

[Chairman: Mr. Stewart]

[7:36 p.m.]

MR. CHAIRMAN: Okay, the committee will come to order. You have your agenda before you. May I have a motion approving the agenda for this evening?

MR. GOGO: So moved.

MR. CHAIRMAN: Mr. Gogo. All those in favour.

HON. MEMBERS: Aye.

MR. CHAIRMAN: Carried.

MR. WRIGHT: I move that we approve the minutes, Mr. Chairman.

MR. CHAIRMAN: Very good. A motion from Mr. Wright approving the minutes. All those in favour, say aye.

HON. MEMBERS: Aye.

MR. CHAIRMAN: Carried.

There are two points that I wish to make. First of all, with respect to the minutes of May 25, there were two items that were noted that perhaps had been omitted from those minutes. One was a motion by Mr. Musgreave that Dr. Garrison be received as a witness. That was not recorded in the minutes, but we've now added that to the minutes, and that's been distributed to all members. As well, the time of adjournment should be 10:46 p.m. and not 11:46 p.m., so that has been corrected as well.

The one other item that I would like to bring forward is the next exhibit, which would be exhibit 9, the editorial in the *Edmonton Journal* dated April 9, 1987. So we will table that as an exhibit for the committee.

The business for this evening under item 4 is the consideration of evidence of Dr. W.F. Dawson. Sorry. Mr. Wright.

MR. WRIGHT: Who brought that up -- the editorial?

MR. CHAIRMAN: I'm tabling that as an exhibit.

MR. WRIGHT: I see. It's within the terms of reference somewhere, is it?

MR. CHAIRMAN: Yes, it is.

Dr. W.F. Dawson is the editor of *Beauchesne's Rules and Forms of the House of Commons of Canada*, and we're very pleased that you are with us, Dr. Dawson, to provide us with your evidence this evening. Before counsel administers the oath to you, I might just make you aware that the 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 which are properly before the committee for consideration and reporting back. As a result, the committee's authority is specifically limited, of course, to consideration of such questions of privilege as arise from that reference. The Chair understands that you've had an opportunity to peruse that reference, and therefore that will be familiar to you and allow you to keep your evidence within due bounds.

The Chair also wishes to draw to your attention the procedure that we are following with our witnesses before this com-

mittee, namely that you will have half an hour or so -- whatever you may require within that general range -- to deliver to us your evidence, and then I will ask counsel for the committee to ask questions of you on behalf of all members. Then each individual member will have the opportunity to direct questions your way. Each member has the opportunity of a main question and two supplementaries, and then at that point in time, if he wishes to speak again and ask further questions, he drops to the end of the list. So that's generally our procedure, for your information.

Well, now I'll ask counsel to administer the oath.

[Dr. Dawson was sworn in]

MR. CHAIRMAN: You may proceed, Dr. Dawson.

DR. DAWSON: Mr. Chairman, as I understand it, there are essentially two areas that this committee is interested in hearing about tonight. One is, in general, privilege and secondly, the questions put forward by the Speaker and included of course in the terms of reference of the committee. So I thought I'd start probably with the general question of privilege, because at least part of what one says later in terms of the Speaker's problems or the Speaker's questions comes out of the understanding of privilege.

I think I perhaps should say to begin with, to make my own life a little happier over the next hour or so, that I'm talking about privilege and not about law. This will seem a little peculiar when I go on in a moment or two, but essentially I'm not here as a lawyer. I am not a lawyer. I do not consider myself to be competent in this field. I do have at least a more than passing acquaintanceship with the question of privilege. So if one gets into the question, as certainly from the material I have at my hands, let us say, of what the Alberta Act provides, I intend respectfully to pass on those questions.

Now privilege. The committee already has before it one definition of privilege put forward in a rather interesting and indeed, although arguable in perhaps some minor points, a very good brief by your Parliamentary Counsel. And if you look on page 5, you will find a small paragraph from *Erskine May* defining effectively what privilege is.

The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights which are 'absolutely necessary for the due execution of its powers'. They are enjoyed by individual Members, because the House cannot perform its functions without unimpeded use of the services of its Members; and by each House for the protection of its Members and the vindication of its own authority and dignity.

I would add one more very brief paragraph to that, again from *Erskine May*, in fact the preceding paragraph where he defines privilege as

the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the ordinary law.

And that's why I said a moment ago -- I'm a little hesitant to say I'm not a lawyer and I'm not impressed with questions of law, because obviously when I get into privilege, I am dabbling at

least in one corner of the law. But it is a very peculiar corner and a very limited corner.

Now, privilege has two aspects. One is the privileges of the Legislature, the House of Commons, the Legislative Assembly as a body, and the other aspect is the privileges that attach to an individual member of either of these bodies. Just to look at privilege, I think I'd start with those belonging to the Legislature as a whole. The most basic, the most fundamental -- really I suppose you can say -- the most important privilege of the House as a body is the control it has over its own proceedings, the most obvious right to make rules and the right to enforce rules and to enforce its procedures, if you like to use a broad term, not only on its own members but also on what are loosely called parliamentary strangers, outsiders, the commonality.

Now, there are a number of features. You could almost sum up the privileges of the Assembly as a body in that one privilege. It is the most fundamental one, and in a sense you can say it encompasses all of the privileges that belong to the House as a body. There are two or three of these, leaving aside the ordinary making of rules as to how long you can speak and this type of thing. I'm not really seriously interested in that type of rule in this context. What I am interested in is, for instance, the control of the Legislative Assembly or the House of Commons over who may sit in it. The power to expel a member, what we've just seen in Nova Scotia in the last six months or so with Billy Joe MacLean, what we saw in Ottawa with Fred Rose in 1946 who was sent up for six years for spying, for Louis Riel, for McGreevy in the 1890s for public works scandals: the power to say who is a fit member quite beyond what the Elections Act says.

At the same time as I say this, it's important to realize, as the Nova Scotia Assembly discovered through the courts, that it couldn't prevent Billy Joe from running again. They tried to, and the courts said, "Tut, tut, you may not do this." So there is a limit on this type of privilege. The Assembly may say you are unfit to sit; the electorate may say yes, we like you.

Of course, the most famous case that you can find is the Bradlaugh case in Great Britain where Mr. Bradlaugh's electors were the most faithful crew any MP would ever want to find. He kept coming in as an atheist and refusing to take the oath because he was an atheist. He would sign the oath and leave it on the Clerk's Table. He was willing to affirm; he was willing to do anything except take the oath. In fact, at one time he even said: "I'm willing to take the oath. It doesn't mean a damn thing to me, but if you want me to take the oath, I'll take the oath." They said: "No, that's not good enough. Out you go." They kept on throwing him out of the British House of Commons, and his electorate kept bringing him back in again. Now, the British House could throw him out, but it couldn't stop the electorate re-electing him until it made a fool of itself, and they ended up changing the law.

This is certainly one of the powers; it's an unusual power. There are, so far as one can see, effectively no limits on it. I used Fred Rose as an example. In fact, the House did not need to use its powers with Fred Rose. The Criminal Code lays down that if anyone is sent up for more than five years -- or as I think it used to say "sentenced to death or more than five years imprisonment," which I always thought was a rather nice mixture -- they were incapable of holding a seat in the House. Obviously, I presume if you were executed, you were clearly incapable of holding your seat.

At any rate, the House has this power. I'm going to raise a question now, and I've raised it with other people in this context

-- I'm still intrigued by it -- as to whether or not the Charter of Rights in fact has changed some of this, whether or not the general punitive power of the House . . . I perhaps should go back to that first. The House of Commons -- and I presume the Legislature, because it assumes the same privileges -- has a punitive power. Again usually when you find a definition of privilege, one of the most fundamental ones is not only to make rules but the power to enforce them, including a power to punish. Now, in the most simple way this is expulsion from the House, normally of course after being named by the Speaker for a relatively minor infringement of the rules, but it also can involve, as it has on the one occasion that we've used this power seriously in Canada -- R.C. Miller in 1913 -- imprisoning a man for six months for refusing to answer questions before the public accounts committee. The House has this power.

The question now is -- and I can toss this in if anyone's interested in discussing it -- as to what effect the Charter of Rights has had on this, whether or not you could successfully claim that a Legislature cannot or indeed a court, dealing with contempt of court -- whether an individual being entitled to a trial before a fair and independent tribunal . . . I don't want to be insulting to the members present, but if a contempt has been committed against the Legislature, are you ladies and gentlemen a fair and independent tribunal? Is a judge in his own court in a contempt case a fair and independent tribunal under the Charter of Rights? It's a question we haven't decided yet. It certainly worries some people. It is a little esoteric, but it may be one limit on the privileges of Parliament. We haven't tested it yet.

Fortunately, Parliament -- and dealing with Parliament, I really use Parliament for Legislature, Parliament for House of Commons, and so on. These powers are not used very often. The only time the Parliament in Ottawa has imprisoned anyone was, as I say, in 1913. It has expelled people; it has delivered solemn admonitions to them at the bar of the House and has said they're very naughty people. But it's not one of the vital questions. But when one is dealing with the power of the Legislature in general terms, it's an interesting, so far hypothetical, question.

In addition to expelling members, there is also another sideline from it, and that is the power to exclude the public. There's no question that the House may sit in secret. Certainly in Ottawa it has many, many times, both formal secret sessions during both World Wars for security reasons and for other reasons that are much less edifying than that. For instance, on one occasion the House of Commons discussed for a considerable time the abolition of the bar -- not that Bar, the alcoholic bar. For good and sufficient reasons they wanted to abolish it, because the House was notorious for its drunkenness in those days. Nevertheless, serious questions like the allocation of offices to MPs -- it doesn't matter what the reason, is what this comes down to. Whether it's the most serious matters of state or the almost frivolous of reasons, the House has the right to exclude strangers by a simple motion.

Indeed, it used to be even easier than that. Any MP in the first six or seven years after Confederation was able to force the clearing of the galleries simply by effectively spying strangers and demanding that they be excluded. What brought that to a head was one MP who was having a feud with a Senator and said, "The next time that guy comes into the gallery, I'm going to kick him out." And sure enough he did, and within a few weeks the House had changed the rules to demand a proper motion. At any rate, no one questions the right of the House to do this, to sit in secret if it wishes to, and of course extends this to

its committees as well.

Secondly, and coming at least close to the intricacies of tonight: control over publications. There is no doubt that the House has and exercises control over its formal publications. In the early years after Confederation the House of Commons used to pass a motion authorizing the publication of the Votes and Proceedings and solemnly saying that no one who is not authorized by the Speaker should be permitted to publish the same. Why anyone would want to publish the Votes and Proceedings privately, heaven only knows. At any rate, that finally died out as a formal motion each session, but the control is still there. You will find that if anyone attempts to use, as has happened on one or two occasions, reproductions of House publications, the House has looked very severely on this.

There's a case of Sperry & Hutchison, the green stamp people, who reprinted part of a speech and the cover of *Hansard* and got themselves rapped over the knuckles. The Hamilton steelworkers did another very similar thing, and again sort of got rapped over the knuckles, although it's a little hard to tell in that.

More important used to be the control over mechanical reproduction in the sense of broadcasting and so on. It sounds rather foolish now to think that there was a prohibition about broadcasting Parliament, seeing as how Parliament now spreads itself quite happily in living colour every afternoon. At any rate, there certainly was, and on the odd occasion when the question came up, again the House took a very serious approach towards it. When Mr. Diefenbaker had the PA system in the House extended into his office, the opposition complained rather vigorously, and it was quietly removed. The House even objected when a committee recorded some of its proceedings even with the permission of the Speaker. The committee had actually gone -- this was experimental; the House wouldn't buy. So there's no doubt that at least the formal publications of the House are protected, that the House is the only one permitted to produce a formal record of proceedings, either in the form of its *Journals* or in the form of a *Hansard*.

Reflections on the House in general. Here again we come close to one of the questions that the Speaker raised. The House has taken over the years an inconsistent approach here. There's no question that on some occasions, and particularly in the last century, the House did not take kindly to reflections made in the newspapers about what it did. It had a lot to be embarrassed about, and there's no doubt that editors and writers in the paper were ruder then than they are now. You find, for instance, the House condemning in 1873 a report to be a

scandalous, false and malicious libel upon the honour, integrity and character of this House, and of certain Members thereof, and a high contempt of the privileges and constitutional authority of this House.

Pompous sort of statement, but it was nevertheless a vicious article. What was it now? It referred to the Conservatives being men who would waste through filth so vile to governorships, judgeships, places in the cabinet, places out of the cabinet, profits and so-called honours. I mean, writers and newspapers were rather more pithy then than they are now, perhaps unfortunately. At any rate, I might say that the individual who was condemned so roundly by the House became the Speaker of the House the next year. He was Timothy Warren Anglin from Saint John, New Brunswick.

Now, every so often, again as I say, the House gets a little tender. There was a case of the Methodist church in 1920. There was a report in the newspaper that the moderator of the

Methodist church or one of the senior members of it had suggested that money spread around Ottawa didn't do any harm in getting legislation through. In fact, the poor man was terribly misinterpreted. What he really meant was, "If you've got money enough to go to Ottawa, you can get better results." But the House was very snarky about this. It got rather upset over a report of a NATO delegation in the 1960s, for instance, that the newspapers reported as being, shall we say, in Paris rather less than dedicated to their formal duties. There were a certain number of reports of running around the nightclubs and drunkenness and so forth and so on. That in fact was sent to the committee on privileges, which never reported.

Mr. Choquette only a few years ago was reported, in fact very clearly reported in a court case, as saying, "Look, if you apply this business of accepting bribes, half the Members of Parliament in Ottawa wouldn't be allowed to hold their seats." It was a very regrettable statement as well, but it's instructive I think in one way. It was sent to the committee on privileges. They had Mr. Choquette there giving evidence, and effectively he laughed at the committee. He thumbed his nose at them and effectively said, "Look you guys, I don't care what you think." He sort of retracted. He sort of said he didn't mean what they thought he meant. He never really retracted. It was a most unedifying spectacle in terms of a committee nowadays trying to get redress in this formalized way with a witness, I suppose, who really doesn't have much respect for the committee. Now, I'll come back to this probably, at least implicitly, later when one deals with the editorial.

Now, reflections on individual MPs. Again, the House has been indifferent, particularly in modern times. Usually, it's ignored. Certainly it hasn't been consistent. The one case you can find is the reflection in an editorial on Mr. Speaker Jerome. The one sentence they objected to, and I read it to you now rather than later:

Let it be said of James Jerome that he is not a Speaker but a gambler who plays incredible odds for the popularity of his party.

You can't get much ruder than that about a Speaker.

I think I'm running a little shy. As usual, I warned the Chairman beforehand that as a professor I run 50 minutes not 30, just automatically.

Now, the personal privileges. If you want to come here to one that is supreme above all others, it's freedom of speech, guaranteed by the Bill of Rights -- not that Diefenbaker thing, not the Charter of Rights, but the real honest to God Bill of Rights back in the 17th century. That is the one that is absolutely essential. If you want one privilege that Parliament has or a member has that is essential, it's freedom of speech. He doesn't need to worry about lawsuits when he stands up and makes a speech in the Legislature. The others, frankly, I find are much less impressive.

The question of influencing members, threatening a member, for instance, is a breach of privilege. You find cases of this sort. Mr. Jelinek, the present minister, reported some years ago about some anonymous telephone calls threatening him. The Speaker quite rightly said, "Well, as long as they're anonymous, there's not much the House can do about them." Mr. Howard, who used to sit for Skeena, was approached by an individual who wanted a "loan" and who suggested that if he didn't get the loan, he would tell the world about Mr. Howard's previous criminal convictions. Mr. Howard answered this in two ways: he went on television and admitted that he had this record, and secondly, turned everything else over to the police. The individual who

wanted this loan did not get his happy loan from a friendly finance company, but he got two years in jail. This, I should say, is the normal method if it's at all possible to deal with this kind of a question. In Ottawa, at any rate, there has been a tendency to turn questions of this sort over to the normal judicial criminal processes.

The potential control. This is a gray area in terms of privilege. What about the RCMP keeping dossiers on MPs? It's been raised a number of times, and there's no doubt that the RCMP do or certainly did. So far the question has been answered by the Speaker saying: "Look, as long as they don't keep a record of you for what you do as an MP, then, thank you, it's not a question of privilege. If you just happen to be a member of a suspicious organization, well, you take your chances like anyone else." Certainly the Progressive Party back in the 1920s ran a rather interesting system by which your MP went to Ottawa leaving behind an undated resignation so that if your constituency did not like the way you acted in Ottawa, you lost your seat. They just filled in the date and shipped it off. Now, there's not much doubt that this is a breach of privilege. This was never decided so formally to be one, but we did change the Elections Act to make this illegal.

We've had a recent case in the Yukon about wiretapping of an MP. I think it was the minister of public works. I'm not terribly happy that the committee of privileges in the Yukon came to the conclusion that this was a breach of privilege. I'm certainly not convinced that it was in my own mind. There was no invasion of the member's office or anything like that. Nowadays you don't need to get into the member's office. You go down the street three blocks, dig up your manhole, and start attaching your little wires to the telephone cables under the street. Certainly there is no doubt that MPs' mail was censored during the Second World War with the complete knowledge of the government, and indeed the knowledge of the MPs, without anyone seriously raising the question of privilege. These sort of potential controls, as I say, are a gray area, and one I wouldn't want to make too many arguments on. One could make an argument, but then we'd sit around with our feet up all evening and argue it. There's nothing very clear-cut about them.

Bribery is another question. There is one clear-cut case of bribery of an MP. I should say that bribery doesn't need to be treated again as privilege. It's illegal under the Criminal Code. But if the House wants to, as in the Heney case -- in 1873 Alderman Heney was accused of trying to buy votes for the government. It was that era at the time of the Pacific scandal and the time when party politics were not as solid as they are now. In other words, there were votes out there to be bought. You know, you can't imagine doing it now, but you could then. And certainly Mr. Heney tried to buy votes. He was summoned to the Bar of the House. The only thing that saved him was prorogation. And as the government changed, no one bothered as to whether he tried to buy votes for the Liberals, because the Liberals were the government next time, and they weren't going to stir that hornet's nest up.

There is another case, Mr. Giroux, who accused the Liberals of trying to bribe him to change his party: again, sent to the committee on privileges, but no evidence being suggested, being adduced to indicate that this was true. The question, of course, with this influencing of a member: where do you draw the line between bribery, dirty phone calls, and writing your MP and saying, "Look, if you don't vote the way I want you to, I'm going to vote against you in the next election." You're threatening your MP, for heaven's sakes. Where do you draw the line in

terms of privilege? And the answer is, the House of Commons essentially has drawn it very narrowly. Clear-cut case of bribery: if you want to accuse of straightforward bribery, okay. If you want to say, "Well, I was kind of worried by a letter I got yesterday," I don't think you're going to get anywhere.

Two other things, freedom from court appearance, again, is relatively unimportant now. It's regularly waived if your evidence is needed. MPs will normally go and give evidence. Provincial juries Acts, so far as I know, universally now exempt MLAs from service on juries. It is a privilege if an MP wants to use it. Freedom from arrest is one that gets a considerable amount of attention because it is such a dramatic privilege. Frankly, it's useless. There are so many restrictions on it. It dates back to the time of imprisonment for debt, which essentially has disappeared. And you will find that those who commit offences in the normal course of events are hauled before the courts in the usual way. Fred Rose did his six years for spying; Mr. Auger didn't do any time for rape, but he was convicted. He was freed on appeal, unfortunately. That's another lovely possibility. It all happened in his office in the Parliament buildings on a weekend. Now, does that get it within the precincts of Parliament when the House isn't meeting that day? Terrific possibilities here. In fact, he resigned from the House before anything could happen.

Mr. Grégoire, much more recently, was arrested for simple traffic offences. Claimed all sorts of privileges. He didn't have the summons, the ticket wasn't in English and French, they broke his watch strap, the Mountie couldn't speak French: Oh God, he had all sorts of privileges. Which I think illustrates the problem of privilege, and that is one of terminology as much as anything. It's worth keeping in mind, and it's why I read those definitions to begin with, that privilege is a very narrow thing. Indeed, we did put in *Beauchesne* that one quotation that a question of privilege should rarely be raised in the House. And an MP in Ottawa, and I suspect MP here for instance, has a Bell Telephone company long distance card. It's one of his privileges. It's got nothing to do with parliamentary privilege. The right to frank your mail, the right to fly home to your constituents, the right to this, that, and the other thing: they are the privileges of an MP but not that capital P parliamentary privilege we're talking about. It's one of the terrible things in Ottawa that has caused such an abuse of privilege, that most members really haven't any conception of what the historic, traditional, important part of privilege is: this fundamental thing that makes it possible for Parliament to operate.

Now, if I could have about three minutes -- I don't know whether I've got three, do I?

MR. CHAIRMAN: Sure. Fine.

DR. DAWSON: Good. To look briefly at the problems raised by the Speaker, because this again opens up a number of possibilities for questioning. First, the use of French in the House. So far as I can see from any of the documents I have, this is essentially a legal question. The one is dealing with it in terms of the Alberta Act, the Haultain resolution, and so on. This is a legal question.

I would suggest that the Alberta constitution, unless -- if the courts decide of course that this is part of the Constitution, then frankly I think the Legislature is stuck with it, like it or not. If it leaves it open and says effectively, "There is nothing in the Alberta constitution parallel to section 133 of the Constitution Act," then in my humble estimation the House can do what it

likes. We come back to that first basic privilege of the House of organizing its own internal proceedings. If the House wants to authorize the use of French or if the House wants to forbid the use of French, it's entitled to do so. But being French means nothing; it could just as easily be Chinese or Cree. The House can authorize its proceedings to go on in any language it likes, once we eliminate this question of the Constitution which, as I say, is a legal question.

Secondly, is Mr. Piquette's letter a publication of the House? I don't know a definition of a publication of a House, to be honest. I can't find one that satisfies me or even comes close to it. My own immediate reaction is that in the strictest sense of the term, a publication of the House would be restricted to the documents published by the authority of the Speaker. Again this is pure speculation on my part. I can find nothing in the authorities to back up what I'm putting forward. In other words, Votes and Proceedings, *Hansard*, committee proceedings, committee reports -- this type of thing.

Now, there's no question, of course, that the letter is some kind of a House document. Please, I'm not putting it outside of the House's purview. I would suggest that if there was anything in it to which this became appropriate, it would have absolute privilege as being part of what are known as "a proceeding in Parliament," whatever that term may mean. In other words, a formal communication between a Member of Parliament and the Speaker putting forward a question of privilege because the rules require it, I think would be part of a proceeding in Parliament without much problem and as a result, I would say, would be covered by absolute privilege. So he would be free to say what he likes, I guess, in terms of prosecution.

I would go one step further and say if the House wished to, as being a document of the House, the House could keep that document secret, if the House wished to. The House would have to order it as a formal decision on the part of the House in the same way if the House wanted to keep any of its documents secret. They could do it. There's no question. They can exclude the public from the galleries; they can keep their documents secret. The public has access to legislative documents or documents in the possession of the Legislature by courtesy of the Legislature. There's no question about that so far as I can see. So if the House wanted to keep this letter secret, it could, but the House would have to do it very specifically which, so far as I can see, the House made no effort to do.

And I can see some kind of a parallel -- it's a little bit tenuous in spots -- between this letter from Mr. Piquette to the Speaker being the equivalent of a member, for instance, handing in proper notice of an amendment, notice of a question for the Order Paper: any of these things. In other words, the fact that it is all within the House doesn't necessarily, as far as I can see, make it a publication of the House. A House document, yes, of some sort, however you want to define that. But if you do look at Ottawa, for the sake of argument now, a notice of motion for a supply day motion in many cases is turned into the *Journals* office by noon the day before it's to be called and is kept secret on the instructions of the mover until 6 o'clock, when it has to become public, which is the deadline for printing it on the Order Paper. To me there at least is a possible parallel there with this particular formal notice of a point of privilege. In other words, the author of that letter can post it up on the billboards outside if he wants to, but he can keep it secret if he wants to. I don't mind. But I don't think you really find that that is a publication of the House in the strict sense that has been used.

Now, reflections on the Speaker. This is again a gray area,

I'm afraid. The suggestion is that Mr. Piquette's letter is a reflection on the Speaker. As an outsider looking at this without knowing -- and I want to emphasize this in this particular aspect.

Without knowing the surrounding aspects of the question, and in this I mean perhaps the last month in the Alberta Legislature and perhaps the last year in the Alberta Legislature, I can't find very much wrong with Mr. Piquette's statement. He is raising a point of privilege, he says. He says that the basic point here is: "Thank you very much. You have exceeded -- you have violated my privileges." And I can't for the life of me find out any other way of saying this except very much the same way as he did. I find it a temperate statement on the whole. He might have modified it a little bit.

Now, where we get into the gray area is that "unparliamentary" or "improper" in very many cases depends on circumstances. And indeed, Mr. Speaker Lamoureux once made a rather classic, amusing statement, saying that, you know, what may be unparliamentary today will not necessarily be unparliamentary next week. And very true. It depends on the circumstances. If this letter is an isolated incident, a shot in the dark, one stone in the mill pond, then I find it -- personally, if I had been the Speaker, I wouldn't have taken offence from it. You know, there may be technically an offence, but I would equally keep in mind: how in Ottawa up to the 1960s did we ever appeal a Speaker's ruling, for heaven's sakes, without saying, "Mr. Speaker, you were wrong"? Was this a reflection on the Speaker? No. You even voted against the Speaker, for heaven's sakes, and no one said it was a reflection on him; just part of the game.

Now, if this particular letter happens to be part of a wider picture of harassment of the Speaker by an individual or by a party or by the opposition as a whole, then I think one is entitled to look at it with a slightly different view. This is taking the circumstances into account. I'm not saying this is true; I'm just saying: unparliamentary language; here is a case in which on the surface it doesn't look too bad, but is this just the straw that broke the camel's back? In which case, okay; you know, sometime or other the hatchet's going to fall. I think one has to look at it from that point of view -- at least consider that.

Fourthly, the editorial. I've had a chance to read it since I got here to Edmonton this afternoon. The House is in a difficult position in here, I think. Technically, any reflection on the House can be judged by the House to be a contempt. There's no question about that in terms of case law. What the House has to decide is whether or not it is worth taking on the *Edmonton Journal*. Maybe it is. I never thought the *Edmonton Journal* was that damn good when I was here. Anyway, there comes a time at which a body with the powers that the Legislature has makes itself look foolish by using all of the powers it has. You can have the editor at the Bar. You can have him on his knees at the Bar. It would be great fun. But is it worth it? Or do you do what the British Parliament used to do with the *Daily Worker* and its editorials and look at them before the committee on privileges and say: "Yes, it is an offence. It is a contempt, but it's beneath contempt. We recommend that nothing further be done."

I don't think there's a doubt in the world that that editorial is a contempt. I don't think, frankly, it matters whether it's a Speaker or some other member who is referred to in it. It is a remarkably scurrilous editorial. But I leave it to you gentlemen to decide whether or not it's worth taking this kind of thing on and whether or not it is worth producing another flurry of editorials about freedom of the press and probably a flurry of

editorials right across the country about freedom of the press. You'll win the long run. You can tell them that this is malicious libel and all the rest of it. Frankly, I don't think they'll give a hoot.

Now, sorry to have been so long.

MR. CHAIRMAN: Thank you very much, Dr. Dawson. I'll now ask our counsel to direct some questions to you.

MR. RITTER: Thank you, Mr. Chairman. Dr. Dawson, I have a number of questions here. But taking notice of your very first comment that you will not be dealing at all in any respect with questions of law, I note that some of the questions I have here are legally oriented, because this is essentially, as you suggest, a legal question put before this committee. So I would like to tell you, if I do venture into a territory that you do not feel comfortable with, don't hesitate to tell me and simply say, "pass", and I'll go on to the next question, if that's agreeable with you.

DR. DAWSON: Mr. Miller was sent to jail for refusing to answer, but I'll keep that in mind.

MR. RITTER: Well, I won't hold it personally, Dr. Dawson, let me assure you. That's up to the Chairman, I'm sure.

My first question is: how is convention, as in the parliamentary sense, distinguished from law?

DR. DAWSON: Convention is, I suppose you could say, not nearly as clear-cut; it's not enforceable in the courts. Those would be the two major differences, I suppose. One argues about convention. There is no way of looking a convention up in books. If you look, for instance, at the convention of responsibility, of what is a question of confidence, Dr. Forsey, who I understand has been invited to this committee, managed 350 pages on it. They're a very interesting 350 pages, but, Oh God, it's a complex question. That's the kind of thing that convention is. You can do it in one sentence in many cases or you take 350 pages.

But law, you could after all -- you can buy the law. We publish it. When you get to conventions, it's much more difficult. You get into too many ands, ifs, and buts, if you like.

MR. RITTER: I see. Is parliamentary privilege a convention or law in Canada?

DR. DAWSON: It is a convention. In other words, it's an adaptation of the common law in Great Britain transferred to Canada by statute. Take your choice.

MR. RITTER: So it's really both convention and law. Would that be fair?

DR. DAWSON: Yes, I think so.

MR. RITTER: What is the status of parliamentary privilege in the United Kingdom?

DR. DAWSON: What is the status of it? I'm sorry, I'm --

MR. RITTER: Is it a convention or a law form there?

DR. DAWSON: It's part of the common law.

MR. RITTER: Does parliamentary privilege exist separately from conventional sources of law in Canada?

DR. DAWSON: Again, I'm not quite sure what you're driving at in that. I don't think you're trying to trap me in this question, but I'm not quite sure what the main thrust is.

MR. RITTER: Well, Dr. Dawson ... [interjection] Yeah. Well, all right, if you want to weasel out of it, that's completely your privilege, if you'll excuse the expression.

We had one witness recently, Dr. Dawson, who explained that, in his opinion, parliamentary privilege was quite separate from the law in this country, and I wondered if you had any feeling on that.

DR. DAWSON: After having quoted *Erskine May* this evening myself, "privilege, though part of the law of the land, is to a certain extent an exemption from the ordinary law." It's a very peculiar part of the law, I think, is all you can say about it

MR. RITTER: Could you reiterate for the committee, Dr. Dawson, what powers, duties, exemptions, or rights are generally included in the notion of parliamentary privilege; just a summary if you will.

DR. DAWSON: Oh. I thought in fact I'd done that at inordinate length. As I suggested, I think the two basic ones are the personal privilege of freedom of speech and the joint privilege of control over proceedings. Once you get into control over proceedings, you can broaden it so much that you can include practically everything.

MR. RITTER: Does privilege apply generally to the conduct of proceedings of the Alberta Legislative Assembly, in your opinion?

DR. DAWSON: Does it apply to it? It's fundamental to it. The making of rules, your Standing Orders are based on privilege.

MR. RITTER: Who would adjudicate in matters arising within the confines of privilege in parliamentary convention?

DR. DAWSON: The Legislature.

MR. RITTER: Would it be the courts at all? Would they have any role in deciding matters within privilege or convention?

DR. DAWSON: That's one of those questions the British have been arguing about for 500 years, and indeed you cover in your own memorandum those two arguments and the general modern coming together. Yeah, the courts have gotten into it. The courts getting into privilege is certainly an arguable area. On the whole, certainly in recent years there haven't been any great conflicts or confrontations between the Legislatures and the courts on the subject.

They seem to have some idea on both sides by now of where that sort of dividing line is. But if the Legislature is careless -- and using this as an example of, say, being too specific in defining privileges and saying: "There has been a contempt and this is what it is. This is the privilege that is being infringed on, and this is what we're going to do about it." Yes, the courts in the past have felt willing to look at this. If the Legislature merely says, "You are guilty of a contempt," the courts will not nor-

mally look at it. They'll say, "Ah, they judge their own." But if you say that, you know, having a beard in the Legislature is a breach of privilege and you're very specific about it, the courts may well say, "Hey, where did you invent that one?" So the vaguer and woolier the Legislature can be, really the better. [inaudible] if you like. If you just say it's a contempt, you'll get away with it.

MR. RITTER: Is Parliament superior to the courts, and why or why not?

DR. DAWSON: I think I'll pass on that one too. I won't say there are too many pitfalls, but it's a terribly, terribly broad question that really needs much more than a simple answer yes or no.

MR. RITTER: That's fair enough. That's why I cautioned you at the very beginning, Dr. Dawson. I can understand your reluctance. It's not a question I myself would like to tackle.

Assuming we're not talking about those matters of constitutional statutory character, is the conduct of Parliament's proceedings a matter for Parliament or the courts?

DR. DAWSON: Parliament, without any question. Here we come back to that basic privilege of establishing your own rules of procedure.

MR. RITTER: Can a decision of the House directly conflict with a decision of the court?

DR. DAWSON: Yes, I'm quite certain it can, but I hope you're not going to ask me for an example.

MR. RITTER: No, I won't, Dr. Dawson, but I might ask you something as difficult. I was going to ask: what are the options of Parliament if a court should make . . .

DR. DAWSON: Excuse me, I'll go back in on it for a minute. There is no doubt that the House in dealing with one of its members, for instance, does not have to wait, as in the case of McGreevy in the 1890s, for courts to decide his guilt or innocence in the public works scandals. They threw him out. They decided whether he was guilty. They couldn't have cared less whether the court acquitted him or not. Maybe that answers your question.

MR. RITTER: It does very well. Thank you, Doctor. What are the options of Parliament if a court should make a ruling on something the House considers a matter over which the House itself remains sole judge?

DR. DAWSON: I can only assume the House ignores it.

MR. RITTER: Who decides whether something falls within the jurisdiction of the House or the courts?

DR. DAWSON: The House is the judge of its own privileges. So I presume the House would make this decision. You might still find, as the British House of Commons and courts did -- you go back to the case of Stockdale vs. Hansard, and people do things like this, in which you get some real conflicts in which both sides are, thank you, exercising their powers, and the Sergeant-at-Arms goes along to the sheriff of Middlesex's house

to enforce the House's judgment, and he gets arrested and thrown into jail. And the House then says, "You can't do this to the Sergeant-at-Arms." And the court says, "Well, we just did." And you get a confrontation.

It's really one of these almost theoretical questions as to, you know, what happens if the Governor General goes berserk, with all the powers that he has under the prerogative. Let's just hope it doesn't happen. Marvelous scenarios. It's real Gilbert and Sullivan you can get here, with everyone arresting everyone else and the Legislature throwing the local sheriff into jail and the local supreme court taking the Speaker off to pokey, and who do the RCMP follow . . . It's almost too horrifying to contemplate, but great fun if we did it.

MR. RITTER: I'll try to bring the situation back to earth, Dr. Dawson, although it's quite enjoyable. The path we're taking right now is strictly from an academic point of view. Which Legislatures of Canada, including the federal House, are obliged to conduct their proceedings in both official languages as a matter of law, for example, the Constitution?

DR. DAWSON: So far as I know, Ottawa, New Brunswick, Quebec, and Manitoba.

MR. RITTER: And for any other Legislature, this would of course be a matter of law and something you would not wish to speculate on?

DR. DAWSON: So far as I know, it wouldn't be a matter of law. It may easily be that they are willing to, that their rules allow it. But I think it would be difficult to force the Legislature of Ontario, for instance, except with its own consent, to operate in French.

MR. RITTER: The Legislature of Alberta, Dr. Dawson?

DR. DAWSON: Thank you. I'll pass that one.

MR. RITTER: Is language and conduct of debate, rules of order, a matter for Parliament or the courts in all other cases?

DR. DAWSON: I would have said it was a matter for Parliament, the Legislature or Parliament. Then the courts are not going to get into the question of whether you have a report stage or have a question period or anything like this. The courts have a degree of restraint as well.

MR. RITTER: Should a finding of the courts conflict with a finding of the House, is the House guilty of an illegality?

DR. DAWSON: Pass, I'm afraid. You may know the answer, but I don't.

MR. RITTER: No, actually, to be honest with you, Dr. Dawson, I wouldn't even want to venture into that one. Can the courts in any way compel the House to comply with any decision that the court should make, or is there any judicial enforcement of a court decision against the House?

DR. DAWSON: Here, we really come back to the Gilbert and Sullivan we were talking about a few moments ago: who arrests whom? You know, do you take the Sergeant-at-Arms hostage? Do you seize the Mace? Do you cart the Speaker's Chair out

and sell it for firewood? Who has the power? I'm sure the sheriff's officers would follow the instructions of the court or the bailiff's or whatever necessary to enforce. Even the RCMP might do it. But if the Sergeant-at-Arms meets them at the door and says, "You can't do this," who listens to whom? I don't know. We really do get to Gilbert and Sullivan with that point.

MR. RITTER: I'm going to reiterate a few points which I know you did raise in your presentation, Dr. Dawson. But just for confirmation, does the right of the House to regulate its own composition and of the House to have exclusive cognizance of matters arising within its precincts follow within the ambit of privilege?

DR. DAWSON: Yes.

MR. RITTER: Would the same apply for punishment for a breach of privilege and contempt?

DR. DAWSON: Does this fall under privilege? Yes.

MR. RITTER: That's what I mean, Doctor.

DR. DAWSON: Yes, certainly.

MR. RITTER: Can the Chair make a ruling on its own over any matter it finds within the ambit of privilege?

DR. DAWSON: Yes, this is an area we didn't get into. A position of the Chair in a question of privilege is a very unusual one because the Chair does not make a ruling as to whether privilege has been breached or not. The Chair rules as to whether there is a *prima facie* case, and all this amounts to is that the Chair is saying, "Hey, there are enough doubts here in my mind. It smells kind of right. The House should therefore have the opportunity to postpone its normal business to take this under consideration." As this is the whole point of raising a point of privilege, it's not the point itself that is so important; it's demanding that it be done now, to set aside the business of Parliament or the Legislature to take this under advisement, that this is so important. And this is the case that one is making in raising a point of privilege; that gosh, this is earthshaking practically. It may seem strange, but that's the theory anyway. And as a result, the Speaker does not make a decision that privilege has been offended against. That is a decision for the House, or the committee of privileges, then ratified by the House.

But this is a communal decision, and if you notice a number of these things, the enforcement, for instance, of control over members -- let's take the old rules in Ottawa in terms of naming a member. When the Speaker named a member, nothing happened. The heavens rumbled a bit and the earth trembled because you knew what his name was, but you needed a motion, moved normally by the Government House Leader, to expel the man for the day. The Speaker had no power to do it. The Speaker *per se* has no disciplinary powers. Anything he has is granted to him by the Assembly, or the Assembly has itself. So it's rather like this question of privilege. In questions of privilege the Speaker has no inherent authority. He says, "Hey, yeah, okay, let's take a look at this," and then the House decides through a committee, or by itself if it likes, that there has been an offence against privilege. But the Speaker doesn't make that decision. The Speaker says, "Yes, we should look at it now."

MR. RITTER: I take it as he has done in this case by referring it to the committee.

DR. DAWSON: Yes, exactly, which is the sensible thing to do, but it's not necessary. There have been cases, as in this case for instance, this offence, this editorial about Jim Jerome. This was a just a Standing Order 43 motion put forward by the Government House Leader, so that didn't go anywhere near a committee. He just said, "Hey, this is horrifying," and by unanimous consent it was, as I say, one of these old Standing Order 43s.

MR. RITTER: The same question on a slightly different subject. Can the Chair make a ruling on its own over any matter it finds within the ambit of a point of order?

DR. DAWSON: That will depend on the rules of the House. I'm going to sidestep that one. I would say in Ottawa, yes, without any question, because there is a Standing Order that gives the Speaker the right to maintain order in the House. I don't know whether Alberta has one or not.

MR. RITTER: Professor Dawson, are you familiar with any process which was referred to as the Speaker's petition?

DR. DAWSON: You mean the claim for privileges at the beginning of a new Parliament? Yes.

MR. RITTER: That is correct. That's what I am referring to. Could I ask you: are you aware of any reason why the Speaker's petition is used or was used?

DR. DAWSON: Frankly, it's completely worthless.

MR. RITTER: Has that always been the case?

DR. DAWSON: Yes. Always. Privilege in Ottawa rests on section 18 of the Constitution Act and the Act passed under it, given Royal Assent in May of 1868, claiming privileges, and what the Speaker said is: "Thank you; couldn't matter less." It's a tradition is all it amounts to. Why does he wear a funny hat? Same thing; not to keep warm. It's a rather nice tradition. I'd hate to see it go, frankly. It's such an idiotic thing.

MR. RITTER: Was the Speaker's petition developed in any jurisdiction for a particular reason? By this I refer specifically to the U.K.

DR. DAWSON: Why did it develop there? Partially, I'm sure -- I've never looked into the question -- almost certainly because privilege in the U.K. depends on the common law, not on statute. In this country, with privilege depending on statute, the Speaker's petition doesn't have any legal validity. It's just there and, as I say, it's one of those things you go through with a new parliament.

Whereas in Britain -- frankly, I think if you left it out in Britain it wouldn't make much difference, because privilege is so ingrained in the common law. But at least there isn't a statute in Britain. You are in fact going to the Crown and saying, "Hey, Lizzy, let's have our privileges," and they're graciously granted. In the same way, as the British go, the British Speaker submits himself to the sovereign for approval after his election. He doesn't in Canada. Why? Because he's elected under the

provisions of the Constitution in Canada. You couldn't care less whether the Governor General approves of him or not. The House of Commons has the obligation under the Constitution, whereas in Britain again he goes and submits himself to the Speaker. One goes back, I'm sure, traditionally in that sense 500 years to times when it was a royal appointment.

MR. RITTER: Mr. Chairman, out of deference to Professor Dawson, I'm not going to ask him, then, whether the situation in Alberta is statutory or based on the common law or was at the time, because these have been questions we've examined in the committee. So if those questions seem a little out of place, I hope the committee will understand. Does the Legislative Assembly of Alberta have the right to conduct proceedings within the Chamber, including language of debate, in any way it sees fit?

DR. DAWSON: I can't see any reason why it doesn't. Let's put it in those terms. I know of nothing in statute or any other place that would say no. In other words, under normal privilege, yes, there's no doubt that it would. As I suggested earlier, if they want to have debates in Chinese, I see no reason why they shouldn't if they want to.

MR. RITTER: Dr. Dawson, I'm going to just direct my last question specifically about the *Journal* editorial. I understand Mr. Chairman has managed to get a copy of it to you, and I take it you have read it. Could you tell me: does the House have authority to punish for what it finds a contempt?

DR. DAWSON: Yes.

MR. RITTER: What elements are required for a contemptuous attack on the Chair?

DR. DAWSON: How do you establish one?

MR. RITTER: In your opinion how . . .

DR. DAWSON: The Legislature decides that that was a false and malicious libel or whatever description he wants to use. There are no rules of thumb about this, and I thought I suggested earlier that it is up to the Legislature to say "That's it."

MR. RITTER: We've anticipated my last question there.

DR. DAWSON: You can see practically any editorial commenting on the debates of the Legislature and say, "That's libelling the Legislature." Come to the bar again; it's your turn this week. I don't recommend doing it, but you could do it and no one seriously is going to be able to question you, except the next day's editorial will have some very rude things to say.

MR. RITTER: I'm going to ask for your personal opinion in this particular case, Dr. Dawson. Certainly we respect your opinion on matters, because you are quite familiar with the subject. Is the *Journal* editorial, which was shown to you as an exhibit, in your opinion an attack on the office of the Speaker, the Speaker personally, or the House?

DR. DAWSON: Oh, now. I'm sorry, I'd have to take another look at it before I answer that. I'm willing to answer it, but I'd like a copy of it under my hand, which I don't have. I was sure

there was one around. Thank you.

Certainly it's an attack on the Speaker. There's no question. The second paragraph is an unquestioned breach of contempt. There's no question in my mind. You can say there is an attack on the Premier, going down about six paragraphs -- in other words, a member of the Legislature, not as Premier but simply as a member of the Legislature. And again, another attack on the Speaker in the last paragraph. I can't see just casually an attack on the Legislature as a whole, but certainly, as I say, against a couple of members, one of whom is the Speaker. Does that . . .

MR. RITTER: Yes, I think that does it. On the basis of that editorial, do you think the House could make a finding or not, that there has been a contempt of the House, as two members were criticized?

DR. DAWSON: Oh, no question. In fact, if you want an opinion, I would do it on the base of the Speaker rather than on the Premier. Because I think anyone would realize here that the Premier is much more open to potting in editorials in newspapers and radio, television, or anything else than the Speaker. I mean, there's an element of where the Speaker is saying in his statement -- you know, the Speaker has to be protected. I mean, I can sympathize with this particular quotation. He can't speak for himself; he doesn't have the opportunity. He's not the public figure a Premier, a cabinet minister, or what have you is. He is meant to be independent. One assumes him to be independent. And as a result an attack of this sort is -- if you like, an attack of this sort on the Speaker is an attack on the Legislature. But if I were doing it I would say, "Look, this is an attack on the Speaker and is simply unacceptable," and I'd leave the Premier out because, what the deuce, he gets paid for this. Oh no, he's a politician.

MR. RITTER: Thank you.

DR. DAWSON: I know the Speaker is a politician too, but not in the same sense. He's not in the firing lines.

MR. RITTER: I have three final questions for you, Professor Dawson. You mentioned in your report one of the most important assumptions of parliamentary privilege is that of freedom of speech. Do I take that to mean actually what was said in the Chamber and not the procedure of how a speech is delivered, as covered by that . . .

DR. DAWSON: Yes. Freedom of speech essentially is that you cannot be held responsible outside for what you say in the Chamber.

MR. RITTER: So if I started speaking Chinese, for example, Professor Dawson, and I said, "Hey, freedom of speech," that is not what that was intended?

DR. DAWSON: No. It's freedom from legal responsibility for what you say in the Chamber. If you read the Bill of Rights, which I know perfectly well you have, that freedom of speech in the Assembly shall not be questioned in any place outside of parliament or whatever it is. I mean, I can't tell a lawyer he hasn't read the Bill of Rights, for heaven's sake. I think he's even quoted it in his brief; in fact I know he has. No, it is not the way you say it; it's what you say. I cannot sue you for what you said

about me in the Legislature.

MR. RITTER: I see. On the subject of Mr. Piquette's letter, Professor Dawson, if the House should determine that Mr. Piquette's letter is a House document, is this enough to bring it within the purview of the House and of course considerations relevant to privilege?

DR. DAWSON: Oh heavens, there's no question in my mind. The House can -- really, I suppose the House doesn't need to make any formal decision that it's a House document. It is there; it's a communication between an MP and the Speaker. But to me the question is: what does the House want to do about it? I suppose there is nothing to prevent the House deciding that it constitutes a contempt so far as I know, in the same way as the House can decide on something said in debate as being unparliamentary, which is essentially the same type of question. You're saying, "Look, this guy stepped over the bounds." The same way as Mr. Trudeau's "fuddle-duddle" and so on -- those sort of people thought he had stepped over the bounds too.

Does that answer your question?

MR. RITTER: Yes, I think it does, Professor Dawson. But I do want you to make sure that you're quite comfortable with giving any type of answer, because what I was proposing to do, Mr. Chairman, is just explain to the witness that we have a procedure which exists under Standing Orders requiring that letter to be published. If I have your permission, I'd just like to show the witness the standing order and show him the circumstances under which a letter like that is demanded and then see if he has any second thoughts or reconsiderations of that.

MR. CHAIRMAN: Yes, I believe that's in order.

MR. RITTER: Professor Dawson, the letter that you were sent, I think, by some members of this committee, which was drafted by one of the members, was in fact required by the procedure of this Chamber with regard to raising a point of privilege. Standing Order 15(2) -- and I'll just give you the standing order -- demands that before a point of privilege is going to be raised, notice has to be given to the Speaker in the form of a letter.

DR. DAWSON: That's what I assume the standing order said. It was fairly clear from the *Hansard* report.

MR. RITTER: Professor Dawson, as that letter was written pursuant to Standing Orders, does that change any thought you may have on whether or not this would constitute a House document, or is it irrelevant to the consideration?

DR. DAWSON: It may be. It's one of these situations when one almost feels one has been a little too cute, and I'm talking about myself in this sense. I started with whether or not I would define that letter as being a publication of the House, not as a House document. I'm quite willing to take it as a House document, but I'm not sure where one sort of limits a definition of a publication of the House except a publication authorized by the House, particularly, as I say, those published under the authority of the Speaker. I know it's necessary. I mean, I did glean from the general tone of the *Hansard* that this was a necessity, as indeed it is in Ottawa. But I'm not sure how one distinguishes -- and this is the question that arises in my mind -- between a formal letter saying I intend to raise this question and, let us say, a

notice of a question to be put on the Order Paper that just entered the *Journals* office. Yes, it's a House document, but a publication of the House, and this is the line that is drawn particularly as one starts quoting. My recollection is that -- yes, there we are; quoting *Beauchesne*, citation 41. Now, this is where it worries me in terms of definitions, and *Beauchesne* 41 I don't think covers this kind of communication is my recollection. It says:

The control of the House over its publications is absolute. For a number of years ... the House made a formal claim each session "that the *Votes and Proceedings* be printed ..."

Thank you.

And then we deal with another. Sub (2) is the story of the Hutchinson case. That's reproducing *Hansard*. This is where I'm a just a little dubious. I'm quite happy with it as a House document. I'm not terribly happy with it as a publication of the House, and that, I grant you, is taking and splitting hairs like mad.

AN HON. MEMBER: I see. So ultimately ...

RM. DAWSON: So much seems to revolve around the term "publication of the House." I'm afraid it's one of those things you then have to dissect.

MR. RITTER: You can understand of course, professor, that this is a very important matter for the committee in its consideration of the questions referred to it, and this was the purpose of seeing if you could shed any light on us in helping to clarify the matter at all.

Mr. Chairman, I have no more questions. I would just leave it to the committee now to continue on. Thank you.

MR. MUSGREAVE: Dr. Dawson, I have two questions. The first one is -- and I'm not a lawyer, so I'm not trying to trap you. If I write you a letter which was written by Mr. Piquette to the Speaker as saying that I disagree with your ruling, and the fact that I published that before you as the Speaker were able to receive it, is it your opinion that the House could decide that that was a matter of contempt?

DR. DAWSON: I'm not quite sure what it would fall under. One comes back to this question: which one of the privileges has been offended against? I'm not sure what privilege has been offended against. I think it's rude. I think it's unnecessary. I think it's a number of things like this. But a breach of privilege? Which privilege? Unless you establish -- and this is where this term "publication of the House" becomes so important, and it's why, thank you very much, I am splitting hairs on this one. I'm just a little dubious that sort of every bit of paper that floats around this building is a publication of the House. I'd be very schizy about that. Well, does this ...

MR. MUSGREAVE: Well, that's quite satisfactory; thank you. My other question is, being a person that can only speak one language: if a member of the Legislature gets up and asks a question in a language which I don't understand, is my privilege as a member of this House being breached because I don't know what he's talking about?

DR. DAWSON: I know I've thought about that question myself -- particularly if you look at these blessed quotations that we use

from *Erskine May* in which you start talking about the privilege, "the rights . . . without which they could not discharge their functions", and you quite rightly say, "Well, I can't understand what the guy is saying; I can't discharge my function." I don't think per se it is a breach of your privileges. What I would say is: go to your rules committee and say, "Hey, look, we need to change the rules." That is of course within the privileges of the House. I think the House could literally conduct its debates in any language it wanted to, and if you look in Ottawa, you will find occasions in which -- my recollection is that Cree in fact was used on one occasion for a considerable period. I don't mean over the years, but for several paragraphs. Latin, Greek, Gaelic: most of these are not recognizable by most members of the House. No, I think it really falls within the ambit of the House to say what is an acceptable language of debate, and if it wants to allow Chinese and you can't understand it, then go kick your whip or the Premier or whatever but you don't have any comeback.

MR. MUSGREAVE: Well, Dr. Dawson, my concern is this. In debate I know people have used quotations in other languages. I'm concerned about the question period where there's give and take back and forth, and I don't know what he's saying, so I couldn't make a supplemental. I couldn't get into it.

DR. DAWSON: Well, I know. It's a very real, practical problem. I suspect what will come out of this is that the Legislature will in fact make some statement in its rules as to what language is acceptable. There's no question; I concede that to the Legislature without any question. This falls within that general provision that the Legislature has the right to dictate its own proceedings. There's no doubt in my mind whatsoever. But I think that if it decides to allow French -- and I can sympathize with you, being unilingual myself -- we're going to suffer. I don't think you've got a comeback if the House decides to allow French. You can ask the question: do the privileges of the whole override the privileges of one? I think in this case one would have to say yes. I don't know of cases, incidentally, in which this has formally been decided.

MR. MUSGREAVE: I have one last question which is maybe a theoretical question. Could the Parliament of Canada, as a part of the law relating to the two official languages of the country, insist that the debates and question period, the business of the House, be conducted in French and English?

DR. DAWSON: Could it make every Legislature in the country bilingual? I honestly don't know. I have no idea. Again, I'm going to pass on that as a pure legal question. One question we might ask is: would it? If you look at its attitude, let's say, towards Ontario, the answer would be: Ottawa would run screaming.

MR. WRIGHT: Dr. Dawson, would it be an oversimplification to define the privileges of a member as being that bundle of rights that he is entitled to exercise in connection with the Assembly?

DR. DAWSON: I think it probably would be an oversimplification. Because I do think you need the added clause that *Erskine May* puts in there: necessary to his duties and so on . . .

MR. WRIGHT: All right.

DR. DAWSON: . . . without which he cannot perform. I think it's not just what rights does he have, like a reserved parking place or this type of thing . . .

MR. WRIGHT: It's essential to the exercise of his duty.

DR. DAWSON: Essential to the exercise of his functions as a member of the Legislature, yes.

MR. WRIGHT: And over and above that that the general public has, providing . . .

DR. DAWSON: Yes.

MR. WRIGHT: That's the rest of that quotation from *Erskine May*. Then is it not the case that those rights can be there by statute or can be there by custom?

DR. DAWSON: Yes, they certainly can be.

MR. WRIGHT: Or can there be half way between by Standing Orders, for example?

DR. DAWSON: Yes. I have no objection to that. I'm just wondering whether you'd say the Standing Orders are there as part of privilege. But fair enough, I have no objection to that.

MR. WRIGHT: [Inaudible] a foundation of privilege, I mean.

DR. DAWSON: I have no objection to that.

MR. WRIGHT: The objection taken to Mr. Piquette's letter -- letter's being released, that's to say, to the press -- we understood to have been founded on the infringement of the control of the House over its publications. You will agree that "House documents" is the widest possible term describing documents in and about the Legislature . . .

DR. DAWSON: Yes.

MR. WRIGHT: . . . while "publications of the House" is a much narrower class of documents.

DR. DAWSON: That is the conclusion I would come to, in fact did come to, yes.

MR. WRIGHT: So when we are talking about the breach of privilege in connection with documents, normally -- in fact, perhaps exclusively -- we're talking about breach of the rights of the House over its publications, are we not?

DR. DAWSON: Well, that certainly is in the Speaker's statement there, and he specifically refers to citation 41 in *Beauchesne* which again specifically refers to control over production of Votes and Proceedings and reproduction of a facsimile of *Hansard*. This is one of the things that worries me about this. I personally would say a publication of the House, as I suggested, is a fairly narrow description.

MR. WRIGHT: Exactly.

MR. CHAIRMAN: Mr. Wright, we're going to have to cut you off there and come back to you.

MR. WRIGHT: I haven't spoken as long as the last member, Mr. Chairman.

MR. CHAIRMAN: I don't think it's in terms of the length of time speaking. It's the number of supplementaries to the main question. But I'd be glad to come back to you very shortly. Mr. Anderson, followed by Mr. Fox and then Mr. Wright.

MR. ANDERSON: Thank you very much, Mr. Chairman. To Dr. Dawson: with respect to the right of the Legislature to control its rules, the privilege of the House, would you maintain your statement on that in the face of a previous decision, albeit some decades before, that is found that would indicate that the House should operate in a certain way? In other words, we're back...

DR. DAWSON: A little clearer is what you're driving at.

MR. ANDERSON: I'm trying to relate to the right of the Legislature to control its own rules to the question we have here before us now, which is: do those rules stand in the face of some evidence, albeit still at question, that included in the original documents establishing Alberta were the...

DR. DAWSON: You're talking about the validity of the Haultain resolution basically, are you?

MR. ANDERSON: If that resolution -- if in fact there was never passed a resolution making this House unilingual, do you still believe that we at this point have the right and ability to determine in what language we operate our affairs?

DR. DAWSON: Well, I think we come back to one of the earlier points I made, that I don't want to get into the question of what is the Alberta Constitution, which obviously is before the courts, at least in Saskatchewan now to an extent, and I gather from some of the *Hansard* that this is: what's sauce for the goose is sauce for the gander; that Alberta says, "Hey, if the Saskatchewan Act says that and means that, then the Alberta Act means the same." I think you can make an argument that if you find part of the Alberta Constitution that opposes a rule of the Legislature, then the Constitution may well take priority. But there are a lot of "ifs" and "perhapes" in that statement. And I'm afraid I mean them to be in there, because I don't know the answer. But then we don't know whether that's part of the Constitution.

There's no doubt that the House can change its mind if this is all we're playing with. But essentially a court case is: how did this carry over after the Alberta Act of 1905 and, effectively, is it part of the Alberta Constitution? To which I don't know the answer. This is a legal question, pure and simple.

MR. ANDERSON: Mr. Chairman, I'm not sure if this is a fair question, but, Dr. Dawson, in light of that lack of sureness, which we all share I think at this point about the legalities of the question, would you advise us to make rules now in accordance with the way we want to operate or to adhere to some point of view with respect to those judgments?

DR. DAWSON: I suppose the only thing I could say is: if I were in your shoes, I would wait and see what the judgment of the court was and see how much hot water you might be in. You may be completely home free and dry. You see, if the

court says, "Hey, this didn't carry over," you are then left with the House being able to make a rule saying what languages it wants to have its debates in. You may easily not have a problem, in other words.

MR. ANDERSON: So, Mr. Chairman, if I can, just for clarification. You would be inclined to feel that the House should operate by the rules it wants to until such a time as a court determines otherwise?

DR. DAWSON: In a question of that sort, yes. I think in cases even of vague doubt the House should go and make its rules as it likes, and if someone doesn't like them, they can take them to court and see what the courts say about that.

MR. ANDERSON: Thank you.

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

MR. FOX: Thank you, Dr. Dawson. I think you've made it very clear to us that this Assembly and any Assembly is indeed quite within its rights and powers to decide what it does from this point on. I think what's important to us in this committee is to determine the status of the use of French in the Assembly at the time all of this took place for us to be able to determine whether or not any privileges were breached.

I'd just like to bring a couple of things to your attention, based on testimony brought to us by a previous witness and get your comment on it, if I could. We have on the one hand section 110 of the North-West Territories Act that says that either English or French may be used in the debates. Then it says further down that any changes, so to speak, to this regulation shall be embodied in a proclamation which shall forthwith be made and published by the Lieutenant Governor.

That was followed, as you know, by the Haultain motion that said

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

Now, I'm wondering -- it's common knowledge that this motion was never proclaimed. But the case has been made by another witness before us here that section 110 spelled the word "proclamation" with a small "p", and therefore it didn't require proclamation in the standard sense but simply by virtue of the fact that the Haultain motion seemed generally to have been followed, it was therefore proclaimed. Would you accept that notion?

DR. DAWSON: Well, knowing where the notion came from -- I have the highest respect for Professor Green's legal knowledge -- I have no intention of arguing that question with him. It's a purely legal question as far as I'm concerned. And thank you; I think you had a very reliable witness.

MR. FOX: There was an equally reliable witness just before that contradicted that -- you know, both eminent authorities. It's difficult for me to know who to believe.

I'm wondering then, with the Speaker's petition to which you referred, would that Speaker's petition at the beginning of each session be sufficient to effectively proclaim the Haultain motion?

DR. DAWSON: I can only say I haven't the vaguest idea, but as I may have suggested earlier, my opinion of the Speaker's petition is a very low one. I don't think it does anything for anyone. Now, whether it proclaims, I don't know. It's an odd situation to proclaim a resolution anyway. You know, it's not a normal process. So you're left perhaps having two lawyers giving you different stories.

MR. FOX: In your opinion, Dr. Dawson, is it a violation of the privileges of the Alberta Legislative Assembly or any individual member of the Assembly that a member speak in French in the Assembly, be it during Oral Question Period, during debate, or any other time?

DR. DAWSON: Is it a violation to speak in French? Not that I can . . . I can't think. This is where I started reading the material that was sent to me, and I kept asking myself -- and that's why I started with the definition of privilege tonight -- I kept saying "what privilege is being offended against?" I can't see any. You know, is it a question of law? Possibly, as you have suggested. It may be a question of order, depending on what the Standing Orders of the Legislature say. Do they prohibit the speaking in French? I don't know. But as a privilege, what privilege is being offended against?

MR. FOX: So in your opinion it's not a violation of privilege then.

DR. DAWSON: I can't see it.

MR. WRIGHT: Back to this confrontation matter. In deciding this question we always try and look at the ordinary meaning of the words, wouldn't you agree?

DR. DAWSON: Yes. I always like to try.

MR. WRIGHT: Yes.

DR. DAWSON: I can't always manage.

MR. WRIGHT: A publication is something put out by someone, wouldn't you agree?

DR. DAWSON: Yes.

MR. WRIGHT: So that it's a little hard if I'm a member, and I put out a letter to you, that it should be your publication.

DR. DAWSON: Yes, I agree. I mean, so far as I can see, we're on the same side.

MR. WRIGHT: Right. So it would be indeed a puzzle to see how a letter put out by Mr. Piquette, directed to the Speaker of the Legislative Assembly, could be a publication of the House.

DR. DAWSON: Yes. This is what I trip over. It's the House seizing this document somewhere halfway between Mr. Piquette's office and the Speaker's office, presumably, and sort of being anointed on the way and becoming a document of the House. Is a letter from yourself to your colleague down the hall a publication of the House? I don't know. But as you would say, in the normal meaning of the term, I can't see it. Of course, I can draw the parallel myself. If you send notice of a question,

is this a publication of the House?

MR. WRIGHT: It's very hard. It's hardly arguably a House document even until it gets there. But it's certainly . . .

DR. DAWSON: Well, it might be, and in this case, for instance, where the letter is required by the Standing Orders, I would suggest it could be a House document.

MR. WRIGHT: But then, as we said, that's a wider question. And so for a member to release a copy of that letter -- which is expected, has been asked for, and is in the public eye anyway -- to the press would be a very hard thing to accept as a breach of privilege, would it not, Dr. Dawson?

DR. DAWSON: I would find it very difficult myself. Now, as I say, there may be an element of propriety about this, rudeness -- all sorts of things. But again we come back to a breach of privilege as a much more serious offence than merely being rude to someone.

MR. WRIGHT: Yes, and I'm not even talking about the contents at this point.

DR. DAWSON: No, no. The fact of delivering it to the press before it's received by the Speaker may be rude, very rude. It may be unsporting or all sorts of things. But a breach of privilege is, as I say, a serious offence. I mean, this is where we come back to the fact that a breach of privilege should rarely be raised. You shouldn't get more than one a session. And when something becomes public knowledge, particularly something that is no great secret and is going to become public eventually, we're dealing with rudeness, not a breach of privilege. There are all sorts of descriptions you can use of it. I think there are all sorts you should use of it, but not a breach of privilege.

MR. FOX: Dr. Dawson, I'd like to look a little more closely at the Haultain motion, if we may, and I'll just read it again. It says:

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

In your opinion, does that strongly imply or in fact require that the English language should be the only language used in the Assembly by virtue of the fact that it's saying it's desirable that it be recorded and published in English?

DR. DAWSON: I suppose the only thing I could come to with any degree of logic would be that yes, in that you're not going to allow or provide for the publication in one language and debate in more than one.

MR. FOX: So it wouldn't leave room to do, for example, what I believe they do in Newfoundland, which is to take whatever is recorded in French and translate it into English for the purposes of . . .

DR. DAWSON: It might, and yet again I suspect there is a legal interpretation of this particular type of thing, but I cannot imagine that when one has the bilingual situation you say after a little while then, "Oh gosh, we'll only publish in one language, but go and debate if you want to in another language." It doesn't make much sense.

MR. FOX: Now, I'm wondering with this motion, too, if you don't have much faith in the Speaker's petition at the beginning of a session in terms of effectively proclaiming this motion, would you say then in order for . . .

DR. DAWSON: I think it's being taken just a touch out of context. I said I didn't have much faith in the Speaker's petition as doing anything.

MR. FOX: Okay, then looking at the Haultain motion, would it be your opinion that in order for it to be effectively proclaimed through the Assembly, in fact, seeming to conform to it, would it have to conform absolutely to it? In other words, if in the interim the House has occasionally accepted without question or kerfuffle the use of French, could this Haultain motion still be viewed as being proclaimed simply by the fact that it was generally used in the Assembly?

DR. DAWSON: In other words, if it was generally followed, would one assume that it had been proclaimed? Is this what you're . . .

MR. FOX: That's the contention that's being made, and I'm wondering, if that were to be true then, in your opinion would it have to be generally followed all the time, or would the occasional use of French in the years that have interceded make that a spurious argument?

DR. DAWSON: I don't know the answer, to be honest. No, I just -- maybe if you try it in a different way, it might get through better to me. Right now I'm sort of wandering in terms of an answer to that, as it sounds.

MR. GIBEAULT: Dr. Dawson, in your opinion, could the third paragraph of Mr. Piquette's letter to the Speaker of April 8 reasonably be deemed to reflect unfavourably on the Speaker or on the Speaker's actions, as these terms would be generally meant in citation 52, page 19, of the fifth edition of *Beauchesne*?

DR. DAWSON: My problem is I'm not quite sure how else he could have put it. You know, he's saying, "I've got a breach of privilege. Language rights are guaranteed. Accordingly, when you didn't let me ask my question, you exceeded your authority and breached my privileges." Short of breaking it down into some basic English, I can't imagine how you can say it much differently and still make your point. And I don't put it that this is any more rude than, as I suggested, the old appeal of the Speaker's ruling. I remember M. J. Coldwell standing up in the House of Commons once, back in 1956, and saying, "Mr. Speaker, surely sometime we must be right," when the Speaker had been knocking his amendments and motions and so on six ways to Sunday for weeks. Now, I mean no one ever thought there was ever anything odd about that. Poor old M. J. Coldwell was just mad as hell that day. But surely, is there anything more rude about this than Coldwell saying this in the House or indeed standing up and saying, "Mr. Speaker, this is why I don't think much of your ruling; I appeal your ruling"?

We used to argue Speaker's rulings in Ottawa at length. We still do to a certain extent, sort of at the backdoor. But we used to do it officially, and then you appealed them. Now, what could be ruder than saying, "Mr. Speaker, you're bloody wrong and we're going to prove it, and there are going to be 75 of us who are going to tell you were wrong"? Or compare it, for the

sake of argument, with what went on about a month or a month and a half ago when Mr. Fraser gave a ruling and allowed the government to get its time allocation order in. He sat there for three hours one afternoon and was slanged by the opposition. Now, frankly, I think he deserved it. But they were certainly a lot ruder than this, and no one said, "Oh, gosh the poor old Speaker's privileges have been breached."

Coming back to the first point, I don't know how you make your point of privilege here in your letter without effectively saying, "I think you breached my privileges," because that's the crux of the whole thing.

MR. GIBEAULT: The second question to you, Dr. Dawson. In your opinion, would Mr. Piquette have violated the privileges of the Assembly or any of the members of the Assembly when he rose after question period on April 7 and raised a question of privilege as a consequence of being ruled out of order by the Speaker earlier in question period when he attempted to put his question in French?

DR. DAWSON: Well, I suppose my problem with that is: I don't think he had a question of privilege. So I don't think he offended anyone's privileges. I think essentially again it's basically a question of order. Again, I come back to the question: what privilege has been offended against; which of his privileges? Do you see what I mean? One keeps coming back, unfortunately, to sort of that crucial, central question: what privilege are we dealing with? What privilege is he dealing with? He says, "My privileges are affected," but he doesn't tell what one. He says, "I have a right to speak in French." Well, law? Order? But privilege? No.

MR. GIBEAULT: Thank you, Dr. Dawson.

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

MR. SCHUMACHER: Thank you, Mr. Chairman. Dr. Dawson, I think we've been very privileged to hear you this evening. I've gotten a lot out of your presentation, but my question is going to relate to this question of privilege and whose privilege could have been affected by the asking of a question in French in the question period. In my view I think there is a very large difference in using a language other than English in this Chamber in debate, say, on the budget or the throne speech or second reading or third reading, which is a sort of set piece thing. No reaction is expected of it. It's a method of exposing a point of view. Hopefully, maybe sometime it might affect a vote a day or two or sometime, but no immediate reaction.

But the most important part of our legislative day -- or our representative day, I guess, more so than legislative -- is the question period. That is the whole key of responsible government: to have the government responsible to all sides of the House every day, as opposed to the congressional or presidential system where there is no responsibility. If I were here and listening to the question period and at somebody's direction the Sergeant-at-Arms came over and clamped some ear muffs over my ears so that I couldn't hear a certain member asking a question or giving a reply, I would strongly say, and you would probably agree with me, that my privileges had been interfered with, because as a result of that question, or the answer, for my constituents it might be very important for me to ask a supplementary question or to pursue that, to represent their point of view in this Chamber. But if somebody interfered physically, I

think any fair-minded person would say, "Yes, my privileges as a representative have been offended." So I would suggest that in the same manner, while it isn't physical, when a member who is bilingual and has the capacity of both languages on purpose and in a considered way decides to use the language that nobody else understands -- particularly me -- he is interfering with my privileges in this House at that particular stage of his proceedings by pursuing that course of action.

DR. DAWSON: What happens if the House decides that you may address the House in -- it would not be unusual here -- Ukrainian? You don't understand Ukrainian. Do you have the same claim then? I doubt it very much.

MR. SCHUMACHER: Well, I would suggest that I would have the same claim in question period. I'm suggesting there is a very large difference in the answer to that question as to what's going on in the House.

DR. DAWSON: I see the point you're making. And the real problem -- I'm not sure, it again doesn't come down to a question of order: what is the House willing to allow? And in this there seems to be considerable doubt as to what the House has indeed decided in what is left over from Haultain and the Alberta Act and what have you. And this is where we come down to the question of, "What does the law say?" or "What has the House said in this?" If there's Ukrainian and French in the Standing Orders, I'm afraid you're stuck with it.

MR. SCHUMACHER: Dr. Dawson, I guess my real question is: in your opinion, can you find anything that would suggest that we are not completely free to find that attempting to ask a question in a language other than English in the Alberta Legislature in 1987 in question period can result in a breach of other members' privilege?

DR. DAWSON: I'd say I would hesitate to come to that conclusion myself. I really would. But then mercifully it's in your hands, not mine.

MR. SCHUMACHER: Well I'm just asking. In your knowledge of the conventions and your knowledge of the law -- I know you've said your not a lawyer but you have some knowledge -- I'm just wondering whether you can point to anything that would say we should not come to that conclusion.

DR. DAWSON: Oh, that's known as being backed into a corner -- a very awkward corner, which I think was thoroughly intended, of course.

I'm hesitant to extend the word "privilege" as far as you're doing. And this, I suppose, is what niggles. Let's go one step further. If you're deaf, is it one of your privileges to have an extension to the PA system so that you can screw it into your ear and hear what's going on? Or do you say, "Look, I'd like to ask a supplementary question, but I can't hear the bloody thing." How far do we stretch this word privilege? [interjection] And this is what one is trying to do. I'm sorry. It's a rhetorical question, but this is what gives me a problem as to how far one can stretch a fairly definite collection of principles and law, if you like, by using the word privilege. And I tend to be a bit of a purist, I think, in using that term, because I've heard it abused so often. And that didn't settle the question at all.

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

MR. WRIGHT: Yes, Mr. Chairman. You were asked by the committee's counsel some questions about how you would resolve a conflict between a court ruling and contrary decisions of the House, or perhaps of the Speaker of the House, and of course the possibilities are endless. But would it not be the case that insofar as a matter of privilege depends on statutory law, the courts could make a declaratory ruling and leave it at that? And then Parliament or the Legislature would know what the law was, and presumably they would follow it or change it. Would that not be the proper areas of each branch of our government?

DR. DAWSON: I would suspect very strongly that the courts would be very, very hesitant to make what -- I think I understand what you mean by a declaratory ruling saying "These are the privileges of the Legislature."

MR. WRIGHT: Yes. I'm talking only of a right which forms part of the members' privileges under the definition we established earlier that is clearly a matter of law, such as whether members have the right to speak French in this Legislature.

DR. DAWSON: Yes, I can see the courts -- indeed, I gather this is essentially the question the courts are being asked now in Saskatchewan, as I understand it.

MR. WRIGHT: Yes. The direct question there is to do with the language in court processes, but it's all part of the same consideration that deals . . .

DR. DAWSON: [Inaudible] over in the legal field, it carries over in the parliamentary field.

MR. WRIGHT: Yes. And so when you say that the Legislature is free to make its own rules, it must always be within the ambit laid out to it in the governing statute?

DR. DAWSON: Yes, within -- but again I'm not sure that one knows with any degree of certainty what the governing statutes are.

MR. WRIGHT: Right. That's true, but . . .

DR. DAWSON: I mean I'm certain, in my own mind, that the House cannot -- in Ottawa, for instance -- give a member the right to introduce a money Bill without the royal recommendation, because of sections 53 and 54 of the Constitution Act. But how far beyond that we'll go, I don't know.

MR. WRIGHT: But if there was some doubt about the parameters, to seek an opinion of the court would be a way of attempting to resolve it. Would you agree?

DR. DAWSON: Assuming the court would do it. I have a suspicion that most courts, being thrown a hot potato of this sort, will get out from under if they possibly can. I don't think they would appreciate it, being stuck with a job -- if nothing else, getting into an area that essentially the courts don't want to be in anyway.

MR. WRIGHT: My last question of this group, if I may, Mr.

Chairman. What then do you say as to the ability or right of the House or a committee of the House to decide a question of law?

DR. DAWSON: I think the general assumption would be that it doesn't have any right, except in the sense that privilege is being part of the law. But that's not the question, I know. At least I don't think it was the question.

MR. MUSGREAVE: Dr. Dawson, this may tie into what Mr. Wright was saying. I've been a Member of this Legislature for 12 years, and the business has always been conducted in English, except for when we're introducing foreign visitors or something of that nature. If I was able to convince my colleagues that my privilege as a member had been usurped because a member had spoken in a language I didn't understand in the question period and they agreed with me that this was an infringement of my privilege, would that in effect become a law or a rule or a regulation that would not be challenged by the courts?

DR. DAWSON: I think you would be on firmer ground if you persuaded your colleagues to pass an amendment to the Standing Orders specifying that English was the sole language of debate in the House.

MR. MUSGREAVE: Well, Dr. Dawson, that would be my next step, but I'm talking about the position I find myself in now. A member has taken away my right to know what's going on in the House, and I'm very upset about this, and I've pleaded with my colleagues that my...

DR. DAWSON: Well, to come back to what I think I said earlier, if you try and be too specific in saying what your privileges are, the courts may well look at them and say, "Hey, whoa." In other words, what you're saying is: "I'm going to persuade my colleagues to make a formal statement that one of my privileges is to have debate carried on in English." At that point, someone again may go to the courts and say "Whoa" back, "the constitution of Alberta guarantees French." And then the courts will look at it.

MR. MUSGREAVE: That's the question I was trying to get out earlier, Dr. Dawson. Would the Constitution override the right of this Assembly to make its own laws as to how its procedures are carried out, how its business is conducted?

DR. DAWSON: I think so, yes. I don't think there's much doubt. Then we get into the awkward question of "what is the constitution of Alberta?" which I think is a bigger question than I want to get into.

MR. MUSGREAVE: Thank you.

MR. SCHUMACHER: I guess, Dr. Dawson, my question is that you know of no convention or law that requires this Assembly to recognize any language other than English in any of its proceedings?

DR. DAWSON: I know of none, which is, as you know, a very limited statement.

MR. SCHUMACHER: I don't like to hear you say that, Dr. Dawson, because I think your knowledge is quite extensive, and

I respect it; I sincerely do. But I think that's my question.

Thank you, Mr. Chairman.

MR. FOX: Dr. Dawson, the English language is a very complicated and beautiful tool that has many, many words in it. Do you think that if I, as a member of the opposition posing a question in question period, happened to use a word in the English language that some of my colleagues didn't understand, they could reasonably claim I'd breached their privileges by using that word?

DR. DAWSON: No.

MR. FOX: If in the asking of a question I used a whole sequence of English words that my colleagues, regardless of their years of experience in the House, didn't understand, could it be interpreted that I'd breached their privilege by asking the question?

DR. DAWSON: No, I'm very dubious about this. In fact, no, I would say. I can't imagine what privilege is, again, being breached.

MR. FOX: Following from that, if I were to ask an entirely inane question in English that didn't make sense to some of the members in the Assembly, it therefore couldn't be interpreted that I'm breaching their privileges by doing that?

DR. DAWSON: No. You're probably out of order. There are rules about relevance, understandability, frivolous questions, and all sorts of things.

MR. FOX: Then to extinguish this line of questions...

DR. DAWSON: Another language may be a different question.

MR. FOX: Without some other authority to guide our decisions at this point as to what constitutes the proper form of debate in this Legislature then, would you again state your opinion on whether or not my posing a question in French in the Assembly violates the privileges of other members of the Assembly simply because they don't understand French?

DR. DAWSON: Again, no. I don't know what privilege essentially is being breached here. It may be out of order, but I still come back... I'm not sure how we get to privilege here; order, very possibly.

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

MR. OLDRING: Thank you, Mr. Chairman. Dr. Dawson, to change the subject a little bit and getting back to a book that you're very familiar with, *Beauchesne*. I'm looking at *Beauchesne* 119(1), and I'm wondering if you would be so kind as to give us your interpretation of 119(1). If the Speaker has given his ruling, is his ruling then challengeable or appealable or debatable?

DR. DAWSON: I don't terribly like the last part of that -- not your question, but the last part of that particular citation. But the first part, which is I think the part you're really chasing, about "belong to the House which, under S.O. 12, must accept them without appeal or debate" -- that really is just a statement

that the Speaker's rulings are not appealable anymore. Up to 1965 they were, so the House changed its rules. The second part of it I think could cheerfully be eliminated in the sixth edition.

MR. OLDRING: So if a member did any of the above, challenged or debated or appealed, would that then be a breach of 119(1)?

DR. DAWSON: Yeah. That's a breach, presumably, of whatever the devil the standing order number is now which says that the Speaker makes rulings which are not appealable.

MR. OLDRING: Thank you.

DR. DAWSON: So it's a breach of order under the Standing Orders. Which is, in a fact, of course: if you try and do it, the Speaker won't recognize you.

MR. OLDRING: Just getting back, I'd like to also follow up, Mr. Chairman, with my last supplementary on the matter that Mr. Schumacher introduced . . .

DR. DAWSON: I should say, incidentally, one thing. This doesn't add -- this doesn't count as a question, I'm sure. It is possible, if you want, still to appeal the Speaker's ruling effectively by putting a substantive motion down. Now, it won't get very far, and it's virtually never done, but it certainly is possible. Or a motion of censure on the Speaker for a ruling that he has made. But this again is a substantive motion, not, strictly speaking, an appeal. Sorry.

MR. OLDRING: Getting back to Mr. Schumacher's comments on what would be a breach of a member's privilege, whether it be French or any language other than English spoken in this House, would it not only be a breach of our privilege, but how does the Speaker, if he's unilingual, make a ruling on whether the question is in order? How do we, as the member has said already, ask any supplementaries or follow up? And I'm not saying just French; I'm saying any language. Surely if we allow that and it isn't considered a breach of privilege in this House, how can we ever maintain order? How do we know, with the television cameras we have on us right now, that what's being said isn't totally improper to be broadcast throughout the province or . . .

DR. DAWSON: This is a breach of order, not privilege.

MR. OLDRING: Sorry, Mr. Dawson?

DR. DAWSON: This is a breach of order, presumably. Improper language in the Legislature is a breach of order, not privilege. And this is the line that I think has to be drawn, and very, very often -- certainly in Ottawa -- is not drawn. A man gets up and says that he's got a question of privilege, and the Speaker says: "What is it? It doesn't sound like a question of privilege." "Oh, well then, a question of order." Everything is all mixed up together. And this is essentially what you're asking. Something improper goes out; well, that's a breach of order.

MR. OLDRING: But how does the Speaker know that even?

DR. DAWSON: Well, I suppose the answer is that the Speaker isn't going to know that. But again, if the member is entitled to speak in that language under the rules, then it is not a breach of privilege or a breach of order or anything else.

MR. OLDRING: If he's not entitled?

DR. DAWSON: If he's not entitled to do it, then it is a breach of order to do it, regardless of whether the Speaker understands it or not. We come back to a question of order, not privilege.

MR. WRIGHT: Okay. We got to the point, Dr. Dawson, in which you said that it's not the job of the committee to decide questions of law except to the extent that privilege itself involves law. But that then throws the whole thing in doubt again, doesn't it?

DR. DAWSON: Yes, to a certain extent.

MR. WRIGHT: The argument is made in this particular case that whether Mr. Piquette had the right to speak French or not is a question of law depending on the construction of certain statutes and the interpretation to be put on certain events that occurred in 1892. My question to you is whether the determination of these things which are, I would believe, purely a question of law is something that is fit for this committee.

DR. DAWSON: I would say no, myself, if I had to produce an answer, but this is a pure legal question, not a question of parliamentary law. Let's use that term for the privilege. It's not a question of privilege; it's a question of what the law actually is, which in a sense has nothing to do with, again, the activities of Parliament directly.

MR. WRIGHT: At least ordinarily the Committee on Privileges and Elections is not designed to answer those kinds of questions, is it?

DR. DAWSON: I don't think so; that would be my rather hesitant answer.

MR. WRIGHT: In fact, it would be quite a proper discharge of the functions of the committee when posed, in fact, with such a question to answer to say: it really is beyond our jurisdiction.

DR. DAWSON: I would have thought so.

MR. CHAIRMAN: Mr. Schumacher, followed by Mr. Fox, then Mr. Musgreave.

MR. SCHUMACHER: Thank you, Mr. Chairman. I'd just like to carry on my original line of questioning about my ability to hear proceedings of the House being interfered with and Dr. Dawson's comeback: "Well, what about if a member was deaf?" Would his privileges be breached unless we brought in somebody who could maybe do sign language for him or some other method of communication? I would suggest, Dr. Dawson, that if the electors knowingly elected a deaf person to represent them, they didn't expect him to represent them in that manner by being able to understand what was going on. I would think that the commonsense view in this country would be that electors would make the ability to hear one of the prime requisites of their representative.

DR. DAWSON: I'd almost like to get the two of you arguing together. The question was asked me earlier: "What if I strung together a lot of words in English that my colleagues didn't know? Are their privileges then being affected?" Now, we're not even taking it out of the one language, but I happen to have a big dictionary at home, and I know a lot of fancy words. I still can't get down to the privilege aspect. I see the glimmer of what the question is; I know damn well what the question is, in fact. But I'm not sure that I can pin a privilege on it exactly enough. And this is where I come back to what I said earlier: I'm a bit of a purist when it comes to using that term.

MR. SCHUMACHER: I guess -- and I may not get you to agree, but it seems to me that there's a very close similarity with somebody physically interfering with my ability to hear, affecting me physically, and somebody doing it through the use of language, whether it's French, German, whatever.

DR. DAWSON: Or complicated English?

MR. SCHUMACHER: If it's complicated English, I at least know what general area he's talking about. Now, I said, "Will you please use some plain English instead of some legal gibberish," and have the right to get back at him and communicate. Whereas if I don't understand at all what is being talked about, I think that is a largely different matter. With all due respect, I think . . .

DR. DAWSON: I can agree, but we're trying to bring it within the bounds of privilege rather than outrage. Outrage I can understand; privilege I haven't quite been able to grasp yet. This is my problem, not that I don't recognize your problem and say, "Gosh, you've got a tough time."

MR. SCHUMACHER: Do you agree with me that if I were sitting at my seat there, trying to understand what's happening, and somebody came along and clapped some earmuffs over my ears that prevented me from hearing what was going on, my privilege would be interfered with?

DR. DAWSON: There are a couple I can think of; probably an assault on a member.

MR. CHAIRMAN: I'll just direct the members' attention to the clock. As you know, our adjournment time is 10 o'clock. I have on my list Mr. Fox, followed by Mr. Musgreave, Mr. Wright, Mr. Oldring, and I wouldn't be a bit surprised if that would take us up to the hour.

MR. FOX: I'd like to get back to something that you dealt with earlier, Dr. Dawson, just to get a clear idea in my own mind what your opinion is on it. It refers again to citation 52 of *Beauchesne*, page 19 of the fifth edition, and that deals with the Speaker being protected against reflection on his actions. Now, for clarification, is it your contention that the wording of Mr. Piquette's letter clearly does not offend against the general understandings contained in this *Beauchesne* citation?

DR. DAWSON: If you want to get it down to essentially a yes or no answer, I'd say that I do not consider it to be intemperate enough to be an attack, and in a sense an attack -- a gratuitous attack, if you like -- on the Speaker. You know, contrast what he says in his letter to the editorial. I think the same committee

has in front of it two attacks on the Speaker, one of which says, "Look, I think you've breached my privileges and those of the House." I think that's a fairly modest statement. The other refers to a "knee-jerk, red-necked reaction" on the part of the Speaker, and this I would consider to be a gratuitously insulting remark. But I think you can draw a line somewhere between them. Gosh, I wouldn't want to do it -- lay down in advance what you can say and what you can't say.

MR. FOX: On April 10 Mr. Piquette made a statement in the House which he wasn't permitted to give in its entirety, but it was basically his attempt to apologize for misunderstandings which may have occurred or interpretations which may have been made on his letter or his release of the letter. In your opinion, knowing what remarks were contained in Mr. Piquette's statement in the Legislative Assembly of April 10, were these of the sort that would give rise to a question of privilege?

DR. DAWSON: Which date is this now?

MR. FOX: That's on Friday, April 10.

DR. DAWSON: Friday, April 10. In other words, his statement in which he is sort of apologizing, sort of: "If there's anything there to apologize for, I apologize for it." I can't see it, frankly. In fact, he is saying, "Look, I can't quite see what all the fuss is about, but if you're offended, please, I surrender."

MR. FOX: I think that's a clear enough answer. Thank you. I'm wondering -- you answered . . . This is my third question, I think; we can check the record on that. We asked the third question about the release of Mr. Piquette's letter, whether or not it's a House publication and whether or not it breached a privilege by the release of it. Could you comment on that whole issue in regards to the House leader of the New Democratic Party, because it is she that's being charged with the responsibility of the release of the letter to the media the day before it was presented to the Speaker of the House. Would you consider the release of the letter and its attachments by the New Democrat House leader to reporters as constituting a breach of privileges of all the members of the Assembly?

DR. DAWSON: Again, I can't see what privilege there is there, regardless of who released it. As I say, in all of these answers it's neat and tidy at this point to say yes or no on them. Just keep in mind, particularly in that previous one in terms of insulting to the Speaker, part of it depends on the surrounding circumstances and, particularly, unparliamentary things. If this is part of a larger picture of insults to the Speaker, then I think the Speaker is entitled to take a more severe view. This is what I said earlier, and I think it's worth saying rather than just yes or no. If this is an isolated incident, if this letter of Mr. Piquette's is an isolated thing, then I frankly can't see much wrong with it. If it is part of a pattern over a period of time by Mr. Piquette or by any group or party or anything else, then I think you're in a different ball game. Again, I'm not suggesting that this is so, but circumstances are not unimportant.

MR. FOX: I'd like to move that the committee extend its sitting beyond the hour of 10 o'clock, Mr. Chairman.

MR. CHAIRMAN: There's a motion. Any discussion on the motion? All those in favour of extending the hour . . . Perhaps

you might be more definitive in your motion. To the extent of the names that are on here or to a particular time, Mr. Fox? Or what is your motion? Just to extend it on an indefinite basis?

MR. FOX: Extend it until the majority of members are satisfied that the witness and the information that he's able to present to us has been dealt with.

MR. CHAIRMAN: And that is your motion?

MR. WRIGHT: And the present agenda is gone through, too.

MR. CHAIRMAN: Yes, fine.

MR. ANDERSON: Mr. Chairman, speaking, if I might, to the motion, if we haven't taken that vote, I personally have other commitments, and I think other members do as well. I'm happy to go to the end of the list that is there, but I'd be reluctant to agree to go further this evening.

MR. CHAIRMAN: Any other discussion on the motion?

MR. WRIGHT: With the greatest respect, Mr. Chairman, this speaker is of eminence and of great use to us and has come a long way, and there are still some questions to be asked. Surely some extension -- if you want to put a limit on it and say not later than 10:25 or something like that, that's fine. But to cut us off bang at 10 just because that happens to be what was on the agenda is unreasonable, in my respectful submission.

MR. CHAIRMAN: Well, with all due respect, it's not what's on the agenda; it is what was decided by this committee as rules to govern our procedure. That was a motion passed, and those are the rules as set for the committee. Now, the committee can change those rules as it sees fit, but all I am saying is that if there is a motion to be put forward, if it's a motion for an indefinite period of time or for a specific time or for a specific number of speakers, I think that would be helpful to have that. But I gather your motion is to proceed until such time as the majority feel that we should adjourn.

MR. WRIGHT: Right.

MR. FOX: I realize, Mr. Chairman, that may be unreasonable, given the open end of it. Would it be proper form for me to amend my motion?

MR. CHAIRMAN: I will accept that amendment.

MR. FOX: I move that the committee extend its sitting time to 10:30 tonight.

MR. CHAIRMAN: Okay, that is the motion then. Is there any discussion on that motion? All those in favour of the motion?

MR. MUSGREAVE: Mr. Chairman, I want to amend the motion that we continue to sit until your present list is cleared and that we complete our agenda.

MR. CHAIRMAN: I don't think I can accept that as an amendment because it's just totally different than the motion before us. So I think we'll have to deal with the motion before us in the first instance.

Any further discussion on Mr. Fox's motion? All those in favour of the motion, please signify by saying aye.

SOME HON. MEMBERS: Aye.

MR. CHAIRMAN: Those contrary, say nay.

SOME HON. MEMBERS: Nay.

MR. CHAIRMAN: I declare the motion defeated. Mr. Musgreave.

MR. FOX: [inaudible] before 10 o'clock.

MR. CHAIRMAN: Mr. Musgreave, you had [inaudible]

MR. MUSGREAVE: Well, I move that we continue the meeting until your present list of speakers has been heard and that we complete our agenda.

AN HON. MEMBER: Would you repeat the list again, Mr. Chairman.

MR. CHAIRMAN: Mr. Musgreave, Mr. Wright, Mr. Oldring is what I read out here just a little while ago. I have a motion here. If you wish to speak to that motion, then you may.

MR. FOX: Well, I think that's just totally unreasonable. This is surely the most eminent expert in this field. The matters of privilege are serious matters before this committee. We've got some very important decisions to make when we're finished with our witnesses, and I think it's unfortunate that we're going to be limited in our ability to benefit from Professor Dawson's knowledge and experience.

MR. CHAIRMAN: Well, I'm sure all of us regret that. It's just that the committee did decide on certain rules in respect to expert witnesses when they do come in, that the meeting would run from 7:30 until 10 and would then adjourn, and . . .

MR. FOX: We bent the rules for Professor Green.

MR. CHAIRMAN: With the consent of the committee. If the consent of the committee is to extend it, then I'm certainly willing to be bound by the decision of the committee.
Speaking to the motion, Mr. Wright.

MR. WRIGHT: I think one subsidiary difficulty is that some of us weren't quite sure about who was on the list. I think if each of us has one more kick at the cat at the very least, it would be reasonable.

MR. CHAIRMAN: Well, Mr. Wright, you are on the list, and . . .

MR. WRIGHT: I know that, Mr. Chairman.

MR. CHAIRMAN: Well, Mr. Musgreave, you have a motion. Is there any further discussion on that motion?

MR. WRIGHT: So there's just three more people asking questions?

MR. CHAIRMAN: That's what I had on the list, and that, I gather, is what Mr. Musgreave's motion is.

MR. WRIGHT: Yes. Well, I speak very strongly against that. I think it's just ridiculous, Mr. Chairman, with the greatest respect. Here is this eminent authority, we've got questions for him, it's a matter of profound significance, and we are stopping even more people asking one more set of questions? I move to amend the motion, if I may, to say to add to the list anyone else not on the list who wishes to be on it.

MR. CHAIRMAN: Okay, I will accept the amendment as being in order. Is there any discussion on the amendment to Mr. Musgreave's motion? All those in favour of the amendment by Mr. Wright that the number of names be extended to any person who wishes to get on the list, as I understand your amendment at this point in time, please say aye.

SOME HON. MEMBERS: Aye.

MR. CHAIRMAN: Contrary?

SOME HON. MEMBERS: Nay.

MR. CHAIRMAN: I declare the amendment fails. Are you ready for the question on the motion?

MR. WRIGHT: I challenge that. I mean, I don't want to do a standing vote; a count of hands is fine.

MR. CHAIRMAN: A count of hands? Fine. All those in favour of the amendment, would they please raise their hands? Contrary, if any? I declare that the amendment fails.

Mr. Musgreave's motion is on the floor. All those in favour of the motion, please signify by raising your hands. Contrary? The motion carries. We will continue with the three speakers on the list: Mr. Musgreave, followed by Mr. Wright, and then Mr. Oldring.

MR. MUSGREAVE: Dr. Dawson, I know one of the members raised a specious example of a string of English words that would be unintelligible, and I won't comment on that because I think it's beneath contempt. My question is this, though. Dr. Dawson, the more I listen to you, the more I'm convinced that as a member of this Legislature I don't have any privilege. You made a very strong statement at first that the main thing we have as democratic, elected people is freedom of speech, and if I don't know what you're saying, how can I respond to you? If you use a foreign language...

DR. DAWSON: Freedom of speech does not mean... I'll go back to the definition of freedom of speech. Freedom of speech, in this context, in terms of privilege, is the ability to say what you like within these four walls with legal immunity. That is freedom of speech.

MR. MUSGREAVE: Should that not also include my ability to understand what you're saying so I can rebut you? How can I rebut if I don't know what you're saying?

DR. DAWSON: Again, I can see your argument, but the problem is that this is not the definition, if you like, of freedom of speech within the terms of privilege. I mean, I'm stuck with

what the Bill of Rights says, and in terms of freedom of speech -- you're even more stuck with it than I am, because that is the privilege of freedom of speech: freedom to speak without fear of legal reprisal, unfortunately perhaps, whether or not you can understand what your colleagues are saying. But they never thought of that in Britain back then.

MR. MUSGREAVE: Because they all spoke English.

DR. DAWSON: Again, one almost has to go back one stage further than I did in terms of privilege. What was the point of privilege at the beginning? I didn't start back there with the ark and I probably should have. It was a defensive mechanism, which it still is. First, it was a defence against the King, then against the Crown, now against people like the *Edmonton Journal*. Perhaps unfortunately, it doesn't say that you should be able to understand what is said in the House. What it says is that you are free to say what you like in the House. In the old days you didn't get your head cut off; nowadays you don't get sued by some irate citizen out there.

MR. MUSGREAVE: You just get nasty editorials.

DR. DAWSON: Exactly, but it is a defensive mechanism, which is one reason why it is as limited as it is and is one reason why, for instance, freedom of arrest has really become unimportant. It used to be when you were dealing with imprisonment for debt -- one great way of harassing an MP was to throw him in jail for an imagined debt or a real one or anything else. And it is why you get the protection of 40 days before and after the session. This is traditionally the time it took the MP to get from London to the furthest constituency. But defensive essentially, and if one keeps that in the back of your mind, some of these things may make more sense than they do in sort of cold blood and modern day common sense. I don't think I've convinced you, but...

MR. MUSGREAVE: No, you haven't, Dr. Dawson, because I still feel that if I'm going to perform my duties as a member of the Legislative Assembly representing my constituents, I should know what the other members of the Assembly are saying. I'm sorry.

DR. DAWSON: I can sympathize with you, but I cannot in my own mind find a privilege in the traditional sense and in going through 300 pages of *Erskine May* that covers this particular problem.

MR. CHAIRMAN: Mr. Wright.

MR. WRIGHT: Thank you, Mr. Chairman. To what extent is intention relevant in deciding a question of breach of privilege; i.e., intention of the alleged offender to be offensive?

DR. DAWSON: I suppose in a theoretical sense it has no relevance whatsoever. In a practical sense, all of us being human, I'm sure it does. If you watch the Speaker in the House of Commons day by day, day by day, you start dealing with -- well, parliamentary language is the most obvious area, because this does vary. There are only one or two things that you may not say in the House, and one of them is that you cannot say, "He lied." Even there... And certainly with the peripheral words, it partly depends on the mood of the House as to what

gets through. If the House is in a fairly cheerful, happy, frame of mind, if it's a particularly difficult period, a lot of things will be said that in cold blood the Speaker would not allow in another occasion. In this sense, intent or circumstances certainly have some effect.

MR. WRIGHT: Thank you.

DR. DAWSON: Incidentally, the rules so far as I know don't say this, but Speakers do it.

MR. WRIGHT: Okay. Citations 117(6) and 240 in *Beauchesne*, Dr. Dawson, both say:

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.

You're well aware of those rules. Yet if you will look at 698 of *Hansard*, which is exhibit 3 in this hearing and is that of Thursday, April 9, you'll see a section entitled "A Question of Law," and the Speaker does come to a conclusion on the question. How appropriate, in your opinion, was it of the Speaker to make such a ruling?

DR. DAWSON: Yes, the citation is a nice one. Clearly, it is not, cannot be a universal. The Speaker constantly makes some kind of rulings on law. The citation very specifically applies to someone asking a question as to whether, let us say, a particular Bill is ultra vires -- you know, attacking -- the kind of question that certainly was raised, when was it now?, in the Constitution debate back in 1981-82, when a series of members of the opposition got up and said: "Look. You can't do this. Mr. Speaker, this is out of order. The whole Bill is out of order." And the Speaker solemnly got up and said: "Look, that's not my cap. That's up to the courts to decide. I'm not going to do it."

Clearly, if one accepts that privilege is part of the law -- my God, we're always dealing with questions of law. So essentially that citation is dealing with the first type of situation where it's a pure question of law.

MR. WRIGHT: But, Doctor, in this case, you'll observe that the Constitution is examined, the North-West Territories Act is examined on page 699. That's found not to be a constitutional document. Then on page 700, section 110 is said to have been reversed in effect. Would I be wrong in supposing that what you're saying is that this is the very type of legal question that is purely a legal question? It is that which defines the ambit of the privilege perhaps in this case but is itself a question of law. My question then is: is this appropriate, this type of examination?

DR. DAWSON: You're asking me to second-guess the Speaker on this one. I suppose if I had been in the Speaker's shoes, I wouldn't have touched it with a barge pole. I think it's very, very close to the type of thing I was talking about, a pure question of law, which is a very dangerous thing. Properly speaking, as I say, Speakers have tended to avoid this.

MR. CHAIRMAN: Mr. Oldring.

MR. OLDRING: Thank you, Mr. Chairman. Dr. Dawson, I just want to persist on this question of privilege over the language issue a little further. My understanding is that the essence of privilege is whether or not a member has been deprived of any right without which he is unable to carry out his functions

as a member, and if that's an acceptable -- you know, it's coming down to a definition of privilege: when is it a breach of privilege or when is it a breach of order?

DR. DAWSON: A breach of order essentially is an offence, if you like, against the written rules, the conventions, and this type of thing; in other words, where the House knows -- again, one uses *Beauchesne*; one uses the Standing Orders. If one offends against them -- if you try to speak three times -- basically this is an offence against order, not privilege. Privilege is a fairly well recognized body of law.

MR. OLDRING: Supplementary to that then, Doctor . . .

DR. DAWSON: Did I get to the answer -- I won't say, "you were looking for", but did I get anywhere near your question, or am I misinterpreting it?

MR. OLDRING: Well, again, I guess, Dr. Dawson, if I refer to *Beauchesne*, citation 16, and I look halfway through, it points out that

the privileges of Parliament are rights which are "absolutely necessary for the due execution of its powers". They are enjoyed by individual Members, because the House cannot perform its functions without unimpeded use of the services of its Members.

When I look at that and I think of the language issue, I can't help but feel that it's absolutely necessary for me as a member to be able to understand those questions, and the only way I can do that is if they're in English.

DR. DAWSON: Yes. It's essentially the same question we were tossing around earlier. I think one has to take May's definition there in terms of what privilege traditionally has been and go back to what I was saying earlier: this defensive type of function that privilege has -- freedom from arrest, freedom of speech, this type of thing. It's never been looked at, shall we say -- maybe wrongly. But it hasn't been looked at in the sense that you're using the term. He says "defensive"; in fact, he uses "unimpeded use of the services of its Members." This essentially, as I say, goes back to the defence against the Crown, against harassment by the King. The House needs its Members actually sitting around in the legislative body, so you can't do certain things to them. You can't prosecute them for what they say. You can't imprison them for debt. But it's not quite the same.

I think the problem is -- and this has been true of two or three questions, basically the same line -- that you're hoping for too much out of privilege. You're hoping for something that isn't there, quite probably because over the years no one has bothered with it. It's not impossible that somewhere along the line this type of thing could have grown up, but it hasn't as far as I know.

MR. OLDRING: I'm still having a hard time accepting that. What happens then in terms of what takes precedence? Is it the right to freedom of speech or is it the legislative orders?

DR. DAWSON: Could you rephrase that, please?

MR. OLDRING: Well, Dr. Dawson, you're leaving me with the impression that it's okay for us as members to speak in whatever language we choose because that's freedom of speech.

DR. DAWSON: Sorry. No, you may speak in whatever language, I presume -- let's broaden it as far as we can -- the Constitution allows or the rules of the Legislature allow. Freedom of speech means that what you say in the House cannot be challenged in the courts outside. The House itself puts limits on what you can say and the way you can say it. Unparliamentary language: the whole area there is the House saying, "Look, you have freedom of speech, but within these limits as to what is right and proper." Or they can allow you to speak in Chinese.

MR. OLDRING: So that becomes breach of order as opposed to breach of privilege?

DR. DAWSON: Yes.

MR. CHAIRMAN: Okay. Thank you very much, Mr. Oldring, and thank you, Dr. Dawson, very sincerely on behalf of the members of the committee for coming to Calgary -- or to Edmonton. Pardon me. [interjection] Yes, you can tell where I am from. In any event, thank you for coming, wherever you are, and for sharing your evidence with us tonight. We appreciate that very much.

The committee will move on to item 5, Other Business. Any other item of business?

MR. WRIGHT: Yes, Mr. Chairman. I do wish to see Dr. Green return to be finished with. There is a spare day next Tuesday. I'm just hoping that we can have him back then. I imagine it wouldn't take more than an half to three-quarters of an hour to finish him, but it is necessary.

MR. CHAIRMAN: We had . . . I'm sorry.

MR. WRIGHT: I should add that our group has gone to considerable trouble to clear every Tuesday morning from this week onwards to accommodate the possibility of the committee sitting, as we discussed. And since we know that Dr. Green can come at 10 o'clock on Tuesday morning, I would move that we receive him then to finish his evidence.

MR. CHAIRMAN: Just for the record, as you know, Wednesday nights is the date that everybody can make. Tuesdays was set aside on a sort of "if necessary" type of basis from 8:30 till 10. That's what's in the minutes of our meetings. That's the motion, I believe, that was made.

MR. WRIGHT: All right; 8:30 is no problem.

MR. CHAIRMAN: Mr. Schumacher.

MR. SCHUMACHER: I'd certainly like to accommodate Mr. Wright, and I would like to see Dr. Green return. I would like to make the suggestion -- I'll put it in the form of a motion so we can deal with this. I move that next Wednesday we meet at 7 p.m. to deal with Dr. Green. As my learned . . .

MR. CHAIRMAN: Instead of 7:30, you mean?

MR. SCHUMACHER: Yes, instead of 7:30, because as my learned friend points out, he thinks he can be done in 30 minutes or so. I certainly don't want to interfere with Dr. Forsey's presentation, but I would like to give the extra time. But that will concentrate our minds to get through Dr. Green's evidence

too when we have Dr. Forsey waiting in the wings. So I move that we meet next Wednesday evening at 7 p.m. to accommodate Dr. Green, with the view that we will conclude at 7:30 or very shortly thereafter so that we can move on to Dr. Forsey.

MR. CHAIRMAN: Thanks, Mr. Schumacher. The clerk has just advised me that it's quite possible the Chamber is booked next Tuesday all morning for another meeting. Members' Services?

We have a motion. Speaking to the motion?

MR. WRIGHT: Yes, in my guess, I didn't understand there was anyone else on the committee that actually had further questions than me. I certainly won't take a half an hour, but I might take 25 minutes. So perhaps we could just have a straw poll here as to whether other people wish to ask questions too, because if they do, it might take more than half an hour.

MR. SCHUMACHER: I didn't intervene, Mr. Wright, on the basis that I had a bunch of questions. I didn't hear all of Dr. Green's evidence before, and I would like to hear more of what he had to say. I'd like to hear you draw him out.

MR. CHAIRMAN: Well, just in response then briefly to Mr. Wright's question: are there other members that have questions of Dr. Green?

MR. OLDRING: I think I might have some, Mr. Chairman.

MR. CHAIRMAN: Two members. Well, we have a motion on the floor. Mr. Fox, to the motion.

MR. FOX: Could I speak to the motion? I appreciate that Mr. Schumacher is trying to be accommodating here. We're not sure that Dr. Green is available Wednesday. We understand he is available Tuesday. In the interest of giving full and due consideration to the presentation of former Senator Eugene Forsey, I would suggest that we deal with that witness only on Wednesday and perhaps look at a subsequent meeting date at which Dr. Green might be called back.

MR. CHAIRMAN: I'll take that as a suggestion. We do have a motion on the floor here. By the by, Mr. Wright, when you and I were talking and indeed were in contact with Dr. Green as to his availability, I believe he said he was free at 10 o'clock on Tuesday.

MR. WRIGHT: Yes, he did, but I think that was because when I was speaking to him, I didn't ask him for any other time. It was 8:30 yesterday he was free, because he was occupied at 10, but 10 was a more reasonable time. I'd quite forgotten we'd said 8:30 to 10.

MR. CHAIRMAN: In any event, we have a motion on the floor. Mr. Musgreave, to the motion.

MR. MUSGREAVE: I would like to comment that I think we should leave it up to you, Mr. Chairman, as to the availability of Dr. Green, to fit in with whenever we can meet with him, and if he can't . . .

MR. SCHUMACHER: My motion is premised on the assumption that he's available at 7 p.m., and if he isn't, well, then we'll

meet at 7:30 with Dr. Forsey.

MR. CHAIRMAN: Mr. Oldring, on the motion.

MR. OLDRING: Mr. Chairman, I just wanted to speak in support of that. Certainly I concur that it should be left in your hands, but I would prefer if we can meet with him next Wednesday. It would certainly make it more convenient for me. Tuesday is out of the question for me. I'd like to see us conclude with these witnesses as quickly as we can. It's getting well on into June now, and surely if we come in half an hour early, that'll allow us enough time to complete that particular witness.

MR. CHAIRMAN: Okay. I'll call the question then. Mr. Wright.

MR. WRIGHT: I'm speaking against the motion, Mr. Chairman. We, too, want to see the thing concluded as quickly as possible. That's why we had these Tuesday mornings cleared, I thought, and here we are ignoring them. We went to a lot of trouble to make . . . We were the ones that gave.

I believe he can come on Tuesday. If he can come on Tuesday, we should have him on Tuesday. I say get him out of the way. We've seen the unpleasantness that occurred last week when two witnesses were on the same evening, and we've seen something of the same thing this evening. That's what we want to avoid. So I speak against the motion.

MR. CHAIRMAN: Okay, I'll call the question. All those in favour, say aye.

SOME HON. MEMBERS: Aye.

MR. CHAIRMAN: Contrary, say nay.

SOME HON. MEMBERS: Nay.

MR. CHAIRMAN: I think we'd better have a show of hands here. All those in favour, please raise their hands. Seven. Con-

trary? The motion is carried.

Now, I will undertake to contact Dr. Green and see if he is available on Wednesday at 7 o'clock.

MR. WRIGHT: And if he's not available, Mr. Chairman?

MR. CHAIRMAN: Back to the committee.

MR. WRIGHT: When?

MR. CHAIRMAN: Well, if he can't come that day, then . . .

MR. WRIGHT: Well, this is the thing. Then we're into the next week. Surely we should leave it up to you to try and arrange it on Tuesday if Wednesday is no good.

MR. SCHUMACHER: That's fine, Mr. Wright.

MR. CHAIRMAN: And the Chamber being available and so on. I will undertake to do that. Is that agreeable? Okay.

MR. OLDRING: Mr. Chairman, it was agreed that you can call a meeting on 24-hours' notice at any time, so I think you have that flexibility already.

MR. SCHUMACHER: We don't have to pursue that anymore.

MR. CHAIRMAN: Okay. Any other business to come before the committee?

MR. ANDERSON: I move we adjourn.

MR. CHAIRMAN: Motion for adjournment. All in favour, say aye.

HON. MEMBERS: Aye.

MR. CHAIRMAN: Carried.

[The committee adjourned at 10:28 p.m.]