[Chairman: Mr. Stewart] [7:09 p.m.]

MR. CHAIRMAN: Ladies and gentlemen, members of the committee, I'd like to call the committee to order.

The first item on the agenda is Approval of Agenda. May I have a motion approving the agenda, please? Moved by Mr. Campbell. All those in favour of the motion, say aye.

HON. MEMBERS: Aye.

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

Item 2, Approval of Minutes of May 12, 1987, Meeting. May I have a motion approving the minutes as distributed? Mr. Hyland. All those in favour of the motion, please signify aye.

HON. MEMBERS: Aye.

MR. CHAIRMAN: Contrary, if any. I declare the motion carried.

Two minor points arising out of the minutes that I might just mention for the benefit of the members. It was suggested at the last meeting that we number the exhibits, and all of the exhibits have now been numbered. There has also been an addition of certain provisions of The Alberta Act, as was requested by Mr. Wright, which becomes exhibit 7.

This portion of our meeting tonight, until 7:30 hopefully, is devoted to certain business items that again have arisen out of the previous meetings, and basically they are two in number. Sorry?

MR. WRIGHT: Can I just interrupt you? If you could just read off those exhibits, I'd like to make a note, Mr. Chairman.

MR. CHAIRMAN: Perhaps I'll get the clerk to do that.

MISS CONROY: Exhibit 1 is the *Alberta Hansard* of Tuesday, April 7, 1987, afternoon sitting. Exhibit 2 is the letter from Mr. Piquette to the Hon. Dr. Carter, dated April 8, 1987. Exhibit 3 is the *Alberta Hansard* of Thursday, April 9, 1987. Exhibit 4 is the *Alberta Hansard* of Friday, April 10, 1987. Exhibit 5 is the article, Official Bilingualism in Alberta, by Dr. Munro. Exhibit 6 is the article, The Law of Languages in Canada, by the Royal Commission on Bilingualism and Biculturalism.

MR. CHAIRMAN: The clerk will distribute exhibit 7 for the benefit of all members.

The other two items of business to which I referred are listed as items 4 and 5 on your agenda. With respect to item 4, Motions for Production of Witnesses, I just want to repeat something I mentioned, I believe, at our organizational meeting. That is that this committee operates strictly and within the limited context of terms of reference of a motion of the Assembly. Therefore, it would follow from that that any witnesses that are to be called and the evidence that is to be given by them must be totally within the terms of reference.

This is not a general public inquiry dealing with a variety of matters. It is a very specific and limited type of reference that deals with questions of privilege in this Assembly. Therefore, on the basis of that when members who are proposing motions relating to the production of witnesses, I would ask them to speak to the matter briefly with respect to the matter of evidence that those witnesses are to bring forward for consideration of this committee.

So I will now ask for motions. Mr. Schumacher.

MR. SCHUMACHER: Mr. Chairman, at our previous meeting we heard Professor Munro from the University of Alberta and his view of the status or the role of French in the proceedings of this Assembly. I guess the main question before us is whether or not that member's privileges are in any way affected by the speaking of French at various stages of the proceedings in the Assembly.

I understand that maybe we'll be hearing similar views from Dean Christian, who has been proposed by the New Democratic Party and accepted by the committee. I guess I would like to suggest to the committee -- perhaps we'll indicate that the University of Alberta is not monolithic in its views, at least the Faculty of Law -- that the committee accept Dr. Leslie Green as a witness.

Dr. Green is on the Faculty of Law at the University of Alberta. His speciality is in the field of constitutional law beginning in Great Britain, where he taught constitutional law at the University College in London for 10 years, and later on taught law and was dean of the Singapore law school. He has advised the government of Canada and the province of Ontario on constitutional matters and has given evidence before the Senate of Canada. I believe he can bring us a useful point of view on the question of language in this Assembly. I'd like to move that he be accepted as a witness.

MR. CHAIRMAN: Mr. Schumacher has put forward his motion. Is there any discussion on the motion?

HON. MEMBERS: Question.

MR. CHAIRMAN: All those in favour of the motion, signify by saying aye.

HON. MEMBERS: Aye.

MR. CHAIRMAN: Contrary, if any. Motion is carried.

MR. WRIGHT: Mr. Chairman, on an earlier occasion I did mention the names of three other witnesses. One is Senator Eugene Forsey, who unfortunately had the angina attack last Wednesday so couldn't appear then. We have been in touch with him, and the next date he is able to be here that fits in with the scheme that you told me about previously for the possible sittings of this committee -- namely, Tuesday mornings or Wednesday evenings -- is June 10.

The next witness I mentioned which I want to propose, too, is one of the editors of the current edition of *Beauchesne* whose name is Dawson. We have ascertained the first time at which he can appear, and that is June 3, which is a week on Wednesday.

The third witness whose name I mentioned is a gentleman, Michel Bastarache, that the French-Canadian Association of Alberta has suggested to me. He seems as if he would be very helpful to this committee. He is a lawyer. He is the former dean of law at Moncton university, and elsewhere? Another place did you mention?

MR. ARES: At the University of Ottawa law school, common law section.

MR. WRIGHT: Yes, and was also a counsel on the Mercure case in the Supreme Court of Canada recently. He is an ac-

knowledged authority on the law of languages in Canada and has edited a book currently in print. I promised the association that I would put this to the committee, Mr. Chairman, with my recommendation for their consideration. With your permission, the president and director-general of the association are here to answer any questions that the committee might wish to address concerning the credentials and relevance of Mr. Bastarache's testimony.

Unfortunately, the date when he will be in Alberta anyway on his way up to the Northwest Territories is also June 10. The trouble about that date, apart from being somewhat in the distance, is that it also is the one that coincides with Mr. Forsey's availability, or Mr. Forsey's first availability at any rate. So I would like to move the acceptance of those witnesses, either together or separately.

MR. CHAIRMAN: I think we'll take them separately, Mr. Wright.

MR. WRIGHT: If I can start with the first in time then, Mr. Dawson, the editor of *Beauchesne*.

MR. CHAIRMAN: Is there any discussion? Mrs. Kosterman? Mrs. Osterman?

MRS. OSTERMAN: That's one way of shortening it, Mr. Chairman.

I wondered if it would possible -- because I understand work has been done by several parties in speaking to possible witnesses that could have a bearing on our proceedings -- to have the various motions with respect to witnesses on the table and then deal with them motion by motion? Or is that not appropriate procedure? I just believed it would give us an understanding of how many people we were speaking about, whether there are going to be any duplications in terms of relevance, and so on.

MR. WRIGHT: I think that's a very good idea, to just scout around and see what everyone has in mind and then pick them.

MR. CHAIRMAN: All right then. Is that agreeable to the committee?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: All right, we will proceed in that manner then. Are there any other motions for witnesses to come forward? Mr. Gogo.

MR. GOGO: Mr. Chairman, inasmuch as in many ways the hon. Member for Athabasca-Lac La Biche, Mr. Piquette, is the reason for many of us being here this evening, I would think as matters unfold that it may become most important to this committee, in view of the resolution that was referred to this committee on April 15, that Mr. Piquette indeed be available as a witness for many reasons. In some ways he would be standing accused of a breach of privilege of the House, and if that indeed is the case and this committee is going to determine in some way his fate, Mr. Chairman, I would certainly think it would be appropriate if Mr. Piquette had that opportunity to be before this committee. So I would move that Mr. Piquette be called as a witness.

MR. CHAIRMAN: Very good; we will make note of that motion. Are there any other motions? Mr. Musgreave.

MR. MUSGREAVE: Well, Mr. Chairman, it's a possibility that we may want to question the editor of *Alberta Hansard*, and I therefore would like to suggest Gary D. Garrison as a potential witness.

MR. CHAIRMAN: Very good. Mr. Russell.

MR. RUSSELL: With respect to exhibit 2, I am proposing the House leader of the New Democratic caucus be called, Ms Barrett.

MRS. HEWES: Mr. Chairman, it's not your intent to make this a finite list is it? While, as Mrs. Osterman has suggested, we're looking at the package to have a sense of what we want in the whole, it occurs to me, however, that as things unfold, we may feel we want further information on a particular part of this subject. So I'm just looking to you for direction, sir. This is not intended to close out that potential is it?

MR. CHAIRMAN: Well, it's my understanding from the last meeting that indeed we really were trying to get a finite number to try and determine the procedure as we would follow it from this point on. The only way in which members felt that that was going to be possible was to indeed get a handle on exactly who were to be called as witnesses and the type of evidence that would come forward for the consideration of members. I don't think it was the intent to leave it totally open-ended.

At the same time, if the committee at any time feels that there are particular points that have been raised in the course of the evidence for the consideration of the committee that do require some clarification or whatever, I would presume that it would be open for the committee to make a motion. But I think the effort tonight is to have virtually all witnesses that are planned to be brought forward, have them being brought forward by way of motion tonight for consideration.

MRS. HEWES: Thanks for that information.

MR. CHAIRMAN: Mr. Wright.

MR. WRIGHT: Yes, Mr. Chairman. That certainly was the object of the exercise so that we could map out our proceedings from then on. Speaking for our little group here, those are all the witnesses we have in mind. However, if along the way something became relevant that we hadn't thought of before which we thought necessitated another witness, then I'm sure you would agree it's within the power of the committee to make that ruling.

MR. CHAIRMAN: Again I say that I don't think it was the intent to have this as sort of an open-ended type of committee for consideration of evidence. But for clarification, for further elaboration on given points, I would think that it's appropriate.

MR. WRIGHT: Yes.

MR. CHAIRMAN: Are there any other motions for consideration? If not, I think it would be in order, rather than sort of dealing immediately with each of these, if there is anybody that wishes to make any comments with respect to any of the witnesses or the general thrust of the witnesses that are proposed to

be brought forward? Are there any comments with respect to that, or is it your wish that we move directly to the individual motions for each of these proposed witnesses?

MR. WRIGHT: Yes. I spoke before about Eugene Forsey. We did agree to have him, so it's a question of whether we can now fit him in, he having been unable to come when we expected him at first.

Dr. W.F. Dawson is well known to any readers of *Beauchesne*, obviously, and he is an acknowledged authority on constitutional law relating to Parliament, parliamentary law; that's to say, such matters as question of privilege particularly. I think there wouldn't be a better person in Canada to help us on this aspect of it. I note from the frontispiece of *Beauchesne* that he is professor of political science at the University of Western Ontario. He is an MA and Doctor of Philosophy, and he was expecting to go to the maritimes on Monday next to start a task down there but has postponed his going in case we do wish to have him next week.

I have described Mr. Michel Bastarache, and if there's any further inquiry, the gentlemen from the French-Canadian Association of Alberta, Mr. Georges Ares, the president, and Mr. Denis Tardif, the director-general, are here to answer questions, Mr. Chairman.

As for the other witnesses proposed, we certainly have no objection to any of them; that's to say, Mr. Piquette, Dr. Garrison, Pam Barrett, and of course we've voted on Dr. Green.

MR. CHAIRMAN: Okay. Thank you, Mr. Wright. Mr. Gogo.

MR. GOGO: I want to ask Mr. Wright so my notes are clear. Mr. Wright, former Senator Forsey would be June 10?

MR. WRIGHT: Yes.

MR. GOGO: Mr. Dawson, June 3?

MR. WRIGHT: Yes.

MR. GOGO: And Mr. Bastarache, June 10. Was that . . .

MR. WRIGHT: That seems to be it. Yes. The hardest one to pin down is actually Mr. Bastarache, but it so happens that he is passing through Alberta on June 10 and 11 on his way to the Northwest Territories. I imagine Mr. Forsey is a little more flexible, but his appointments preclude his appearing on any Tuesday or Wednesday before June 10, it seems.

MR. CHAIRMAN: Perhaps the Chair might make a comment. With the greatest respect to all of the witnesses that are proposed, from the standpoint of timing I'm not sure we should be adopting the general policy that the committee will at all times adjust its schedule to those of the proposed witnesses. Most of these committees and hearings or inquiries or whatever you may call them set their schedule, and if people are able to meet the schedule of the committee, then that's usually the way they proceed. So I just offer that as at least a point of view with respect to how we can govern our schedule as it goes forward.

MR. WRIGHT: Mr. Chairman, I quite agree with you in general, of course. In this case, it's a little different, because the proposed witnesses are people of some eminence and are busy people who come from afar. So far as the two proposed witnesses who come from our caucus, I have canvassed them on the possibility of coming on Wednesday, for example, and there's no problem there. So this week then is spoken for.

MR. CHAIRMAN: But you're not saying that we aren't busy.

MR. FOX: Nor eminent.

MR. CHAIRMAN: Nor eminent. Very good, Mr. Wright. Very good then. Are there any other comments before we move to the motions with respect to each of these witnesses?

MR. RUSSELL: I gather we don't have to devote an entire evening to one witness. I see we've got two names here for June 10. If we feel we should have them both or ought to have them both, they'd share the time.

MR. CHAIRMAN: Anybody else?

MRS. OSTERMAN: Mr. Chairman, to be clear, again looking at the type of backgrounding that Senator Forsey would bring to us and thinking about the witness that we've already had with respect to the Constitution, our history, and so on, and with respect to, as I understand it, Dean Christian, that we'll have this evening, again some background and I'm sure a legal opinion on various matters, and possibly another individual as well -- and we have yet to deal with that motion that may provide, as I understand it, the sort of balance in the legal world in terms of, to some degree, how this matter might be viewed -- I concern myself with an overabundance of legality. I feel badly, because I obviously haven't proposed anyone that would speak to the traditions of this Legislature and what I would believe to be more specific discussion to the Alberta Legislature and its convention and procedures and so on.

I believe we have an overabundance of experts from afar. In some cases we seem to somehow believe we're going to get more expert advice on Alberta and its traditions from outside of this province, and at this point in time, Mr. Chairman, I don't concur. I believe that a couple of names have been suggested this evening that, with all due respect to their expertise, good base information would be provided by our people right here concerning, for instance, Mr. Bastarache. Am I pronouncing that properly?

MR. WRIGHT: Bastarache.

MRS. OSTERMAN: Our member, Mr. Piquette, in terms of this whole proceeding, I believe would be able to bring the view that would concern Albertans and particularly French-Canadian Albertans. I think that would be appropriately so, and I believe we would be redundant. These proceedings could go on for a very long period of time. I'm sure it would be tremendously interesting to be listening to many, many people, but it isn't, so to speak, a public forum. I have many people who have asked about representation, and I have tried to indicate, in terms of the outline of the motion before the Assembly, what it is that is under discussion. I'm not sure but what we are wandering far afield from that, as interesting as it may be.

I put that view forward, Mr. Chairman, and, I'm sure, wait to be corrected by somebody else who may have a different view. I make that observation as well about the gentleman who edits *Beauchesne*, in terms of the applicability to our traditions and someone here.

MR. FOX: In terms of some of the witnesses this committee has already voted on, whether or not we would ask Mr. Forsey to be a witness here -- that was passed. I guess the decision to make at some point is whether or not the committee will be sitting on the 10th, which is when he's available. I don't know about that. But whether he attends or not has been decided as an issue but not in terms of scheduling, I guess.

In terms of Dr. Dawson, or Professor Dawson -- I'm not sure what his title would be -- I think his presentation would clearly be distinguished from that of Professor Munro's last week or the week before, and the considerations that might be brought to us by Michel Bastarache and Senator Forsey, because he is an authority on *Beauchesne* and would deal in a specific way with matters of privilege. That's what we're here to do, and I think Professor Dawson is a witness that the committee should aggressively seek in terms of getting an authoritative presentation on the rules that this House follows.

MR. WRIGHT: If I can address very specifically the points you make, Madam Minister, really there is little or no overlap. They are all more or less academic persons, but Dr. Munro, as he very fairly said, is a historian not a lawyer. Although he had some very useful evidence, in my respectful observation, to give us, there were some very loose ends when it came to the legal questions. Now, we hope Dean Christian and Dr. Green between them will elucidate those points for us.

But when it comes to the question of privilege, as my colleague here has mentioned, I don't think there is a better man to deal with it than Dr. Dawson. Senator Forsey is an outstanding parliamentarian, who is resorted to and has been for many years in the general law and practice of Parliament. I suppose there might be some overlap there between Dr. Dawson and Eugene Forsey, but one can speak perhaps more forcibly to the practice of the matter and the other to the law.

Michel Bastarache, though, speaks especially strongly, I suppose, from the French-Canadian point of view, and I think it would be unwise of us to think that we can adequately represent that side of matters without having the testimony of a Franco Canadian, notwithstanding that he is primarily a lawyer and will be very much in point in the matters we have to decide. So in considering this matter and, although Mr. Bastarache is not a witness we propose, I'm bringing it forward on behalf of the association. They are not attempting to use this committee, as far as I can see, in any way as a sounding board or a platform for their views, but they simply feel that this particular witness is pre-eminent in the field of the official place of the French language in Canada.

The total is five witnesses that we propose, and in admittedly informal discussions before this took place, it was thought that half a dozen witnesses on each side was in the ballpark, and it's too bad it's spun out over several weeks. But I'm afraid the nature of the way we have to sit rather dictates that, so with great respect, Madam Minister, I don't really feel that we are being redundant or overfulsome with the evidence.

MRS. OSTERMAN: Not to make this a two-way discussion, Mr. Chairman, but I would say that I am somewhat persuaded with the respect to the argument of the expertise of Dr. Dawson, particularly in light of the possibility that there may be some question as to whether ultimately the Senator will be able to attend upon us. But having listened carefully, I would reiterate again that I believe Mr. Piquette would be the individual that I would look to to bring information on behalf of many people in Alberta, as he has been the focal point for the question arising in the first place.

Thank you.

MR. CHAIRMAN: All right. If there's no further discussion in general with respect to all witnesses, I will proceed with the motions for each witness. If there's any individual discussion as it pertains to those individual motions, I will allow such debate in that regard as well.

Mr. Oldring.

MR. OLDRING: Mr. Chairman, will we be voting on the witness and the date or just the witnesses at this time? In other words . . .

MR. CHAIRMAN: Just the witness.

MR. OLDRING: Thank you.

MR. CHAIRMAN: All right. The first witness on which there is a motion is Dr. Dawson. Does anyone wish to speak specifically in respect to that motion?

HON. MEMBERS: Question.

MR. CHAIRMAN: If not, I will call the question. All those in favour?

SOME HON. MEMBERS: Aye.

MR. CHAIRMAN: Contrary?

AN HON. MEMBER: No.

MR. CHAIRMAN: That motion is carried.

The next motion is with respect to Mr. Bastarache. Mr. Russell.

MR. RUSSELL: Well, Mr. Chairman, I've been wrestling with this one, and I believe I'm going to vote against this simply for reasons of practicality. We are dealing here with a motion of privilege and not law, although it's nice to have legal advice, and I'm looking at the package we're putting together. If we take the members of the Legislature and get *Hansard* and *Beauchesne* involved and our own Alberta legal experts and Senator Forsey and the historian we've already had, I think that's a good package. That would be the only reason I would vote against the next one. I fail to see what additional information that's germane to the motion that has been referred to us can be involved, so I'm just explaining why I'm going to vote no.

MRS. HEWES: Mr. Chairman, do I understand that Mr. Bastarache is going to be passing through our city and would therefore be available to us with no particular inconvenience to himself and could be here for half an hour or an hour on his way to the Yukon? Is that correct?

MR. WRIGHT: That is substantially correct, is it not?

MR. TARDIF: On his way back from the Northwest Territories.

MR. WRIGHT: I take it, if this is a consideration, that there would be little or no expense involved even. Is that correct?

MR. TARDIF: That's right.

MR. WRIGHT: Does that answer the question?

MRS. HEWES: Further, Mr. Chairman, he is someone that the society feels could add some balance and good information to our discussion? Is that also correct? I thought I understood Mr. Wright to say that.

MR. WRIGHT: Yes. The gentlemen are here to speak for themselves if members of the committee wish to ask them that question directly, but that's certainly my view, for what it's worth, Mr. Chairman.

MRS. HEWES: Under those circumstances, Mr. Chairman, I will support Mr. Bastarache being here. If he's going to be available to us, I think it would be a great pity not to avail ourselves of that opportunity as he's passing through.

MR. CHAIRMAN: Anyone else? Mr. Wright?

MR. WRIGHT: Yes. In reply to the observation concerning Mr. Bastarache, that we are really concerned with privilege and not with law, I think the testimony already has been sufficient, together with the material filed, to show that the two are inextricably intertwined in this case.

The status of privilege is a legal one with us under the terms of the Legislative Assembly Act and the question of the extent to which, if at all, privilege can override statutory provisions or what otherwise is the law. This is particularly germane since the Speaker in his ruling made allusions in two directions on that point, that a lawyer who is one of the leading experts in Canada on the very question of the legal status of French constitutionally, notwithstanding the other observations made by other witnesses, might well be a person that we should listen to, particularly since he's going to be here anyway and it will not be much inconvenience to him and no expense to us.

MR. RUSSELL: Mr. Chairman, therein lies the dilemma. Mrs. Hewes more or less got at it, and Mr. Wright has touched upon it. I'm looking at the total package and the times available. We're going to bring Senator Forsey out here on the same night that this other gentleman is passing through. Now, we've already got two lawyers, probably with two opposing opinions, and I'm not sure what a third one can add. So I'm saying as a matter of practicality and for no other reason that if I have to choose my druthers -- we're bringing Senator Forsey, this constitutional expert, all the way out, and we've got two other lawyers anyway. That's why I'm going to vote against it.

MR. CHAIRMAN: Are you ready for the question on that?

HON. MEMBERS: Question.

MR. CHAIRMAN: Mr. Bastarache is the subject of this motion. All those in favour of the motion, signify by saying aye.

SOME HON. MEMBERS: Aye.

MR. CHAIRMAN: Contrary, if any.

SOME HON. MEMBERS: No.

MR. CHAIRMAN: Perhaps we'd better have a show of hands. My hearing may not be that good. Would all those in favour of the motion, please signify by raising their hand? Contrary? I declare the motion defeated.

The next motion is Mr. Piquette. Is there anyone that wishes to speak to that particular motion before I call the question?

HON. MEMBERS: Question.

MR. CHAIRMAN: All those in favour of producing Mr. Piquette as a witness, signify by saying aye.

HON. MEMBERS: Aye.

MR. CHAIRMAN: Contrary, if any. I declare the motion carried.

Dr. Garrison of *Alberta Hansard*: any particular discussion on that motion?

HON. MEMBERS: Question.

MR. CHAIRMAN: All those in favour of the motion, signify by saying aye.

HON. MEMBERS: Aye.

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

Ms Barrett: any discussion with respect to that motion?

HON. MEMBERS: Question.

MR. CHAIRMAN: All those in favour of the motion, signify by saying aye.

HON. MEMBERS: Aye.

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

The time is moving rather quickly. Yes, Mr. Gogo.

MR. GOGO: I wonder if I could ask your indulgence. On May 12 I had raised a question of honoraria for witnesses for this committee. I've given some thought to it, Mr. Chairman. I really think that if we're asking people to come to testify, they should perhaps be treated the same as we treat members of the public appointed to various boards and commissions in this province. I understand that there is a fee schedule for citizens who give of their time to attend government or government agency business.

Therefore, I would suggest and indeed propose that we give consideration to paying witnesses a fee in an amount of $100, which would be similar to those boards and agencies, as published by a schedule of the government, for any meeting up to four hours that they appear before this committee. Then I believe that in Standing Orders is provision, Mr. Chairman, for out-of-pocket expenses, which would be determined by yourself. I would propose that as a motion to this committee.

MR. CHAIRMAN: As a matter of information on that, are you excepting out current members of the Assembly or all witnesses?

MR. GOGO: With respect, Mr. Chairman, I do believe it's the practice of the Assembly and of government that employees of the the government of Alberta -- and I assume that Dr. Garrison is an employee of this Assembly, or at least he was, and that perhaps he would be exempt from that. I'm referring mainly to our professional witnesses that we would be calling. I would stand to be corrected as to who else should be included in that, but I would certainly propose it for the former Senator and Dr. Dawson. I don't know as it would apply to anybody else. I need guidance on that perhaps from the Government House Leader or Mr. Bogle from Members' Services.

MR. CHAIRMAN: Any other discussion? I will accept that as a motion, Mr. Gogo.

MR. WRIGHT: Mr. Chairman, the rules do state that the committee can decide, of course, what is the proper payment in any particular case. Former Senator Forsey has indicated that he does not expect any honorarium. The previous witness did not insist on a honorarium. But I understand that commission counsel has spoken to him and struck tentatively a reasonable sum, bearing in mind the amount of research that is necessary to go into a presentation of that nature, unlike someone just appearing as a witness of fact. I believe the sum was somewhere between a $175 and $200. So without prejudice, I would like the motion, if passed, to be understood to be a general proposition for witnesses appearing and not to determine in all cases the amount to be paid in the case of an expert witness, if that can be understood in the motion.

MR. CHAIRMAN: I think that under Standing Order 66 -- and you and I may have a difference of view on this -- it's my understanding that in the final analysis, while we may make recommendations or try to establish some reasonable guidelines in regard to fees particularly, the Speaker has the discretion.

MR. WRIGHT: Yes.

MR. CHAIRMAN: Mr. Gogo.

MR. GOGO: Mr. Chairman, I don't know whether I can speak again, but I don't differ at all with Mr. Wright when I say up to four hours, and that's what we pay various citizens of this province. If an expert witness has spent four hours in preparation and then three hours before this committee, I have no quarrel with double that amount; for example, for each four hours. I mean, I'm not hung up on it. If Mr. Wright says an individual has spent X hours in research, that obviously should be considered.

MR. CHAIRMAN: Mr. Musgreave.

MR. MUSGREAVE: Mr. Chairman, it was my understanding, on these committees, that if the expert witness is, say, a professional engineer or a lawyer or a chartered accountant or a person of that nature, that he can be paid twice as much as those other citizens.

MR. CHAIRMAN: Well, we have a specific motion before us. Is there any other discussion on that motion? If not, I'll call the question. All those in favour of the motion, please signify by saying aye.

HON. MEMBERS: Aye.

MR. CHAIRMAN: Contrary, if any. Carried.

With respect to item 5 on the agenda, Schedule of Committee Meetings, and with time pressing forward here, I think that, as Mr. Wright indicated, we had pretty well analyzed the times available for us to get together. It pretty well boiled down to Wednesday evenings, which is our only free evening for all members otherwise free, and Tuesday mornings was the other suggested time frame, from 8 or 8:30 till 10, I think, is what we were discussing. Is there any comment or does anyone wish to make a motion in respect to the schedule of committee meetings? Mrs. Osterman.

MRS. OSTERMAN: Mr. Chairman, as I understand it, this Wednesday for sure is a sitting of the committee, and then next week we have a possibility of, if it has been checked with House leaders and so on, Tuesday morning. I believe it would be wise to meet reasonably early in order to make it worth while, say an 8 o'clock beginning, and then the following Wednesday, that would be the 2nd and the 3rd. We already have an indication that Senator Forsey is available on the 10th; that takes some of that Wednesday evening. Would it be possible to then designate those three dates and see if arrangements can be made for another date the week of the 10th, by the chairman canvassing the committee and some of the witnesses that have been accepted by motion this evening?

MR. M. MOORE: Mr. Chairman, the committee cannot do any other work until we've completed hearing our witnesses, in terms of motions or disposing of this whole issue. If Senator Forsey is going to be here on the 10th, it seems to me that we ought to try to establish meeting times that would complete the witnesses that are to be heard, other than him, between now and then. Surely Wednesday night of this week and next Tuesday morning, two other full meetings after tonight's meeting, ought to deal with all of the other witnesses, in perhaps more than enough time. Then if we could establish that we needed three more meetings to deal with witnesses -- that being Wednesday night of this week, Tuesday, June 2, and finally Wednesday, June 10 -- we can then hold to the time frame that we're going to deal with all the witnesses in that time. Then after June 10 schedule, if we can, that evening or before or have the chairman do it, a wrap-up meeting or two to deal with the motions. I can't see any reason why we couldn't deal with the remaining witnesses, besides the Senator, on those two dates. That would preclude having a meeting on June 3.

MR. CHAIRMAN: Any other discussion?

MRS. OSTERMAN: Mr. Chairman, my observation -- I guess I would concur with my colleague to some degree, subject to the original discussion as the committee began to meet -- is that the chairman would have the discretion, with appropriate notice, for a meeting depending on how the witnesses work out, but I'm amenable to my colleague's suggestion.

MR. CHAIRMAN: I don't propose to ask for a specific motion with respect to this. I think we've had an opportunity to fully explore the activities of the committee over the next foreseeable period. We'll leave it at that, and we will keep in touch and move accordingly as the situation unfolds.

Mr. Wright.

MR. WRIGHT: As for this Wednesday -- I was momentarily absent. Was there a proposal to sit on Wednesday?

MR. CHAIRMAN: Yes.

MR. WRIGHT: So that's just two days away. Did anyone have any particular witness in mind for Wednesday?

MR. CHAIRMAN: The motions, of course, have just come forward this evening and perhaps will require us to explore that and see what sort of content for the meeting we can come up with.

MR. WRIGHT: I was thinking that Ms Barrett and Mr. Piquette are available on those days. At least Ms Barrett is, and I think Mr. Piquette is too.

MR. CHAIRMAN: Well, I will undertake to explore that and to get the agenda out in the usual fashion.

All right. Moving to item 6 on the agenda, we have with us this evening Dean Christian and also Dr. Green. Just before counsel administers the oath, I might just say a word or two to the two of you who have been approved by the committee for the purposes of giving evidence for our consideration. This committee has received a reference from the Assembly in the form of a motion of the Assembly which sets out the framework of those matters that are properly before the committee for consideration and then of course a duty to report back to the Assembly. As a result of that, the committee's authority is of course specifically limited in its consideration to questions of privilege that arise from that reference. The Chair understands that each of you is at least familiar with the terms of reference that have been established by the Assembly for the committee. Hopefully it will give you sufficient background in order to confine your evidence to the very matters that are before us.

Perhaps I might also bring to your attention the procedure adopted by this committee with respect to the hearing of witnesses. At an earlier meeting of the committee a motion was passed, which I will read to you:

> that each expert witness shall have up to 30 minutes for the presentation of evidence . . .
>
> that expert witnesses shall 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 . . .
>
> that after the presentation of evidence by an expert witness, counsel to the Committee shall first examine that witness, to be followed by members of the Committee, who shall be allowed an opening question and two supplementaries before falling to the bottom of the list of questioners.

So that is the basic procedure which we follow in instances where witnesses are presenting evidence for consideration of the committee.

Insofar as order of your presentations, I would feel that the most appropriate order would be the order in which you were approved by the committee to give evidence to the committee. So that would be Dean Christian first, followed by Dr. Green.

It's now approximately 8 o'clock, and it would be our hope that perhaps we could divide the time equally to be totally fair to the evidence from each of you. If that doesn't present a hardship to you, what we would do is have your presentation, Dean Christian, followed by questions from counsel and any questions from the members, and then following that, your presentation, Dr. Green, in a similar fashion. If that is agreeable to members, let's try it and see how it works out.

Okay. With that, I will then ask our counsel to administer the oath to you both.

[Mr. Christian and Dr. Green were sworn in]

MR. CHAIRMAN: Dean Christian, you may proceed. Oh sorry, Mr. Wright.

MR. WRIGHT: Mr. Chairman, I do understand that Dean Christian has a summary of his disquisition and that it's been copied -- I don't know where they are -- which might be of assistance to members if it's distributed.

MR. CHAIRMAN: I understand this is to be sort of a reference for the committee. It's not intended to be an exhibit or anything like that. His testimony itself will obviously be the evidence he gives to the committee. That's fine; we can distribute those for the benefit of members.

Fine. Dean Christian.

MR. CHRISTIAN: Mr. Chairman, may I begin by saying that it is indeed an honour to be asked to appear before this committee to express my opinion on the important questions that the committee is considering. I have, Mr. Chairman, in order to prepare myself for my presentation this evening, done some research, and the paper which is being distributed to members of the committee contains the main points that I will touch on.

I would like to begin by observing that the Legislative Assembly of the Northwest Territories was not a sovereign legislative body. I make this point because I believe it is important that the actions taken by that body are placed in a historical and legal context. The fact is, as all members are aware, that the Northwest Territories were added to Confederation under the authority of an imperial order in council of June 23, 1870, and that was done in conformity with section 146 of the British North America Act as it then was. As Professor Peter Hogg said:

> On admission [the Territories] did not become provinces; they became federal territories, entirely subject to the authority of the federal Parliament.

The North-West Territories Act provided that the Governor General in Council could appoint a Lieutenant Governor who was to

> administer the Government under instructions from time to time given him by Order in Council, or by the Secretary of State of Canada.

In essence, the territory was to be administered as a colony of the central government.

Further provision was made for the appointment of a council not exceeding six persons which was to "aid the Lieutenant Governor in the administration of the North-West Territories." The council was to be appointed by the Governor General in Council. As the population in the Territories increased, the Lieutenant Governor was authorized to erect electoral districts which would thereafter be entitled to elect a representative to the council. When the number of persons elected to the council amounted to 21, the council was to cease to exist and was to be replaced by a Legislative Assembly which would obtain the powers of the council.

Now, in my opinion, it is important that the Act pursuant to

which the council was established provided in section 21(2) that:

> Such Legislative Assembly shall be summoned at least once a year, shall sit separately from the Lieutenant-Governor, and shall present Bills passed to the Lieutenant-Governor for his assent, who may approve or disapprove of the same, or reserve the same for the assent of the Governor.

This section clearly indicates that the Assembly of the Northwest Territories was a subordinate legislative authority.

It is significant, in my submission, Mr. Chairman, that the assent requirement was carried forward in future amendments of the North-West Territories Act. It is therefore clear, in my submission, that the Legislative Assembly of the Northwest Territories was not a sovereign Legislature. It was subordinate to the Governor in Council, and no Bills passed by the Legislative Assembly were legally effective unless the Lieutenant Governor assented to them.

The second area I would like to turn to is the effect of section 110 of the North-West Territories Act. In my submission, the effect of that section was to guarantee the use of the French language in the debates and records and journals of the Legislative Assembly of the Northwest Territories. That section as amended in 1891 provided as follows, and if I may, Mr. Chairman, I would like to read that section:

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

In my submission, the components of this section may be broken down and analyzed as follows. First, English or French could be used -- the statute says "may" -- in the debates of the Legislative Assembly and in proceedings before the court. Second, both languages were required to be used -- that is, the wording is mandatory; the word "shall" is used -- in the records and *Journals* of the Legislative Assembly and in all ordinances. So those were the rules which were established by section 110. The section went on, of course, to provide the manner by which those rules could be changed, and they could be changed after the next general election of the Assembly "by ordinance or otherwise," provided that the regulations were embodied in a proclamation and published by the Lieutenant Governor in accordance with the law.

The third point I wish to move to, Mr. Chairman, is this. The Haultain motion of January 19, 1892, was not effective to extinguish the right to use the French language in the debates of the Legislative Assembly of the Northwest Territories. The Haultain motion provided, quote:

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

Now, the Speaker has ruled, and that ruling is recorded in *Hansard* of April 9, 1981, which is, I believe, exhibit 3 before the committee . . .

AN HON. MEMBER: 1987.

MR. CHRISTIAN: Sorry; 1987. That quote: "The Assembly, in accordance with its own mandate afforded it" -- that is, the Assembly of the Northwest Territories -- "changed the effect and application of section 110 in clear, unequivocal terms."

The fourth point I wish to make is that there are two major problems with the Haultain motion: first, it did not deal with the language of debate in the Assembly, and second, it was never proclaimed. Dealing with the first point, the Haultain motion dealt with the language in which proceedings were to be recorded and published, not the language of debate. Section 110 of the North-West Territories Act distinguishes between the language of debate and the language to be used in the records and *Journals*. Even if the Haultain motion were valid, to limit the application of section 110 to the records and *Journals* of the Assembly, it would not affect the right to use the French language in debates in the Assembly. To extinguish the right to speak French in the Assembly, clear words would have to be used.

The governing rule rejecting the repeal of entrenched rights has been articulated by Chief Justice Duff in the Spooner Oils case reported at 1933, S.C.R. 29 at 638 as follows, quote:

> The appropriate rule of construction has been formulated and applied many times. A legislative enactment is not to be read as prejudicially affecting accrued rights or an existing status unless the language in which it is expressed requires such construction. The rule is described by Coke as a law of Parliament meaning no doubt that it is a rule based on the practice of Parliament; the underlying assumption being that, when Parliament prejudicially intends to affect such rights or status, it declares its intention expressly unless that intention is plainly manifested by unavoidable inference.

In my respectful submission, Mr. Chairman, the Haultain motion does not manifest an intention to deny the right to speak French in the debates of the Assembly.

The second fault with the Haultain motion, in my respectful submission, Mr. Chairman, is that it was never proclaimed as required by section 110 of the North-West Territories Act and neither was it assented to by the Lieutenant Governor as required by section 21(2) of the North-West Territories Act. Therefore it never had full force and effect.

I would like to deal, Mr. Chairman, with the need for the proclamation or assent. It is, in my respectful submission, a fundamental principle of British and Canadian constitutional law that proclamation or Royal Assent is a condition precedent to the validity of a statute. As deSmith has stated in his book *Constitutional and Administrative Law*, 1985, at page 41:

> . . . If the Queen were to refuse her assent to a Bill of which she disapproved, no court would deem the Bill to be an authentic Act of Parliament.

Mr. Chairman, while the withholding of Royal Assent in Britain would be an unusual or an unconventional occurrence, the same could not be said, in my respectful view, of the administration of a subordinate legislative body like the Legislative Assembly of the Northwest Territories. Indeed, there have been several instances in which Lieutenants Governor have reserved their assent pending a determination of the desirability of even provincial legislation by the Governor General in Council. Although the federal power of disallowance of provincial legislation has

fallen to disuse, speaking in 1987, it is clear that at the time of the events considered by this committee it was actively employed. In my respectful submission, Mr. Chairman, the importance of the Lieutenant Governor's assent is more than merely formal, and that is so because the provinces are incapable of legislating by circumventing this fundamental, constitutionally entrenched office.

In Re The Initiative and Referendum Act, reported at 1919, 48 DLR 18, at pages 23 to 25, the Privy Council declared unconstitutional a Manitoba statute which attempted to bypass the office of the Lieutenant Governor by making legislation subject to automatic repeal -- that is, without assent -- where a majority of electors voted for appeal in a referendum. The privy council said in its judgment, and I quote:

> For, when the Lieutenant-Governor gives to or withholds his assent from a Bill passed by the Legislature of the Province, it is in contemplation of law the Sovereign that so gives or withholds assent .... It follows that if the Initiative and Referendum Act has purported to alter the position of the Lieutenant-Governor in these respects, this Act was insofar ultra vires.

In other words, the Legislature could not provide for a mechanism for the repeal of statutes which circumvented the office of Lieutenant Governor. Now, in my respectful submission, if the Manitoba Act was unconstitutional because it purported to empower the Legislative Assembly to pass statutes without the need for assent by the Lieutenant Governor, it follows that it would be unconstitutional to give legal force to the Haultain motion which was not assented to by the Lieutenant Governor. If it could not be done directly, it could, in my respectful view, not be done indirectly.

In Lefebvre and the Queen, reported at 1982, 141 DLR 3rd, 460 at page 469, Mr. Justice Greschuk of the Alberta Court of Queen's Bench considered the effect of the Haultain motion on section 110. He said in response to the argument that section 110 was altered by the Haultain motion:

> However, counsel for the Respondent fails to note this regulation, to have the force of law, was never proclaimed, negating the assertion that the Legislative Assembly felt the guarantee of French language rights was not suitable to the Territories. His interpretation also fails to recognize that in 1877 the French and English populations in the North-West Territories was very nearly equal in numbers.

Mr. Chairman, the Court of Appeal of Alberta has denied an appeal from this judgment, so in my submission it has been determined by the courts of this province that the Haultain motion never was proclaimed.

I would like to turn to my fifth point, and that may be briefly stated as follows. The language guarantees in the North-West Territories Act were carried forward into the Alberta Act. When Alberta was formed in 1905, certain provisions of the North-West Territories Act were carried forward. The two main transitional provisions were section 14 and section 16. If I may, I would like to quote those sections.

Section 14 of the Alberta Act provided:

> Until the said Legislature otherwise determines, all the provisions of the law with regard to the constitution of the Legislative Assembly of the Northwest Territories and the election of members thereof shall apply, mutatis mutandis, to the Legislative Assembly of the said province and the elections of members thereof respectively.

Section 16 of the Alberta Act provided -- and here, Mr. Chairman, I propose simply to read the important words from my point of view:

> All laws and all orders and regulations made thereunder, so far as they are not inconsistent with anything contained in this Act ... existing immediately before the coming into force of this Act in the territory hereby established as the province of Alberta, shall continue in the said province as if this Act and The Saskatchewan Act had not been passed.

Mr. Chairman, section 16 has received more attention from the courts than section 14. In two decisions, the Alberta and Saskatchewan Courts of Appeal have considered whether section 16 carried forward the provisions in section 110 permitting the use of French in the courts. In R. v. Lefebvre -- this is an unreported decision of the Court of Appeal of Alberta dated November 5, 1986 -- the majority of the Court of Appeal held that the provision in section 110 was merely transitional, and when the province of Alberta set up a court system,

> ... the Province occupied its field of power in relation to Courts and all purposes affecting or extending them [during] the transitional period came to an end. Section 110 was not enacted for the purpose of extending language rights into the Alberta courts after the courts of the North-West Territories ceased to have any jurisdiction in the province upon being superceded by the Supreme Court of Alberta.

Justice Belzil dissented, holding that section 110 had survived the creation of the Supreme Court of Alberta and that there was a right to use the French language in the courts of this province.

In Mercure v. the Attorney General of Saskatchewan, reported at 1986, 2 W.W.R. 1, the majority of the Saskatchewan Court of Appeal per Chief Justice Bayda held that section 110 had been carried forward in respect of the use of French:

> In the result, I find that the ... law, empowering any person to use either English or French in the courts in Saskatchewan, prevailed at the time of the appellant's trial. [page 18]

Chief Justice Bayda was of the view that the requirement in section 110 that "all ordinances made under this Act shall be printed in both languages" ceased to have any effect in relation to Saskatchewan when the Saskatchewan Act became effective, because it was "special legislation" that referred to the rules of the Legislative Assembly of the Northwest Territories and had no application to the Legislative Assembly of the province of Saskatchewan. In the words of Chief Justice Bayda, "it became spent," page 30.

Chief Justice Bayda took a similar view of the right to speak French in the Legislative Assembly. This legislation was "special legislation" because it stipulated the language that was to be used in a particular institution -- the Legislative Assembly of the Territories.

Mr. Chairman, in my respectful submission, it is important to note that the questions placed before the Saskatchewan Court of Appeal did not include the issue of the language of debate in the Legislative Assembly of Saskatchewan. Therefore the statements of Chief Justice Bayda are obiter dicta. Further, Chief Justice Bayda did not consider the effect of the Constitution Act, 1982, as that Act came into force after the facts which gave rise to the appeal before him. Further, it is important in my submission to note that Chief Justice Bayda did not deal with the transitional provisions in section 14 of the Alberta Act. That is significant, because even if Chief Justice Bayda is right about the

interpretation of section 16, the provisions of section 14 carry forward the right to use the French language in the debates of the Assembly. The language of debate in the Assembly of the Northwest Territories, as stipulated by section 110 of the North-West Territories Act, was part of the constitution of the Legislative Assembly of the Northwest Territories and was, in my submission, carried forward by The Alberta Act.

The leading case to have considered the effect of section 14 was Prince Albert City Provincial Election, reported at 1907, 4 W.L.R. 411. In that case, an unsuccessful candidate for election to the Saskatchewan Legislature sought to controvert the election by relying on provisions contained in the North-West Territories Controverted Elections Ordinance. He argued that the ordinance was carried forward as part of the "constitution" of the Legislative Assembly of the Northwest Territories. Chief Justice Sifton rejected this argument, reasoning that the Controverted Elections Ordinance could not have been included in the "constitution" of the Northwest Territories because it would have been unnecessary to include special reference to the election of members in section 14. In other words, if "controverted" elections were included in the general term "constitution," no special reference to the "election" of members would have been necessary.

This argument could have no application in the present case. The language of debate in the Assembly is a fundamental aspect of the constitution of the Legislative Assembly. It is a primary rule of operation and not a secondary rule such as an ordinance dealing with the procedure to be employed to controvert an election. There are several examples of constitutional provisions concerning the language of debate in Legislative Assemblies in the context of Canadian constitutional law. For example, section 133 of the Constitution Act, 1982, specifies that English or French may be used in the debates of Parliament and the Legislature of Quebec. Section 16(2) of the Charter of Rights and Freedoms provides that English and French may be used in the Legislature and government of New Brunswick, and section 17 of the Charter provides that English or French may be used in the debates of the Parliament and the proceedings of the Legislature of New Brunswick. In my respectful submission, Mr. Chairman, these provisions are clearly "constitutional" in their nature, and the language protections contained in section 110 of the North-West Territories Act were part of the constitution of the Northwest Territories carried forward by section 14 of the Alberta Act.

Indeed, Mr. Chairman, since the proclamation of the Constitution Act, 1982, the right to speak French in the debates of the Assembly has become a constitutional right. Section 52(2) of the Constitution Act, 1982, provides:

> (2) The Constitution of Canada includes . . .
> (b) the Acts and orders referred to in the schedule; and
> (c) any amendment to any Act or order referred to in paragraph (a) or (b).

Included in the Acts in the schedule is the Alberta Act, which carried the language guarantee forward. The right of any person to use English or French in the debates of the Assembly is thus constitutionally guaranteed, as section 52(1) of the Constitution Act, 1982, provides:

> The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

Therefore the constitutional rights to use French continued in section 110 of the North-West Territories Act were carried forward after the entry of Alberta to Confederation. Except to the extent that they have subsequently been extinguished, those rights continue to this day.

Mr. Chairman, my sixth point is this. The Interpretation Acts introduced by this Assembly since its inception have not affected the right to use the French language in the debates of the Legislative Assembly of Alberta. Alberta's first Interpretation Act, S.A. 1906, chapter 3, was silent on the question of language. In 1919 the Act was amended by adding the following new clause:

> 61. Unless otherwise provided where any Act requires public records to be kept or any written process to be had or taken it shall be interpreted to mean that such records or such process shall be in the English language.

The Interpretation Act of 1958 repealed and replaced the foregoing provision as follows. Section 27 provided:

> 27. Where by an enactment public records are required to be kept or any written process to be had or taken, the records or process shall be had or taken in the English language.

The Interpretation Act of 1970 slightly modified the foregoing wording as follows. Section 27 provides:

> 27. Where by an enactment public records are required to be kept or any written process to be had or taken, the records or process shall be had or taken in the English language.

The current Interpretation Act, RSA 1980, contains no language provision.

Therefore, Mr. Chairman, in my respectful submission, if it is held that the Interpretation Acts have been effective to change the rights brought forward from section 110 through section 14 or section 16 of the Alberta Act, it is clear that the language of debate in the Assembly was not affected by the Interpretation Acts. At most, those statutes would have the effect of altering the requirement concerning the language to be used in the records and *Journals* of the Legislative Assembly and the language to be used in the statutes of the Assembly.

My final point, Mr. Chairman, is this, number 7. In Alberta there is no distinction between law and privilege. While in Great Britain the privilege of Parliament stems from common law, in Canada privilege has a statutory origin. As the editors of *Beauchesne* have said, "Privilege in Canada rests on statute and not on common law." In the absence of sections 8 to 15 of the Legislative Assembly Act, there would be no privileges other than those conferred by the United Kingdom Parliament in the Constitution Act, 1867, or The Alberta Act.

The brief from Legislative Counsel suggests that the Speaker's Petition at the opening of each session of the Legislative Assembly is of some overriding significance. However, as *Beauchesne* states:

> The privileges of the House of Commons are also claimed on the opening day of each new Parliament when the Speaker, after introducing himself to the Governor General, claims on behalf of the House "all their undoubted rights and privileges, especially that they may have freedom of speech in their debates, access to Your Excellency's person at all seasonable times, and that their proceedings may receive from Your Excellency the most favorable construction."

I am here quoting from *Beauchesne*:

> Although this request is granted, it has no legal validity as privilege in Canada rests on statute and not on common law.

The effect therefore of that prayer is in law nothing, in my submission.

The immunities of members of the Assembly, which Legislative Counsel submits have been accepted by the courts, are in fact specified by statute and not based on common law. Hence, for example, the immunity from libel and slander stems from section 13 of the Legislative Assembly Act and not the common law. Further, the powers of the House are all provided by statute and not the common law. The Legislative Assembly is made a court by section 12 and section 10 of the Legislative Assembly Act. Legislative Counsel provides no authority for the proposition that the "Legislatures . . . are higher courts of record than even the Supreme Court of Canada," stated at page 4 of his submission.

Legislative Counsel submits that there is a distinction between law and privilege -- at pages 6 to 9 of his submission -- and relies on passages from Sir Erskine May and the history of the United Kingdom Parliament. Counsel then goes on to conclude that "Parliament does not and cannot decide matters of law, only privilege" at page 6. With respect, this analysis, based as it is on the powers of the United Kingdom Parliament, completely ignores the situation in Alberta. Here section 9(2) of the Legislative Assembly Act provides that the immunities and powers conferred by the Act and those adopted from the Parliament of the United Kingdom "are part of the public and general law of Alberta." The exclusive power of the Legislative Assembly to determine the lawfulness of its proceedings and to regulate its proceedings and conduct its business is conferred by section 8 of the Legislative Assembly Act. Therefore, in my respectful view, it follows that in determining questions of privilege, the committee is by definition dealing with questions of law. With respect, given the provisions of the Legislative Assembly Act, Legislative Counsel cannot be right when he states, and I quote here from page 6 of the submission:

> Once a matter of privilege has been referred to the House, the question is dealt with as a matter of privilege only, and legal arguments are inadmissable.

Likewise, with respect, the Legislative Counsel is wrong when he concludes, and I quote from page 12 of his brief:

> The Committee is not empowered to determine questions of law and must consider every question put to it by the House in the context of privilege. It must be remembered that the House has no authority to refer questions of law to its committees.

In my respectful submission, if privileges are part of the general law of Alberta, it follows that the committee is considering a question of law when it determines a question of privilege.

Even if Legislative Counsel were correct and the common law of the United Kingdom applied, I respectfully submit that while the Legislative Assembly has the power to set its own procedure, that procedure cannot contradict the law of the land. The noted English constitutional authority, A.V. Dicey, quoted with approval from Arnoud, from the *Memoir of Thomas, First Lord Denman*, to support this fundamental proposition, and I quote:

> The House of Commons, by invoking the authority of the whole Legislature to give validity to the plea they had vainly set up in the action of Stockdale v. *Hansard* and by not appealing against the judgement of the Court of Queen's Bench, had, in effect, admitted the correctness of that judgement and affirmed the great principle on which it was founded, viz. that no single branch of the Legislature can, by any assertion of its alleged privileges, alter, suspend, or supersede any known law of the land, or bar the resort of any Englishman to any remedy, or any exercise and enjoyment of any right, by that law established.

I'm quoting here from the work by Professor Dicey, *An Introduction to the Study of the Law of the Constitution*, the 10th edition at page 58.

Mr. Chairman, in support of the proposition that questions of law can be considered, I would simply refer to paragraph 117(6) of *Beauchesne*, which provides that

> The Speaker will not give a decision upon a constitutional question nor decide a question of law, though the same may be raised on a point of order or privilege.

Mr. Chairman, thank you. Those are my remarks.

MR. CHAIRMAN: Thank you very much, Dean Christian.

I'll now ask counsel to direct any questions that he may have to you, Dean Christian.

MR. RITTER: Thank you, Mr. Chairman. This is very unusual for me, because when I came to the Legislative Assembly I thought I was getting away from this university nonsense. But here we are back again with two eminent professors and I'm right back in the same boat.

But I am rather pleased to have some lawyers here at last. Dean Christian, before I go into any questions about your submission, could you tell the committee a little bit about your background in parliamentary law and constitutional law.

MR. CHRISTIAN: Yes. I have taught constitutional law at the Faculty of Law at the University of Alberta since 1980. I have written in the area of constitutional law primarily with respect to the Charter of Rights, and I have acted as counsel in litigation before the courts of this province and the Supreme Court of Canada in constitutional matters.

MR. RITTER: Do you have any background in parliamentary law as such, as specifically relating to privilege?

MR. CHRISTIAN: No, I do not.

MR. RITTER: I'm going to be asking these same questions of Professor Green, so I've got a standard list here in front of me. I noticed in your submission you were referring to the process of proclamation, with specific reference to ordinances and statutes. I'd like to ask you, Dean Christian: is it normal for a proclamation to be made for a motion of the House in the U.K. or any other jurisdiction you are aware of, as opposed to a statute or ordinance?

MR. CHRISTIAN: I'm not sure what the practice is. The point which I think is important here is that the statute in question, section 110 of the North-West Territories Act, expressly required that a proclamation be used regardless of whether a regulation or ordinance was used. That strikes me as being the important point.

MR. RITTER: Yes, I do understand that, Dean Christian. I would agree with you on that point. I'm just wondering if you are aware of any other instances where a motion of the House required a proclamation, in the U.K. or Canada or any other Dominion?

MR. CHRISTIAN: No, I'm not.

MR. RITTER: With respect to a proclamation for a motion of the House, did section 110 require that the proclamation necessarily be in a written form as would be found in a proclamation with an Act or ordinance?

MR. CHRISTIAN: Are you simply asking me to read section 110 because . . .

MR. RITTER: Well, in your opinion, do you feel there was a requirement that the proclamation that was demanded by section 110 as amended required the proclamation to take a specific form, written or otherwise?

MR. CHRISTIAN: Section 110 itself does not require that a specific form be used.

MR. RITTER: Is there any precedent that you're aware of which would require the proclamation of a motion of the House to take a specific form?

MR. CHRISTIAN: No.

MR. RITTER: Is a proclamation necessarily made subsequent to a motion of the House . . .

MR. CHRISTIAN: Yes.

MR. RITTER: . . . or can it be made before?

MR. CHRISTIAN: I'm sorry, I anticipated your question. The answer is yes in my opinion.

MR. RITTER: It must be made subsequent to the motion.

MR. CHRISTIAN: I think we should distinguish between general cases and the case which we have before us today. In my respectful submission, the only sensible interpretation of section 110 is that proclamation shall follow the motion or ordinance or regulation having the intended effect of changing the language requirement in section 110.

MR. RITTER: I see. So in this particular case, with this particular motion of the House, it would be fair to assume that you feel the proclamation would have to be made subsequent to the date of that motion of Mr. Haultain.

MR. CHRISTIAN: Yes, I would because the wording of section 110, if I may simply refer to the last part of the section, says:

> and the regulations so made shall be embodied in a proclamation which shall be forthwith made and published by the Lieutenant Governor in conformity with the law, and thereafter shall have full force and effect.

In my respectful view, it would not be possible to forthwith make a proclamation unless the regulation already existed. The section contemplates that it is only after proclamation that there will be full force and effect of the regulation.

MR. RITTER: Thank you, Dean Christian.

I'm going to ask you now about the subsequent Acts of Parliament, or in this case Acts of the Legislature, which proclaimed the right of Parliament to regulate its own proceedings. And in this respect, I specifically refer to the Legislative Assembly Acts which were enacted in this province since 1905. Would the proclamation of any one of the Legislative Assembly Acts which embodied the right of the Legislature to regulate its own proceedings by motion of the House be considered a proclamation? Or could they possibly be considered a proclamation of Mr. Haultain's motion of 1892?

MR. CHRISTIAN: In my opinion, they could not.

MR. RITTER: Could you expand on that?

MR. CHRISTIAN: If you would care to refer me to the particular sections of those Legislative Assembly Acts you wish me to consider, I'd be happy to do that.

MR. RITTER: Certainly. Well, referring to our present Legislative Assembly Act, section 8 gives the Legislative Assembly the power to regulate its own proceedings. Now, that particular Act was proclaimed. Could that in any way be construed to have given effect to a motion which was held prior to the proclamation of that particular Act?

MR. CHRISTIAN: In my respectful view, it could not.

MR. RITTER: You made a comment in your submission . . . Let me rephrase that; I'm getting ahead of myself here. We have a situation both in Saskatchewan and Alberta where the Legislatures of those respective provinces have adhered to a particular convention throughout the years. Is not convention, parliamentary convention itself, forming part of the Constitution in this country?

MR. CHRISTIAN: Yes, it does form part of the Constitution in the country. But I think one has to be very careful when one is comparing the existence of a convention with the existence of a positive law. In this case, we have section 110 of the North-West Territories Act, which contemplates a specific procedure for dealing with the use of the French language in the Assembly. That specific procedure, in my respectful view, must be followed, and the existence of that law cannot be diminished by a subsequent failure to obey the law. The convention, to the extent that it is inconsistent with the law, is illegal.

MR. RITTER: Do you think there is any possible case to be made for the possibility of a convention through time actually displacing the effect of statute?

MR. CHRISTIAN: No, I do not. In my view, conventions and law are two quite different animals. And if I may, I would like -- without quoting him, because I don't actually have his words here -- to refer the committee to the judgment of Chief Justice Freedman of the Manitoba Court of Appeal in his judgment concerning the patriation reference.

In that case, Justice Freedman described the differences between a convention and law, and his description was adopted subsequently by the Supreme Court of Canada when it delivered its judgment in the patriation reference. And I use his explanation because I think it's so clear. He said that if one imagined a line, at one end one would have law; at the other end, one would have custom; and somewhere in the middle, one would find a convention. The crucial point is that a convention is not law,

and a convention cannot be inconsistent with the law. It's fundamental to the notion of a convention that it exists in recognition of the law to assist in the interpretation and the operation of the law.

MR. RITTER: Dean Christian, you just made a comment, "convention is not the law." Did you mean convention is not statute or convention is not the law?

MR. CHRISTIAN: Convention is not law.

MR. RITTER: Not law. So you just answered that convention could form part of the Constitution. Is the Constitution not the law of the land?

MR. CHRISTIAN: The Constitution of Canada is comprised of what is defined in section 52(2) of the Constitution Act, 1982. In addition to that which would be called the law of the Constitution, there are practices which are called the conventions of the Constitution. This is very clear if one looks at the decision of the Supreme Court of Canada in the patriation reference, and had I anticipated this line of inquiry, I would have been happy to bring that along, and indeed I'm prepared to undertake to file a copy of that judgment with the committee, because there is in that judgment an extremely lucid and authoritative description of the difference between law and convention. And in my respectful submission, there's absolutely no doubt about it. A convention is quite different from law, and a convention cannot supersede the law or be inconsistent with the law.

MR. RITTER: I am sorry for this line of questioning, Dean Christian. It's just that these were questions which were raised at the last committee meeting with the last witness, and the possibility of convention through time being entrenched in the law as the practices of this Legislature were deemed relevant.

MR. CHRISTIAN: Well, let me make my position perfectly clear. If there were no inconsistent previous statute, you could have a convention of the sort which presumably it is argued there is now. But in my respectful view, in the face of a previous inconsistent statute, the inconsistent convention cannot supersede the law. The law is the law, and a court will apply the law that the law continues to speak.

MR. RITTER: To go on, Dean Christian. At the time of Mr. Haultain's motion or shortly thereafter, did the House of Commons in Ottawa have any problems with the technicalities of the failure of the proclamation, or did the House of Commons itself consider the motion valid, to your knowledge?

MR. CHRISTIAN: I have no knowledge of what the House of Commons considered.

MR. RITTER: Perhaps you could tell me the actual constitutional relationship between Parliament and the Crown. Does the Crown purport to have any powers over the proceedings of Parliament within the Chamber?

MR. CHRISTIAN: I'm sorry. Would you repeat that question?

MR. RITTER: The relationship between Parliament and the Crown. Does the Crown purport to exercise any authority over the proceedings of Parliament within the Chamber? That was no?

MR. CHRISTIAN: Yes.

MR. RITTER: I'm going to just go on. Dean Christian, you mentioned the Mercure case. I note it does deal with the courts, but did it deal specifically with the issue of the French language within the Chamber of a Legislative Assembly?

MR. CHRISTIAN: Yes. In my earlier submission I think I fairly stated the decision of the court, which did in part deal with the language of debate in the Assembly.

MR. RITTER: Were these comments obiter, or were they part of the main judgment?

MR. CHRISTIAN: In my opinion, they were obiter comments.

MR. RITTER: Could you perhaps tell the committee the status of obiter comments in a judgment?

MR. CHRISTIAN: Obiter comments are comments that are by the way. They are not necessary for the disposition of the main issue remitted to the court.

MR. RITTER: What was the status with the Lefebvre case as well? Did that specifically deal with the French and English language issue within the Legislative Assembly Chamber?

MR. CHRISTIAN: No, it did not.

MR. RITTER: So this was a case that was decided strictly on the basis of French language usage in the courts. Is that correct?

MR. CHRISTIAN: That is correct.

MR. RITTER: I'm going to ask you about your point you made regarding proceedings, and you said the motion of Mr. Haultain did not specifically deal with the language of debate. If proceedings could only be recorded in the English language, would you care to venture a guess on what might have happened in the Chamber had somebody been speaking French and the proceedings could not have recorded that particular transaction?

MR. CHRISTIAN: I would expect that the comments would have been translated and rendered in English. But I think it's important to bear an important practical point in mind, and that is that there was no *Hansard* at this time, and I think it would be wrong to read into the mind of the persons involved in this motion the prospect of word processors and the transcription of debates.

MR. RITTER: Would you agree, though, that in the Votes and Proceedings of this particular Legislative Assembly at this time it was clearly the intention to drop any reference to French language proceedings and to have them recorded in French? Was the intention of Mr. Haultain to make sure the Votes and Proceedings were recorded completely in English?

MR. CHRISTIAN: Just a minute; I just want to refer to the precise wording. Yes, I think in the absence of any evidence one must simply look at the words of the motion, and those words indicate:

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

In my submission, one can only infer the intention, but the intention would be that the language of record would be English.

MR. RITTER: I see. To deal with your point that in Canada privilege is a matter of statute now, as opposed to the practice in the United Kingdom, and in looking at section 9 of our present Legislative Assembly Act and section 18 of the Constitution Act, 1867, which specifically refer to the Canadian status on privilege being identical to that as found in the United Kingdom House of Commons, would you not say that we have statutorily entrenched a customary law as found in the United Kingdom?

MR. CHRISTIAN: Let me deal with section 9 of the Legislative Assembly Act first. Section 9(1) is quite clear that what was adopted was the state of the law which existed at the time of passing the Constitution Act, 1867. And you asked me about section 18 of the . . .

MR. RITTER: It's basically a similar provision as found in that particular constitutional Act. But what I'm trying to get at, Dean Christian . . .

MR. CHRISTIAN: [Inaudible] the particular section, if you don't mind.

MR. RITTER: Certainly. But what I'm referring to is: we had some sections in various statutes which referred that Canada would adopt in its entirety a situation which was based completely on convention and not on statute in the United Kingdom. Is it really fair to say that ours was a completely statutory provision, when the statute itself bases it on a nonstatutory source?

MR. CHRISTIAN: Well, it's not just me who thinks so. The editors of *Beauchesne* have also said so.

MR. RITTER: Well, I appreciate that, Dean Christian. But I mean, is this in fact what you are saying, that even in spite of our Legislative Assembly Act and the Constitution Act of 1867, referring to a very conventional source of law in the United Kingdom, the Canadian system is completely bound by statute and is quite finite in its application?

MR. CHRISTIAN: My position is this: that in the absence of a statute there would be no privilege. The whole Assembly is created statutorily and the rights, privileges, and immunities of members are conferred by statute. In section 9 the privileges, immunities, and powers which were held by the House of Commons of the Parliament of the United Kingdom at the time of passing of the Constitution Act, 1867, are conferred upon the members of this House.

MR. RITTER: And lastly -- or actually almost lastly, Dean Christian -- you mentioned the Interpretation Act. Does any Interpretation Act that was enacted in Alberta apply in the Chamber of the Legislative Assembly? And if so, who should adjudicate to decide how obliged the Chamber is to conform to the procedure and interpretation as laid out in the Interpretation Act?

MR. CHRISTIAN: In my respectful submission, the laws of the land apply in the House, except to the extent that there is expressed contrary provision, and the Interpretation Act would or could be used in debate in the House and would be interpreted by the Speaker of the House.

MR. RITTER: I see. So if I can just ask you, I suppose, a shortened version of this question: is the Legislative Chamber itself bound by its own statutes which apply outside the Chamber?

MR. CHRISTIAN: I would say that it is, yes.

MR. RITTER: One last point, Dean Christian, and then I'll turn over the questions to members of the committee. You mentioned that section 110 was since carried over into the Alberta and Saskatchewan Acts as it originally was, taking into consideration the defective motion of Mr. Haultain, and now this has been constitutionally entrenched. Are you telling the committee that while Ontario and Nova Scotia and British Columbia can change at will through a motion of the House the languages used in their Assemblies, Alberta and Saskatchewan would now be obliged to seek a constitutional amendment to regulate the proceedings as regards language in our Chamber?

MR. CHRISTIAN: No, that is not my position. My position is that the Alberta Act has been made part of the Constitution of Canada and as the Alberta Act incorporates, in my submission, the provisions of section 110, those provisions are now constitutional provisions. It is, therefore, sensible for someone to argue that they have a constitutional right to use French in the Assembly. But in my view, since section 110 itself has been carried forward, and that is the foundation for the right, the provisions in section 110 allowing for changing the status are also carried forward.

MR. RITTER: I see. So if Alberta wanted to become a unilingual English-only Legislature, could it do so without a constitutional amendment?

MR. CHRISTIAN: In my view it could, yes.

MR. RITTER: It could. Thank you, Dean Christian. I have no further questions. Perhaps you . . .

MR. CHRISTIAN: If I could just elaborate on that last point, it really depends on what one wants to consider constitutional. It's quite clear that there are a variety of statutes in Canada which are considered to be constitutional in their nature, and they're not all statutes which have been declared to be constitutional or part of the Constitution of Canada in the Constitution Act, 1982. Statutes which relate to the nature of the operation of the Assembly could equally be called constitutional, and therefore those statutes could be changed.

MR. RITTER: Thank you, Dean Christian. I'll turn it back over to the Chairman now.

MR. CHAIRMAN: Thank you as well, Dean Christian. I'll now entertain questions from members, and on my list I have Mrs. Osterman and Mr. Anderson thus far. Mrs. Osterman.

MRS. OSTERMAN: Mr. Chairman, I'm looking at the time and realizing that we may be running over somewhat here, but just very quickly, I'm fascinated once again this evening by the

amount of discussion around section 110 that goes back almost a hundred years and we're trying to imagine what was in the minds of the people at the time and then attributing some legal framework to it as we believe it must have had. And in reading it, and its saying:

> Either the English or the French language may be used by any person in the debates of the Legislature Assembly of the Territories and in the proceedings before the courts; and both these languages shall be used in the records and the journals of such Assembly.

Does that mean that everything has been published and was published at that time in French and English? It had to be, as I understand it, from Dean Christian's comments.

MR. CHRISTIAN: Perhaps I could respond, minister, by saying that, in my respectful view, it's not that unusual to be considering an ancient statute. It is this week, of course, the 200th anniversary of the American Bill of Rights, a document which is still hotly contested and, of course, generations of lawyers have attempted to divine the intention of those drafters.

It is my understanding that after the Haultain motion both English and French continued to be used in the Northwest Territories gazettes; that in the years 1884-89 both English and French were used; that for the years 1892 and '93 French and English were used, but for the year January to December 1894, only English was used; that for the period January '85 to August 1885 both French and English were used; and that the Northwest Territories gazettes for the period September 1895-1905 used English only.

MRS. OSTERMAN: Well, I'm not sure that my first question was entirely answered, Mr. Chairman. I was asking, since section 110 says "shall," that surely we are looking at all of these publications in French and English? I don't understand why there is a difference. If the statute says "shall," why do we not have all the publications in French and English, because as Dean Christian has said -- "the specific procedure must be followed," Dean, were your words.

MR. CHRISTIAN: Yes ma'am. Well, that is certainly correct in law. That's a correct statement of law: that where there is a mandatory statutory provision, that provision must be complied with. Now, of course, there are many instances in which the law is not complied with. And it would be my submission that had someone at this time -- the time we're talking about -- taken a declaration application in a court, the court might well have determined that there was an obligation to print in both French and English; that the proceedings would have to be in both French and English.

MRS. OSTERMAN: Unless of course there was an acceptance that the motion in fact somehow, according to however they looked at things at that time, negated the need to do that. I have another question, Mr. Chairman.

MR. CHAIRMAN: We'll have to come back to you, Mrs. Osterman, with a . . .

MRS. OSTERMAN: I thought I'd just ask clarification on the first one, Mr. Chairman, but I'll come back if you wish.

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

MR. ANDERSON: Thank you, Mr. Chairman. Dean Christian, in looking at your submission, perhaps you could help me. I'm somewhat unclear about the role of legal convention versus written law. You suggest that the Legislative Assembly of the North-West Territories was not a sovereign legislative body, that there were attempts at changes, but you suggest that did not formally take place in terms of French and English in this Legislature. Yet that convention that has taken place over the last 80, 90 -- however many years -- of unilingual Legislature would not apply. Could you elaborate a bit more on that? Why would a Legislative Assembly and the activities of that Assembly which were not a sovereign legislative body be more compelling than the convention or the common law, if you will, that has evolved over this past near century?

MR. CHRISTIAN: In my submission the difference between a law and convention is important. A convention is really based on the practice of an institution, but it is not legally enforceable. If, for example, one regards the decision of the Supreme Court of Canada in the patriation reference, there were two judgments. One judgment was that the effort by the federal government to unilaterally patriate the Constitution without obtaining the consent of the provinces was constitutionally unconventional or, I think as the court said, was unconstitutional in the conventional sense.

The second judgment, however, the judgment of Justice Laskin and the other majority -- there were two majorities on this issue -- held that the procedure used by the federal government was lawful. There was then a contradiction. On the one hand the Supreme Court said that the procedure employed by the federal government was lawful, and yet on the other hand it said that it was conventionally unconstitutional. Now, how could that contradiction be explained? Only in this way, I would submit. Conventions and the law are two different things. Conventions were described by Dicey as the morality of the Constitution. The law is quite a different matter, and in my respectful submission a practice, no matter how consistently followed, could not prevail in the face of an expressed contrary statutory provision.

MR. ANDERSON: Mr. Chairman, thank you Dean Christian. I appreciate your raising the reference for the patriation case, which was in fact something that was confusing me. I have that reference here. In looking at the conclusion and the remarks opening the conclusion, they read, if I might briefly:

> We have reached the conclusion that the agreement of the provinces of Canada, although being expressed as to its quantification, is constitutionally required for the passing of the proposed resolution for a joint address to Her Majesty respecting the Constitution of Canada, and that the passing of this resolution without such agreement would be unconstitutional in the conventional sense.

Obviously, that portion of the ruling carried the day, since the Prime Minister, who had previously declared intent to go to London apart from the provinces, in fact obtained provincial consent by changing radically the recommendations made. So in fact did not convention in this case rule over the strict legal qualifications which the federal government were trying to obtain as support for their position?

MR. CHRISTIAN: With respect, I think your observation is astute. The point, however, is this: when the court said that

what the Trudeau government was doing was unconstitutional in the conventional sense, it was not saying that it was illegal. It was not saying that the Parliament of Canada could not continue to follow its unilateral course. It was not saying that it would be illegal to do so. It may have been saying that it was constitutionally immoral to do so, and that declaration by the court on a question of constitutional morality was very important, because of course the political pressure placed upon the government forced it -- as I understand it as an outsider, as an interested observer -- to engage in negotiations with the provinces and to arrive at a consensus for patriation of the Constitution. The fact that those political events occurred, however, does not blur the distinction between what is a law and what is a convention.

MR. ANDERSON: Mr. Chairman, I believe I have one more supplementary allowed. Perhaps I could ask Dean Christian to define the difference between "constitutional" and "legal," since in this case the convention was declared to be unconstitutional but you maintain that it was yet legal.

MR. CHRISTIAN: The Supreme Court of Canada in that judgment determined that the Constitution of the country is comprised of the laws of the Constitution and the conventions of the Constitution. Let me give an example. It is a convention that when a governing party loses its majority in the House it is required to seek dissolution. That is not a law. It is a convention; it is a practice.

The conventions of the Constitution are used and are built up as a practice by the officers of the government, of the Legislature, who carry out legal duties. The legal duty of the Lieutenant Governor in such a case is clear. His legal duty is to dissolve the House when requested to do so. What would happen if a governing party lost its majority but refused to seek dissolution? Could the Governor General or the Lieutenant Governor nevertheless dissolve the House? He has the legal power to do so, but the conventions of the Constitution constrain the exercise of that power.

In my submission, the chief difference may be this: you can go to court and have a court grant an order which it will enforce, upholding the law. You cannot go to court and get an order upholding a convention or enforcing a convention. In the case we've been discussing -- the patriation reference -- the most a court would do would be to declare that a declaration existed. It would not be prepared and could not grant an injunction to restrain the federal Parliament from proceeding on its unilateral course, even though it was contrary to convention. There are no remedies. The law does not deal with conventions.

MR. CHAIRMAN: Thank you, Dean Christian.

We have on our list members Mr. Sigurdson, Mr. Gibeault, Mr. Wright, Mr. Fox, Mrs. Osterman, and Mr. Russell. At the beginning of this portion of the meeting I indicated that we would endeavour to split our time equally between our two witnesses and questions that pertained to their evidence. With the agreement of the committee, I would like to saw off the list at that point and ask those members that do have questions to proceed as quickly as they can through the questions.

MR. RUSSELL: Take me off.

MR. CHAIRMAN: I beg your pardon?

MR. RUSSELL: Take me off.

MR. CHAIRMAN: Mr. Sigurdson.

MR. SIGURDSON: Thank you, Mr. Chairman. Dean Christian, do the terms of the Haultain motion, whether or not they were proclaimed, have anything to do with that part of section 110 which allowed for the use of both English and French in the Legislative Assembly of the Northwest Territories?

MR. CHRISTIAN: Well, it is clear that the Haultain motion speaks to the language of the proceedings of the Legislative Assembly and the way in which they are to be recorded and published, but the Haultain motion does not deal with the language of debate to be used in the Assembly. Section 110 specifically addresses the question of debate and distinguishes the question of debate from the language of the records and journals of the Legislative Assembly and the language to be used in the ordinances.

In my respectful view, in order to negative any one of the four rules which I earlier discussed arising from section 110, it would be necessary to specifically target that provision and repeal it. Now, the Haultain motion does not purport to do that. The Haultain motion does not deal with the language of debate in the Legislative Assembly.

MR. SIGURDSON: Would you care to speculate as to the reasons why the Haultain motion did not specifically negate the use of French language in the Legislature?

MR. CHRISTIAN: I'm reluctant to speculate. One can only really infer from the words of the section that it was not intended to affect the language of debate. It is presumed that legislators know what they're doing and use the appropriate words to attain the end which they seek. And if that assumption is correct, in this case it must be concluded that the drafters of the Haultain motion did not intend to affect the language of debate.

MR. SIGURDSON: Finally, Mr. Chairman, to Dean Christian. There was an amendment that was attempted to the Haultain motion which states:

> Be it resolved that it is not in the public interests that any change be made in the system of public printing in the North-West Territories as far as the use of the French language as an official language is concerned.

That motion was of course defeated. I would suggest that this amendment would have reversed the Haultain motion and that records and journals would still have to be published in the French language as well; thus the Haultain motion only dealt with that which is published and not with what is spoken or allowed to be spoken in the Legislature. Would you concur with that?

MR. CHRISTIAN: I concur with that assessment, yes.

MR. CHAIRMAN: Mr. Gibeault.

MR. WRIGHT: May I just refer to your statement about cutting off the list there. I do have a number of questions myself, Mr. Chairman. Dean Christian was scheduled for tonight, and I rather take the view that when another witness is added, he or she comes after we've got through the first witness and the members have asked their questions. I would not feel properly dealt with if another course were adopted. I don't think there's a real problem with the other witness. I don't suppose there is,

unless he's off to Japan or Korea or something next week or later this week, which might well be the case.

DR. GREEN: Perhaps I can enlighten Mr. Wright on that point. I have to speak to the Calgary police and the RCMP on Wednesday with regard to security at the games, so if the committee is to meet on Wednesday, I'm not quite sure, Mr. Wright, that it would be possible. I'm not going to Korea again for a little while.

MR. CHAIRMAN: I think we may come out all right in time in any event, Mr. Wright. But let's proceed. Mr. Gibeault.

MR. GIBEAULT: To Dean Christian, I wonder if you could tell us if it would be your view that section 110 of the North-West Territories Act, brought forward by either section 14 or section 16 of the Alberta Act -- did it thus continue to have effect in the province of Alberta following the creation of the province?

MR. CHRISTIAN: Yes. In my submission it was carried forward by either of those sections and did continue to have force in the province, except to the extent that it may have been superceded or limited by subsequent statutes.

I have in my original presentation dealt with the possible effect of the Interpretation Acts upon the requirement in section 110 that the records and proceedings and the published materials arising from the House be in French and English. In my view, it is arguable that the Interpretation Acts narrowed the rights contained in section 110, and that the language of the public records could be in English only and still satisfy the continued effect of section 110.

But those statutes -- and I've been unable to find any other statute that might bear on it. There is no statute that I'm aware of which purports to extinguish the use of English in the debates of the Assembly.

MR. GIBEAULT: Just to clarify that. As a supplementary, then, you're not familiar with any motion, Bill, or other instrument that has been introduced by the Legislative Assembly of the province that would have the effect of deleting French as a language that would be usable in our Assembly?

MR. CHRISTIAN: No, I'm not.

MR. GIBEAULT: A final supplementary, Mr. Chairman. In section 110 of the North-West Territories Act as it stood in 1905 and has been brought forward by the Alberta Act of 1905 and thereafter enshrined by the provisions of the Constitution Act of '82, which incorporated the Alberta Act, is that a constitutional provision as that term would normally be understood, a constitutional provision as you would normally think of that?

MR. CHRISTIAN: Well, if by a normal understanding of the constitutional provision one means a provision which can be amended only by the amending procedure contemplated by the Constitution Act, 1982, this is not such a provision. In my view, section 14 or 16 carried forward the provisions of section 110, and as the source of the rights carried forward were subject to limitation by the procedure expressly set out in section 110, it still is possible for the Assembly of this province to follow the procedure anticipated or spelled out by section 110 and to limit the use of language in the debates of the Assembly.

MR. CHAIRMAN: Mr. Wright.

MR. WRIGHT: Yes, thank you, Mr. Chairman. When questioned by commission counsel, you were asked about your view of the effect of the proclamation and the necessity for it in the case we're dealing with of Mr. Haultain's resolution. Prior to that, counsel had questioned you about the statutory basis of privilege, and you had cited the provisions of the Legislative Assembly Act that bestows the privilege that existed in the House of Commons in England in 1867 upon this Assembly. I've looked in the North-West Territories Act and can't find a similar provision there, and I take it you've done the same.

MR. CHRISTIAN: I couldn't find the provision either. I think it's important to note -- and that's why I began my presentation by examining the status of the Assembly of the Northwest Territories -- that that was essentially a colonial administration. It was not in any sense sovereign.

MR. WRIGHT: So my question is, is it not the case that whether the basis is statutory or customary -- or conventional, that is -- still in this particular case it is clear that a subsequent assent by the Lieutenant Governor and proclamation, or proclamation, assent, and publication, is necessary to validate the regulation that's passed?

MR. CHRISTIAN: Absolutely. If it didn't follow that, one would simply be building a practice which was inconsistent with the law.

MR. WRIGHT: Yes. So does it make sense at all that there could be a sort of ongoing, continuous ability to have an automatic proclamation without anything further than just passing the resolution?

MR. CHRISTIAN: In my submission, it wouldn't make sense; no.

MR. WRIGHT: The last . . .

MR. CHRISTIAN: Maybe I should add to that by saying that this is particularly true given the subordinate nature of the Legislative Assembly of the Northwest Territories. That Assembly was analogous to a municipal council is to this Assembly. It was completely subordinate to it and could do nothing other than that which was permitted to it, and in passing any Bills, it was required to obtain the consent of the Lieutenant Governor. What section 110 was designed to do here, in my submission, was to carry forward that scheme in respect to this extremely important and politically sensitive issue, to ensure that before the Legislative Assembly changed the language requirement with respect to debates or records of the House, there would be approval through the proclamation issued by the Lieutenant Governor. The Lieutenant Governor was here to ride herd on the Assembly. He's not like our Lieutenant Governor today. His obligation was to examine any legislation passed by the House and, before assenting to it, consider whether it ought to be reserved. And that, in my submission, is why there is a reemphasis of the requirement of assent in section 110: because the issue was so important.

MR. WRIGHT: My third question, Mr. Chairman, is with regard to the Haultain resolution and, again, the question of com-

mittee counsel. His questioning was concerning the obligation to publish in English only and how this squared with the possibility of speaking French. And you pointed out that, of course, there was not a verbatim transcript; it was just the same as Votes and Proceedings now, in which the purport of what is done is recorded.

But can I draw your attention to the actual wording of the Haultain resolution, which does not say that the proceedings of the Legislative Assembly shall be recorded and published hereafter in the English language only in a definite sense. It says, does it not,

> that it is desirable that the proceedings of the Legislative Assembly shall be recorded . . . [et cetera]

That, would you not agree, would permit the possibility that in an exceptional case where for some reason it was necessary to record in another language, it would nonetheless be possible. Would you agree?

MR. CHRISTIAN: Yes, I would agree, and that might help to explain the inconsistent usage following the Haultain motion.

MR. FOX: I'm just trying to come to grips with all of the terms that have been used in terms of privilege in law and convention in law, and I want to be clear in my own mind on a couple of things here. I'm wondering: is the fact that English has been used predominantly or overwhelmingly in this Assembly over the last several years sufficient to make null and void, by convention or by its simple use over a period of years, the statutory provisions that French may be used in this Assembly?

MR. CHRISTIAN: No. In my view it cannot be extinguished by convention. It can only be extinguished by law in the manner specifically contemplated by section 110.

MR. FOX: Okay. Following from that, then, is it the constitutional or statutory right of any member of the Assembly, this Legislative Assembly in the province of Alberta, to use the French language in any proceeding at any time during the course of his or her discharge of duties as a member?

MR. CHRISTIAN: In my respectful view, that follows from the interpretation of section 110 and the fact that section 110 has been carried forward unaltered with respect to the language of debate in the House.

MR. FOX: So in your opinion, that's a clear yes.

MR. CHRISTIAN: A clear yes.

MRS. OSTERMAN: Once more with feeling, Mr. Chairman. I'll see if I can get struck out again. I'm sure Mr. Wright's getting more supplementaries than I am. Gordon, what's the secret?

Mr. Chairman, I would like to know from the dean, was there a question period at the time of reference to 110, the North-West Territories Act? Was there a question period in their Legislative Assembly?

MR. CHRISTIAN: I'm afraid I don't know. I would assume there was, but I would be guessing.

MRS. OSTERMAN: Well, I ask that question because I think it to be reasonably germane. The whole thing seems to hinge around 110; at least part of it hinges around 110 and the interpretation subsequently given. I'd be very curious about that, because the term used here is "debates." It is my understanding that very possibly -- I just quickly asked my colleagues here whether anybody would know -- there wasn't necessarily a question period in the proceedings as we understand it. And when we read *Beauchesne* and the two subsections here, 358 and 359, it certainly says that there must be no debate when we speak to question period. So at the time of 110, unless we can establish the proceedings at that time, I wonder whether this discussion has any relevance to our question period, where in fact this whole thing arose.

I'm not a lawyer, and I get more confused the longer I listen. I hear words so carefully chosen and elaborated upon, and so I say to myself I must then look at the precise meaning of those words instead of just speaking to convention and so on, because as the witness has told us, only in the absence of law does convention hold. And if there were an absence of a question period at that time, we have had a convention grow without any offence to a law that was in place because the law spoke to debates at the time. It makes no mention of even other proceedings; it just speaks to debates, and then it goes on to talk about proceedings before the courts. So I believe that obviously that is a question that needs to be responded to because it leaves, in my view, a whole host of things up in the air, Mr. Chairman. We are ascribing meanings to this section 110 when I'm not sure we have the same processes and applicable proceedings in place. So I think it's a reasonable question to ask and that we should be assured about.

MR. CHAIRMAN: Thank you. Members of the committee, the time reads shortly after 9:30. In view of the fact that we were about half an hour late in commencing to hear the evidence from our witnesses, I had sort of planned in my own little mind that we might go until 10:30 this evening. That would allot an hour at this point in time to Dr. Green. If there are further questions of Dean Christian, or indeed after that hour is passed there may be outstanding questions for Dr. Green, then I would propose that we would have them appear again, if they would be so willing. But in view of Dr. Green's being not available on Wednesday, perhaps we might, with your consent, move to Dr. Green at this point. Is that agreeable?

HON. MEMBERS: Agreed.

MR. WRIGHT: Assuming that Dean Christian is available in the future, in the near future.

AN HON. MEMBER: Definite future. Which?

MR. CHRISTIAN: In the near future. Yes. I'd have to check my calendar to see whether . . .

MR. CHAIRMAN: [Inaudible] try and accommodate us.

MR. CHRISTIAN: I'll certainly try to make myself available, Mr. Chairman, if my presence is required further.

MR. OLDRING: I'm very anxious . . .

MR. WRIGHT: We all are.

MR. CHAIRMAN: Mr. Oldring.

MR. OLDRING: Thank you, Mr. Chairman. I'm very anxious to hear from Dr. Green as well, but I would hate to see us fall short in terms of the time we're able to spend with Dr. Green. I would much prefer that we conclude our time with Dean Christian, and then perhaps bring Dr. Green back at a time that is agreeable so that can have some continuity.

MR. FOX: I think that's the fairest suggestion, Mr. Chairman.

MR. CHAIRMAN: Anybody else? Is that agreed then?

MR. GOGO: I don't agree, no. I want to hear Dr. Green. That's why I came tonight.

MRS. OSTERMAN: Mr. Chairman, is it possible that in normal circumstances we would have concluded with our discussion with Dean Christian and just agreed to stay later to hear Dr. Green?

MR. CHAIRMAN: Is that agreed? I don't know that we're that far off. I have no one else on my list, unless you wish to get on the list, Mr. Wright, with respect to Dean Christian.

MR. WRIGHT: Yes, I do.

AN HON. MEMBER: I had my hand up.

MR. CHAIRMAN: Oh, I'm sorry.

MR. GOGO: Mr. Chairman, now I'm confused. I thought at the outset, Mr. Chairman, you had set some guidelines that this committee agreed to, and that was that Dean Christian would speak for so long, bearing in mind that there would be questions, and at some point those questions would end. Now, is it the intent -- and I'd like to have the view of the committee -- that we're going to have Dean Christian for several days? Frankly, in deference to Dr. Green, he came tonight in good faith to testify. I'm looking forward to his comments. I've no objection if Dean Christian comes back eight times some other time. With respect, we spent four minutes now during which I had hoped to hear Dr. Green.

MR. FOX: Mr. Chairman, it was only a suggestion made by the Chair as to how the remaining time might be divided between the speakers. With respect, I too am anxious to hear Dr. Green, but in fairness, his appearance before this committee was endorsed at tonight's meeting. Dean Christian's appearance had been arranged some time ago, and I think in fairness to the deliberations of this committee we ought to make sure that we have our questions answered.

MR. CHAIRMAN: Mr. Musgreave, briefly.

MR. MUSGREAVE: Well, I'd just like to suggest -- I'd like to hear Dr. Green. I think we've heard enough from Dean Christian. This will give the members of the committee an opportunity to sit down and read Hansard, and they may be able to develop more questions for when Dean Christian comes back. In the meantime, I'd like to hear Dr. Green.

AN HON. MEMBER: Agreed.

MR. WRIGHT: Mr. Chairman, I do strongly object to this idea that's developing here. We had a witness tonight: Dean Christian. Normally, one goes through the witness and you proceed on to the next witness. Of course, beforehand you make an estimate on how long it's going take, but you hear the witness. If it inconveniences the subsequent witness, that witness, particularly one who is a lawyer, will perfectly understand that these things can't be arranged like a railway timetable. I suspect, in point of fact, that we won't spend more than 10 more minutes with Dean Christian in any event, but to chop and change like this is irregular and should not happen.

MR. CHAIRMAN: Well, I'm in the hands of the committee on this. It was my suggestion and hope that we might be able to get the evidence of both in tonight, particularly because of Dr. Green being unavailable on Wednesday night, and we could carry over questions. I don't wish to cut anybody off at all in respect to questions that might either be directed to Dean Christian or indeed to Dr. Green subsequently, but time is pressing on. Would it be -- you say about 10 minutes. If we were to say until a quarter to, and then we would sit until a quarter to 11 with Dr. Green, is that a reasonable suggestion?

SOME HON. MEMBERS: Agreed.

AN HON. MEMBER: Yes, just 10 minutes.

MR. CHAIRMAN: Well, that's seven minutes. It's easier to go on the quarter hour. So all right, is that agreed then, Mr. Russell?

MR. RUSSELL: Agreed.

MR. CHAIRMAN: Okay. We will proceed with Dean Christian until quarter to, and I have Mr. Sigurdson and Mr. Wright on my list. Mr. Sigurdson?

MR. SIGURDSON: I believe Mrs. Osterman had some questions that she . . .

MR. CHAIRMAN: Were you finished, Mrs. Osterman?

MRS. OSTERMAN: I'm finished, thank you.

MR. CHAIRMAN: Mr. Sigurdson.

MR. SIGURDSON: Very briefly, to Dean Christian. Were those provisions of the North-West Territories Act that allowed for the use of both French and English in the Legislative Assembly of the Northwest Territories they extinguished by any action or proceedings of any other determination of either the Legislative Assembly of the Northwest Territories or by the parliament of Canada prior to the coming into force of the Alberta Act in 1905?

MR. CHRISTIAN: No. The only potential limit was contained in the Haultain motion, and as the courts of this province have determined, that motion was never proclaimed and therefore was legally ineffective.

MR. SIGURDSON: Okay. Finally, then, could the Lieutenant Governor today proclaim the Haultain motion?

MR. CHRISTIAN: Yes.

MR. WRIGHT: I think Mrs. Osterman raised a very good point there, that the words used in section 110 are "debates," and normally we don't think of question time as being part of the debates. But what does your reading of section 110 suggest as to whether debates on the one hand and the records of the Assembly on the other were intended to cover everything that happened in the Legislative Assembly or only part?

MR. CHRISTIAN: That would be my interpretation, that the word "debates" as used in section 110 is a generic term referring to the exchanges, the verbal exchanges, taking place in the House. That would be my interpretation.

MR. WRIGHT: Following that, Mr. Chairman, I do note section 155 of *Beauchesne* speaks of *Hansard*, and it says:

> The *Official Report of Debates* [is the name of Hansard, the correct name] commonly referred to as Hansard, is the record of speeches made in the House; it also contains answers to written questions on the Order Paper.

Would that support your idea or not?

MR. CHRISTIAN: Yes, I think it would. And if one looks at collections of debates of the House of Commons of the United Kingdom, for example, that's a full record of the proceedings in the House. In order to check that out one might want to look at the way in which the word "debates" was used at the time section 110 was drafted. But my view is that it is an all-inclusive term referring to the oral exchanges taking place in an Assembly.

MR. WRIGHT: Those were all my questions, Mr. Chairman.

MR. CHRISTIAN: If I could just elaborate on that, it would seem to me not to make much sense to distinguish between debates in the narrow sense, thereby ruling out the use of French in other forms of expression.

MR. CHAIRMAN: Dean Christian, I want, on behalf of all the members, to thank you for being here tonight and bringing forward the evidence that you have. I'm sure that all of the members have found it of real interest and value, so I thank you for your presentation.

MR. CHRISTIAN: Mr. Chairman, I did undertake to provide the members of the committee with a copy of the patriation reference. Is it your wish that I do so?

MR. CHAIRMAN: Very good. Thank you very much. We will distribute that after committee and give it the appropriate exhibit number.

We would now hear from you, Dr. Green, and thank you very much in advance for your attendance here as well.

DR. GREEN: Thank you. Like my colleague Dean Christian, I too regard it as a privilege to be able to come and give whatever expert help I can in this issue. It would have been fun to debate with my former student on where I disagree with him, particularly as I have confined my remarks to the problem of parliamentary privilege rather than the minutiae of constitutional fiddle-faddle.

MR. WRIGHT: Which former student?

DR. GREEN: Both of them, Mr. Wright. The only thing I would say on Dean Christian's remarks are as follows: even if the North-West Territories Legislative Assembly was not a sovereign Legislature, it had the same competence as such and enjoyed the privileges inherent in an Assembly. I would remind him that as Professor Hogg points out in his *Constitutional law of Canada*, when the colonists went abroad, they took the common law of England with them, which would include the right to establish a Legislative Assembly in order to legislate for their own purposes, enjoying the privileges that they were accustomed to with regard to the mother parliament.

Furthermore, I would emphasize -- and I was surprised that Dean Christian spent so much time on it -- that we're not dealing with the statute; we're dealing the problem of motion or an order or a resolution of the House. As I understand parliamentary law, that has never required royal assent. The whole issue of royal assent from that point of view is an irrelevance. Again, since the Charter of Rights and Freedoms specifically refers to language rights in particular provinces, I would argue that it follows a contrario that where a province is not named, there is no such constitutional provision with regard to the use of the language in that province.

But to return to my basic comments, I was intrigued that the minister raised the problem of debate, because it's one that I have dealt with. I do apologize that I have not the resources that the dean of the faculty has in preparing copies of documents, so I could not circulate what I wish to say. But I would point out that since the days of Charles I and Sir Edward Coke at the latest, it's been a well-established principle amounting to a constitutional convention that the privileges of parliament are absolutely sacrosanct and above question either by Crown or the Crown's courts.

Traditionally every new session of a new parliament in the British House of Commons, which sets the example for every Legislative Assembly throughout the Commonwealth, begins with the claim by the Speaker of all the ancient and undoubted privileges of the House, including freedom of speech, freedom from arrest. Thus the royal writ of arrest or appearance does not run within the boundaries of the Legislature, and any attempt to exercise such jurisdiction constitutes a contempt to the Chamber. The Speaker requests that a favourable construction be placed upon the proceedings of the House. That is to say, should the House not proceed in what is generally regarded as a proper or legal process, nevertheless such defects are to be ignored and the proceeding of the House to be considered beyond question either by the Crown or by the courts of the land. For it is true that parliament is the supreme court of the land. It is subject to any constitutional limits imposed by statutes. It has complete authority even to abolish the courts of the land, but there is no authority other than parliament that can abolish parliament.

In addition to the privileges expressly claimed by the Speaker, there are the right of the House to regulate its own composition, its right to have exclusive cognizance of matters arising within its precincts, the right to punish, including by imprisonment, for contempt and breach of privilege, and its claim to be the sole judge of the extent of its own privileges. The fact that these privileges are not directly claimed is irrelevant, since in accordance with constitutional practice what has been successfully claimed and exercised over the years hardens into a constitutional convention and at least in this area has as much veracity as any privilege that is directly claimed. In fact, as Pro-

fessor deSmith, to whom Dean Christian referred, has pointed out, "the difference between privileges expressly claimed and those not so claimed is one of form and not of substance."

The difference between substance and form is significant, for it emphasizes that if there has been a formal failure to carry out the requirements of the law -- for example, after the procedure in enacting legislation -- such a defect ought not to invalidate the legislation or even give the courts any authority to examine the formalities of the procedure followed. In other words, what purports to be properly legislated is to be accepted as having been properly legislated. Equally, if there be a failure to put a particular issue in documentary form and to rely instead upon oral history, this too cannot be considered as in any way detracting from the authority of what has been done.

As to the nature of a constitutional convention, it is sufficient perhaps to refer to the judgment of the Supreme Court in the reference to which comment has already been made, when it was held that conventions form part of the Constitution. Moreover, the court expressly referred to the supreme competence of Parliament, and provincial Legislatures enjoy within their field of competence under the Constitution the same rights as does the federal Parliament.

I would point out that despite *Beauchesne*, the Supreme Court quoted *Erskine May*, which is the basis for *Beauchesne* and which may be described as the bible on parliamentary procedure and privilege throughout the Commonwealth, including Canada. The court said:

> Every question [considered by parliament] when agreed to, [assumes the form of] either an order or a resolution of the House. One or the other of these terms is applied in the records of the House to every motion which has been agreed to, and the application of the term is carefully regulated with reference to the content of the motion. By its orders, the House directs its committees, its Members, its officers, the order of its own proceedings.

And I would point out that that is subject to any overriding statutory enactment to the contrary, but it includes the language of those proceedings together with the acts of all persons whom they concern.

The court said, quoting *Erskine May*, that:

> by its resolutions, the House declares its own opinions and its purposes ... How Houses of Parliament proceed, how a provincial Legislative Assembly proceeds, is in either case a matter of self [determination and] definition, subject to any overriding constitutional or self-imposed statutory or indoor prescription.

The reason I emphasize this quotation is that it shows that the Supreme Court, with great respect to *Beauchesne* and his learned editors, still pays more attention to *Erskine May* than it does to *Beauchesne*. Moreover, the court went on to state in its judgment on the basis of article 9 of the Bill of Rights of 1689, thus asserting the historic significance of the issue, that "Proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament." In fact, should any attempt be made even by the Supreme Court of Canada to impugn such proceedings or question the authority or legality, the judges involved in such a process could be summoned to answer therefor before the bar of the House and could be committed for contempt if the House were so inclined. The procedure for protecting and asserting the privileges of the Chamber rests in the care of the Speaker, subject to any rulings that may be adopted by the Chamber.

Insofar as such rulings are concerned, it should be noted that they do not require any royal or similar proclamation to give them effect. From the legal point of view, a formal proclamation is only required in the case of an order in council, the historic successor of an exercise of the royal prerogative, or to announce the effective date for the coming into force of legislation. Such legislation, however, is the law of the land from the date of the great seal or the signature of the Governor General, the Lieutenant Governor, or those authorized to act in his name.

A resolution or order of the Legislative Assembly, being solely a matter within the competence of that Assembly, does not require any similar proclamation. It should be noticed that historically a proclamation is -- and I define the word from the only place where it ought to be defined, *The Oxford English Dictionary*:

> The action of proclaiming; the official giving of public notice; that which is proclaimed either as the substance or form; a formal order or intimation issued by sovereign or other legal authority and made public either by being announced or by being printed and posted in a public place.
>
> The same dictionary defines the verb "to proclaim". It says:
>
> To make official announcement of something by word of mouth in some public place.

A Legislative Assembly, I would point out, is a public place, at least under our system of government.

> The dictionary goes on:
>
> To give public notice of something; to declare publicly; to make known aloud; to make known or manifest; to intimate.

The reason I have referred, Mr. Chairman, to the dictionary is because it is necessary to understand how words are used in English in the historic context, and that is why it becomes important to see what was perhaps meant at the time of the passing of the North-West Territories Act when the word "proclamation" was used. But I will come back to that in a much more formal sense. It is clear, therefore, that a proclamation is nothing but a generic term covering a variety of forms for making known to the public or those to whom notice should be given. It may be oral, written. It may be in formal language; it may be completely informal. To argue as some commentors, usually nonlawyers, have done, that resolutions or motions of the Legislative Assembly require proclaiming in some specific form in a way similar to royal proclamation or orders in council is, with great respect, indicative of their lack of knowledge of the English language as well as of legal history, particularly the history relating to parliamentary procedure and privilege. What is being said about it is, I would submit, clearly applicable to the Legislative Assembly of Alberta. Not only is this Assembly a parliament in the traditional sense of English law, but by the Legislative Assembly Act it is clearly laid down in section 8 that:

> the Assembly has exclusive jurisdiction in respect of
>
> (a) the determination of the lawfulness of its proceedings, and
>
> (b) the regulation of its proceedings in the conduct of its business and affairs.

This puts in statutory form what we find in the decision of the House of Lords, in British Railways Board v. Pickin [1974]: that courts have no power to examine proceedings in parliament to determine whether the passing of an Act, public or private, has been obtained even by irregularity or by fraud.

What is true of the incompetence with regard to an Act os-

tensibly passed by Parliament is, I would submit, even more true of a motion or resolution relating to the internal procedure of that Parliament. On the basis of the Australian case of Clayton v. Heffron [1961] Professor deSmith goes so far as to state of noncompliance with statutory provision that

> these rules are probably no more than directory; that is to say, non-compliance will not vitiate the end-product ... The rules in question are not of such fundamental importance to be regarded as conditions precedent to the validity of subsequent legislation.

It could be argued, therefore, that even if a resolution of the House required a more formal type of proclamation, failure to issue such proclamation would not invalidate any action taken by the House in accordance with that resolution.

Section 9 of the Legislative Assembly Act provides that:

> The privileges, immunities, and powers [of the Legislative Assembly] ...
>
> (a) are part of the public and general law of Alberta,
>
> (b) [they] need not be pleaded,
>
> (c) shall be judicially noticed in all courts of Alberta.

Moreover, by paragraph 9(1) of the section:

> in addition to the privileges, immunities and powers respectively conferred on them by this Act, the Assembly and its Members, and the committees of the Assembly and their members, have the same privileges, immunities and powers, as those held respectively by the House of Commons in the Parliament of the United Kingdom, the members of that House, the [members of the] committees of that House ... at the time of the passing of the Constitution Act, 1867.

This includes the privilege of regulating its own activities with such activities, regardless of form, being unchallengeable either by Crown or court. I would point out that the effect of this statute is to be statutory form to common law and convention, which statute can only be truly interpreted by reference to such convention and common law in defining the privileges of this Assembly.

This brings us to consideration of The North-West Territories Act of 1891, a date later than 1867 that in accordance with which the privileges of the Legislative Assembly of Alberta are to be assessed. In the first place, let me state: I'm not impressed by the comments of an historian, whatever his status, as to the meaning of legislation if he lacks legal qualification and is merely at most a constitutional historian as distinct from a constitutional lawyer. Equally, I have little regard for the view of any archivist, even a parliamentary archivist, when it becomes clear that he too lacks a feel for constitutional law or history and from his own actions indicates a deficiency of knowledge as to the sources to be consulted insofar as parliamentary procedure or privilege is concerned. It is no basis for acceptance of views when the researcher states his inability to find what he was never sure he was looking for.

Nor does it concern me that a generation or more of parliamentarians, bureaucrats, members of committees, or the like have been unable to find evidence of what happened a century ago -- again, because they do not know what they're looking for or where to conduct their researches. Moreover, I would submit that it is the height of arrogance, which can only be based on ignorance, to assert that what was done a century ago and followed regularly since then is evidence of the ignorance of our forebears, particularly when those forebears were acting as they thought proper and they and their followers have behaved in accordance with that action, which has never and which could never be challenged since it was an Act relating to the internal affairs of the Legislative Assembly.

This apart, it becomes necessary to examine the wording of section 110 of the North-West Territories Act, which provides for use of both English and French in the Assembly of the territories. As Dean Christian referred: "Either the English or the French language may be used by any person in debates of the Legislative Assembly." Here, Madam Minister, I have interpolated in brackets: in passing, it might be pointed out that question period does not qualify as a debate; therefore, it cannot be contended that the same rule automatically governs, even if at that date there was a question period. The fact that *Hansard* gives a complete record should be borne in mind. *Hansard* started as a private exercise by a private journalist. By the decision of Stockdale v. Hansard it was agreed that what he recorded would not be a breach of the privilege of the House so long as it was a true record of everything that proceeded in the House. So one must be extremely careful when saying *Hansard* includes this or includes that or included or didn't include. The rest of the section I will assume is sufficiently well known.

What is noticeable about the provision is the generality of its terms. The Assembly is empowered to decide upon the regulation of its proceedings by any formula it chooses, for the terms employed are "by ordinance or otherwise." The Assembly is only required to record and publish those regulations which may be in *Hansard* or such other record of its proceedings as may be in customary use.

It should also be noted that the regulations are to be embodied in a proclamation -- spelled with a noncapital letter -- made and published by the Governor General. It's of interest that the word "proclamation" is not capitalized, as is usual when referring to a formal proclamation as issued by the Governor General, the Lieutenant Governor, or in his name. In fact, we find support for this argument in chapter I-C of the studies of the Royal Commission on Bilingualism and Biculturalism. In his discussion on the law of language in Canada, Mr. Sheppard says at page 85, quoting Pierre Brunet, the assistant dominion archivist:

> A search of the *Northwest Territories Gazette* for the years 1891-95, and of other logical ...

and I'm interested he does not say legal

> ... sources in our custody has failed to locate a Proclamation [capitalized] establishing English as the only official language of the Northwest Territories Legislative Assembly ... or subsequently.

In the light of this, Mr. Sheppard goes on to assert:

> Consequently, until proof to the contrary is offered, we conclude that in the absence of the proclamation ...

In this case not capitalized

> ... required by the 1891 Amendment ... the resolution abolishing French in the Legislative Assembly of the Northwest Territories never acquired "full force and effect".

It is somewhat difficult to understand why neither Monsieur Brunet nor Mr. Sheppard, in seeking to find what the Legislative Assembly had in fact done, apparently never had recourse to the sources which any research scholar in constitutional or parliamentary law would have undertaken as a matter of course. Since the use of language in accordance with the 1891 amendment was a matter for decision by the Assembly, the first place to seek evidence of what occurred is the account of the proceed-

ings of that Assembly.

In assessing the procedure adopted by the Assembly, it is necessary to examine the issue in the light of the proceedings of the day. At that time the claim to parliamentary privilege was made in accordance with the traditions of the British House of Commons; that is to say, by Speaker's Petition at the beginning of a session. Since the statutory embodiment of these privileges by way of the Alberta Legislative Assembly Act, the Speaker's Petition is no longer required. That does not alter the fact that the statute has merely given statutory form to what was in fact a common law process and what was established by common law and convention.

The correct archive for ascertaining what occurred after the passage of the 1891 Amendment is the Votes and Proceedings of the Northwest Territories Legislature, particularly those at the beginning of the session after the first general election, to which reference was made in the 1891 amendment. On that occasion, after the Lieutenant Governor approved the election of Ross as Speaker, Mr. Speaker said, in accordance with time-honoured tradition:

> May it please Your Honor,
> I beg to lay claim, on behalf of the Legislative Assembly of the Northwest Territories, to all our ancient privileges, especially freedom of speech, access to Your Honour . . .

In the English House of Commons, it was access to the Sovereign

> . . . and that the most favourable construction be placed upon our proceedings.

To which the Lieutenant Governor replied: "Mr. Speaker, I most cheerfully grant your request."

That is in reference to common law established privileges. As we have seen, one of the most important privileges claimed by Parliament is that of the regulation of its own proceedings. On January 19, 1892, the Legislative Assembly of the Northwest Territories resolved by 20 votes to four that

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

Since the record is to be so published, it is inherent that if the record is to be accurate, it follows that the language of the proceedings shall be the same.

Being a resolution of the House, the adoption and subsequent publication in the records constitutes proclamation in accordance with the meaning of that term as explained above. Since the Legislative Assembly possesses as one of its privileges the sole right to governing its proceedings, it would have been improper for the Lieutenant Governor, unless specifically requested by a further motion of the Assembly, to proclaim that motion in any shape or form.

Dispute as to the validity of this motion and its proclamation by vote of the Assembly occurred some 75 years before the recent controversy in the Alberta Assembly which led to this committee being charged with consideration of the problem of the use of French and the Speaker's ruling in connection therewith.

In June 1905 an exchange took place in the House of Commons when Monk, a member from Quebec, sought to reestablish the use of French in the Assembly of the Northwest Territories. After an exchange of questions, even he conceded that the 1892 resolution gave the Legislative Assembly of the territories the right to abolish the French language, and he accepted that it did in fact abolish that language. That you'll find in *Hansard* at page 8602.

It is not surprising that 19th and 20th century politicians brought up in the traditions of English parliamentary law and procedure, though sitting in Canadian legislative assemblies, were aware of the fact that parliament, by whatever name it be known, was complete master of its own procedure and that subject to any properly passed legislation, its activities were completely within its own discretion and competence. Whatever it did was outside the competence of any other body, including the courts. If it behaved in an improper fashion, its behaviour had legal validity until such time as parliament itself decided otherwise. The only limitation on that discretion stems from statute, which statute might itself have been wrongly enacted, although the presence of a written constitution would make easier the task of deciding that an illegality might have occurred. However, until such illegality was found, the Acts, wrongly authorized, would still be enforced. And this is still the position today. And if those Acts wrongly authorized continued and were followed as if they had been rightly authorized, a convention of parliament may well have arisen, justifying and legalizing removing the invalidity that initially was in position.

It may well be that at the present time these traditions are considered to reflect the principles of a bygone age. If that be so, it is open to a Legislative Assembly to change them, but any tinkering with the privileges of the Assembly requires extremely careful thought and must not be undertaken lightly. So long as the rules of procedure remain what they are or what they are understood to be, it is the bounden duty of the Speaker, regardless of his personal feelings that they may be wrong or archaic, to apply them as he understands them. It is of course open to him to suggest to the Assembly or its committees that the rules should be amended. It remains, however, the prerogative of the Assembly whether it accepts that advice or not.

Equally it is its prerogative to amend the rules, even contrary to the advice of the Speaker, for the Speaker is merely the servant of the House. But it must be remembered at all times that while he is its servant, he is also the guardian of the Assembly and of its privileges and it is his responsibility to see that the proceedings of the Assembly are conducted in accordance with the accepted rules of the Assembly, just as it is his responsibility to protect the rights of every member regardless of party, regardless of whether he is a member of government or a lowly opposition backbencher.

Mr. Chairman, I apologize if I have read at express speed, but I'm conscious that time waits for no man, not even the Legislative Assembly of Alberta.

MR. CHAIRMAN: Thank you very much, Dr. Green. I will now ask counsel to direct questions to you.

MR. RITTER: This is becoming the real battle of the deans, Mr. Chairman. I think we'll get right onto the questions, and I will ask the same questions basically that I asked of Dean Christian, starting off with: Professor Green, could you please expand for the committee on some of your qualifications relative to this area of law and in particular parliamentary law?

DR. GREEN: My qualifications go back to the fact that in England I lectured in constitutional law, and in those days constitutional law included parliamentary procedure, for some 10 years. I did the same in Singapore, where I was also chairman of the law reform commission and legal draftsman for a number of years, continuing to act as legal draftsman for Singapore even when I came to this country. And I might say that it is ex-

tremely pleasant to be away from the pressure groups that would normally attack a legal draftsman on a provocative measure.

While in this country, while I have not lectured directly on constitutional law, I have written on the Canadian Constitution, I have written on Commonwealth constitutions, and I have debated on issues of the Constitution. As Dean Christian knows, he and I have very different views as to the value of the Charter of Rights and Freedoms.

MR. RITTER: I see. Thank you, Professor Green. We'll avoid that particular subject tonight.

I see some of these questions have been dealt with in your brief, but I'll ask you again for clarification. Is a proclamation necessarily written?

DR. GREEN: No, it is not, neither by the definition of the dictionary nor by parliamentary practice.

MR. RITTER: Is it normal for a proclamation to be made for a motion of the House in the U.K. or any other . . .

DR. GREEN: No, it is not. It is proclaimed by being recorded or even by actual verbal vote. That is a sufficient form of proclaiming, because it is then made public.

MR. RITTER: My next question was: what form would a proclamation take? But I see you've dealt with that. Is a proclamation necessarily made subsequent to a motion or an Act, Professor Green?

DR. GREEN: Well, I suppose it could be made in advance by declaring that this is what we are about to proclaim, but in the sense of a formal proclamation, no, the actual vote recorded on that motion is the form of proclaiming it.

MR. RITTER: Must the form of the proclamation -- and we're referring here to section 110 of the North-West Territories Act -- be specific to a particular motion, or can it be more general?

DR. GREEN: It can be general, but I think one has to be extremely careful as to how one is using that word "proclamation." As I tried to point out, as I understand the section, the word "proclamation" is used generically and not in reference to what one would say: the government has issued a proclamation.

MR. RITTER: Was this commonly used in Britain and other countries, but specifically Canada? Was this type of form quite common?

DR. GREEN: Well, I can only say that by the practice of the British House of Commons, it was assumed that by the assertion of the rights and privileges of the House, those rights and privileges were by that very fact proclaimed as soon as the Queen or the King conceded that the rights and privileges claimed had been conceded.

MR. RITTER: Assuming, Professor Green, that the Speaker's Petition in 1891 did fail -- and the members of this committee would reject that argument -- do you feel that the subsequent enactments of the Legislature, being the Legislative Assembly Acts which proclaim the privileges of the Legislature, do you think that would suffice to have proclaimed Mr. Haultain's motion in 1892?

DR. GREEN: I think it would by virtue of the assertion that the House enjoys the same privileges as were enjoyed by the British House of Commons in 1867.

MR. RITTER: I'm going to address to you matters of convention now. I take it you disagree with Dean Christian, but could you explain why you believe convention forms part of the Constitution, and is this recognized in Canada specifically?

DR. GREEN: I think it is clearly recognized in any common-law country that a Constitution is made up of statutes, the practice of the courts, and the conventions of the practice of parliamentary procedures and those who are called upon to administer what we might call administrative law. These conventions are the customs of practice.

When Dean Christian referred to the problem of a House, of a government being outvoted and that there was a convention that the Prime Minister and his cabinet would automatically resign on a matter of competence at least, he indicated that there was no legal enforcement. It is perfectly true that there may be no legal breach when a convention is itself breached, but as a consequence of that breach, breaches of the law would automatically follow. For example, in the instance that he cited, the government so outvoted would be unable to raise taxes, which may be a blessing but would nevertheless not be a legal performance for that government. Breach of convention would consequentially lead to breach of law.

But the attitude, as I understand it, of any textbook on constitutional law within the Commonwealth -- be it the U.K., be it Canada or Australia, or where have you -- will always say that the Constitution comprises statutes, judicial precedent, common law, and convention.

MR. RITTER: Is that specifically recognized in any Canadian judgment?

DR. GREEN: Well, I think it's recognized in the petition on patriation, in the reference on patriation, where you have the citation that the conventions are part of the law.

MR. RITTER: Getting back to Mr. Haultain's motion and the House of Commons, which was the authority for enacting section 110 of the North-West Territories Act, at a time proximate to Mr. Haultain's motion, are you aware if the House of Commons itself considered Mr. Haultain's motion valid?

DR. GREEN: No, I cannot say that I do, because I haven't checked it sufficiently.

MR. RITTER: Perhaps you could explain for members of the committee, Professor Green, the relationship between the proceedings inside the Chamber of Parliament and the role of the Crown.

DR. GREEN: Well, the role of the Crown is such that ever since Cook's day, the Crown cannot interfere, cannot stop a debate in Parliament. It goes back to the period when Mr. Speaker on one occasion knelt before the Crown and offered to go to jail himself rather than have members of the House jailed for activities that the Crown disapproved of.

The proceedings in the Canadian Parliament, in the English Parliament cannot be compared with the proceedings in some of the new Commonwealth countries in Africa, where if there is a

member who disagrees with the president, his future is likely to be rather short and sharply terminated. In our practice, the Crown will in fact respect the fact that the Parliament is a distinct entity over which the Crown has no authority. Even today one would question whether the Crown has the authority to dismiss a Parliament. As you know, this led to almost a constitutional crisis in Australia only a few years ago.

MR. RITTER: Professor Green, if I understand you correctly then, you feel that this matter over the French language use in the Legislative Assembly of Alberta is a matter of privilege rather than law.

DR. GREEN: I think it's a matter of privilege insofar as by law the Legislative Assembly has the right to define its privileges and its procedures in-house.

MR. RITTER: I see. Why isn't the Speaker's Petition in Alberta used anymore?

DR. GREEN: Probably because we have embodied in the Legislature Act that Parliament has the privileges therein defined. There is no need for the Speaker to assert his claim to those privileges any longer.

MR. RITTER: Professor Green, back to the language of debate and the wording of Mr. Haultain's motion. He never specifically referred to the language of debate, but you somehow justified the wording of his motion to also include language in its entirety. Could you please clarify that?

DR. GREEN: Yes. I think the very fact that he says it would be desirable that the records of the House be kept in the English language only and the fact that the House proceeded ultimately so to do would confirm the acceptance of his desire. But in order to say that the records shall be kept in that language, to me implies an understanding that since the records are to be a true record of what transpired, it can only be so if the language used is itself the language of the record.

MR. RITTER: Professor Green, reverting back to a question which I directed at Dean Christian about section 9 of our Legislative Assembly Act and section 18 of the Constitution Act, 1867, which guarantees the rights of our Legislatures to exercise the same privileges as was evident in the U.K. House of Commons, do you agree with Dean Christian inasmuch as privilege is not a matter of convention but is in fact completely statutory in this country?

DR. GREEN: No. I believe that this is a typical situation in which you can only define what the statute declares by reference to some other manifestation. The statute is confirming what existed in 1867, which was already established by common law and custom, and therefore what the statute is doing is embodying the conventions, the customs, and the common law as part of our statutory law.

MR. RITTER: Does any interpretation Act apply in this Chamber, and if so, who would adjudicate to oblige the Chamber to conform to its procedure and the interpretation laid out in that Act?

DR. GREEN: I think the issue of the interpretation Act refers rather to functions of the Chamber and what the Chamber actually achieves rather than the procedures by which the Chamber reaches that conclusion.

MR. RITTER: Professor Green, why can't you enforce a convention in court, and whose jurisdiction is the enforcement of a convention?

DR. GREEN: Well, insofar as the conventions relate to the activities of a Legislative Assembly, the court has no power to decide on what goes on within the four walls of a parliamentary building, whether they be by conventional origin or by statutory origin. Insofar as the courts cannot enforce a convention, it is because until the courts are prepared to say that that convention has hardened into a rule of common law which the courts will interpret, there is no way of saying the convention has received what I might call the glamour of law, enforceable law.

MR. RITTER: One last question, Professor Green, and then I'll open it up to members of the committee. We heard tonight that the North-West Territories Act had no provisions similar to our Legislative Assembly Act guaranteeing the privileges of that Parliament. If that is so and it had no statutory protection of its privileges, how did the Northwest Territories Legislative Assembly guarantee its privileges?

DR. GREEN: I think they did that by way of the Speaker's Petition and by way of the custom that every Legislature within the ambit of the Mother Parliament automatically claimed, enjoyed, and exercised the rights and privileges of the Mother Parliament.

MR. RITTER: I thank you, Professor Green. Mr. Chairman, I tried to be brief, so I will now turn over the questions to the members of the committee.

MR. CHAIRMAN: Thank you, as well, Professor Green.

I have on my list Mr. Sigurdson, Mr. Fox, followed by Mr. Wright. Mr. Sigurdson.

MR. SIGURDSON: Thank you, Mr. Chairman. I would just like to read a couple of points from *Beauchesne* and form a question around that.

> Dr. Green, section 155(2) of *Beauchesne* says that:
> Corrections may be made to Hansard. If the correction is of a very important nature the Member shall rise in the House when Motions are called to explain his correction. At this time the House gives its approval to the change.

You would agree than that *Hansard* is the official report of debates?

DR. GREEN: I would say that *Hansard* is now accepted as the official report of debate, particularly when you bear in mind that it's printed by authority.

MR. SIGURDSON: Thank you.

Sections 150 and 151 of *Beauchesne* deal with the *Journals*, and section 150 states:

> The *Journals* are the permanent official record of the proceedings of the House. They are an edited and corrected version of the *Votes and Proceedings* . . .

et cetera, et cetera. Section 151 says:

> The *Journals* contain all the proceedings which have

actually taken place . . .
Therefore, in your opinion is it true that the *Journals* are the official records of the activities of the House, as opposed to *Hansard*, which can in fact be changed or amended?

DR. GREEN: Well, the *Journals* will normally contain those amendments, but I would point out that the *Journals* are still only a record of minutes and are not necessarily legally authoritative in the fullest sense of the word. But even with that comment, you will find that the courts within the Commonwealth, the courts owing allegiance to the common law will automatically assume, unless there is overwhelming evidence to the contrary, that what appears in the *Journals* is a correct statement of law even though it has been wrongly enacted.

MR. SIGURDSON: Well, the Haultain motion dealt with the quote, "proceedings of the Legislative Assembly." It states that they "shall be recorded and published hereafter in the English language only." He was referring, I would assume at that time, to only the Votes and Proceedings or the *Journals* of the House then. Thus, the Haultain motion deals only with that which is officially recorded and published, translated or otherwise, and not, I would suggest, with the spoken language.

DR. GREEN: I do not agree. If, accepting your own conception that the records in the Act, whether they be the official *Journals* or *Hansard*, are a record of what proceeds in the House, if those records are to be in English, if they are to be a correct record of the proceedings of the House, it follows, as I understand the situation, that the proceedings themselves will have been in that language. Otherwise, the records are a translation and not a record.

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

MR. FOX: Thank you, Professor Green. I found an uncanny resemblance between the presentation you just gave us and the questions that Parliamentary Counsel posed to Dean Christian prior to your presentation and then subsequent to your presentation. I'm wondering: were you involved in any consultative process with the legal counsel prior to your coming here?

DR. GREEN: I wrote my brief on my own, worked it out in my own way, and as I pointed out at the beginning, I was confining myself to the issues of privilege and not to Constitution. It is perhaps to be expected to some extent that a student might follow or might understand the way in which his professor's mind works. Even Dean Christian has been known to do that.

MR. FOX: With respect, I'm just trying to find out and understand myself what the process is here. Were you involved in any consultative process with legal counsel immediately prior to his preparation of the document he gave us on privilege and law?

DR. GREEN: No, because it so happens that when all these issues arose, I was out of the country. The only thing I saw was the Speaker's ruling.

MR. FOX: My next question, if I may pose it to the Chair. I'm just wondering: Professor Green had the opportunity to rebut some statements made by Dean Christian and at some length to rebut statements or presentations made by witnesses appearing before the committee prior. Would these other witnesses have the same opportunity or the same privilege accorded them?

DR. GREEN: With respect sir, when did I rebut the question asked by a witness?

MR. FOX: I'm sorry; I thought you made reference to the historian's presentation to this committee.

DR. GREEN: I'm sorry; that I did. I did have that. I saw that in the *Edmonton Journal*, which is a public record as far as I understand it.

MR. CHAIRMAN: Mr. Fox, I think everybody here is intelligent enough to receive the evidence that comes forward and to distill it in their own way. If we embarked upon a course where everybody was entitled to come back and rebut, as you say, everybody else's testimony, this would be a totally endless process.

MR. WRIGHT: Just on that point, Mr. Chairman. It is, of course, always within the power of the committee to ask a witness to come back if they wish.

Now, Dr. Green, do I understand you to say that it doesn't matter that the Lieutenant Governor did nothing after this proclamation?

DR. GREEN: I argue that the mere statement, "I concede those requests with regard to privilege," is the effective proclamation by the Lieutenant Governor.

MR. WRIGHT: So he doesn't have to do a thing after the Assembly passes a resolution.

DR. GREEN: In that connection, he has to grant the privileges. By so doing, he has fulfilled the desires of proclaiming. That is all.

MR. WRIGHT: That's in general.

DR. GREEN: Yes.

MR. WRIGHT: But once this particular resolution dealing with the use of the French language in the Legislative Assembly of the Northwest Territories was made by the Legislative Assembly, then he didn't have to do one thing more.

DR. GREEN: No, subject to one thing, Mr. Wright. The very fact that the legislative Act of Alberta itself statutorily embodies those privileges removes the need for his having to make that proclamation.

MR. WRIGHT: Well, I'm talking about in 1892.

DR. GREEN: Yes. In 1892; you mean when the resolution of the House was passed. I would point out that the fact that the House acted on that resolution . . .

MR. WRIGHT: But please answer my question.

DR. GREEN: Yes. I am answering your question. The defect . . .

MR. WRIGHT: He doesn't have to do a darn thing more.

DR. GREEN: I'm not saying that nor am I suggesting that.

MR. WRIGHT: What does he have to do more?

DR. GREEN: The need for him to act has been removed by the fact that the Legislative Assembly has acted consistently on the resolution despite the absence of any formal proclamation by the Lieutenant Governor.

MR. WRIGHT: So the answer is yes; he didn't have to do anything.

DR. GREEN: He didn't have to do anything because of the subsequent confirmation.

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

MR. RUSSELL: Thank you, Mr. Chairman. I'm struggling with this question of whether this committee is dealing with a question of law or a question of privilege and the extent to which those two matters are related. I was startled when Dean Christian said in point 7 of his brief that in Alberta there is no distinction between law and privilege. I gather you're taking the other side from that. I was going to ask the dean this question when we . . .

DR. GREEN: Well, the point I am taking is that the privileges of Parliament have been recognized as a legal entitlement of Parliament, but it is not the type of law that the courts can interpret or invalidate. By the law of the Constitution, Parliament, be it a Legislative Assembly or House of Commons or what have you, has a legal right to enjoy its privileges and to define those privileges. To that extent, there is an overlap between the concept of law and the concept of privilege.

MR. RUSSELL: I'm looking at the definition of "privilege" on page 11 in *Beauchesne*, right at the beginning of the text in section 16, saying that "privilege, though part of the law of the land, is to a certain extent an exemption from the ordinary law."

DR. GREEN: Yes, it's an exemption in the sense that it cannot be questioned by the courts, but it is part of the law of the land in that the law authorizes Parliament to enjoy its privileges. Normally the law of the land is subject to judicial interpretation. The privileges of Parliament are not so subject.

MR. RUSSELL: One last question. In your opinion, this committee, in trying to deal with the question of privilege of any member using a particular language, is one then which is properly in front of this committee or ought to be settled in a court?

DR. GREEN: In my view, it is properly in front of this committee and would be outside the scope of the courts. With great respect to a court purporting to deal with it, I think the court would be misconceiving its function, and it would be fully within the competence of the Legislative Assembly and this committee to disregard such a ruling.

MR. CHAIRMAN: Mr. Sigurdson.

MR. SIGURDSON: Thank you, Mr. Chairman. Dr. Green, section 110 reads:

> 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.

Could you possibly speculate as to the reason why Mr. Haultain would then move a motion that specifically doesn't deal with the languages as they're spoken in the Legislature? The form of the motion did not negate the use of the spoken French language in the Legislature.

DR. GREEN: Because, as I have tried to explain, the motion as I understand it has little meaning unless it is understood as implying automatically the proceedings, as you yourself pointed out, sir, are the record of the debates. If the proceedings are to be in English, the records are clearly of debates that have been conducted in English. There is no need for him to talk about the speeches in the House. He is referring to the way in which the proceedings of the House shall be noted, shall be recorded, shall be understood, and shall be applied.

MR. SIGURDSON: Well, I do have a problem with that, and I hope you can help me sort through my problem, because there was an amendment, as I noted earlier when I questioned Dean Christian, that was moved by Mr. Prince on January 19, 1892:

> Therefore be it resolved that it is not in the public interests that any change be made in the system of public printing in the North-West Territories as far as the use of the French language as an official language is concerned.

Now, again, to me that means that they don't intend to print the proceedings of the House in French, but it still leaves it wide open to the use of French language which can be translated, and I'm sure that people that serve as translators are quite accurate.

DR. GREEN: Well, the people who serve as translators today may be accurate. I would not like to guarantee the people who served as translators in 1892. I don't want to go into details of how you test what is a correct translation and not a correct translation. What I would say to you, sir, is that, with great respect, it is clear that you and I disagree and will continue to disagree as to the purpose of the proceedings of the House. If the proceedings of the House are to be a record of the House, they cannot be a record of the House if they are printed in a language which is not that in which they are spoken.

MR. SIGURDSON: We will have to continue to disagree.

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

MR. WRIGHT: Continuing where we left off, Dr. Green, it does seem, then, that since, as you say, the Speaker's Petition embraced automatic proclamation and publication -- right?

DR. GREEN: Yes.

MR. WRIGHT: The Parliament in Canada was doing something that was unnecessary, and the words they embodied it in were otiose, then, in putting after the words in the amendment to section 110 namely:

> such Assembly may, by ordinance or otherwise, regulate its proceedings, and the manner of recording and publishing the same;

By adding the words -- I mean, this is the unnecessary part ac-

cording to you:

> and the regulations so made shall be embodied in a proclamation which shall be forthwith made and published by the Lieutenant Governor in accordance in conformity with the law.

What you say is that this happened automatically by the very act of passing the resolution.

DR. GREEN: I am suggesting, Mr. Wright, that both you and I know it is not unusual for parliamentary draftsmen to add a mass of unnecessary words which then become the playthings of our profession.

MR. WRIGHT: But that's bad drafting, isn't it?

DR. GREEN: It may be bad drafting, which is perhaps why the law schools are now introducing courses in legal draftsmanship.

MR. WRIGHT: And you're saying, then, that the revision of section 110 was badly drafted?

DR. GREEN: I'm saying that if those words are unnecessary, as they may well be, it may have been put in because of bad draftsmanship.

MR. WRIGHT: But you say they are unnecessary?

DR. GREEN: I'm saying that those words are unnecessary from the point of view of practice, yes.

MR. WRIGHT: Therefore, does that not make it bad draftsmanship?

DR. GREEN: Only to that extent, yes.

MR. WRIGHT: Very well.

MRS. OSTERMAN: Mr. Chairman, we at last have a lawyer admitting to exactly what they've been doing to us for years. I love it.

Mr. Chairman, I was interested in the questions of the Member for Edmonton Belmont, because I was -- again being picky about the words -- trying to understand how this motion would then negate what section 110 said. I noticed something interesting here, in that my question about the debates and whether or not that word is applicable in terms of whether or not there was a question period . . . It's interesting in the detail in section 110 because it says, "debates of the Legislative," and then "proceedings before the courts." And I would be interested in looking at the definition of "proceedings," because when you now look at the motion, it doesn't speak about the courts, but it does say the proceedings of the Assembly. Now proceedings seems to be the word that would have wrapped everything together. Am I right? Why would one have said "debates" and the motion say "proceedings"?

DR. GREEN: You may well be right in that suggestion that the intention was to distinguish that the debates of the Chamber will be in either of the languages. Insofar as the proceedings of the courts are concerned, they would cover all the preliminary documents that are being submitted to the courts, as well as the oral proceedings to go on during those proceedings, an issue that has of course become very real within the last few years. Therefore, the difference in the words may be necessary. Plus the fact that by using the word "debate" it may well have been the intention of the draftsman -- good or bad -- to make it clear that all they were talking about was in fact the debates. There is by the normal rules of interpretation that words shall be understood in their normal senses and that any attempt to introduce a technical or special meaning to the words rests upon he or she who seeks to put forward that special meaning or definition.

MRS. OSTERMAN: Was there a legal dictionary at the time that would have given a different interpretation from the ordinary meaning of the word in English?

DR. GREEN: I regret I don't know the date of the first edition of *Stroud*, which would have been the English legal dictionary that was being used. I would point out that the draftsman of Canadian legislation would have been acting in the light of their knowledge of what the English draftsmen had been doing traditionally, right or wrong.

MRS. OSTERMAN: And so it's fair to say, given your interpretation of what the small "p" in proclamation means, that in fact what occurred subsequent in terms of the practice, and possibly leading to what would could be called convention, of this Legislature, would be the body given to what was meant at the time. In other words, the practice of English.

DR. GREEN: That is my understanding of the words.

MR. WRIGHT: Continuing were we left off again, Dr. Green. You will agree, though, that there is a rule of construction that presumes that words are not unnecessarily inserted into a statute.

DR. GREEN: Agreed, sir. But you will also agree that the words become amended by interpretation and by application and may even be dissented from. Insofar as parliamentary activity is concerned, the proclamation by the Lieutenant Governor, or in the name of the Lieutenant Governor -- I use the word proclamation with a small "p" to distinguish from a formal proclamation -- would only be a formality which would not invalidate the application and applicability of what was done in the absence of such proclamation, if in fact there was consistent practice in accordance with the action without the proclamation.

MR. WRIGHT: Anyway, we agree that there is that rule of construction that presumes that words are not unnecessarily present in a statute?

DR. GREEN: [Inaudible] that at all, sir.

MR. WRIGHT: Yet you say that that is precisely the case with the amendment to 110?

DR. GREEN: I said that those words were unnecessary. And I say that they can be interpreted, and can be interpreted by the House, on what might be regarded as a housekeeping matter.

MR. WRIGHT: Interpreted by disregarding them, Dr. Green.

DR. GREEN: Even by disregarding them by consistent practice. It would not be the first time, Mr. Wright, that legislation has fallen into desuetude by a practice to the contrary effect, even in this province.

MR. WRIGHT: But that does not repeal it, does it?

DR. GREEN: No, but it may create a convention where a convention may operate. It does not repeal it at all, but it may make it nonapplicable.

MR. WRIGHT: That was the argument in the recent Manitoba appeal on the speeding ticket, wasn't it?

DR. GREEN: I cannot recall. I'm not going to pretend I can, and you know that.

MR. WRIGHT: Well, I'm talking about the proceeding in the Supreme Court of Canada, which decided that all the laws in Manitoba were invalid from whatever date onwards it was -- about this time, I think -- because they had not been published in both languages.

DR. GREEN: That was because as far as I recall, there was no similar function in Manitoba as there has been with regard to the way in which this House has operated.

MR. WRIGHT: But there was a custom of 75 years' standing to the contrary, wasn't there?

DR. GREEN: There was only a custom with regard to the procedure with the method of publishing the Act, but not with regard to the regulation of the activities internally of the House.

MR. CHAIRMAN: I guess we've gone beyond, Mr. Wright. Mr. Gogo.

MR. GOGO: Mr. Chairman, I wondered, because of a question asked by Mr. Fox, if I could be permitted to put a similar question to Dean Christian?

MR. CHAIRMAN: Carry on.

MR. GOGO: Dean Christian, could I ask you, sir, whether you had met with any member of this committee prior to tonight?

MR. CHRISTIAN: Yes, sir, I have.

MR. GOGO: Can I ask you in addition, sir, if you were aware of any questions that were put to you tonight prior to them being put to you?

MR. CHRISTIAN: No, sir, I was not.

MR. GOGO: Thank you.

MR. CHAIRMAN: On that note, I am going to exercise the chairman's prerogative. It's a quarter to 11; the hour is getting late. I think that we will at this point adjourn, on the basis that the witnesses are subject to recall at the wish of the committee for further questioning.

MR. WRIGHT: I do have further questions of Dr. Green.

MR. CHAIRMAN: We will make a note of that, Mr. Wright. Are there any other persons in the committee that have questions of Dr. Green? Very good.

Item 7 on our agenda is: other business. I would merely quickly point out that I neglected to note that exhibit 8 is another document that was requested by Mr. Wright to be made as an exhibit. It is section 110 of the North-West Territories Act.

Exhibit 9 will become the excerpts of the Supreme Court of Canada reference on the Constitution, as tendered by Dean Christian.

Is there any other business to come before the committee this evening?

MR. MUSGREAVE: I move that we adjourn.

MR. CHAIRMAN: Mr. Musgreave moves that we adjourn.

HON. MEMBERS: Question.

MR. CHAIRMAN: Thank you very much, and thank you Dr. Green and Dean Christian, for being with us tonight.

[The committee adjourned at 10:46 p.m.]