in the North-West Territories at that time. Nevertheless, members from the Assembly and others asked Ottawa to change the North-West Territories Act to accommodate the desires of groups like the Equal Rights Association of D'Alton McCarthy. In fact, in January 1890 after he had made this fall tour in August and September 1889, McCarthy went back to Ottawa, and he introduced a motion into the House of Commons to make the North-West Territories unilingual English.

In other words, it was the same type of situation that is occurring now in the federal Parliament with respect to capital punishment. It was just a motion, really. The government was very concerned about this. This was 1890. Macdonald was going to be facing an election the following year. Tensions between English- and French-speaking Canadians were rising. He didn't want the party disrupted. It had suffered a major shake-up after the Riel affair in 1885, although he had won the 1887 election. He wanted, as did other politicians, to put this language question on the back burner. So he was very annoyed at McCarthy raising this issue in the House, as were the Liberals, of course, who didn't want to have very much to do with it.

An attempt was made to reach a compromise, because just as the English-speaking nationalists, which McCarthy represented, wanted a unilingual, English-speaking, British Dominion, French-speaking Conservative nationalists wanted a bilingual, bicultural Canada. And there was no ground for compromise, it seemed, between the two. In the end Adolphe Chapleau, who was then Secretary of State, and the minister of justice, Sir John Thompson, reached a compromise whereby the courts would remain bilingual, the ordinances would be published in French and English, but they would allow the Assembly itself to decide the language, whether French or English, for the Territories.

This motion then received majority support in the House, and in 1891 Sir John Thompson introduced an amendment to the North-West Territories Act which would allow the Territories after the following territorial election -- that is, after the people of the Territories had had their say, the new territorial Legislature would be allowed to change the language of the Assembly. This was passed in 1891.

But the federal government, in introducing that amendment, was very specific. It became section 18 of the amendment to the North-West Territories Act, and with your indulgence I would like to read it. It stated:

Section 110 of the Act is hereby repealed and the following substituted therefor,

And I quote 110:

Either the English or the French language may be used by any person in the debates of the Legislative Assembly of the Territories and in the proceedings before the Courts, and both those languages shall be used in the records and journals of such Assembly, and all ordinances made under this Act shall be printed in both those languages, provided however that after the next general election of the Legislative Assembly such Assembly may, by ordinance or otherwise, regulate its proceedings and the manner of recording and publishing the same, and the regulations so made. . . .

And this is the important part,

. . . shall be embodied in a Proclamation which shall be forthwith made and published by the Lieutenant Governor in conformity with the law, and therefore shall have full force and effect.

This was passed by the federal House, and in 1892 there were territorial elections. Following those territorial elections, the Legislative Assembly of the Territories decided in its wisdom to indeed change the language provision. That change was made by Mr. Haultain. Nevertheless, the Lieutenant Governor never did sign the proclamation as set out in the federal legislation.

This oversight, if you like, was not noticed until the 1960s, when researchers working for the Royal Commission on Bilingualism and Biculturalism made this discovery. At the time, however, it wasn't a major issue, and government in the Territories continued as before. That ended sort of a second period, the period 1886 to 1892, when there were changes made in the North-West Territories Act and in the language of activity of the Assembly.

Finally, there is a third period. I discussed the period 1905, when Alberta and Saskatchewan were carved out of the North-West Territories and became provinces. The Alberta Act was presented to the federal Parliament first, followed by the Saskatchewan Act. When the Alberta Act was presented, there was no clause in the proposed legislation with respect to language. Several French-Canadian nationalists, such as Henri Bourassa and Frederick Monk, who was a leading Conservative, wanted to take the 1877 clause of the North-West Territories Act and insert it into the Alberta Act. Naturally, Sir Wilfrid Laurier was concerned about doing that. Again, he was being an astute politician and was concerned about raising the issue of ethnicity and language in federal debate, and he counseled against it. Indeed, he refused to countenance such action. Nevertheless, the minister of justice as well as the Prime Minister, Sir Wilfrid Laurier, and the Leader of the Official Opposition, Robert Borden, all accepted the idea that section 110 would be carried forward into the Alberta Act, and there was no reason to insert a clause spe-

cifically with respect to language.

Indeed, to make certain that this was the case, Frederick Monk asked the minister of justice in June 1905 -- he was talking about section 24, which was this section which allowed the carrying forward of various sections of the North-West Territories Act. He says:

. . . in this section 24 we are maintaining in force a very considerable body of law contained in the Northwest Territories Act. A glance will show the Minister of Justice that there are few sections of the Northwest Territories Act that are either inconsistent with the Alberta Act or for which there are substitutes in so many words in the Alberta Act. I wish to mention particularly section 110 of the Northwest Territories Act as to the English and French language and in regard to which I have given notice of an amendment. Section 110, under this repealing section 24, would seem to me to be preserved. There is no clause in the Alberta Act under consideration which provides any special substitute for that, nor is it inconsistent with any of the clauses of the Alberta Act, as I understand them. It would remain in the law, and I would venture the opinion that it would remain there very probably, subject to repeal by the local legislature as being a local matter within the province.

In reply, the minister of justice agreed emphatically that

If section 110 is carried forward -- and I myself am disposed to think it is carried forward -- it would be the law as they will have it in the province after this constitutional Act is passed. Then of course, it would become subject to the control of the local legislature, and it will be a matter to be dealt with by them; and I say emphatically, Mr. Chairman, that is my intention.

Indeed, Robert Borden concurred with this analysis, as did the Prime Minister, as did other members of the Laurier cabinet. Everyone agreed that that was the intention of the government, to carry forward this language provision to the new province of Alberta, and then it would be up to the province of Alberta to decide what that province would do with respect to language. So in 1905, I would submit, section 110 was carried forward.

Certainly, the section with respect to the courts and the publication of ordinances or laws -- and I would submit as well because the Lieutenant Governor did not follow the procedure as outlined in the 1891 federal legislation with respect to the language of the Assembly -- that aspect of the language would be carried forward as well. If that is the case, did the Legislature of Alberta change the language provisions from 1905 to the present? I would submit there is no clear indication that they have done so.

As you know, in 1982 the Alberta Act became part of the Constitution Act, or the Canada Act, so that the Alberta Act now is an integral part of the Canadian Constitution. So because of negligence or because of the will of the Legislatures of the province of Alberta, I would suggest that Alberta is today officially bilingual with respect to the courts, to the publication of laws, and with respect to the Assembly.

That is my submission, Mr. Chairman.

MR. CHAIRMAN: Thank you very much, Dr. Munro. I now ask counsel to direct any questions to the witness on behalf of the members.

MR. RITTER: Thank you, Mr. Chairman. Before we start, I

should like to give Professor Munro my personal welcome, because Professor Munro and I are very good friends back at the university. I only promised Mrs. Hewes that I wouldn't mention which bars Professor Munro and I spent most of our time in making this friendship, so I'll just get right on to the questions.

Professor Munro, you seem to base much of your hypothesis on the use of French in the Alberta Legislature. Of course, we're not addressing the situation as regards the courts or anything like that, but we are looking within the Legislature. You base it on the discovery of a deficiency, which you say the discovery happened in the 1960s regarding the proclamation of a motion which I understand was introduced in the North-West Territories Legislature on January 18, 1892. Could you explain that a little further, please?

DR. MUNRO: Well, as you know under the Alberta Act, if this were carried forward, when the debate occurred in 1905 when the Alberta Act was being discussed in the Parliament of Canada, there was little mention made of the language of debate in the Assembly. Indeed, in 1891 when Sir John Thompson was discussing the question of language, he noted that it wasn't as important a question as the question of the courts and the publication of laws. So the federal government was willing to compromise on what they considered to be the least important aspect of the language provision of section 110.

They allowed the Legislature to change the law if they so desired. The Legislature passed an ordinance, but under the law this should have been made and embodied in a proclamation signed by the Lieutenant Governor, I would submit, and this was not done. Thus it does not have the force of law. At that time, no one seemed to be too worried about it. Indeed, in 1905 when the Alberta Act was discussed, many assumed that the law had been changed, but in subsequent searches, beginning in 1963 in earnest, no proclamation has seen the light of day with the Lieutenant Governor's signature on it.

MR. RITTER: Thank you, Professor Munro. Mr. Chairman, just to read into the record, I would like to quote a relevant passage from Dr. Munro's article, which was passed out to the members dealing with this very point. It's just one paragraph. He writes:

The compromise amendment was passed in Parliament in . . .

MR. WRIGHT: The page?

MR. RITTER: I'm sorry?

MR. WRIGHT: The page?

MR. RITTER: Oh, I'm sorry, Mr. Wright. One sixty-eight, I believe. Oh, I'm sorry; I have a different copy in front of me. It's 42. I'm sorry. On my copy it's the third paragraph down. I hope it's the same on your copy.

The compromise amendment was passed in Parliament in 1891, and in 1892, following the Territorial elections, the Assembly of the Territories abolished the use of French in the Assembly and in the publication of journals and debates of the Assembly. Apparently, this restrictive legislation was never proclaimed and thus French was never legally abolished in the legislature of the Territories. Until scholars examined this issue for the Royal Commission on Bilingualism and Biculturalism, no one noticed this deficiency. Even French Canadian nationalists like Henri Bourassa were unaware that because of the lieutenant-governor's failure to proclaim the ordinance, the Territorial legislature had not abolished French within the terms set out in the 1891 federal legislation.

Dr. Munro, had the motion of the House in 1892 been successfully proclaimed, would its effect have been carried forward under the terms of the Alberta Act, section 24?

DR. MUNRO: Yes.

MR. RITTER: So basically the whole argument is dependent upon this defect of the proclamation. Is that correct?

DR. MUNRO: That is correct.

MR. RITTER: May I ask what you based your research on with regard to the discovery of this deficiency?

DR. MUNRO: I'm not certain I completely understand the question, except that if you examine the federal Act of 1891, section 18, which lays out clearly the method by which the territories can amend section 110, plus research into trying to find the documents necessary to bring that into effect, you find that at least up to the present, those documents have not been found.

MR. RITTER: I see. Thank you, Professor Munro. What I actually meant was: how did you discover the deficiency in the proclamation? Was it the government report on bilingualism and biculturalism?

DR. MUNRO: That's where it first came to my attention. That is correct.

MR. RITTER: I see. Mr. Chairman, with your permission I would like to refer the members of this committee to page 85 of that government report. I won't read it because it's a fairly lengthy passage, but if the hon. members assembled here don't wish to go through the whole report, I think Professor Munro would agree with me that this is the section. It's entitled paragraph 1.147, about one-third down the page, to the end of page 85. That is the relevant passage, I believe, to which Professor Munro refers. Is that correct?

DR. MUNRO: I don't have that copy right in front of me.

MR. RITTER: Mr. Chairman, I would like to just read that into the record for the reference of the committee members.

Professor Munro, perhaps you can tell me then -- because we have a number of very enlightening historical facts which were quoted to us, but we also have inherent in your paper and of course inherent in the report of another source, being the government report, some legal conclusions that were made about a defect in law. Perhaps you would explain to us what a proper proclamation, what form it might have taken.

DR. MUNRO: I'm not a lawyer, thus I can only give you a layman's opinion. My understanding is that all proclamations to become law, particularly with respect to this issue as stated in section 18 of the amendment to the North-West Territories Act of 1891, would require the signature of the Lieutenant Governor to have the force of law.

MR. RITTER: I see. Would this be in the form of an ordinance of that Legislature?

DR. MUNRO: According to this provision the Assembly, by ordinance or otherwise, would regulate its proceedings, and then those regulations would have to be embodied in a proclamation made and published by the Lieutenant Governor.

MR. RITTER: I see. Again, I realize I'm taking you out of your field here, but would you have any idea of what the "otherwise" might refer to? How else might the effect of section 110 be dealt with by the Legislature?

DR. MUNRO: I'm not certain.

MR. RITTER: Oh, I see. Thank you.

Now, I'd like to know: again, if we assume that the defect was in fact binding on this Legislature and the effect of section 110 of the North-West Territories Act had not been changed, can the Alberta Legislature change it now?

DR. MUNRO: I, of course, am not a constitutional lawyer. It seems to me that until 1982, they most certainly could. Now that the Alberta Act is part of the Constitution of Canada, I don't know. I think one would have to have a legal ruling on that. But it seems to me that until 1982, definitely it was the intention of the government of the day in 1905 that they would carry forward all of these matters and would allow the Legislatures in both Alberta and Saskatchewan to make changes as desired.

MR. RITTER: I see. Thank you, Dr. Munro.

So if I may summarize, what we're basically looking at is: had the attempted reversal of section 110 of the North-West Territories Act as amended taken place correctly, would we now be looking at a unilingual Legislature in Alberta?

DR. MUNRO: It seems to me that that is the case.

MR. RITTER: So we are really basing everything on this defect which was only discovered in the 1960s?

DR. MUNRO: On this particular point, yes.

MR. RITTER: I see. One last question. I have a number of questions here for you, Dr. Munro, but I think I'll just . . .

MR. HORSMAN: Excuse me, counsel.

MR. CHAIRMAN: Mr. Horsman, did you have anything?

MR. HORSMAN: I was going to signal that I would like to ask some questions following the counsel.

MR. CHAIRMAN: Very good.

MR. RITTER: I have some other questions here for you, Dr. Munro, but I think I'll leave it open to the members. I'll just leave on one last question. You made an opening statement at the very beginning of your presentation that you were going to examine whether the use of French in this Legislature -- and again I must emphasize that we're not dealing with a question touching upon the courts or any other body, but we are interested in what happens in this Chamber alone -- is a right or a

privilege. I would like to ask you: is it in fact a right or a privilege in your point of view, and if so, could you define what you mean by privilege?

DR. MUNRO: It seems to me it is a matter of right in the sense that it is now a matter of -- I would suggest, submit -- constitutional law. In other words, if it is matter of law, it is a matter of right. It's only a matter of privilege -- in other words, any language could be used in the Legislature of Alberta with the indulgence of the Speaker and the members of the House. So that would be a privilege, whereas if you have a right, you have a right in law.

MR. RITTER: Thank you, Dr. Munro. I might refer the members of this committee to their briefing or indeed any of the other sources with regard to a slight difference, I think, in meaning between the layman's understanding of the word "privilege" and privilege put into a parliamentary context.

But just as one closing statement I would like to ask Professor Munro: you're basing your conclusions on the defect from this particular report, *Legal History of Bilingualism in the West and Northwest*. I note that Mr. Sheppard, who published this report, bases his conclusion on the opinion of another archivist, the provincial archivist of Saskatchewan, Mr. Allan Turner. So what I see here is that your conclusions as a historian are based on the conclusions of another historian, which are based on the conclusions of a provincial archivist. And I wonder if you might be able to offer this committee any other source than this one opinion from which it seems a number of academic studies emanate.

DR. MUNRO: Yes, there have been studies done. There has been research, as you can imagine, done recently on this matter because of the contentious issue. In the 1970s, you will notice in my footnotes, *les francophones hors Quebec* published a report, *Les héritiers du Lord Durham*, and in that document as well researchers could not find a proclamation that was signed by the Lieutenant Governor.

MR. RITTER: I see. Thank you, Dr. Munro. Mr. Chairman, I have no further questions.

MR. CHAIRMAN: Thank you very much. I have a list forming here. Mr. Horsman.

MR. HORSMAN: Yes, Mr. Chairman. Thank you, Dr. Munro. I want to ask you -- I'm entitled to ask you one question and two supplementaries and will try to phrase my first question in such a way that it's clear. Your article, which we've just received this evening, provides in the last paragraph the following statement:

... section 110 of the North West Territories Act of 1886 remained intact. Since the Province of Alberta never changed that legislation, when the Canada Act was passed in 1982, section 110 of the old North West Territories Act concerning bilingualism was carried forward into the new Canadian constitution.

End quote from a sentence in that statement.

Then section 110 states that:

Either the English or the French language may be used by any person in debates of [the Legislative Assembly of the Territories] and in proceedings before the Court, and both those languages shall be used in records and

journals of [such Assembly], and all the ordinances [made under this Act] shall be printed in both those languages.

There appear to be four separate items contained in section 110: debate, courts, journals and records, and ordinances or laws.

In your opinion is section 110 severable into four parts, so that one or more or less than the full four could now be in place, legally binding upon this Legislature?

DR. MUNRO: Yes, I believe so. And I believe so for this reason: that in 1891 the federal government refused to allow the complete change in section 110. In other words, the federal government in 1891 set aside the question of the courts. They refused to allow the local Legislature to tamper with them -- with respect to language, that is. They set aside as well the publication and ordinances, so that you can see that even then they took out certain sections of that section 110 and refused the Legislative Assembly to have anything to do with it, but they did allow the Assembly to look at the other two aspects that you have mentioned.

MR. HORSMAN: Well, as a supplementary then: what sections or parts of section 110 do you believe now to be part of the Constitution of Canada?

DR. MUNRO: In my view, all of section 110. In other words, all four parts that you have suggested are part of the Constitution.

MR. HORSMAN: My final supplementary then: in view of what you have told us, that Alberta is officially a bilingual province and that this is officially a bilingual Legislature, is it necessary to implement all the steps such as full translation facilities for debates, *Hansard*, all laws past and present, in order to comply with the official bilingual status of Alberta?

DR. MUNRO: No, I do not believe so, and I base this on practice in other jurisdictions in Canada. For example, since 1867 the province of Quebec has been officially bilingual, as it is today, with respect to the Legislature. Nevertheless, if one speaks in English in the Legislature of Quebec, the information is taken down in English; if one speaks in French, it is taken down in French. There is no translation.

If you move to Manitoba, which is officially bilingual, for example, one must inform the Speaker that one is going to make a speech or ask a question, and a reporter will come in to take down the information in French.

So there are variations that the legislators of a particular jurisdiction must work out themselves within the overall principle.

MR. R. SPEAKER: Mr. Chairman, my questions are somewhat similar to Mr. Horsman's, but I'd like to refer to page 85 of the *Legal History of Bilingualism in the West and Northwest*, the last line. I won't read the full sentence, just the latter part, and I quote:

... and that not only is it still permissible to use French in the debates but the records and journals must still be printed in both languages and should have been so printed without interruption since 1892.

The word "must" is in that. Now, since you could conclude that we are a bilingual Legislature, based on the preceding documentation here in this article, does that mean that -- and it's similar to Mr. Horsman's question -- the word "must" is placed upon

our shoulders as legislators at this current sitting?

DR. MUNRO: No, I do not, the reason being that -- for example, if one takes the case again of the province of Manitoba, in that court case it was decided by the Supreme Court that Manitoba is a bilingual province, that the province did not have the right to make Manitoba unilingual, English, in 1890. Nevertheless, the courts stopped there once they had made that statement, and it was up to Manitoba to see how they were going to reconcile the practice of Manitoba before that decision and after. And indeed, there were negotiations and discussions between the government and a Francophone group so that much common sense would be brought to bear to this question, because there was on the part of the Francophones and on the part of the government no desire to -- I should say that there was no desire on the part of either group simply to translate irrelevant material because the courts had said, you know, Manitoba is bilingual. So I think what happens is that there is discussion, and each jurisdiction works out something that's very practical and is useful for all concerned in each jurisdiction, accepting the general principle.

MR. R. SPEAKER: Mr. Chairman, just one supplementary. In summary, what you're saying to us is that the concept of bilingualism is here, or that's in effect, but the operative word in implementing that is "common sense" among the legislators at a point in time. Would that be correct?

DR. MUNRO: That seems to me to be the Canadian tradition which has developed in the past few years, yes.

MR. CHAIRMAN: Further supplementary, Mr. Speaker? Mrs. Hewes.

MRS. HEWES: Thank you, Mr. Chairman. Dr. Munro, back to your description of 1905 and some suggestions that there was not too much concern expressed about this being carried forward into the legislation. In your mind is there evidence that there was an assumption that it had in fact been proclaimed?

DR. MUNRO: It seems to me that if one looks at the debate, there was an assumption that it had been proclaimed, that it was in effect law.

MRS. HEWES: Then one further question, Mr. Chairman. Is there then any evidence recorded of discussions or correspondence at the time of the proclamation of the Alberta Act that would reinforce the belief that it had been proclaimed and that the use of French had been abolished? Or, on the contrary, is there any evidence in correspondence that would support the notion that it had not been proclaimed?

DR. MUNRO: No, Mr. Chairman. The problem in 1905 was that no one other than the French-Canadian nationalists from Quebec were terribly interested in this question. It was noted in debate and stated clearly by all concerned on both sides of the House that it was law, that the ordinances should be published in French or English, but it hadn't been done for a number of years, and no one seemed to be too concerned about it. So I think this is why that question -- by that I mean the question of the proclamation of the ordinance of 1892 -- did not really arise. People didn't seem to be too interested. Even the Prime Minister mentioned that although it was law that French should be

used in the courts, no one seemed to have bothered with it, and he couldn't recall a case for years in which French had been asked for.

MRS. HEWES: So in the final analysis, Dr. Munro, it simply was not addressed.

DR. MUNRO: It seems to me that is correct.

MR. CHAIRMAN: Thank you, Mrs. Hewes. Mr. Wright.

MR. WRIGHT: Yes. On the question, Professor Munro, of the resolution -- and I say "resolution" because you I think said "passed an ordinance." If you've got page 85 of the B and B report there -- do you have it?

DR. MUNRO: No, I haven't.

MR. WRIGHT: I see. There should be a spare one around.

Turn to page 85 and you'll see what was actually passed. What was passed -- tell me if I'm reading this right -- was a motion by Frederick Haultain, and I'll read it:

that it is desirable that the proceedings of the Legislative Assembly shall be recorded and published hereafter in the English language only.

That is the instrument you're referring to or the resolution you're referring to, is it not?

DR. MUNRO: That is correct.

MR. WRIGHT: Which is in fact not an ordinance, of course; it is a resolution.

DR. MUNRO: If I may reply, Mr. Chairman. Indeed, that would -- as the counsel to this committee asked me, you know, when I said, "by ordinance or otherwise" -- be the "otherwise" in that case.

MR. WRIGHT: Exactly. But whether it was by ordinance or otherwise, it still had to be embodied in a proclamation.

DR. MUNRO: Correct.

MR. WRIGHT: All right. That, of course, there is argument about, and you've given your version of the events. But what I'm particularly drawing your . . .

MR. CHAIRMAN: I think we've had a couple of supplementals there.

MR. WRIGHT: Have we?

MR. CHAIRMAN: Yes. But I'll be glad to put you at the bottom of the list and let you . . .

MR. WRIGHT: If I can just finish. It's all about this resolution, if you don't mind?

MR. CHAIRMAN: I think I must stick closely, or otherwise this matter is going to be out of hand. There are not many others on the list ahead of you, so we will be able to get back to you shortly.

MR. WRIGHT: This was my main thing I was going to ask. All the rest was preamble, so . . .

MR. CHAIRMAN: Mr. Anderson.

MR. ANDERSON: Thank you, Mr. Chairman. Just two points that I'd like to have the witness clarify if he might. Dr. Munro, not being a lawyer, I recall my lessons historically about the evolution of Canadian law. I guess the question would be: is it not true that the evolution of our system of government and the way in which we operate is both by written law and by convention? And if that is in fact the case, is there a case to be made that because we have in fact implemented in this Legislature -- rightly or wrongly, on a fine legal point -- the unilingual nature of it over the past several decades, would there not be a case for the precedent being established and for that having some supremacy over the fine point of legal law?

DR. MUNRO: I'm sorry; I'm not a lawyer myself, but it seems to me that if there is a law, it takes precedence. As you know and quite rightly point out, we do not have simply a written Constitution in this country. We have both a written and unwritten Constitution, and the precedent and tradition occurs in the unwritten part of the Constitution. But as far as the written part of the Constitution is concerned, it is binding, it seems to me, as stated in law.

MR. ANDERSON: Dr. Munro, just for clarification. On a point which you answered for the Attorney General earlier, I was unclear on that. You indicated that the four points raised, which included the courts and journals and so on, would in fact in your opinion be part of the Constitution. But then you said that there is not a requirement that all four be acted upon and gave some reason with respect to other federal statements. Could you clarify that for me?

DR. MUNRO: Mr. Chairman, they must be acted upon, but they must be acted upon bearing in mind a great deal of common sense and what is required. In other words, legally -- and this is where Manitoba has come to some grief -- it was hoped that not all statutes passed since 1890 would have to be translated into the French language. But because of a problem in the Legislature an agreement was not reached whereby they could translate only those that were useful and appropriate; in fact, all must be translated.

In other words, what I'm saying is that where goodwill and compromise and everyone can get together and work out a solution which is of benefit to everyone -- there seems to be no reason why the letter of the law must be pushed to the limit, but if that is not the case, then the letter of the law must be adhered to.

MR. ANDERSON: I see. So, Chairman, with my last supplementary then, just so I'm perfectly clear, it is your opinion that we are legally bound to adhere to all four of the points, regardless of the costs or the implications, but the timing would be a matter to be determined by the citizens of the province, presumably through their representatives.

DR. MUNRO: That is my opinion. That's correct, Mr. Chairman.

MR. CHAIRMAN: Mr. Oldring, followed by Mr. Wright, followed by Mrs. Osterman.



MR. OLDRING: Thank you, Mr. Chairman. Dr. Munro, I think that clarifies the point I was about to make. It was confusing to me, and I'm not a lawyer. But on one hand, I listened to the perspective that section 110 clearly calls for four provisions: that a person can use English or French in debates in the Legislature, that there should be provisions before the courts, that there should also be French as well as English in all records and journals of the Assembly and all ordinances. So on one hand, it clearly states that, and on another hand, you're saying that we can in part pick and choose.

You've qualified that somewhat by suggesting that common sense should prevail. With no disrespect to the courts, I'm not sure that common sense always does prevail, and I guess it really does come down to the letter of the law. What you're saying now is that the letter of the law is that all four would have to be implemented.

DR. MUNRO: That is correct, Mr. Chairman, but other jurisdictions, for example, Quebec and even the federal Parliament itself in its history, have worked out a *modus vivendi* in which the spirit of the law has been acceptable rather than the letter of the law.

MR. OLDRING: Supplementary then to Dr. Munro. I suppose if we were talking about the spirit of the law, then perhaps we could accept the motion that was passed although not proclaimed. But in following it through, if we're going to follow it to the letter of the law, then I'm presuming that we would have to have full translation provisions here in the Assembly and that, again, all legislation and ordinances and Acts would have to be written in both languages.

DR. MUNRO: Mr. Chairman, for the second part of the question, yes, but not for the first part. For example, there was no simultaneous translation in the federal House until the Diefenbaker government in the late '50s.

MR. OLDRING: But if we're going to follow the letter of the law, there should be.

DR. MUNRO: No, because under the Constitution and the old BNA Act, the federal Parliament was bilingual, and as I mentioned, all that it requires is that one has the right to speak in French or English. In the federal House in the early years, until simultaneous translation, very few people spoke in French because the House was deserted when they spoke. But once simultaneous translation was introduced, then French Canadians generally spoke in their mother tongue.

MR. CHAIRMAN: Mr. Wright.

MR. WRIGHT: Yes, I do have a number of questions, so perhaps you'll cut me off when I've used up my ration, and I'll drop to the bottom again, Mr. Chairman.

What I was getting to last time was the terms of the resolution of Mr. Haultain on page 85 there. Do you not agree that it does not deal with the spoken words in the Legislature at all?

DR. MUNRO: That is correct. The spoken words are not mentioned at all.

MR. WRIGHT: So in your article, when you mention that French was abolished, you were really talking about in the re-

ords of the Legislature.

DR. MUNRO: That is correct, Mr. Chairman.

MR. WRIGHT: So that even if Mr. Haultain's resolution was in effect -- because it had been proclaimed -- it would not affect the spoken language anyway.

DR. MUNRO: That is correct.

MR. CHAIRMAN: Mrs. Osterman, followed by Mr. Horsman, Mr. Russell, and Mr. Wright.

MRS. OSTERMAN: I was almost going to give ground to Mr. Wright, but to keep the proceedings proper, Chairman, I would just make an observation and possibly follow it by a question.

It seems that in the considerable amount of research you and others have done, Dr. Munro, which is extraordinarily interesting to a layperson as they begin to read about our history and realize the impact of what interpretations may be placed on the events of a hundred or more years ago -- and in fact what was the intent of the people at the time? What interpretation would a term "or otherwise" hold? How do we try to put ourselves back into the minds of the people then? Because surely we are really doing an amount of interpreting here of what might have been actually done or considered properly done at that time and in terms of the people of that day.

So I certainly wonder aloud what "otherwise" means and if in fact when you follow the research that's been done -- again, going back to page 85, apparently it's Mr. Turner again, the provincial archivist, that says:

I am therefore led to believe that no proclamation was issued subsequent to the action of the Legislative Assembly. He says "I am therefore led to believe" because it hasn't been unearthed. It took how many years to unearth the first bit of information? You wonder if somewhere along the line there's not going to be another unearthing and that, in the meantime, we're going to somehow say that at this point in time here we are, this is what the law of the land actually was. Meanwhile, we operated the law of the land until 1960-something in a certain way until we unearthed something else.

So my question would be: where in all of this, when there is obviously considerable discussion about the interpretation here, do our customs come in that we have operated with all through these many years?

DR. MUNRO: The answer to that, Mr. Chairman, is that the customs come in on the unwritten part of the Constitution; for example, in the cabinet, the government, this type of thing. With respect to the written law, however, this is where the courts come in.

For example, in a case involving a criminal matter in the province of Alberta today, the main centre of discussion was whether section 110 indeed was carried forward. It seems to me it is very clear in the debates that the intention of the politicians was to carry it forward, but this is a contentious issue and thus that aspect went to the courts for a decision and is in the court system at the moment and will undoubtedly go to the highest level, to the Supreme Court, for a resolution of that issue. So where there is uncertainty on the written law, one goes to the courts; where there is uncertainty on custom and tradition, one must decide within a legislative body.



MRS. OSTERMAN: That's helpful, Mr. Chairman. To Dr. Munro: where there is a difference of opinion in terms of the written law and the subsequent practice of a Legislature, or all the indications would be that the written law in practice was thus and so, your belief is still that the written law, when questioned and not being able to be verified in total obviously because of the incredible lapse of time, would not, in terms of the courts' consideration of it, be subject to interpretation with some recognition given to the practices over time?

DR. MUNRO: Mr. Chairman, if I may use a specific example to clarify my position. If you will recall, in the early 1980s the then Prime Minister was attempting to -- as we called it -- patriate the Constitution and devise an amending formula for that. There was an attempt -- and there has been since 1927 with a great deal of vigour -- to obtain agreement on that issue. No agreement was forthcoming, so the Prime Minister announced that he was going to do it alone. The provinces questioned this and the matter was referred to the Supreme Court. The Supreme Court ruled that yes, the government of Canada had every right to patriate and devise an amending formula -- that is, advise the British government to make the necessary adjustments -- but it was not the tradition or the custom. But the Prime Minister had the right, and once that was announced and he decided to go ahead and do it, then of course the body politic in the country came together and an agreement was reached. So yes, law is the law and can be used despite custom.

MRS. OSTERMAN: That is, if it is in the courts . . . Oh, I'm sorry; did I get my second supplementary in already?

MR. CHAIRMAN: I think so. I believe so, Mrs. Osterman. Mr. Horsman.

MR. HORSMAN: Yes, I'll follow up on the same point. I think what we're really talking about in terms of constitutional understanding -- and that was established in the case which went to the Supreme Court of Canada referred to by Dr. Munro -- is that customs and usages and the unwritten part of our Constitution are commonly, and in that particular case were, referred to as "conventions." That is the terminology that was used in that case. And you would agree that the term "convention" would apply in this case to customs, usages, and the unwritten practices.

DR. MUNRO: That is correct.

MR. HORSMAN: You've indicated that in your view -- and you've used several terms: "common sense," "goodwill," "compromise" -- recognition of the spirit of the law can be utilized to, if you will, overrule the letter of the law -- not overrule; perhaps that's not the right term -- but replace the letter of the law. That would be your view, that that is what should be done in this particular case in this Legislature in Alberta.

DR. MUNRO: It seems to me there is a good case to be made for it, for it seems to me -- and this is just a personal view of an ordinary Albertan -- rather useless to translate, for example, all the laws from 1905 to the present, whether they're relevant or not today, into French.

MR. HORSMAN: Would you agree, using the term "convention" in its sense that we've been discussing, that by convention

the Alberta Legislative Assembly has been a unilingual English Legislative Assembly?

DR. MUNRO: No, I would not, Mr. Chairman, because there have been periods, for example, from 1935 to just beyond the mid-50s -- there was a minister who was Francophone in the Social Credit government, in which there was use of French. There has been use of French since that period. Now, where a debate could occur is where some members of the Legislature might consider that a privilege has been extended to certain individuals to speak in the French language, whereas those French-speaking individuals might feel they are exercising their right. But French has been used in this Legislature over the years.

MR. CHAIRMAN: Mr. Russell, followed by Mr. Wright.

MR. RUSSELL: Thank you, Mr. Chairman. I'd like to continue the line of questioning that's been developed by Mrs. Osterman and Mr. Horsman. To get off the strictly legal point for a moment and pick your brains as an expert in history -- I'm referring to page 85 of the B and B commission studies and the Haultain resolution -- in your understanding of the society of the Territories in that day, have you any opinion why Haultain would develop that resolution and why it would be subsequently passed?

DR. MUNRO: It seems to me, as I mentioned very briefly in my opening remarks, Mr. Chairman, that there was a feeling in the country, a growing feeling of despair. As a matter of fact, in that period you find Canadians writing books about "Let's forget the whole thing; let's join the United States." Commercial union was talked about a great deal. People looked to the United States. Canada was going to be the great country. We were the men of the north and we were going to have a place in history. We were going to be the big, dominant power. After all, Confederation came about when our neighbours to the south were involved in a bloody civil war, and there was a great deal of euphoria in the air.

But by the 1890s this had all passed. The United States was the great power in North America. We felt destiny had betrayed us. We were looking around to find out why. The Americans had had any dissent, any differences, stamped out. They did it through a civil war. There was a feeling that if you have different nationalities, different traditions and customs, you would never be a great power. So many, many English-speaking people in this country -- and they were the majority, particularly in Ontario, but also in the northwest the vast majority were English-speaking people, largely from Ontario, for don't forget this is the period before the arrival of the vast waves of immigrants from central Europe. So they were largely English-speaking British in orientation or American, and they felt there should be a unilingual, unicultural country and then we would be great. I mean, that is one aspect.

Secondly, there was no need for French. As a matter of fact, this is probably one of the reasons why Haultain proposed a resolution. It wasn't really an issue in the northwest as it was in central Canada. The real battle was between Ontario and Quebec and spilled over into the northwest. So they thought they would conform; they might as well make the Legislature unilingual English. But there was no real need to, because most of the discussion and debate was in English at that time at any rate. The real problem was in central Canada and really not out here. But there was this feeling, though, that maybe to be great

we should become unilingual British. There was this feeling in the air at that time.

MR. RUSSELL: Thank you. In answering a question to Mr. Wright you emphasized the fact or confirmed the fact that it is the recorded and published proceedings that were to be in English only. Did that mean that French-spoken contributions were to be officially ignored?

DR. MUNRO: One must remember, Mr. Chairman, that at that time there was no *Hansard*. What you will find is that originally the *Journals* or the daily agenda, that type of thing, were in French and English -- sometimes only in English. But there was no debate, there was no *Hansard*, so that question didn't arise.

MR. RUSSELL: Thank you. With respect to the proclamation, there seems to be no proof that it was proclaimed. Is there any proof that it was not proclaimed?

DR. MUNRO: Mr. Chairman, there is no indication whatsoever anywhere. People have done a great deal of research -- historians and students -- since this bilingual/bicultural report was begun in the 1960s to find documentation of any sort, and there has been none found to indicate that there was an official proclamation on this matter.

MR. CHAIRMAN: Thank you, Dr. Munro. Just for the record, I have on my list Mr. Wright, followed by Mr. Fox, Mr. Anderson, and Mr. Schumacher. Mr. Wright.

MR. WRIGHT: Thank you, Mr. Chairman. Still on the same business of the Haultain resolution, would you be of the opinion -- and don't make a hasty judgment on this but consider it, please, if you haven't already considered it before, of course -- that when it says "that such Assembly may by ordinance or otherwise regulate its proceedings and the manner of recording and publishing the same," the section there is not dealing with statutes or ordinances in this case but is only dealing with what is published in the Legislature itself in the way of Votes and Proceedings, Orders of the Day, and that sort of thing? Or might it not include the ordinances themselves since they are in fact the manner of publishing the proceedings of the Legislature in passing Acts?

DR. MUNRO: Mr. Chairman, no, because the Minister of Justice in debate explicitly indicated that he was refusing to allow the Assembly to touch the publication of ordinances because it was so intimately connected with the courts. Because if you're going to take a case to court in French, you would want an official version which would be the French version, so that was explicitly excluded from the jurisdiction of the Assembly.

MR. WRIGHT: But were the ordinances in fact published in French?

DR. MUNRO: Generally they were not.

MR. WRIGHT: I've never seen ordinances of the Territories published in French, I must say.

DR. MUNRO: Mr. Chairman, this was noted in 1905 when a minister, Mr. Brodeur, indicated that although ordinances were

to be published in French or English they had not been. I had a direct quotation on that matter, which I'm not certain I can find at the moment.

MR. WRIGHT: I think you referred to that in your opening statement.

You mentioned section 24 of the Alberta Act. I think you were speaking about debate in the House of Commons in 1905 and that Act was under consideration, and I think you refer to that as a carry forward section. I am puzzled by that. I have a copy of the Alberta Act here. Do you have a copy of it?

DR. MUNRO: Yes, I do, Mr. Chairman.

MR. WRIGHT: Is there in fact a section 24, or is it not 14 that you are talking about in respect to the Legislature?

DR. MUNRO: It might well be section 14. It could be a typo that I have on this.

MR. WRIGHT: Or it could easily be that the Bill had different numbering from the Act.

DR. MUNRO: Yes, that's correct. It referred to the Bill before the House that Monk was referring to. And what it really referred to was that there would be certain aspects of the North-West Territories Act negated and all the rest would be carried forward.

MR. WRIGHT: So you think it's 14 and 16 now, 14 regarding the Legislative Assembly and 16 the carry forward.

DR. MUNRO: Actually, I think it ended up as section 16 in the final Act.

MR. CHAIRMAN: Mr. Fox.

MR. FOX: In terms of the Haultain resolution, I'm just trying to understand the process here. Even though the resolution didn't deal at all with the language used in the proceedings of the Assembly -- and I'm not sure it's germane to any of what we're considering here -- there still was a resolution that was made but not proclaimed. I'm wondering if you could tell me: was there a document produced out of this resolution that visibly lacked a signature, or was there just nothing to be found beyond a resolution on the books?

DR. MUNRO: As far as I'm aware, there is no . . . All I can say is there's no document with the Lieutenant Governor's signature on it that explicitly excludes the use of French.

MR. FOX: So there's nothing that refers to the Haultain resolution or what's contained therein other than the resolution itself?

DR. MUNRO: I personally have not come across any such document. Although one might exist, I have personally not seen one.

MR. FOX: Because you've done so much investigation into this, I wonder if you could venture forth with an informed opinion as to why that might be. Is it possible that there was some further consideration of the implications of this resolution and it was decided that it best be left unproclaimed?

DR. MUNRO: Mr. Chairman, it's very difficult to speculate, especially when there is such flimsy evidence, in fact practically no evidence. The only thing one could say is that Joseph Royal had come out. Back in the 1870s he had been a protégé of George Cartier. He knew what Cartier's vision of Canada was. But as far as motivation, it's impossible for a person like myself to even really speculate. It could have even been just clerical error. I just don't know.

MR. CHAIRMAN: Mr. Anderson.

MR. ANDERSON: Thank you, Mr. Chairman. I'm prompted to get back into the discussion on the debate over convention or unwritten law versus the written law, and I am by the responses of Dr. Munro to Mrs. Osterman with respect to the constitutional court of '82. Frankly, the recollections of Dr. Munro and myself are different in that respect. I was a member of the Constitution committee of this Assembly at that point. I read the reference case that was there in some detail, and in fact my interpretation of the reference case was that the Supreme Court said that while there were legal precedents for the Prime Minister to proceed to London without the agreement of the provinces, in fact in the convention of Canada he could not do so and would not be operating in the context of Confederation to do so. It was then that the Prime Minister compromised to the point that the provinces agreed to a constitutional package largely of their making. So my recollection obviously is different, or my interpretation. Dr. Munro, would you then not agree at least that the point is debatable whether or not convention or unwritten law would take precedence over written law?

DR. MUNRO: No, I wouldn't, Mr. Chairman, because I think our recollection is the same to a certain point. It is the same up to the point and including the fact that the Supreme Court ruled it was legally acceptable for the Prime Minister to go to London. In fact, only he could advise the British government to make a change. But by convention this was not done or had not been done for many years. Now, as to who then brought the body politic together and how that occurred, our recollections might differ. But on that one point I think we're the same. In other words, the Prime Minister had the legal right to go to London, and that is what the courts ruled, although by convention the court in a sense cautioned very strongly against that.

MR. ANDERSON: Mr. Chairman, my second question then would be: are we not in a similar circumstance -- assuming for a moment that in fact legally the case you make, Dr. Munro, is correct -- that in fact that was not passed, and we are officially bilingual by either a clerical mistake or by intent that hasn't been noted in history? Would not the convention which has been established over several decades since that point make it inadvisable, as it would have been for the Prime Minister to proceed to London, for us to overrule that convention unless there is a basis for a different decision?

DR. MUNRO: Mr. Chairman, naturally I have my own personal view, but it is up to the collective wisdom of the legislators of Alberta to decide whether it is wise or not.

MR. ANDERSON: Mr. Chairman, then for my last supplementary. Would you then agree, Dr. Munro, that in fact the case is one to be determined by this Assembly rather than by legal precedent, written or unwritten?

DR. MUNRO: No, Mr. Chairman, I wouldn't agree, because this is a matter of law and the courts may or may not be asked to rule upon this matter. As a matter of fact, the courts have already indirectly been ruling on this matter, so in fact it is a question of law at this point.

MR. CHAIRMAN: Mr. Schumacher, followed by Mr. Wright.

MR. SCHUMACHER: Thank you, Mr. Chairman. Back to the history a little bit. What were the results of that 1891 election in the Territories? Did the government change? Was there new leadership?

DR. MUNRO: At that point there were no political parties in the territory as such; it was more or less independent. Haultain was certainly a leader of the group, but there weren't political parties in the sense that we know them at the present time.

MR. SCHUMACHER: Did the election result in a change, though, of the leadership?

DR. MUNRO: The election itself didn't. The spirit of the Assembly was the same before as after, but the federal government just wanted to make certain that after an election occurred -- in other words, it would allow the people to express themselves just to make certain. But the Assembly before was equally concerned, was of the same opinion as after.

MR. SCHUMACHER: The way the Assembly was set up, though -- was there a designated leader?

DR. MUNRO: Yes. It was similar to the Northwest Territories today, and I'm not exactly certain . . . My memory escapes me as to whether Haultain was or was not. He certainly took a leading role in both administrations, if not the leadership role.

MR. CHAIRMAN: Mr. Wright, followed by Mr. Fox.

MR. WRIGHT: Yes, it is in fact section [13] that deals with the Legislature itself in the Alberta Act, and you mentioned that it might be difficult after 1982 to make amendments because the Alberta Act has been incorporated as part of the Constitution of Canada. But of course it hasn't altered the wording of this section, obviously, and the section says:

Until the said Legislature otherwise determines, all the provisions of the law with regard to the constitution of the Legislative Assembly of the North West Territories and the election of members thereof shall apply, *mutatis mutandi*, to the Legislative Assembly of the said Province and the elections of members thereof respectively. So that is part of the Constitution, but right in the Constitution it says: "Until the said Legislature otherwise determines."

DR. MUNRO: Why, Mr. Chairman, I qualified it: as well, under the Constitution Act the province of Alberta, like all provinces, can change their own Constitution. But under section 52(2) -- I believe that is the section -- that if there is a law that is passed which contravenes the -- it's something to the effect . . . I'm not certain; I don't recall it directly -- general intent, the federal Legislature will prevail. Something to that effect. I just don't know, and it is a case for constitutional lawyers.

MR. WRIGHT: Well, subject to that though, the Legislature

can do what it pleases, including passing retrospective legislation.

DR. MUNRO: That is correct. And I'm not certain, to be quite honest too, under what provisions Manitoba was going to -- and has indeed today made certain provisions. In other words, you cannot go into the Manitoba Legislature if you're elected, and suddenly start speaking in French, although it is officially bilingual. There are certain rules and regulations which the Assembly has set out, and I presume there is a similar provision in the Manitoba Act for that.

MR. WRIGHT: But Manitoba doesn't have the benefit of a section 14, does it?

DR. MUNRO: No, it does not.

MR. WRIGHT: So in that respect we are less fettered than the Legislature of Manitoba?

DR. MUNRO: That would appear to be so.

MR. WRIGHT: So we are not any more master of our own destiny in this respect than the Legislature of Manitoba?

DR. MUNRO: All those assumptions being true, the conclusion is correct.

MR. CHAIRMAN: Mr. Fox, followed by Mr. Horsman.

MR. FOX: I'd like to designate my question to Mr. Wright.

MR. CHAIRMAN: Followed by Mr. Horsman. Mr. Horsman.

MR. HORSMAN: Well, I will review the *Hansard* record of our conversation this evening, but it seems to me, Dr. Munro, that in answer to your most recent line of questioning by Mr. Wright, you have somewhat reversed your position relative to both your article and your opening statement and testimony, that in fact it is a right in this Assembly, legally binding upon us, that section 110 of the North-West Territories Act is still in place, and that it cannot be amended by this Legislature alone or without going through the steps necessary to amend the Constitution of Canada since the Alberta Act of 1905 is incorporated in that Constitution.

Which is correct? That we can now, by resolution or otherwise, change the law that you have indicated we are bound by, that Alberta is an officially bilingual province?

DR. MUNRO: The reason I hesitate to state that the Legislature can itself is, because of that I'm not certain -- because I'm not a constitutional lawyer -- of the overriding clause of section 52 of the Canada Act. But if that does not stand in the way, section [13] of the Alberta Act reads:

Until the said Legislature otherwise determines, all the provisions of the law with regard to the constitution of the Legislative Assembly of the North West Territories and the election of members thereof shall apply . . .

But this seems to be more with regard to the -- it depends on the word "constitution," whether that means the makeup or whether it refers to the proceedings:

and the election of members thereof shall apply, *mutatis mutandis*, to the Legislative Assembly of the said Prov-

ince and the election of members thereof respectively.

If you read that closely, one could interpret that to mean changing the electoral boundary, making new ridings, and that type of thing. So not being a constitutional lawyer, I simply could not give an opinion on that subject.

MR. HORSMAN: Well, I won't pursue it. I think that the record will show the letter, and I intend to read your article very closely, which I hadn't had an opportunity of seeing until this evening.

I just want to ask one final supplementary, though, to make it clear with respect to section 110, and that is: if someone contends that the language rights guaranteed in section 110 of the North-West Territories Act were never extinguished and do still obtain in the Legislative Assembly of the province of Alberta, that that would apply to the Legislative Assembly with respect to debates, ordinances, and *Journals* as set out in section 110. All those matters would be encompassed in that contention. Is that correct?

DR. MUNRO: As stated in section 110, in the records and *Journals* of the Assembly, and of course all ordinances -- or laws, as we would say today -- made by the Legislature. That is correct.

MR. HORSMAN: Thank you.

MR. CHAIRMAN: Mr. Schumacher, followed by Mr. Wright.

MR. SCHUMACHER: Thank you, Mr. Chairman. Just going back to the Haultain administration, then, of 1891, the article by Sheppard indicates that there was some opposition. So I assume there was a debate on this. Was there a division?

DR. MUNRO: Mr. Chairman, there was a division on this matter. There was an attempt to negate that resolution, as a matter of fact, which failed, and there was an amendment, in a sense, which would have in effect negated it. It failed, and then the main resolution was put and passed.

MR. SCHUMACHER: What was the division?

DR. MUNRO: I have the information here in a form. I believe it was four members opposed to that. I will tell you explicitly. Haultain moved the motion, seconded by Mr. Tweed. There was an amendment by Mr. Prince, seconded by Mr. Mitchell. There were four for the amendment, which would have negated the main motion, and 20 opposed. And when it failed, the main question was put again and passed in the affirmative, but there is no recorded division on that vote.

MR. SCHUMACHER: Thank you.

MR. CHAIRMAN: Mr. Wright.

MR. WRIGHT: My question has been answered.

MR. CHAIRMAN: Are there any other questions from other members of this witness? If not, Dr. Munro, I wish to thank you on behalf of all members for appearing before us today and providing us with your evidence and answering the questions. We really appreciate that very much. Thank you.

Item 6 on the agenda is other business. Are there any other

items of business? Mr. Wright.

MR. WRIGHT: I think it might be helpful, Mr. Chairman, to have the Alberta Act distributed to members, or at least the relevant part of it, and also the relevant part of the North-West Territories Act, which is probably just 110. But I'd move that that evidence be received and numbered in sequence, and leave it to the Chair to select the correct amount of those two Acts.

MR. CHAIRMAN: Very good. The motion has been put by Mr. Wright. All those in favour of the motion, say aye.

HON. MEMBERS: Aye.

MR. CHAIRMAN: Contrary, if any? I declare the motion carried. We will attend to that, Mr. Wright.

Any other items of business? Mr. Oldring.

MR. OLDRING: Mr. Chairman, are we going to discuss perhaps when the next meeting date might be?

MR. CHAIRMAN: Yes, I think that may be. I've had a couple of comments from members with respect to meeting dates. As you know, we did pass a resolution which authorized the Chair to investigate some possible dates, but the matter was left on the basis that any meeting of this committee could be called upon 24 hours' notice by the Chair. We have determined that next Wednesday evening at 7:30 would be the next meeting date. I've checked that out as to availability, and that is the time that we could set aside for the next meeting. After that, I'm hopeful that we might be able to meet on the following Monday. I'm not sure what date that would bring us to -- May 25, I believe.

MR. WRIGHT: The 20th and the 25th. Next Wednesday is the 20th, and the following Monday is the 25th.

MR. CHAIRMAN: Yes, I will certainly confirm that. But I think that those dates we can take as given, and I will get out a notice to all of you, as well of course as an agenda with respect to that next meeting.

Mr. Wright.

MR. WRIGHT: On the question of witnesses, the former Senator Eugene Forsey has said that he is willing to give evidence. He is, of course, an acknowledged constitutional expert, well versed in at least some of the matters that we have to deal with in the area of inquiry, Mr. Chairman, and I move that the committee receive his evidence, subject to his being available at the time that's convenient to us and that arrangements be made.

MR. CHAIRMAN: A motion is put. Mr. Gogo, followed by Mr. Anderson.

MR. GOGO: Mr. Chairman, I'd like to ask either Mr. Wright or yourself: with regard to expert witnesses, would the committee be paying the cost of bringing the witness to the Assembly -- which I wouldn't object to -- but would there be matters of honoraria involved and so on?

MR. CHAIRMAN: My understanding is that Standing Order 66 covers the matter of sums to be paid for travel or attendance. I'll just refer you to Standing Order 66(2) as well as subsection (3). The way I interpret that is that the Clerk of the Assembly is

authorized to make payments for the per diem honorarium, if you wish, plus travel and a reasonable allowance for traveling and subsistence. But that is then determined at the final discretion of Mr. Speaker. Any claim that is to be made under subsection (3) must be made by the witness and presented to myself in the capacity as chairman to certify that indeed that witness did appear and that the claim is in order from the standpoint of the time spent.

MR. GOGO: The reason I raise it, Mr. Chairman, is that I wouldn't want to embarrass the former Senator. If he happens to have a speaking tour at a \$10,000 fee, I would not like to vote for Mr. Wright's motion if it were implicit that we had to pay that kind of money. I'm not trying to be facetious. I do think it's an important matter.

MR. CHAIRMAN: Mr. Anderson, followed by Mr. Wright.

MR. ANDERSON: Yes, Mr. Chairman. I have the greatest respect for Senator Forsey. In fact, I've had the opportunity to participate on a panel with him. However, I wonder if we could get some more information as to the relevance of his testimony to the questions before us before we vote on this one. While he's well recognized as a constitutional expert, in terms of questions related to this Assembly and the operating of it, I'm not sure that Senator Forsey would claim expertise in that respect. So before I agree to go to that expense and to bring such a distinguished gentleman so far, I'd like to have some further evidence as to his relevance.

MR. WRIGHT: I believe he is acknowledged as an expert in parliamentary procedure and, Mr. Chairman, the questions of the place of custom in regulating the matters of privilege as distinct from law. All those less definite questions I believe are peculiarly ones that he would be qualified to give an informed opinion on.

It is true that he is perhaps not -- I don't know, but he may not be as learned in the particular laws applicable to this Assembly or in dealing with the matters that the witness tonight has dealt with. But on the wider questions of what constitutes privilege and how it is regulated, I believe he will be of considerable help to the Assembly.

On the question of honoraria and what someone in the position of Senator Forsey may reasonably command -- that was implied in my motion, subject to his availability -- it wouldn't be only time but all the other positions and qualifications too, Mr. Chairman. And on Standing Order 66, I do note that the second part of suborder (2) is: "and a reasonable allowance for travelling and subsistence expenses," which sets it off from the first part, which talks of "a reasonable sum per diem during . . . travel and attendance." So while the second part deals with the out-of-pocket expenses obviously, the first part does entitle us, as refereed by the Speaker, so to speak, to go into the question of a reasonable sum for the attendance of an expert witness.

MR. CHAIRMAN: Mr. Hyland, followed by Mrs. Osterman and Mr. Horsman.

MR. HYLAND: Mr. Chairman, I think part of my question has been answered. But I guess the two things I still have a problem with -- "a reasonable expense" and what is a reasonable expense. If we could get it just a little closer than "reasonable expense" for per diem expenses, I guess it's straightforward --

whatever you turn the receipt in for. But reasonable expense for per diem still troubles me a little bit when we're dealing with an open-ended amount.

The other one may be clarified in that I thought initially we had agreed on one meeting for constitutional exchanges or how the questions we're dealing with affected or are affected by the constitutional issues, and then when I heard this gentleman's name come up I wondered if we were approaching on constitutional issues or the issues on privilege. Maybe from Mr. Wright's last exchange I feel a little better about it, that we're on the issue of privilege and not on the issue of Constitution with this witness. I hope that's my understanding.

MR. CHAIRMAN: Mrs. Osterman.

MRS. OSTERMAN: Mr. Chairman, in a small part I would just follow up Mr. Hyland's comments. I think that Mr. Wright has made some very excellent points about the possible witness who could come forward and add to the discussion and our deliberations. I would ask, though, in terms of what it is the committee anticipates by way of witnesses before we, sort of on an ad hoc basis -- next week that witness, the following week another, and so on, realizing that we need an appropriate picture framed for us to make sure that we've done all the discussion and, I guess, sleuthing that's important in this matter. I wonder if any observations have been made in that regard. I don't recall hearing anything this evening, nor do I recall Mr. Wright speaking to other witnesses that may be in the same vein, because then it would be appropriate, while we're discussing expenses, to pick and choose and make sure that we've done it in an efficient and effective way. I would look forward to Mr. Wright's observations there.

MR. CHAIRMAN: Mr. Horsman.

MR. HORSMAN: Yes. I was going to make a similar point. I do believe that we had generally agreed that we would try and devote one meeting to setting the constitutional framework for discussions before we got down to the actual facts of the particular set of circumstances we're facing here now, and it would appear to me that by proposing to bring in this former Senator that we might be prolonging and stretching out what we would hope would otherwise be a proceeding which would be fairly contained. I think that while I wouldn't have any great objection to bringing him in for one more look at the constitutional, conventional, legal aspect of the matter, I would be very much opposed to then having a suggestion that we think, well, the next meeting or a week from now we might bring in someone else.

In other words, is he the last of this lot, so to speak? I'd like to know that before I voted on this motion in favour of bringing him in. Because I do think that we've got to set the constitutional legal framework, and then we've got to get down to deciding what witnesses we may wish to call as a committee, who are familiar with the facts of the particular questions of privilege which are inherent in the motion relative to Mr. Piquette and perhaps other members of the Assembly who may or may not have breached the privileges of the Assembly or the Speaker or individual members thereof. We've got to get to that. I don't want to see this thing stretched on and on and on indefinitely. I don't think it's in the best interests of the Legislature to do that.

So I would want to know before I vote in favour of bringing former Senator Forsey in that that's the last proposed witness by Mr. Wright or others on this particular subject.

MR. CHAIRMAN: Mr. Wright.

MR. WRIGHT: Yes. Well, I don't really know why it's up to me or any particular member of the committee to propose the witnesses. I just wonder if the commission counsel or anybody else has any witnesses in mind for dealing with the constitutional and legal questions that must be the framework within which we decide the questions of fact, Mr. Chairman. And it's only in the absence, as I understand it, of suggestions in that regard that I make our suggestions.

MR. FOX: Mr. Wright covered basically what I was going to say, but I'd just like to emphasize that we've been presented with a complex and very important task, and I certainly don't want to see this committee waste its time, nor do I want to see us make some hasty decisions. Unless the conclusions have already been arrived at, it's my assumption that we as committee members would want to have the very best information presented to us and available to us, upon which we can base our informed decisions.

Both Mr. Hyland and Mr. Horsman seem to have the impression that it was understood we'd devote one meeting only to the consideration of constitutional questions. I don't believe that's anywhere in our minutes. I'm not sure where that impression came from, but it's not my impression. I think that Mr. Wright made the point very clearly that Senator Forsey would be dealing with the matters of privilege, which is in fact the basis of a paper presented to us by the committee's counsel, trying to delineate between matters of privilege and matters of law. I want to understand that better, and I'd like some additional input on that.

MR. RITTER: Mr. Chairman, just with regard to Mr. Wright's inquiry on witnesses that I would request that this committee call, I won't be calling anybody with regard to constitutional legal questions. I only had two witnesses in mind, which I'll be asking you to consider later on, of a much more immediate aspect, and that is a person, the Editor of our *Hansard*, to ask him relevant questions about what type of problems he might expect if this committee asked him to deal with French speeches and that type of thing, and another one from a ministry in the government which might be able to enlighten the committee on certain trends now and statistics regarding linguistic groups in Alberta.

MR. WRIGHT: You see the real problem, Mr. Chairman, is the form of our committee scheduling, because a matter like this, normally you would set two or three days apart and hear the witnesses one after the other. For, I suppose, inescapable reasons we can't do it that way. Yet we have, if we're going to do a decent job, to get people that will fill up that space of time. It's a very tedious prospect, I'm afraid, to spin it out over a series of two and a half hours a week for several weeks, but if it has to be that way, then it has to be that way. I would much prefer that somehow we can spend even just one day, start at half past 9 and go through to half past 4, and knock it all off, if that were possible.

But since it seems to be impossible, then we have to do it in this strung-out way, and certainly former Senator Forsey is not the only witness that we think should be consulted by us on the legal and constitutional questions. There's no doubt that this is a most important matter that we're dealing with. It's not the usual sort of privilege question in which it's largely a matter of

fact because the rules are known within which you operate. It's the other way round. The facts are there, plain to see, and it's the rules within which we are supposed to operate that are in dispute and doubt. That is why it is not a simple matter to get out of the way and why we do need expert evidence.

I would anticipate that at least two more witnesses on the expert matter would be necessary besides ex-Senator Forsey, and if it has to take longer than the time we would like to deal with that, then that has to be, Mr. Chairman.

**MR. ANDERSON:** Mr. Chairman, having originally raised the concern with respect to Dr. Forsey, or at least the questions related to the relevance, I guess I should declare my bias, which is that unlike Mr. Wright, I feel that the question before us is primarily one of what decisions we need to make within the boundaries of our rules. I personally don't believe that it is possible for us to conclude a constitutional question which to some extent is before courts.

Having said that, I appreciate other members' viewpoints that that may not be the case, and that I may be proven wrong. Nonetheless, I do agree with statements previously made that we should know what witnesses are to be called, what parameters are to be established for the discussion, how much time this aspect of the debate will take us, so that we don't preclude the other aspect, which I personally contend is much more important, and that is the debate with respect to the rules that this Assembly should have: what the questions referred to us by the Assembly refer to in terms of privilege as defined by our House. That's a particular bias, but I think it's important to have both presented: both the bias that there is an external constitutional parameter that will determine that and the bias which I have, which is the opposite, that the parameter has to be established in this Assembly before we look at that time allocation.

So if Mr. Wright could identify for us what other witnesses there might be and what parameters those might be intended to bring out, I suppose we could deal with those as a package.

**MR. FOX:** In putting that question, Mr. Chairman, I think it would be fair of you to ask all members of the committee if they have in mind the calling of or production of witnesses to appear before the committee. I'm not sure where the we/they, you know, "I'll show you mine if you show me yours" kind of attitude has come from. But you know, we -- Mr. Wright and I and some other people on the committee -- have talked about people whose appearance before this committee we think would be most important. But that may well be something that other members have thought about, and perhaps the question should be more generally put.

**MR. CHAIRMAN:** Mrs. Hewes, followed by Mrs. Osterman.

**MRS. HEWES:** Mr. Chairman, me first?

**MR. CHAIRMAN:** Yes.

**MRS. HEWES:** Thank you. I'm sorry I wasn't at your original meeting, but I didn't see anything in the minutes that really described to me that you'd had a conversation about what we need to know. Now, I've read the paper by our counsel. I had thought perhaps that he would tell us, "Here are the issues that need to be looked at in broad terms to provide us with adequate background in order to discuss the specifics of the case." Now, our counsel may think that his paper on privilege does that, and

perhaps it's simply that I have not sufficient depth of understanding or have not studied it in sufficient detail. But I think we do need more discussion on privilege, on conventions, as has been described, and on constitutional law, so that when we have to talk about the specifics of what's before us, we have that depth of understanding.

Now, it's an extremely important matter to me, Mr. Chairman. I don't want it to take forever, but I think we have to put our minds to it. We have to take the time that's required in order to arrive at the right decision, because, you know, we'd better get it right.

**MR. CHAIRMAN:** In response, Mrs. Hewes, from the standpoint of the scope of the matters for consideration, I think that's obviously specifically set out in the terms of reference, which of course deal with the matter of privilege.

**MRS. HEWES:** It's the background that we need to be able to talk about those specifics. I don't think we've -- I couldn't gather from your minutes that you had really discussed it or that our counsel had said, "Here are the pieces of information that you're going have to have firmly in your minds and a complete understanding of before you should talk about the specifics." Perhaps we haven't felt the need to have that discussion.

**MR. CHAIRMAN:** I think that the concern I hear from some members is that the terms of reference are there, we know from the rules that relate to this committee that we cannot extend beyond those terms of reference, and therefore any witness or any materials or any evidence that is to be coming before this committee must relate to those terms of reference and be tied into those terms of reference. This is not a full-scale public hearing into the matter of the use of language in this Assembly. There are questions of privilege that are before us and virtually nothing else in the terms as I read them from the motion.

**MRS. OSTERMAN:** Well, Mr. Chairman, I think the point has been well made, and I began to raise it before in terms of planning and understanding whether we have a complete picture in front of us. I wondered if the committee could consider that for any individual member who has a sense that a particular person would make a good witness for us, that information be shared at our next meeting, after we've dealt with the motion that's before us. I sense that there may be some concurrence there in that we could round out some of the discussion from tonight and launch into another discussion based on the expert testimony and so on that would occur the next time around. But at that same meeting, I believe that in order that we can chart some course for ourselves and set up things so that we're not trying to set meetings, locate the witnesses that are raised the week before or several days before, and so on, we discuss all the witnesses that we believe we would need and set ourselves a schedule for that.

**MR. CHAIRMAN:** Okay. That's sort of a separate . . .

**MR. WRIGHT:** That would be very good. The question remains: how about next Wednesday?

**MR. CHAIRMAN:** We have a motion on the floor at the present time too.

**MR. WRIGHT:** Yes. My motion, is that?



AN HON. MEMBER: Forsey.

MR. WRIGHT: Yes, about Eugene Forsey. I'm not being coy or anything. I do have in mind Dean Christian, dean of law at the university, on the question of the constitutional context of all of this, and also another lawyer who argued the recent case in the Supreme Court of Canada, whose name is Mistel Bastarache, who is undoubtedly extremely learned in the same areas that the witness tonight has spoken of but as a lawyer himself who can deal with the legal questions involved. It seems to me that those two others would be very useful. Until tonight I haven't known when we were likely to sit again, so I haven't been able to make inquiries about that. But that's what we have in mind, Mr. Chairman.

MR. CHAIRMAN: Mr. Wright, perhaps for the benefit of the members then, you might put your motion forward again, unless the secretary has got it down here.

MISS CONROY: Moved that the committee receive the evidence of former Senator Eugene Forsey.

MR. CHAIRMAN: Did you have further qualifications?

MR. WRIGHT: Yes. I think I added: subject to his availability in the widest sense and the making of necessary arrangements. But what I am afraid of is the possibility that he might not be available for next Wednesday, in which case Dean Christian or perhaps this other gentleman might be available. I don't think we should be asking them to appear unless there's some reasonable expectation they will be received by the committee. Michel Bastarache is a counsel in Ottawa for l'Association Canadienne-Française de l'Alberta, and he's extremely knowledgeable in the area under review.

MR. CHAIRMAN: Is there any further discussion on the motion? If not, I'll put the question. All those in favour of the motion, say aye.

HON. MEMBERS: Aye.

MR. CHAIRMAN: Contrary, if any? Carried.  
Mr. Fox.

MR. FOX: Mr. Chairman, I'm just wondering how we as a committee respond if other individuals or groups decide that they want to present information for our consideration. Does it have to be done through the committee per se, through an individual on the committee, or can groups on their own approach you as chairman and get you to put your motion to appear on the record?

MR. CHAIRMAN: No. The authorities that I quoted last time would make it clear that the production of witnesses must come through by motion from members of the committee.

MRS. HEWES: Mr. Chairman, do you want a motion for a plan B in the event that Senator Forsey can't be available for next week? Do you want a motion of the committee to give you the mandate to move along with Dean Christian?

MR. CHAIRMAN: Mrs. Osterman.

MRS. OSTERMAN: Well, if I could just comment on what has been raised. I guess my concern still is that we're doing some ad hoc'ing, and I would strongly suggest that all of us in the course of the next week have the opportunity to do a lot of hard thinking about the people we believe will be of assistance, either through their interest in this area or whatever. Mr. Fox may have somebody in mind that has a different type of interest in the committee, not in an expert way but in a personal way. I believe all of that should be discussed by the committee, and I believe that we should be prepared to make motions about those we believe should appear before the committee and take that time to plan and lay out precisely what our proceedings will be. When Mr. Forsey is available, hopefully within the next short while, that could occur almost immediately. But if not -- and we have set what seems to be a meeting date that most would concur in if the chairman is charged with that responsibility -- then we use that date to lay out our plan.

MR. CHAIRMAN: Mr. Wright.

MR. WRIGHT: Yes, that's good. I don't think it'll take two and a half hours. That's the only thing. So if Senator Forsey can be here next Wednesday, then so be it. If he can't but Dean Christian can, then perhaps we can have him on spec that the committee will receive him to use up the rest of the time. Is that acceptable?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: Is that agreed then?

MR. FOX: Would you need the motion, then, to accept Dean Christian as a witness? I move that the committee invite the presentation of Dean Christian to a subsequent meeting.

MR. CHAIRMAN: Mr. Hyland.

MR. HYLAND: So then, Mr. Chairman, with this motion are we saying that we're in for at least two more meetings dealing with the constitutional issue as it faces us, with the dean and with Senator Forsey? Or could it happen to be both through in one meeting or whatever?

MR. CHAIRMAN: Did you wish to respond to that, Mr. Wright?

MR. WRIGHT: It does look that way. But my hope is to keep it to that, at least not to waste next Wednesday -- I shouldn't say "waste" -- in order to use up all of next Wednesday, so we won't be into a third on this topic for sure.

MR. ANDERSON: Mr. Hyland's suggestion, at least the implied suggestion, might have some merit. Would it be possible to do both witnesses, if they're available, next Wednesday? If not, whichever one might be available, plus some planning discussion time.

MR. WRIGHT: Mr. Chairman, I think that if Eugene Forsey were able to come, Dean Christian could be here too, and if he couldn't be got through with on Wednesday, no great problem for him to come back.

MR. CHAIRMAN: Shall we leave it then on the basis that

you'll make every effort to make sure, if you possibly can, to have both of those witnesses here for next Wednesday?

MR. FOX: Did we vote on my motion?

MR. CHAIRMAN: Oh, I beg your pardon; I'm sorry.

AN HON. MEMBER: We agreed.

MR. CHAIRMAN: Madam Clerk, was that passed? We didn't vote on it according to the Clerk.

SOME HON. MEMBERS: Question.

MR. CHAIRMAN: All those in favour, say aye.

HON. MEMBERS: Aye.

MR. CHAIRMAN: Contrary, if any. The motion is carried.  
Mr. Fox.

MR. FOX: Mr. Chairman, in terms of the amount of time we devote to the consideration of constitutional, legal, and privilege issues before us, it's my contention and my hope that when we know what we're doing, it'll be much easier for us to do it and that once the background is laid, once the foundation for the house is built, the walls will go up in a hurry. It might not take as long as one might think in terms of resolving the issues before us.

MRS. OSTERMAN: Mr. Fox swept us all in when he said "when we know what we're doing."

AN HON. MEMBER: Do we have to wait that long?

MRS. OSTERMAN: I'll just leave that comment aside.

Mr. Chairman, do you believe a motion is required that the committee undertake to bring forward the names of any and all

witnesses at the very next meeting so that a plan may be developed for the hearing of witnesses and so on?

MR. CHAIRMAN: I think that would be in order. Would you wish to make that motion? Any discussion on that motion? All in favour of the motion, say aye.

HON. MEMBERS: Aye.

MR. CHAIRMAN: Contrary, if any? The motion is carried.

MR. WRIGHT: Perhaps we can deal with that before we hear the witnesses on Wednesday next.

MR. CHAIRMAN: Yes, that's a possibility. Mr. Hyland.

MR. HYLAND: Mr. Chairman, just in a reply to Mr. Fox about building foundations and the house would go up quickly. I can assure him, being in the middle of building a house, that just because the foundations are down, the house doesn't go up as quickly as what one would suggest it might.

MR. WRIGHT: It goes up a damn sight quicker than if you have no foundation.

MR. CHAIRMAN: With that, I will ask if there is any other business to come before the meeting.

MR. HORSMAN: I move we adjourn.

MR. CHAIRMAN: Motion to adjourn. All in favour, say aye.

HON. MEMBERS: Aye.

MR. CHAIRMAN: Contrary? Carried.

[The committee adjourned at 9:49 p.m.]