[Chairman: Mr. Stewart] [9:37 a.m.]

MR. CHAIRMAN: May I call the members to order, please. You have an agenda that was previously distributed. Item 2 is Approval of Agenda. Yesterday at our meeting it was determined that we would start off today's meeting with the consideration of the evidence of the Hon. Nancy Betkowski, Miss Karen South, and Mrs. Louise Empson. So I would ask for a motion for approval of the agenda with that amendment. Moved by Mr. Hyland. All in favour, say aye.

HON. MEMBERS: Aye.

MR. CHAIRMAN: Contrary? Carried.

Before calling Mrs. Betkowski, I might also table as an exhibit a letter of yesterday's date which the Chair has received, and I'll have the clerk distribute copies to you. It's a letter from the Speaker, Dr. David Carter. Also, for the benefit of members I received a further letter of today's date from Dr. Carter and signed on his behalf by Mr. Rod Scarlett, dictated by the writer and signed in his absence, and perhaps I might just read that letter. It's addressed to me in my capacity as chairman, and it reads:

> Dear Sir:
>
> I thank the members of the Standing Committee on Privileges and Elections, Standing Orders and Printing, for extending an invitation to appear before the Committee to deal with some matters of information, however, I feel I must decline.
>
> As an M.L.A. it would be entirely proper for me to attend the committee, but as Speaker I believe it would set a most unusual precedent by appearing before this particular Committee, when this Committee is considering matters of purported privilege which arose in the House.
>
> Thank you.
>
> Yours sincerely,
>
> David Carter, M.L.A.
>
> Speaker of the Legislative Assembly.

Signed by Mr. Rod Scarlett for Dr. Carter and with the indication at the bottom: "Dictated by writer and signed in his absence."

MR. WRIGHT: Mr. Chairman, I must respectfully move that we not receive Dr. Carter's letter as evidentiary in any way in the absence of his unwillingness to answer questions. It would be different if this was a mere formality, but it's not. He is purporting to contradict a witness who happens to be a member also, and it's just not fair to accept this on that footing without giving the opportunity to Mr. Piquette or others to question him about the circumstances. It would simply be unfair. Since he has chosen not to come before us to answer questions, I think that must be the conclusion with respect to this letter.

MR. FOX: I would concur. I think sending this letter and at the same time sending a letter to you saying that he would be unwilling -- and I don't quarrel with his reasons for feeling it would be somewhat improper for him to appear before the committee. That being said, I think it's also improper evidence to be admitted, of this sort -- a letter from the Speaker that purports to be an accurate statement of an event that contradicts a supposedly accurate statement of the same event given by another member. I just don't see how we can accept one without the other.

MR. ANDERSON: Mr. Chairman, I would oppose the motion by the member, though I understand the reasoning. Surely the Speaker's reason for not appearing is because of the parliamentary tradition in this respect, and I think it's totally within the Speaker's right to try and clarify the record from his perspective. This letter at a minimum should be accepted as evidence so that there are the two sides presented clearly before the committee, despite the fact that parliamentary tradition inhibits the ability of the Speaker to appear before a committee of this sort.

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

MR. OLDRING: Thank you, Mr. Chairman. I, too, want to oppose the motion that's being proposed. I think the evidence as provided by Speaker Carter helps to clarify a matter in my mind. I don't think it's necessary to bring him forward. I think this statement is very clear and should be accepted.

MR. CHAIRMAN: I am sorry, Mr. Hyland; I overlooked you on my list. Mr. Hyland, followed by Mr. Horsman.

MR. HYLAND: Mr. Chairman, much the same comments as the previous two speakers. I guess my problem here is that we heard arguments yesterday -- now I'm not even sure if these comments from Mr. Maccagno's memoirs were accepted as evidence or not. We heard motions to accept them as evidence, yet we don't want to accept evidence of a signed letter by another member of this Assembly as evidence. This is where I have trouble. At least this letter from the Speaker is a signed letter, under his signature, and dated, outlining what he feels happened. Other evidence we've accepted. It was a typewritten page that came; we took the word of a member that it came to him from another former member of this Assembly. You know, there's nothing to say it did, yet we accepted that as evidence.

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

MR. WRIGHT: Mr. Chairman, are you going to correct the record on that, please? The member said it was accepted as evidence. I see it hasn't been marked.

MR. CHAIRMAN: It was not accepted as evidence until it could be verified as having indeed even come from Mr. Maccagno. There was nothing with it. There was no signing of the document, nothing on it at all, no signature whatever.

Mr. Horsman, followed by Mr. Fox.

MR. HORSMAN: The point that was just made relative to the alleged Maccagno document -- it was clear that we're prepared to accept that document once it has been authenticated as having come from Mr. Maccagno. That evidence was submitted by Mr. Piquette himself without Mr. Maccagno being present, without anyone asking for the right to cross-examine him, if you want to use that term. How can the opposition members of this committee now propose to reject a signed copy of a letter from the Speaker of the Assembly? I think it's illogical, to put it in the kindest terminology. I'm opposed to the motion.

MR. FOX: With respect, we've accepted a printed record of the Haultain motion without having spoken to Mr. Haultain. The

question here isn't whether or not Dr. Carter signed this letter; we clearly agree that he signed the letter. What we're saying is that we're getting two interpretations of an event by two members, one who made his presentation and was subjected to cross-examination by other members and another whose opinion other members of this committee are willing to accept as irrefutable and infallible.

I don't question either member's recollection of the event, but I just don't think it's fair for Dr. Carter to quite correctly suggest that it wouldn't be proper for him to appear before this committee but then make sure that his words appear without his having to defend or explain them -- highly improper.

SOME HON. MEMBERS: Question.

MR. CHAIRMAN: No, I'm sorry; Mr. Wright is on the list.

MR. WRIGHT: Mr. Chairman, I'm astonished that the Attorney General should not make the distinction between the paper allegedly from Mr. Maccagno's memoirs and this letter from the Speaker, aside from the fact that it seems it wasn't accepted in evidence. But I agree with Mr. Horsman; assuming that it's authenticated, having come from him, there's no reason why we shouldn't accept it.

But this letter is in a different order, because that letter is about a completely uncontroverted event, as far as I know. I mean, no one denies that that happened back in the '60s sometime, the thing Mr. Maccagno speaks of. It's incidental to the questions of privilege anyway, I suppose, contrasted to this, which is the supposed refutation of a witness in a material point. That is in a completely different order of evidence.

If I can draw the analogy with proceedings such as before arbitration boards and statutory tribunals and so on where the rules of evidence that apply in court are not applied, there hearsay evidence is received in matters which are not crucial, to save a lot of trouble. But in matters which are crucial, almost without exception the tribunal will say, "Well, it's not fair to have a piece of hearsay evidence supposedly contradict what has been sworn to before us or testified before us." And that is the case here. It's not on any technical basis; it's simply a matter of fairness, which is what the rules are supposed to accomplish. So that's the simple basis of the motion, Mr. Chairman.

MR. R. SPEAKER: Mr. Chairman, I've been listening to Mr. Wright's presentation. I'm not familiar with court procedures in presenting various kinds of evidence, so my remarks should reflect on that somewhat. But my suggestion was that we should deal with this as two different issues: one, the letter being presentable evidence; and the second issue, by a different resolution, would be with regards to whether the Speaker should be called or not. I would see this as two separate issues on which we should vote as a committee.

MR. CHAIRMAN: Mr. Campbell?

MR. CAMPBELL: Yeah, thank you very much, Mr. Chairman. I hate to cloud the issue with some logic. We've heard the evidence of the Member for Athabasca-Lac La Biche. I've read this letter. I've seen both sides of the issue or heard them and read them, so I feel very comfortable.

MR. CHAIRMAN: Very good. Are you ready for the question? The motion is that the letter of June 22 from Dr. Carter not be accepted as an exhibit in evidence.

MR. BOGLE: One final comment, Mr. Chairman. Dr. Carter, as I heard the second letter, certainly expressed the desire as an MLA to participate, however indicated that he feels compelled to decline because of the tradition, the custom, that the Speaker not appear before the committee. I believe we must respect that position.

MR. WRIGHT: May I just on that point remark on this: there's nothing that forbids the Speaker to appear, and the Speaker acknowledges that when he says highly "unusual." But then it's highly unusual that the Speaker relies on an agreement that is not written or recorded or published in any way between him and that member to cite him for breach of privilege. In that very unusual circumstance, surely decency -- decency, Mr. Chairman -- obliges him to state what happened, just the same as the other witnesses on whom we rely have stated. For instance, the minister is prepared to come forward today. It's on exactly the same footing. Otherwise, the rule would be a rule without exceptions. I ask: when do the exceptions apply? Surely this is the very case in which the exceptions to the ordinary rule that the Speaker ordinarily does not testify before committees should be the case.

MR. SIGURDSON: Well, Mr. Chairman, you know, for the Speaker to send a letter yesterday so that he could have his words before the committee and then decline to defend his argument is really unfortunate. Yesterday we heard from an hon. member. We had the opportunity to cross-examine that member. The Speaker writes a letter so that he has the opportunity to refute or contradict what the hon. Member for Athabasca-Lac La Biche said. We're now asked to accept it as evidence, signed as "David Carter, M.L.A. Speaker of the Legislative Assembly." Not as "David Carter, M.L.A. for Calgary Egmont" but as the Speaker of the Legislative Assembly. Then he chooses in a letter of today's date to not appear before the committee. Yet his words are going to be before us. I think we ought to have the opportunity to cross-examine, and failing that, then we ought not to accept this letter as evidence.

MRS. OSTERMAN: Well, Mr. Chairman, I'm listening carefully to the discussions by all my hon. colleagues. I harken back to yesterday when Mr. Musgreave asked a question about his understanding of perceptions that other people had of various events and conversations, and indeed I think it's fair to say that often they are perceptions when you look back in time and haven't been sort of challenged to be having every word put down from a conversation.

At that time, when Mr. Musgreave spoke out, Mr. Wright made a point of order that there was no evidence with respect to those conversations by the people that Mr. Musgreave had either been talking to or understood that they had said. So looking at that, and today I see that there now is -- I don't know what kind of evidence a person would be looking for, but you now have a statement. If one of the hon. members in this committee were to say, "It is my understanding that so and so has this interpretation of a conversation," and that hon. member to substantiate that then put forward as evidence a letter that they had, having requested from someone their interpretation of a conversation, surely that would be acceptable. Because it is not hearsay, as Mr. Wright had challenged yesterday; it is the written words of somebody's perception of a conversation, and surely this is

acceptable.

If somebody wishes to put down on paper their perception of a conversation, I can't understand at all why this committee wouldn't accept that. We accept that there is obviously a different opinion about a number of these matters, but to say that we should not accept what a member's perception of a conversation was is, I think, really quite ludicrous.

MR. GOGO: Mr. Chairman, I'd wanted you to read Dr. Carter's letter again in that I don't have a copy of it. I don't mean the one dated June 22. [interjection] No I just -- you read it previously to the committee.

MR. CHAIRMAN: The letter of June 23 addressed to myself as chairman reads:

> I thank the members of the Standing Committee on Privileges and Elections, Standing Orders and Printing, for extending an invitation to appear before the committee to deal with some matters of information, however, I feel I must decline.
>
> As an M.L.A. it would be entirely proper for me to attend the committee, but as Speaker I believe it would set a most unusual precedent by appearing before this particular Committee, when this Committee is considering matters of purported privilege which arose in the House.
>
> Yours truly.

MR. FOX: Mr. Chairman, I just want to point out that those of us arguing for the motion here are not questioning the words of Dr. Carter. We're not questioning his recollection of an event nor that he indeed signed this letter. We're just arguing the principle of accepting these without the opportunity for cross-examination when it apparently contradicts testimony given by another hon. member who was subject to cross-examination.

I should point out that there are almost three lines that are quoted in here as if they were direct quotation, and I certainly would like the opportunity to question Dr. Carter to find out if he indeed wrote down these words or if his memory is so entirely accurate that it's word for word, these 20 or 30 words.

It seemed to me that there may have been confusion between Dr. Carter and Mr. Piquette. Perhaps Dr. Carter said to him something like, "Let's restrict it to debates," and in his own mind differentiated between debates and question period, whereas in the mind of Mr. Piquette there may not have been a distinction. You know, it seems to me there's lots of opportunity there for a misunderstanding between the two hon. gentlemen, and perhaps Dr. Carter's recollection of exactly what he said is irrefutable. But I certainly in the interests of the reputations of both individuals think that either we should not accept this or that we should require that we have the opportunity to mesh their two memories of the event.

MR. GIBEAULT: Mr. Chairman, the Speaker in his letter talked about setting what he termed an unfortunate precedent, I believe. [interjection] An unusual precedent. I can't help but think that his action in ruling Mr. Piquette out of order was an unusual precedent in the history of this Chamber, and I, too, am having to support this motion because I think it's only proper that we have an opportunity to have a full discussion about the circumstances surrounding this particular question. I would speak strongly in favour of having the Speaker be here to face the questions and members of this committee.

MR. CHAIRMAN: Are you ready for the question?

HON. MEMBERS: Question.

MR. CHAIRMAN: All those in favour of the motion, please signify by raising your hands. Contrary? I declare the motion defeated. The letter of June 22 from Dr. Carter will become exhibit 14.

MR. GOGO: If I recall, Mr. Chairman, yesterday I believe Mr. Wright said that there shouldn't be an exhibit 14, or is that subject to confirmation?

MR. CHAIRMAN: I'm just getting the explanation here from the clerk.

MR. WRIGHT: What I said was that Mr. Maccagno's document was not accepted as an exhibit. Therefore, there was no exhibit 12, and everything shifted up a notch.

MR. CHAIRMAN: Okay. We have the hon. Mrs. Betkowski with us. I thank you for taking the time out to appear before the committee. I would ask our counsel to kindly swear in the minister, please.

MR. RITTER: As a member?

MR. CHAIRMAN: Oh, I beg your pardon. As a member, no. Pardon me; I apologize.

Has counsel any questions to direct?

MR. RITTER: No, Mr. Chairman.

MR. CHAIRMAN: Okay, I will turn it over to members of the committee then to raise questions.

MR. SIGURDSON: Mr. Chairman, did you advise her of . . . [inaudible]

MR. CHAIRMAN: Yes. I beg your pardon. I'm really falling down on my duties here. As we have advised other members when they give testimony before the committee, Mrs. Betkowski, we are reminding them of the fact that they were given an oath of office at the time they became a member of this Assembly, and as such that oath is binding upon you, obviously, throughout your term. We would merely ask you to confirm to us that you regard yourself as being bound by that oath of office as you give evidence before this committee.

MRS. BETKOWSKI: I do.

MR. CHAIRMAN: Thank you. I apologize, Mr. Sigurdson.

MR. HYLAND: Mr. Chairman, maybe, as others that have appeared before the committee, the minister has some opening remarks she'd wish to make first, before we . . .

MR. CHAIRMAN: Would you care to make a statement briefly to the members prior to the questions?

MRS. BETKOWSKI: Perhaps, Mr. Chairman, it would be useful if I were to give in my own words the events leading up to the question being put in the Assembly on April 7. I'll start by

the evening of April 6. As best I can recall, I was coming down the stairs outside of the Assembly from the third to the second floor and was about halfway down when Mr. Piquette caught up to me and said to me that he was planning on asking me a question tomorrow in the question period. I said, "Oh, fine," or something to that effect, thinking that he would identify the subject he would be asking me the question on. He didn't. As best I can recall, I then indicated that I might be a bit late getting into the question period on April 7. We then reached the bottom of the stairs and were starting to go our separate ways around the fountain, and in a jocular way, knowing how Mr. Piquette likes to speak French with me, I said, "Don't ask me the question in French, Leo." And he then said, as we were moving apart, "Oh, don't ask the question in French, eh." Then we went our separate ways and nothing further was said.

So in summary, I was certainly aware that Mr. Piquette would be asking me a question, but I was unaware of the subject matter or of the language in which he would be asking it.

In preparing since yesterday, when I heard that I would be asked to appear before the committee, I then recall returning to my office and discussing with Mr. Osbaldeston in my office and trying to surmise what the question might be. We concluded that it might be on a matter of the native education project which I had announced about a week previously, since Mr. Piquette was the native affairs critic.

I also recall walking into the Assembly on April 7, and I was late getting into question period because I was returning from Red Deer where I had spoken to the Alberta school business officials' conference at noon that day. I recall seeing Premier Peterson in the Speaker's gallery, and I sat down just as Mr. Piquette was rising to ask me the question. For the split second between the question being put and the Speaker intervening I remember thinking, "Oh, that's what he wanted to ask me the question about." And the rest is history.

MR. CHAIRMAN: Thank you very much, Mrs. Betkowski. Are there questions for Mrs. Betkowski from members? If not . . . Mr. Gogo.

MR. GOGO: Well, yeah. I'm just checking yesterday's record, Mr. Chairman, with questions that I put to hon. member Mr. Piquette. I would just make the statement -- and this was my question to Mr. Piquette: "Mrs. Betkowski was, you say, aware that you were going to put that question in French?" Answer, Mr. Piquette: "Yes." That would appear to be a very clear contradiction of what I've just heard. I don't want to put a question to Mrs. Betkowski; I am just now confused because we very clearly have a difference of opinion, of recollection, between the hon. minister and the hon. member.

MR. CHAIRMAN: Mr. Oldring.

MR. OLDRING: Thank you, Mr. Chairman. Mrs. Betkowski, yesterday when we heard from Mr. Piquette he was very vague and having a difficult time even recalling what date the conversation actually did occur on. Can you again confirm, for my benefit at least, what date and time the conversation did occur?

MRS. BETKOWSKI: It was the evening before the question was put in the Assembly; therefore, it was the evening of April 6.

MR. OLDRING: It definitely wasn't the 7th then? Because he couldn't recall if it was the 6th or the 7th.

MRS. BETKOWSKI: I know the date because I know when the question was put in the Assembly.

MR. FOX: Point of order, Mr. Chairman. If the hon. member for Red Deer South checks the record, Mr. Piquette's statement is: "I notified the Minister . . . of my intention on the evening of April 6." There was no doubt in his mind about that. I believe what he is recalling is Mr. Piquette's confusion about the date of his conversation with Mrs. Empson.

MR. CHAIRMAN: On this point, Mrs. Osterman?

MRS. OSTERMAN: Well, Mr. Chairman, I see the unequivocal statement made by Mr. Piquette in his opening comments, but in response to Mr. Gogo's words: "On the evening of April 6, I think you stated, you discussed down in the rotunda this question with the minister. Is that accurate?" Mr. Piquette: "I believe it was the 6th." This is after he made the unequivocal statement. He says:

> I believe it was the 6th. I know I did speak to her just previous; it could have been on the 5th, the day before, because there was a problem with one day there where we had questions delayed because of the fact of just trying to get into the House here in terms of our question period. So I believe it was either the 5th or the 6th.

MR. CHAIRMAN: Okay. Mr. Oldring, you have another supplementary left.

MR. OLDRING: That's fine, Mr. Chairman. I think Mrs. Osterman has clarified that point very well for me.

MR. CHAIRMAN: On my list I have Mr. Fox, followed by Mr. Speaker, and then Mrs. Osterman. [interjection] Oh, I'm sorry, Mr. Wright.

MR. FOX: Mrs. Betkowski, I'd like to try and follow the events as you recall them, because it seems that you do agree with Mr. Piquette on a couple of things: one, that it was indeed after the evening sitting on April 6 that you had this conversation. He describes it as a chance encounter and describes part of the conversation as having taken place down towards the rotunda where, I believe he calls it, the flower arrangement is. Do you remember: were you walking beside each other, and if you were, do you remember what side Mr. Piquette was on? Would you recall that?

MRS. BETKOWSKI: Yes, I do. We were, as I indicated, about halfway down the steps when Mr. Piquette caught up to me. I was on the left-hand side; he was on the right, facing the front doors of the Legislature Building.

MR. FOX: Are you aware that Mr. Piquette is deaf in one ear?

MRS. BETKOWSKI: You've told me that before, Mr. Fox.

MR. R. SPEAKER: Mr. Chairman, I was trying to go through the minutes of yesterday. Mr. Piquette mentioned a meeting that the minister was at and he was at, and there was a presentation, I believe, to the French-Canadian society or something; I'm not sure. I was trying to find it here in the minutes, but

can't. Could the minister recall that meeting, and was there any commitment at that time for Mr. Piquette to ask you a question in the Assembly with regards to French language education?

MRS. BETKOWSKI: I believe the occasion was the annual congress of the French-Canadian Association. It was their 60th anniversary in October of 1986. I don't remember the exact date. I spoke to that assembly in French. I made a speech in French, and Mr. Piquette was at the head table of the dinner that was part of the speech. As best I can recall, we had a conversation that evening about the issue of section 23 in the legislation of Alberta, and of course I had brought forward a Bill during the previous session with respect to the issue of section 23. I think the conversation may have gone along the lines of, "Well, I'll look forward to raising the issue with you in the Legislature," and I said, "I'll look forward to that as well," as I would with respect to any education issue by any MLA in this Assembly.

MR. R. SPEAKER: Mr. Chairman, to the minister. Could the minister indicate whether that conversation was a private one at the head table, or was that a conversation via the microphone to the assembled crowd?

MRS. BETKOWSKI: No. I gave a speech that evening, and Mr. Piquette also spoke publicly. I may not have been concentrating as hard as I should have been on the essence of his speech, but my recall of the conversation I've just recounted to you is one that he and I held as the meeting was breaking up.

MR. R. SPEAKER: Mr. Chairman, a final, just to clarify. The minister does not recall a public commitment between herself and Mr. Piquette at that meeting that this matter would be raised in the Legislature.

MRS. BETKOWSKI: Certainly -- and I haven't gone through the text of my speech that evening -- I spoke to the recognition of the province of the issue of section 23 in our School Act and spoke to the fact of Bill 31, which I had presented to the previous Assembly. I can't answer your question specifically, because I honestly do not recall a firm commitment that this matter would be raised, but certainly we discussed . . .

MR. R. SPEAKER: Privately

MRS. BETKOWSKI: Privately, and I spoke to the issue of section 23 during the speech. I'm certainly familiar with the issue, and it is one that has been before this Assembly before.

MR. CHAIRMAN: Mrs. Osterman, followed by Mr. Wright, and then Mr. Anderson.

MRS. OSTERMAN: My question has been answered. Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Wright, followed by Mr. Anderson, and then Mr. Fox.

MR. WRIGHT: Going back, Mrs. Betkowski, to this meeting of the association canadienne-française de l'Alberta, there was some conversation, apart from your mentioning it in your speech, about section 23, was there not?

MRS. BETKOWSKI: Yes, Mr. Piquette and I chatted briefly, as I recall.

MR. WRIGHT: And did he not say that you could expect to be asked a question or two about it in the Legislature?

MRS. BETKOWSKI: My recall is that it was, "The issue will come up probably in the Assembly," but certainly I don't recall, "I will ask you a question." I certainly did not connect that conversation in October of '86 with the conversation I've recounted to you that took place on the evening of April 6 in terms of identifying the subject of the question that would be asked on April 7.

MR. WRIGHT: On the subject of French in question period, was it not the case that at that meeting, presumably at the dinner -- I don't know -- you said that you looked forward to trying to field a question or two in French someday?

MRS. BETKOWSKI: I don't recall saying that, Mr. Wright. Certainly Mr. Piquette and I had spoken French on many occasions but outside of this Assembly.

MR. WRIGHT: In the course of that evening perhaps something along those lines did occur. Would you . . .

MRS. BETKOWSKI: It could have. I don't specifically recall it. The problem I'm having with your question is that before I was able to answer a question, the Speaker intervened, and I do not see what a question, as I said, between any two members of this Assembly outside of this House -- it does not and cannot change in my view the rules of this House.

MR. WRIGHT: I'm not arguing that, Mrs. Betkowski.

MRS. BETKOWSKI: That's my problem with your question.

MR. WRIGHT: Just a difference in recollection, that's all.

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

MR. ANDERSON: Yes, Mr. Chairman. My question really is further to those just asked by Mr. Wright and dealing with the recollection. Just so it's absolutely clear, does the minister recall at any point being told that a question would be asked of her in French in the Assembly on the day in question or any other day?

MRS. BETKOWSKI: Certainly not on the day in question, and I don't recall a commitment being made by me to respond in French in the Assembly during the question period.

MR. ANDERSON: At any other time?

MR. CHAIRMAN: Mr. Fox, followed by Mr. Horsman, and then Mr. Sigurdson.

MR. FOX: I'm wondering, Mrs. Betkowski, in the little over a year that you've been a minister in this Assembly, if you have ever considered the possibility of a question being put to you in French about the French language education section of the proposed School Act?

MRS. BETKOWSKI: Yes.

MR. FOX: So you've considered that possibility. Did it seem likely that a question of that sort would come from Mr. Piquette?

MRS. BETKOWSKI: I think it was probable that it could have, and I've certainly only thought about it subsequent to the events of April 7. Certainly not having anticipated at the time that the question was coming to me in French, I can only respond to you what I have thought of in hindsight. So yes, in answer to your question.

MR. FOX: Now I'm a little confused. I was wondering if you had ever considered in the year that you've been a minister of the Crown, the possibility that you may be asked a question about French language education in French. You said, "Yes," but then I think you said that that's only in thinking about it in the past. Are you saying then that you never considered prior to April 7 the possibility of being asked a question in French in this Assembly?

MRS. BETKOWSKI: Yes, I had, but as I wanted to make sure, I hadn't anticipated being asked on April 7 a question in French on the subject of French language education. I have thought about it, and I have thought about it subsequent to the events of April 7.

MR. FOX: Okay, in thinking about the possibility of being asked a question in French, was it your assumption that before that would ever take place, you would be duly notified and some arrangements would be made through the Speaker?

MRS. BETKOWSKI: I didn't think about that, frankly.

MR. FOX: So you didn't have any conversations with Speaker Carter about what would or would not be required in terms of the use of French in this Assembly?

MRS. BETKOWSKI: No.

MR. HORSMAN: Just to be perfectly clear. The conversation that you had with Mr. Piquette on the evening of April 6: was that conversation in English or French?

MRS. BETKOWSKI: It was in English.

MR. HORSMAN: English. So then your recollection was that you said something to the effect to Mr. Piquette, "Don't ask the question in French, Leo," and he replied, "Don't ask the question in French, eh," which would confirm to you that he heard your remark and that he understood what you had said. Is that correct?

MRS. BETKOWSKI: Yes.

MR. HORSMAN: So despite the fact that he may be hard of hearing, you had no doubt in your mind that he understood you and heard you?

MRS. BETKOWSKI: Yes.

MR. HORSMAN: Thank you.

MR. CHAIRMAN: Mr. Sigurdson, followed by Mr. Wright, and then Mr. Fox.

MR. SIGURDSON: Thank you, Mr. Chairman. Mrs. Betkowski, on the evening of April 6 when you were walking down the staircase, you said that you got about halfway down when Mr. Piquette caught up with you and that he at that point advised that he'd be asking you questions. Was there any other conversation on the way down with Mr. Piquette?

MRS. BETKOWSKI: In my opening remarks, Mr. Sigurdson, I outlined the events, as best I recall them, between my conversation with Mr. Piquette on the evening of April 6 and Mr. Piquette rising to put his question on April 7. As I indicated, we were coming down the stairs, and when he caught up to me he said, "I'm planning to ask you a question tomorrow in question period." And I said, "Oh, fine," as I indicated, and then came back with -- thinking that there may be an indication of what the subject matter would be . . . That didn't come. Then as best I can recall, as I indicated in my opening remarks, I said that I might be a bit late for question period tomorrow because I knew I had to give a speech in Red Deer.

MR. SIGURDSON: So your statement that you might be a wee bit late was at some point midstair? I'm trying to find out what conversation took place from the time that Mr. Piquette caught up with you and the time you got to the rotunda. The way that I walk -- perhaps I walk a little more leisurely -- I would find a number of topics of conversation to have with an individual on the way down by the time I got from the midpoint of the staircase to the rotunda, yet there seems to be this great gap in time.

MRS. BETKOWSKI: Well, as I indicated, I was, as I best recall, about halfway down, and knowing I was to appear before this committee today, I have gone over in my own mind as best I could every single part of the conversation that I could recall. There are some that I recall very clearly, and the portion about the conversation about my perhaps being late coming into the Assembly is my best recall of what occurred as we were walking down the stairs.

MR. SIGURDSON: Thank you.

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

MR. WRIGHT: Yes. Can you remember on any occasion explaining to Mr. Piquette that you're a bit shaky answering questions or speaking spontaneously; you're much better with a text in French: along those lines?

MRS. BETKOWSKI: I think Mr. Piquette and I have certainly discussed my trepidation in an interview kind of situation with French. Yes.

MR. WRIGHT: Can you remember anything along those lines on the evening of the 6th in which you said that you were a little leery of questions?

MRS. BETKOWSKI: No, sir. My only recall on the evening of April 6 with respect to French specifically was my saying to Mr. Piquette in the jocular way, because he and I have spoken French, and I certainly know that my French is not of the fluency that his is -- it was in that context and only that context

that I said, "Don't ask me the question in French, Leo," and he responded as I've indicated.

MR. WRIGHT: Has Mr. Piquette ever suggested to you that he would deal with any other question in the question period than section 23, which you had talked about earlier?

MRS. BETKOWSKI: I don't understand your question.

MR. WRIGHT: No. At the annual dinner or whatever it was you had talked about section 23 and the fact that it might be an issue in the House sometime. Has he ever suggested to you that he would ask a question on any other topic?

MRS. BETKOWSKI: We've discussed other topics that affect his constituency and his role as native affairs critic, and certainly he has asked questions other than questions affecting section 23 of me.

MR. WRIGHT: My last question, Mr. Chairman, is: did Mr. Piquette on any other occasion notify you of an intention to ask a question on the following day?

MRS. BETKOWSKI: I don't recall. I believe so, and I can't remember the subject matter, although I don't think it was section 23. I honestly don't remember this verbatim. There may have been a question with respect to native education policy that he indicated he'd be asking me, but I would have to check through the questions which he has raised with me since I became a member.

MR. FOX: I'm wondering if in your thoughts about the possibility of a question being asked to you in French in the Assembly, would you feel it incumbent upon you to respond in French, or would you feel comfortable answering a question asked in French in English?

MRS. BETKOWSKI: I assume by asking that that you are saying that the events occurred and the Speaker did not intervene; I was left with a French question being put to me in the Assembly, and the Speaker not having intervened, what would I have done? Is that the question you're asking?

MR. FOX: Not specifically. I'm just wondering -- I guess what's in my mind is that you're a proud and competent person with some background in French and that you would likely feel obliged or want to do your very best to respond in French to a question asked of you in French. Is that a fair statement?

MRS. BETKOWSKI: I would have to put the caveat, given the situation, that if the Speaker permitted me or didn't intervene, I might consider answering a question in French. But I cannot look at the question without thinking of the Speaker not intervening, and if that's the question you're asking, perhaps I can respond.

MR. FOX: I'm meaning just in a more general way your desire to respond or to do your best to respond in French.

The other two questions I want to ask: when you said to Mr. Piquette, "But not in French, Leo," or something like that, did you mean that as a serious request to him, indicating that you would feel betrayed if he asked the question in French, or was this an expression of your perhaps not total confidence in your ability to respond in French to whatever question he may ask in French?

MRS. BETKOWSKI: Well, I already indicated that it was in a jocular way, but it would be for the latter reason that you've just described.

MR. FOX: Okay, that's good. Because it's obvious from your recollection of Mr. Piquette's response to you that he took it that way when he repeated your statement and added "eh" afterwards. It's obvious to me from that that he didn't consider it a serious request that he ought to honour but that it was more an offhand sort of statement that you were making to him. Is that the way he interpreted that remark?

MRS. BETKOWSKI: I can't measure how Mr. Piquette interpreted the remark. I can only recall for you what I said and why I said it.

MR. CHAIRMAN: Mr. Russell.

MR. RUSSELL: Mr. Chairman, I'm just trying to clarify what the member who gave evidence yesterday felt he was doing by way of this casual comment going down the stairs after the House adjourned in the evening, and I'm saying it against the basis of how many times members or ministers are encountered in the stairwell, in the hall by any number of people. We heard from the House leader and from the witness yesterday that this was to be a designated, major question and the reasons for handling it that way.

I want to find out from the member, in her role the past year as Minister of Education, what she regards as proper notice or courteous notice from a member from either side of the House who wishes to give her advance notice of a question in some subsequent question period. Do members phone your office? Do they write you a note? Do they casually discuss it in the stairs? How do you receive notice of questions?

MRS. BETKOWSKI: Well, first of all, it may be my inexperience in the Assembly, but I don't expect to receive notice of questions. I have received notice in all of the ways that you outlined. I don't know if I can define what I would see as clear notice. Frankly, I'm surprised, as a new member of this Assembly, when someone will say they're going to ask me a question.

MR. RUSSELL: Well, I can only guess that the reason you would be given notice -- and I've had it happen to me -- is so that you can prepare an adequate answer, because the member has some reason for wanting to get that question and answer on record. Is it correct that you're saying you were satisfied then that Mr. Piquette had given you adequate notice that he was going to ask you a question the next day?

MRS. BETKOWSKI: That's a very different question than the first one you asked me. As I indicated, Mr. Piquette certainly told me he would ask me a question the next day, but he did not indicate the subject matter nor the language in which he would ask the question.

MR. FOX: Perhaps in asking this question, just an opportunity to correct the record here. Mr. Russell said in his opening query to the hon. minister that Mr. Piquette and the House leader, who

gave testimony yesterday, obviously knew that this was going to be a designated major question, and he related that to the conversation the member had with the minister on the evening of April 6. The decision to designate that as second question from the Leader of the Official Opposition was not made until our 8:30 or 9 o'clock meeting the morning of April 7, and Mr. Piquette was not notified of the status of that question until our 1 o'clock meeting. I think he put that on the record yesterday. So I just wanted a chance to make sure that information is correct.

MR. CHAIRMAN: Mr. Wright.

MR. WRIGHT: Yes. Did you read the transcript of Mr. Piquette's testimony yesterday?

MRS. BETKOWSKI: I read it as best I could from the copy I had, which was quite blurry.

MR. WRIGHT: Well, you're satisfied you were able to read what he said though?

MRS. BETKOWSKI: Yes.

MR. WRIGHT: Thank you.

MR. CHAIRMAN: If there are no other questions from members, I would just like to extend to you, Madam Minister, the thanks of the committee for taking the time out to appear before the committee and give your evidence today.

Miss South, thank you very much for attending before our committee today on very short notice. I'm going to ask counsel, when he reappears, to swear you in as a witness, and then we would ask you if you wish to make a brief statement with respect to the subject matter of the evidence that you are to give to the committee. Following that, I will ask members of the committee if they have any questions to direct your way.

[Miss South was sworn in]

MR. CHAIRMAN: Miss South, would you like to make a statement to the committee members at this time?

MISS SOUTH: Perhaps I'll just state my recollection of Mr. Piquette's visit to our office. I don't remember whether it was April 6 or April 7; he did come into our office. He spoke very briefly to Louise Empson, whose desk was at that time up at the front end of the office. I was sitting towards the back. I looked up and he looked at me and he said something to me to the effect: get ready for French, or be ready for French. That was the total extent of his comments to our staff.

MR. CHAIRMAN: Counsel, do you have any questions for the witness?

MR. RITTER: No, Mr. Chairman. I'll leave it to the members.

MRS. OSTERMAN: Well, Mr. Chairman, I am taking for granted that *Hansard* from yesterday was perused by staff.

MISS SOUTH: I did hear most of the comments yesterday afternoon, and I did have an opportunity to read the draft transcript this morning.

MRS. OSTERMAN: Mr. Chairman, again going back to Mr. Piquette's comments, in his statement -- not in response to questions, but his statement ahead of time, which I believe would be well thought out in terms of preparation for this committee -- he says:

> I notified Karen South and Louise Empson in the Clerk's office of my plans and asked them to pass the word onto the staff. This I did in compliance with the Speaker's previous request.

I just want to make sure that we have heard all there is about Miss South's recollection of the conversation in terms of -- there was no mention of compliance with a request or anything of that nature?

MISS SOUTH: No, he did not say that, and there was no instruction to pass that on to the Speaker.

MRS. OSTERMAN: Thank you.

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

MR. GOGO: Thank you, Mr. Chairman. Miss South, you stated that it was either April 6 or 7. Would you recall the approximate time of day, be it 1:30, 2 o'clock?

MISS SOUTH: I believe it was after 2 o'clock, and it would have been probably before 25 after 2 because that's when we usually leave to go over to the Speaker's office.

MR. GOGO: Thank you. I'm trying to recall of the times, Miss South, I've been in your office after 2 o'clock. Is it hectic always at 2 o'clock? My recollection is that it is, but perhaps you could confirm what goes on in the office next door after 2 o'clock.

MISS SOUTH: That is usually the time when we are getting changed and getting ready for the House. If members have Bills they want to introduce, we're quite often making sure that the copies are in the House and making sure that the books for the day are out. Just a final getting ready for the day's proceedings.

MR. GOGO: But it's never so hectic, Miss South, that if a member had a special request about giving directions or instructions to staff, you'd certainly remember that. Is that correct?

MISS SOUTH: I very definitely would remember it, and we would have carried out those instructions.

MR. WRIGHT: Had the Speaker notified you of any rules for the reception of French?

MISS SOUTH: No.

MR. WRIGHT: And did you in fact notify *Hansard*?

MISS SOUTH: I was not told to notify *Hansard*, and I wouldn't have thought to notify *Hansard*.

MR. WRIGHT: But you don't know whether Louise notified *Hansard*.

MISS SOUTH: I expect Louise will be able to answer that when she comes.

MR. FOX: I'm just reading Mr. Piquette's statement yesterday, and it seems to corroborate almost identically your recollection of the conversation. I'm wondering . . . I could read a few of his statements, and you can tell me if you disagree with them. He said:

> I notified Karen South and Louise Empson in the Clerk's office of my plans and asked them to pass the word on to the staff.

Now, you're saying he didn't specifically ask you to pass that on to the staff, but he did say, "Get ready for French" or "Be ready for French." So it was implied in his statement. Would you agree with that?

MISS SOUTH: It was implied. It certainly wasn't stated that he would be speaking French at any particular time in the next day. On April 6 he did give us notice of a private member's motion dealing with French and English language in schools, and I think in my mind I was thinking that he would be speaking French with respect to that motion.

MR. FOX: Okay. Then he did say:

> Yes, I considered both Karen and Louise part of his staff.

"His" is referring to Mr. Speaker Carter.

> So when I indicated to them that I was proposing -- I wasn't sure when I made that conversation exactly what date or what day the actual question would be coming up . . .

But he considered you both a part of the Speaker's staff, and he said:

> There was no feedback to me that there was any problem, so I assumed either the message had been carried through or, simply, there's no problem.

MISS SOUTH: There was no instruction or any suggestion that we should be passing that information on to anyone else.

MR. FOX: Okay. Then Leo's recollection in response to Mr. Horsman about whether or not you were indeed in the office:

> I believe they both were. I know I spoke very definitely to Louise Empson. I believe Karen was sitting up from there. Whether she overheard the conversation [or not], but both were in my presence when I made the statement.

Is that . . .

MISS SOUTH: I think he may have said an initial statement to Louise. I didn't hear what he said to her then.

MR. FOX: But you were in the office.

MISS SOUTH: I was in the office, yes.

MR. FOX: He says he's not sure whether you overheard the conversation.

MR. HORSMAN: Following this very brief conversation that you recollect, did you take any steps to notify anyone, either the Speaker or *Hansard* or anyone else, to be ready to deal with French language to be used by Mr. Piquette in the Assembly either that day or the following day?

MISS SOUTH: I believe I'd mentioned it very briefly, very casually on the way into the House to the Speaker, that Mr. Piquette had been in the office and that he had said something. But I was completely confused as to what he was talking about, so I was not able to give the Speaker any kind of detail.

MR. HORSMAN: Thank you.

MR. GIBEAULT: Miss South, you are in fact a member of the Speaker's staff I take it?

MISS SOUTH: Yes.

MR. GIBEAULT: You take your directions from him fairly directly, do you? Or is there anybody else that is an intermediary between you and the Speaker?

MISS SOUTH: I do take instructions directly from him on occasion, yes.

MR. GIBEAULT: Would he be the person you're directly responsible to?

MISS SOUTH: In my role as Acting Clerk I was, yes. Now that we have a Clerk appointed, I would be directly responsible to the Clerk.

MR. GIBEAULT: Would you then, in the normal course of your responsibilities, have occasion to pass along items of concern to the Speaker that you thought maybe should be brought to his attention? Have you done that in the past on other issues?

MISS SOUTH: Yes.

MR. GIBEAULT: I have one more question . . .

MR. CHAIRMAN: Can I just come right back to you then? Mr. Fox is the only other one on my list. Just so we keep our rules straight. Mr. Wright after Mr. Gibeault.

MR. FOX: I'm wondering: do members normally notify you or anyone else in the Clerk's office there about their intention to ask questions on a particular day?

MISS SOUTH: No.

MR. FOX: So it's not a common practice, but Mr. Piquette did this. Did it strike you as somewhat unusual?

MISS SOUTH: He did not indicate that he would be asking a question. He said something about French, but not necessarily that he would be speaking French or that it would be in the Assembly or on any particular matter.

MR. FOX: Okay, but it was a somewhat unusual occurrence for him to come and say that and to anticipate some event in the Legislature?

MISS SOUTH: Yes. The only type of thing that we would get normally an advance notice of would be something like privilege or a point of order or a request under Standing Order 40, the urgent debate.

MR. FOX: So this somewhat out-of-the-ordinary occurrence did surprise you somewhat. We've heard from the Minister of

Education that she's not commonly notified, especially by members of the opposition, about being asked questions in question period.

So here we have a case of an hon. member making an attempt to notify the Clerk's office of something happening in the Assembly the following day as well as notifying the minister of an event happening the following day, perhaps not as specifically as it might have been but nonetheless there was an effort made to notify people in advance. Did you at all consider the possibility that he may have been complying with a request made to him by the Speaker, or you just didn't know what to make of it?

MISS SOUTH: It wouldn't have occurred to me that he was complying with a request, because I was not aware of that request.

MR. GIBEAULT: Miss South, since the circumstances surrounding Mr. Piquette's question and the Speaker's ruling and so on, have you had any discussions with the Speaker or other members of his staff regarding arrangements for use of French language in the Assembly?

MISS SOUTH: No, I haven't.

MR. GIBEAULT: Do you feel that there's any need for that kind of discussion in your capacity?

MISS SOUTH: No.

MR. GIBEAULT: The procedures are clear.

MISS SOUTH: If this committee decides on a procedure, then I would think that our staff would need to be aware of that procedure, yes.

MR. WRIGHT: You said on your way in you mentioned this to the Speaker. Where was it you mentioned it?

MISS SOUTH: In the procession.

MR. WRIGHT: And what did you say?

MISS SOUTH: That Mr. Piquette had been in, and that he had made some mention of French.

I'm trying to recall exactly what I was thinking of when he said it, and I quite honestly think in my mind that it was his intention to have an urgent debate on the motion that he'd given us notice of on April 6.

MR. FOX: We're given to understand from rulings made in this Assembly that the use of French is not permitted in question period but that it is permitted with certain provisos during debates. That's what I've heard from various rulings that have been made in this Assembly. Yet, if I understand you correctly in response to Mr. Gibeault and others, you're saying that as Acting Clerk you were not made aware of any rules or regulations regarding the use of French in the Assembly or arrangements made between the Speaker and certain members or amongst House leaders. Is that correct?

MISS SOUTH: No. If he had requested Mr. Piquette to do that last year, I would think he may have told the former Clerk about that. That certainly was not passed on to me.

MR. FOX: Okay. So as Clerk you're not aware of any arrangement. You had not been instructed by Mr. Speaker Carter of any arrangements made between him and other members or amongst House leaders regarding the differentiation between the use of French in question period and the use of French in debates.

MISS SOUTH: No.

MR. FOX: If this is being cited as a rule or a standard practice in this Assembly over a period of years, does it not strike you as unusual that the Acting Clerk would not be made aware of this?

MISS SOUTH: Speaker Carter may have told that to the former Clerk and assumed that the former Clerk had passed it on to his Table officers as well.

MR. FOX: Thank you.

MR. MUSGREAVE: Miss South, I want to just clarify something, and I'd like to quote from a question Mr. Horsman asked yesterday. He said to Mr. Piquette:

> Am I correct in that you had said in your opening statement that you had contacted Karen South and Louise Empson in the office of the Clerk to tell them that you were proposing to ask a question in French on the following day, and they were then to advise Mr. Speaker Carter of that intention, and that was your understanding as to the procedure you believed had been discussed with Dr. Carter in the previous year?

Mr. Piquette answered:

> Yes, I considered both Karen and Louise part of his staff. So when I indicated to them that I was proposing -- I wasn't sure when I made that conversation exactly what date or what day the actual question would be coming up, because again in question period, as an opposition MLA you don't always get your chance to ask your questions . . .

Do you not gather from that, Miss South, that he was going to ask a question?

MISS SOUTH: From that part of the transcript, that's what it sounds like, yes.

MR. MUSGREAVE: But he didn't tell you that he was going to ask a question? He just said, "Be prepared to hear something in French." Is that what you're saying?

MISS SOUTH: That's what I recall him saying.

MR. CHAIRMAN: Mr. Oldring.

MR. OLDRING: Thank you. I wonder if you can just go over one more time for me. I'm trying to think of what it would mean to me if somebody happened to strut past my office and pop their head in and say, "Get ready for French." Is that basically what happened, and what did that really mean to you at the time?

MISS SOUTH: That would be basically what happened. He may not have used those exact words, but they were words very

similar to it. As I said, in my own mind I believe I related it to the motion that he had brought to our office on April 6.

MR. OLDRING: And what was that motion in reference to?

MISS SOUTH: French- and English-language education rights.

MR. OLDRING: Thank you.

MR. CHAIRMAN: Are there any other questions for Miss South? If not, I want to extend to you, Miss South, on behalf of all members of the committee, our thanks for appearing here today and giving your evidence.

Thank you, Mrs. Empson, for appearing before us today. What we will do is: first of all, I will ask the counsel to swear you in as a witness, and then we will give you the opportunity of making a brief statement to the members of the committee with respect to your recollection on those matters that pertain to the evidence that you are to give, and then I will ask counsel if he has any questions for you. Following that, we will open it up for questions from the members to you. So I will ask counsel to kindly swear you in.

[Mrs. Empson was sworn in]

MR. CHAIRMAN: Mrs. Empson, do you wish to make a statement to the members?

MRS. EMPSON: Yes. Perhaps I could start with my recollection of April 6, I believe it was, when Mr. Piquette came by room 313, which is our office, and said something to the effect -- and I don't have the exact words -- "Are you ready for French?" I'm sure my answer was something like, "Yes, I am." We might have had some general chitchat conversation, but it was very, very short; it was a very brief visit, and that was it. Mr. Piquette left, and that's the extent of my recollection.

MR. CHAIRMAN: Counsel, do you have any questions for the witness?

MR. RITTER: No, Mr. Chairman.

MR. WRIGHT: In the brief chitchat might he have mentioned something about making sure *Hansard* knew?

MRS. EMPSON: No, not at all.

MR. WRIGHT: You're quite clear that that was so?

MRS. EMPSON: Yes. Something like that we would have looked after. We would have certainly notified *Hansard*.

MR. WRIGHT: Did it occur to you that perhaps he was alerting you to that possibility?

MRS. EMPSON: No.

MR. WRIGHT: Were you formerly with *Hansard*?

MRS. EMPSON: No, I never have been.

MR. WRIGHT: They just resort to you as a resource person sometimes.

MRS. EMPSON: That's right. It's just convenient that I do speak French and can read and write French.

MR. FOX: Just a point of order first, Mr. Chairman. I hope that someone will correct the spelling of Louise's last name in the Hansard before it's printed. As well, Mr. Maccagno's name is spelled a number of different ways, all of them wrong, and I'm hoping that it gets corrected somewhere.

MR. CHAIRMAN: In the final copy.

MR. FOX: Okay, good.

I'm wondering: you have provided translation services when French has been used in the past for *Hansard*. Have you acted in that capacity?

MRS. EMPSON: *Hansard* would have already had it typed in French. I would do the spelling check, and I would also put the accents on the Es and the Cs. That was my role with *Hansard* in proofreading, if you want to call it that, the French text of any French spoken in the House.

MR. FOX: So you have provided that service in the past for *Hansard* and for members who have spoken in French, much the same way as Mr. Stefaniuk helped me when I spoke in Ukrainian and *Hansard* didn't have it quite right. Is that . . .

MRS. EMPSON: That's correct.

MR. FOX: Have you ever been notified by Mr. Speaker Carter about any stipulations or restrictions on the use of French in this Assembly?

MRS. EMPSON: No, I haven't.

MR. FOX: Did you wonder why Mr. Piquette would be saying this to you? I mean, did it clearly indicate to you that he would be using French in the Assembly in the next day or two, or you just weren't sure at all why he would be saying this to you?

MRS. EMPSON: Since finding out that Mr. Piquette did speak French since his election, on a number of occasions -- maybe two or three or four -- we've had short conversations in a casual way, mostly in French, to more or less practice the French, because you do tend to lose it if you don't speak it over a period of time. When he came into the office that day, I just thought it was another casual, friendly visit. We have a number of MLAs from all parties that drop in to room 313 just prior to session. We have a jujube jar, and it attracts a number of people and we like to see them. And when Mr. Piquette came that day, I thought it was another casual visit, and he was again making general, friendly chitchat.

MR. FOX: You didn't infer from anything he said to you that he may be using French again in the near future in the Assembly?

MRS. EMPSON: I assumed he would be speaking French in the near future. I did not know when he would do so.

MR. CHAIRMAN: Sorry, Mr. Fox. We'll come back to you.

MR. HYLAND: Mrs. Empson, on that day that Mr. Piquette

came into the Assembly, did he speak any French to you, or was the conversation in English?

MRS. EMPSON: It was in English. I don't recall any French, but it's quite a while ago, and I didn't attach any importance to it, so I don't really recall clearly. We also have a tendency to speak English when other people that are present are English.

MR. MUSGREAVE: Mrs. Empson, I want to quote a question that the Attorney General asked yesterday of Mr. Piquette and Mr. Piquette's answer before I ask you my question. Mr. Horsman said:

> Am I correct in that you had said in your opening statement that you had contacted Karen South and Louise Empson in the office of the Clerk to tell them that you were proposing to ask a question in French on the following day, and that they were then to advise Mr. Speaker Carter of that intention, and that was your understanding, as to the procedure, that you had believed had been discussed with Dr. Carter in the previous year?

Mr. Piquette's answer was:

> Yes, I considered both Karen and Louise part of his staff. So when I indicated to them that I was proposing -- I wasn't sure when I made that conversation exactly what date or what day the actual question would be coming up, because again in question period, as an opposition MLA you don't always get your chance to ask your questions on the day that you propose to ask them. So I made them aware of this. There was no feedback to me that there was any problem, so I assumed either the message had been carried through or, simply, there's no problem. So that's basically what transpired there.

Do you not get from that conversation between the Attorney General and Mr. Piquette that he had indicated to you he was going to ask a question in French?

MRS. EMPSON: From the transcripts of yesterday, that's what I gather. But the day that Mr. Piquette came by room 313, there was no indication of what was said yesterday.

MR. MUSGREAVE: Thank you.

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

MR. FOX: Well, we could follow up on that perhaps. Now, Mr. Piquette's statement is fairly clear, that he considers you and Karen to be a part of the Speaker's staff. He said he wasn't sure about the conversation, but he indicated to you that he was proposing, and then he didn't finish that.

But in fairness, in response to Mr. Horsman's several questions -- he asked several questions of Mr. Piquette -- he responded with a general "yes." I'm sure Mr. Horsman recalls yesterday when he asked Mr. Piquette a question, and it was apparent that the question was misunderstood -- again referring back to an obvious hearing impairment.

Do you really see any contradiction between not what Mr. Horsman asked Mr. Piquette but Mr. Piquette's statements about his conversation with you and your recollection of it, when he says,

> I believe they both were [there]. I spoke . . . definitely to Louise Empson. I believe Karen was sitting up from there. Whether she overheard . . .

or not, I don't know. He indicated to them "that I was proposing" although he doesn't finish that. And he says,

> I notified Karen [South] and Louise [Empson] in the Clerk's office of my plans and asked them to pass the word on to the staff.

Now, do you see a definite contradiction between what Mr. Piquette has told us about that day and about what you remember about that day?

MRS. EMPSON: Yes, because Mr. Piquette did not ask myself or anybody else to pass it on to anybody else.

MR. FOX: Could that have been an assumption on his part, given that he says he considers both of you a part of the Speaker's staff, and he said, "Get ready for French" or "Be ready for French"?

MRS. EMPSON: It could have been. I'm not sure what he had in mind.

MR. FOX: Okay. Now, I'm wondering: what was your role? You're a Table officer here. Could you tell me what your role was in the absence of a Clerk? We had an Acting Clerk. Were you the the Acting Clerk Assistant?

MRS. EMPSON: No. I was the Acting Assistant Table Clerk, and during question period I would keep a record of the question period, the length of the questions, who asked them, and who answered.

MR. WRIGHT: Was there any other occasion on which Mr. Piquette came in and said that there might be or would be a question coming up in French?

MRS. EMPSON: Not that I recall.

MR. WRIGHT: Thank you.

MRS. OSTERMAN: Mr. Chairman, in reading Hansard from yesterday, various members have been asking questions, and I appreciate our witnesses' answers. It is somewhat difficult because we have several versions from the hon. member yesterday in respect of the event in question, and if you rely on what I would have believed again to have been a well thought out statement made by the hon. member, as opposed to possibly his responses to various questions put to him subsequent to that statement, again I want to refresh our witness' memory, though I understand they heard part of the proceedings yesterday via a speaker that goes throughout various -- not only at the back -- offices. Again in his statement, which, as I said, I would believe to be reasonably well thought out, Mr. Piquette says:

> I thought it would be appropriate on this day to use the occasion to question the minister in both French and English. On April 6, the day before I attempted to ask my question, I notified Karen South and Louise Empson in the Clerk's office of my plans and asked them to pass the word on to the staff. This I did in compliance with the Speaker's previous request.

It is fair to say that your response to that statement would be that that is not at all your version of any of the events that transpired.

MRS. EMPSON: That's correct.

MR. HORSMAN: Just to be clear, I don't want to repeat ques-

tions; you made your position very clear. Following this very brief conversation, what action did you take relative to his comment?

MRS. EMPSON: I didn't take any action, because I had not taken it as an indication that he would be speaking French either that day or the next day. In my mind it was a casual conversation that he would be speaking French sometime during the session.

MR. HORSMAN: Did you have any conversation with Mr. Speaker Carter relative to that particular event prior to April 7 when the question was posed in French?

MRS. EMPSON: No, I didn't.

MR. HORSMAN: Thank you.

MR. FOX: How long have you worked in the Clerk's office?

MRS. EMPSON: Since February 1983.

MR. FOX: Are you aware of any rules that exist in this Assembly regarding the use of French, be it in question period or other proceedings?

MRS EMPSON: No, I'm not.

MR. FOX: Not aware of any rulings. Does it strike you unusual that we would be told on April 7 and days subsequent that it is not the practice of this Assembly to allow French in question period and that a member wishing to speak French should notify people in advance and all these other things? You're not aware of any arrangements like that or rules like that? It's not in *Beauchesne*; it's not in Standing Orders; we haven't accepted temporary Standing Orders. Does it strike you unusual -- and I'm asking for your opinion on this -- that there would be such a rule to be applied here without your ever having heard of it or being aware of it?

MRS. EMPSON: My feeling is that because the majority of members do not speak French or understand French, if a member were to rise and speak the French language, there would have to be some provision made for the other members to understand what is being discussed, what is being asked or debated. I would feel that way if, for instance, Ukrainian were spoken. I don't understand it, and I would like, to keep track of what's going on, to have Ukrainian translated. So the same would happen with French.

MR. FOX: You're giving us an opinion of what you think ought to happen. What I'm asking you is: do you think it unusual in the absence of temporary Standing Orders, Standing Orders, *Beauchesne*, or any reference or your knowledge of any arrangements between House leaders or Mr. Speaker Carter and any members that we could suddenly be made aware of rules and traditions that have existed in this House that French not be used in the question period?

MRS. EMPSON: Since I've been here, every since 1983, there hasn't been any French used other than possible introduction of guests. So the occurrence had never happened. So the difficulty, the problem, never arose. So I'm not aware of any and I don't find it unusual, but then again I've never had to deal with it. It's never been presented.

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

MR. GOGO: Thank you, Mr. Chairman. Mrs. Empson, I just wanted to clarify that you are not a member of the *Hansard* staff, and your duties do not allow you the time to do *Hansard* work. Is that correct?

MRS. EMPSON: That's correct.

MR. GOGO: Then when you do act in some capacity, as you stated earlier -- for example, the accents on words and so on -- it would only be on the basis of: you would be asked, and secondly, it would be a volunteer function or a favour to *Hansard*. Is that correct?

MRS. EMPSON: That's correct.

MR. GOGO: Thank you, Mr. Chairman.

MR. MUSGREAVE: I just wanted to clarify another point. Mrs. Osterman had raised a question yesterday, Mrs. Empson. When she spoke to Mr. Piquette, she said:

> Well, I understand Mr. Piquette, through the Chairman, that you advised staff of Speaker Carter's that you were going to ask questions, and I further understood you to say that you gave no date. I don't understand how there could be people available if you thought you were fulfilling a condition.

His reply was, and this is where I want to ask the question:

> I recall the conversation. I said I might be able to get in today or tomorrow, and that was the gist. What I basically tried to do with that was to make sure that if there was any problem, that since Dr. Carter's staff was advised of it, then somebody would be getting back to me, either prior to the question period or whatever.

So that partial response of Mr. Piquette would indicate to you, would it not, that he had indicated to you that he was going to ask a question in the House?

MRS. EMPSON: I can't recall that he said it was a question, just that he would be speaking French in the House, and I had no idea of when he would be doing so.

MR. MUSGREAVE: Thank you.

MR. HYLAND: Mr. Chairman, Mrs. Empson, I wonder if you could outline for us when you became the Clerk Assistant, what your duties were previous to that time, and if you worked with *Beauchesne* or any of the other rules related to the operation of the Legislature.

MRS. EMPSON: My work prior to that was strictly with committees and some House procedures as it relates to committees. So it was very limited use of *Beauchesne* and Standing Orders.

MR. HYLAND: And when did you become the position at the Table?

MRS. EMPSON: When session started at the beginning of March.

MR. HYLAND: Of this year.

MRS. EMPSON: This year, yes.

MR. CHAIRMAN: Are there any other questions of this witness from members? If not, on behalf of all members of the committee I would like to extend to you, Mrs. Empson, our thanks for appearing before us today.

Members of the committee, the next item on the agenda is the committee counsel summation. I'm advised by counsel that he anticipates that that would take 45 to 50 minutes, and so we might very well come out at our planned adjournment hour. I would suggest, however, that we might have perhaps a five-minute break at this point in time and then resume.

MR. WRIGHT: I just noticed that it says "Summation and Evidence." Is that a misprint?

MR. CHAIRMAN: Well, I think perhaps "Summation of the Evidence" would have been more correct, Mr. Wright. What we would plan to do is that after the summation, and presumably when we reconvene, if there are any questions to counsel for clarification or any other matters that come out of the summation, then we'll open it up to members of the committee at that time. We will reconvene then at 8 minutes after the hour. [interjection] Boy, do I ever need a five-minute break -- 13 minutes after the hour.

[The committee recessed from 11:08 a.m. till 11:17 a.m.]

MR. CHAIRMAN: Would the committee please come to order. Item 3 on our agenda is the committee counsel summation. Counsel advises me, as I indicated to you before, that he anticipates about 45 minutes. He has copies of his submission; those are almost completed for distribution, and they will be distributed to you in the course of his summation.

Counsel? Sorry.

MR. WRIGHT: When you say "his submission," do you mean a copy of what he is about to give us?

MR. CHAIRMAN: Yes.

MR. WRIGHT: So we don't need to make notes?

MR. CHAIRMAN: That's right.

MR. RITTER: Thank you, Mr. Chairman. Before I go on with my final summation -- on a point that Mr. Wright asked me at our second-last meeting to confirm the Journals of the North-West Territories Assembly, I have received information from the library, and I'll read it into the record, Mr. Chairman, with your permission. The Journals of the North-West Territories Assembly were printed in French and English in the following years: 1884-1889, 1892 and '93, and part of 1895. They were published in English only in 1890-91, 1894; some parts of 1895 were in French and English and other parts were in English only. So I trust that answers Mr. Wright's question.

Mr. Chairman, before I start on my summation, I would just like to advise that I have addressed several matters which were presented to us earlier at these committee hearings, and before I actually get on to the summation of the evidence of various witnesses, I have dealt with some aspects raised in the Speaker's ruling. I do apologize if it gets a little theoretical at times. I've tried to keep it as clear as possible, but it is just a very short introductory part to my summation, and I'll get on with the witnesses' evidence immediately.

Mr. Chairman, at the beginning of this committee's hearings on the French-language issue, it was decided that I should be accepted as counsel to the committee. My duties were to include attendance at each meeting of the committee, cross-examination of each witness the committee called forward to give evidence, and lastly, the delivery of a summation to the committee, taking into account evidence presented before it and providing the committee with my own analysis and expertise on specific points of law.

It is this last obligation which causes me the greatest concern, because of the very nature of the problem before this committee. Some committee members know that I have worked in other parliaments elsewhere, and I've had the pleasure of being involved with other parliaments' committees, including privileges and elections. Very rarely is a committee on privileges and elections asked to consider a question of such legal significance as it touches upon the question of privilege.

Even more rare, however, does a committee on privileges and elections tend to divide on a question of privilege according to party lines. Normally the question of privilege is regarded by all members of the committee regardless of party affiliation as a problem which is generally perceived in the same light; that is, that each member must consider a possible breach of privilege as a potential insult on the House as opposed to a problem which insults a particular party. In other words, Mr. Chairman, more often than not, the deliberations and recommendations of a committee on privileges and elections tend to be cohesive, if not unanimous. The dignity of the House is regarded as something of equal importance to all members of that House.

I only say this because what we have here is a very different matter. Through the course of time, two major and distinct interpretations of the law have developed. To exacerbate my problems, Mr. Chairman, it turns out that one of these interpretations has so far, it seems, been favourably received by government members of the committee. The other interpretation, it seems, has been favoured by committee members of the New Democratic caucus. I am in a bind because clearly, whichever interpretation I tend to subscribe to as counsel for this committee, someone is going to be unhappy with it.

My interpretation of the law, however, has nothing to do with party divisions. If the committee members would remember, Mr. Chairman, the Speaker's ruling and my collaborative efforts with the Speaker in that ruling were formed well before this committee started to use me, and well before any particular legal interpretation was adopted by any particular party. My efforts today are solely to communicate the legal interpretation which I had then and continue to hold now, and I suppose it is no secret to any member of this committee that committee counsel uncategorically subscribes to the notion that the issue of language within this Chamber comes solely under the ambit of privilege or order and not law.

However, Mr. Chairman, my assertion that there has never been a statutory right in Alberta to speak French in the Legislative Assembly Chamber comes from a very careful and extensive consideration of legal principles and not political ideologies. My support of the legal interpretation, which tends to be held by most government members, will undoubtedly be criticized. This is an unhappy outcome of the party divisions which have occurred within this committee.

Mr. Chairman, my familiarity with constitutional matters in this country is not insignificant. I was personally involved with the patriation deliberations of the Canadian Constitution. However, at the time I was not at the Canadian side of these deliberations but on the British side, when Canada was involved very deeply in discussions with the British Parliament on how the possible patriation of Canada's Constitution might be achieved, given the ultimate authority of the British Parliament over the Canadian Constitution at that time. It was during this legal activity that I also gained invaluable experience in parliamentary law. I have also served as legal adviser in Canadian constitutional law for the federal government in Ottawa. It is this knowledge which I hope to present before this committee for full consideration in light of the evidence given before us.

It is my intention to distill the relevant points of the Speaker's ruling and compare them with those points presented by various witnesses who came to testify before this committee.

The Speaker's Ruling

First, Mr. Chairman, I would like to review for members of the committee the actual points contained in the Speaker's ruling delivered before this Assembly on April 9, 1987. It is not easy, I think, to be Speaker because once a ruling is given, the Speaker is restrained from going into any great detail to justify what he said. The very same restrictions apply to a judge. The ruling, once it is given, and which may have been made on the basis of very relevant information, cannot be put into context at a later date or justified. The Speaker and his ruling become the objects of analysis from within and without the Assembly, and the Speaker is powerless to defend himself against any criticism of his actions. In that context, I suppose I am here to re-relate the decisions of the Speaker to the matters referred by the House before this committee.

The Speaker, from the outset, explained to this Assembly his reluctance to address matters of law. Law, he explained, was a matter more appropriately put before the courts and not the Legislative Assembly. However, given the inextricably linked subjects of both law and privilege, the Speaker was obliged to deal with matters of privilege, order, and law because the three in this case could not be separated.

Mr. Chairman, several witnesses have come before this committee, and all have been unanimous on the fact that privilege and law were almost impossible to separate. Certainly, Dr. Dawson said it, Dr. Forsey said it, and Dean Tim Christian of the University of Alberta went so far as to say the two were one and the same. Nevertheless, the Speaker has been put on a type of trial and severely criticized by some members of this committee for feeling obliged to deal with the two disciplines together. This is a case of being damned if you do and damned if you don't. Had the Speaker not dealt with law, his ruling clearly would have been incomplete by the inference of all the witnesses. If he dealt only with law and not privilege, then clearly he would have been exceeding his authority. In determining that the matters referred to this committee were solely areas of privilege or order, the Speaker clearly stayed away from giving a legal ruling which only an ordinary court is empowered to give. By deciding that the matters before us were matters of privilege, the Speaker was upholding his duty as a parliamentarian to place a favourable construction on the problems before him as being parliamentary problems rather than legal ones and referring them to the House as matters of privilege rather than law.

In other words, Mr. Chairman, the Speaker is not only expected but obliged by his office to prevent any matter from leaving the jurisdiction of the House, which the House considers a matter which touches upon its own exclusive authority. The Speaker, by dispensing with the questions as questions of privilege, attempted to keep within the House what the House considers its own. A Speaker is undoubtedly derelict in his duty if he does not. As master of the Chamber, he's expected to uphold the rights of all members, regardless of party affiliation, to determine for themselves what rules they wish to live by.

But the courts may indeed differ with the Speaker, Mr. Chairman, in that they could easily decide that this issue is a matter of law and not privilege. But we've already found that the two are inextricably linked, and differing interpretations will lead to different conclusions. Parliament would have to simply ignore such a court decision. It would not be the first time Parliament and the courts disagreed. Clearly, it is to the advantage of this House to deal with these matters as a question of privilege, not law, keeping it within the House's jurisdiction, not the courts'. The Speaker is charged with this duty by every single member of the House, and to criticize him for performing that duty is an attack on one's own privileges and rights as a Member of the Legislative Assembly.

I'll start with the theory of parliamentary independence, Mr. Chairman. If I sound very esoteric, I hope you'll forgive me, because parliamentary theory and the concept of privilege are very esoteric notions. The theory must be understood before the practical application can be properly carried out. The Speaker is not a judge, and he is not expected to be neutral when it comes down to a question of a struggle between Parliament and the courts. The Speaker, as trustee of the rights and privileges of Parliament, is expected by Parliament to be biased in favour of Parliament, which includes all parties within.

This is not a particular oddity exclusive to the Legislative Assembly of Alberta. In 1976 the Speaker of the House of Commons in Ottawa ruled that should a court ever embark on such folly as to deliver a judgment on a matter which the House considered within the House's jurisdiction, the House would be obliged to ignore the decision of the courts -- for no one can decide what is and what isn't within the House's jurisdiction except the House itself -- and further, that the matter found to be within the House's jurisdiction would be judged only by the House.

In the English case of Jay v. Topham, Mr. Chairman, two justices deciding a case which Parliament clearly said was within their own jurisdiction were themselves arrested and jailed for contempt after finding against the jurisdiction of Parliament. This may not sound very just to nonmembers of the Assembly. This may sound like an incredibly biased and lawless system. Putting members in charge of their own affairs would seem to some citizens akin to letting a bank robber guard a bank. Natural justice it would seem is dead in this case.

But in my reading of the media reports and hearing the comments of some commentators, Mr. Chairman, I'm convinced that very few people understand the reasoning behind this system and understand that this is as much a fundamental component of natural justice in our society as the impartiality of the courts. The safeguards to society against abuse of this system are found in the political system rather than the legal one. A Speaker or politician abusing his privileges can be voted out either by his peers or by his own constituents. A judge doing the same thing cannot.

In 1689, Mr. Chairman, the English Parliament made incred-

ible advances. Existing only by the grace of an often tyrant sovereign, Parliament exerted its right for independence and freedom from the Crown, which at that time held absolute power. Through the Bill of Rights of 1689, Parliament secured for itself independence from the King -- the right to operate independently.

MR. WRIGHT: A point of order, Mr. Chairman. When do we come to the summary of the evidence, which is the sole topic before us now?

MR. CHAIRMAN: Well, I'm sure that he will come to that, Mr. Wright.

MR. RITTER: The Chamber within the Parliament Buildings, Mr. Chairman, was sacred and did not fall within the King's jurisdiction. The reason was, of course, that if every time Parliament tried to make a law of which the King did not approve, they'd be at the mercy of the King's troops or other forms of interference on their operation as an independent body. By article 9 of the Bill of Rights, Parliament achieved independence from the King and from the King's courts, which were and still are extensions of the Crown's authority to make laws as independent representatives of the people. To suggest today, as some members are doing now, that Her Majesty's courts should have jurisdiction over matters which Parliament feels are essential to its operation and independence belies the centuries of history which finally concluded that an independent Parliament was in the better interests of the people than a subservient one.

The relevance of history has been dismissed by some members as an anachronism. This may be so. I'm not here to defend history today, Mr. Chairman, only to report its effect on the laws of today. The Speaker is bound by that history, and if this Assembly wants to refer all disputes within the Chamber to the courts, it can do so, but until the Speaker gets a different set of rules to work by, he is obliged to come to the conclusions which he came to on April 9, which is that these matters touch upon the proceedings of Parliament and are thus a question of privilege of order but not law.

To justify his position the Speaker had to examine, albeit in a cursory manner, the legal considerations which were before him as presented by certain members of the Assembly. The legal considerations dealt with by the Speaker can be divided into roughly two categories: one being the Constitution Acts, 1867 to 1982, which deal to some extent with language rights; and two, the status of the North-West Territories Act, 1891.

Constitutional Language Provisions

It seems, Mr. Chairman, there was little disagreement on the fact that conventional constitutional documents, being the British North America Acts, now called the Constitution Acts, did not specifically address the question of French language use in the Legislatures of Alberta and Saskatchewan. Indeed, the conventional constitutional statutes specifically enumerate only three Legislatures obliged to operate bilingually. They are the federal Parliament in Ottawa, the Quebec National Assembly, and the Legislative Assembly of New Brunswick. I trust that this fact is not in dispute, as all witness concurred on the point.

The real question of whether or not certain other Acts affecting the provinces of Manitoba, Saskatchewan, and Alberta could be considered to have been of the same constitutional authority as the conventional statutes I have just cited.

First of all, Mr. Chairman, the Speaker did not deal with the question of Manitoba. This was not a consideration before him, but obviously we know that Manitoba has since been held by the Supreme Court of Canada to be obliged to conduct the proceedings within its Legislative Assembly in both English and French. Obviously, the Supreme Court of Canada decided that the effect of the Manitoba Act, which created the province of Manitoba, had constitutional effect.

It has largely been the similar provisions between the Manitoba Act and the North-West Territories Act of 1891 which some members and some witnesses have relied upon to establish that the case of Manitoba and the case of Alberta and Saskatchewan can be compared enough to result in the same legal findings. Mr. Speaker's job, Mr. Chairman, was to look again at the situation and decide whether the North-West Territories Act, like the Manitoba Act of 1870, had the same constitutional force and effect. Clearly, if the North-West Territories Act, section 110, has constitutional effect in Alberta and Saskatchewan, then that is the only type of law which can supersede other constitutional guarantees that the Legislature shall otherwise be free to regulate its own language within the Chamber. If section 110 was not constitutional, then the assumption of parliamentary independence and the right to regulate one's own Chamber prevails. In the absence of constitutional law affecting the Legislature's right to regulate its proceedings, all witnesses were unanimous on the point that regulation of one's own proceedings is the sovereign right of every Legislature. So is section 110 of the North-West Territories Act of constitutional force and effect, or is it null and void on the basis that it is ultra vires? That's the question.

The Speaker's ruling, as we all know, Mr. Chairman, was that the North-West Territories Act of 1891 was not a constitutional statute. Therefore, under the other terms of Canada's Constitution, the Speaker ruled Alberta was free to regulate its own language within its Legislative Assembly Chamber and was not bound by statute to allow members to speak French in the Chamber.

That is what this committee is all about: to re-examine again the question of whether or not the North-West Territories Act, 1891, has constitutional effect in Alberta, obliging this Chamber to operate bilingually. We had several witnesses before us, all eminent in their respective fields. I propose to go through the testimony of each witness, distill their comments, and offer to the committee my research on their respective positions. The applicability or nonapplicability of my comments, and the comments of each witness, will have to be for you, Mr. Chairman and all members of this committee, to decide.

Dr. Kenneth Munro

There is very little that Parliamentary Counsel can offer to members of this committee with regard to the expert testimony of Dr. Ken Munro. I've known Professor Munro as a personal friend for some years and would be the first to offer that he is a very competent historian and teacher. Dr. Munro's French-Canadian nationalist leanings are well known throughout the country and his testimony was, therefore, no surprise. I do not propose to correct or in any way criticize Dr. Munro's interpretation of history. I am not a historian, and as far as Professor Munro's credibility as an expert witness on Canadian history is concerned, I believe this committee had an extremely reliable witness. However, in saying this, I would also express my conviction that aside from putting this question into a historical

perspective, Professor Munro had very little to offer this committee, at least with regard to the questions before us, being law, order, and privilege. Professor Munro is not a lawyer, much less a constitutional lawyer. Anything he offered this committee with respect to constitutional analysis must, with respect to Professor Munro, be taken in the context of an opinion being advanced by a completely unqualified nonexpert on the subject.

Again, Mr. Chairman, I do not propose to dispute anything Professor Munro said relating to history. I'm not a historian and would be as out of place correcting Professor Munro on history as Professor Munro was in offering his legal analysis to members of this committee. Professor Munro was, like many academics are doing today, perpetuating what he considers a favourable interpretation but one which is an erroneous legal interpretation advanced by Monsieur Claude-Armand Sheppard as found in the federal government's bilingualism and biculturalism report. Further, Mr. Sheppard, another nonlawyer, much less a constitutional or parliamentary lawyer, arrived at his amazing legal analysis by his reliance on the seemingly innocuous statement of a Mr. Fischer, who communicated an opinion from a Mr. Turner, who merely said that he could not find evidence of a proclamation of Mr. Haultain's motion being made after January 19, 1892.

We have here, Mr. Chairman, academics quoting academics who quote academics who quote academics, none of whom are constitutional lawyers or qualified to advance any credible legal opinion on the implications of a particular legal instrument not being found. Coming recently from a university environment myself, I know this type of practice goes on all the time. If enough researchers adhering to a particular interpretation can quote each other enough times, the original theory is soon regarded as fact by the implicit credibility that the theory captures through its continual repetition. I'm afraid I must concur with Professor Green when he said:

> It is no basis for acceptance of views when the researcher states his inability to find what he was never sure he was looking for.

Dr. Munro did not mention, however, certain facts of history which might have put Mr. Haultain's motion into better perspective. Grant MacEwan, in his book *Frederick Haultain - Frontier Statesman of the Canadian Northwest*, said that Mr. Haultain's motion was motivated by real practical considerations.

MR. WRIGHT: Sorry, Mr. Chairman; on a point of order. Where is this in the evidence that he is summarizing?

MR. CHAIRMAN: Mr. Wright, I am prepared to listen to the summation of evidence from our counsel and to allow him to go ahead.

MR. WRIGHT: So am I, but where is it? This is now a rebuttal to a witness. The counsel had it in his power to put the point to the witness to gain his evidence. It's not a summary of his evidence, with respect, Mr. Chairman.

MR. CHAIRMAN: Mr. Wright, I'm prepared to have counsel go ahead and provide the summation.

SOME HON. MEMBERS: Agreed.

MR. RITTER: Thank you, Mr. Chairman. To continue then, Mr. Haultain's motion was motivated by real practical considerations. He wrote, quote:

> Apart from the two appointees, the Lieutenant Governor and the Legislative Clerk, both from Quebec, nobody in the House claimed French as a mother tongue and nobody else, except Mr. Haultain, could have put it to proper use. For all practical purposes, a speech in French in the House would have been lost, and the Lieutenant Governor, who would have been within his rights in addressing the Assembly in the language of his background, did not do so except under very special circumstances . . . It was provided . . . that French as well as English would be recognized as an official language to the Legislature and Territorial Courts, but there being comparatively small demand for the second language, the Territorial Assembly in due course moved to end its official recognition. Mr. Haultain noted that the Journal of the Assembly had on a few occasions been printed in French as well as English, but no requests were made for those in French. For reasons of economy as well as convenience, he felt it would be in order to publish the proceedings in English only. He moved accordingly and Thomas Tweed seconded the motion.

Mr. Chairman, I do not expect to go further in my comments about Professor Munro's testimony. Clearly, while he's an expert in historical matters, he possesses no expertise with regard to legal ones. His comments must be analyzed by committee members in that light. Furthermore, while he insists that the House of Commons debates in 1905 prove support for his hypothesis, this assertion is blatantly untrue, and I'm prepared to document that fact. However, as those House of Commons debates deal with legal points rather than historical ones, I will reserve further comment on them until I come to Dr. Forsey's evidence and my consideration of his reliance on the alleged positions of Canada's parliamentarians in 1905.

Dean Tim Christian

Mr. Chairman, it's my intention to comment on Mr. Christian's evidence jointly with my consideration of Dr. Forsey's testimony. Mr. Christian and Dr. Forsey, as you know, were roughly on the same lines and for the most part in agreement. The points of Mr. Christian's testimony for this committee to consider were that Mr. Haultain's motion of January 19, 1892, was defective, it did not deal with the spoken word, and that the unamended language guarantees of the North-West Territories Act were carried forward into the Alberta Act.

I hope committee members will forgive me, Mr. Chairman, for dealing with these two witnesses together, but I think that in the interest of time and given the similarity of their testimony, it would not be unfair of me to do so.

Dr. Leslie Green

By the committee's bringing forward of Dr. Leslie Green from the University of Alberta, Mr. Chairman, committee members afforded themselves the opportunity to hear a strikingly different interpretation of the legal principles governing this case than the ones offered by Dean Christian and Dr. Forsey. Professor Green staunchly upheld the privileges of Parliament and the right of Parliament to regulate its own proceedings. Dr. Green, who came from an extensive background of British parliamentary law and practice, asserted that Dr. Munro and Mr. Christian were in error on points about the effectiveness of the

Speaker's petition or indeed about the proclamation of Mr. Haultain's motion in 1892 generally.

Without going through every detail of Dr. Green's testimony, the basic thrust of his arguments was that Mr. Haultain's motion was effectively carried out by virtue of the proclamation in the Speaker's petition and that such proclamation, as required by section 110, referred to a legal process as opposed to a legal instrument. Speaker's petition aside, Dr. Green said the motion's adoption and usage were sufficient to give it legal effect.

Professor Green put great weight into the interpretation of the word "proclamation," noting that it was written with a small "p", implying proclamation as a verb referring to a process rather than as a noun referring to a statutory instrument. For reference Professor Green used the Oxford dictionary definition of proclamation which read:

> The action of proclaiming; the official giving of public notice; that which is proclaimed either as the substance or form; a formal order or intimation issued by sovereign or other legal authority and made public either by being announced or by being printed and posted in a public place.

For my own purposes, Mr. Chairman, I would use a law dictionary definition, for as Dr. Dawson pointed out, the ordinary meaning or layman's meaning of a word can differ greatly from the legal meaning of a recognized legal term. *Black's Law Dictionary*, which is surely the authoritative and most widely used dictionary in Canada, defines proclamation as:

> The act of publicly proclaiming or publishing; a formal declaration; an avowal. The act of causing some governmental matters to be published or made generally known.

I would assert, Mr. Chairman, that clearly proclamation can be considered either a verb or a noun, a legal process as well as a legal instrument. I will establish later which interpretation I believe the parliamentarians adhered to 100 years ago. But again I would emphasize that the gist of the Speaker's ruling largely found this whole issue of proclamation and the Speaker's petition irrelevant. The ruling itself addressed the much more basic issue of the constitutionality of section 110, which circumvented the proclamation of Mr. Haultain's motion from even becoming an important issue.

Nevertheless, in light of the confusion over the word "proclamation," Professor Green insisted that British parliamentary practice, and particularly Canadian parliamentary practice of 100 years ago, would have recognized a proclamation by several means. The first, as I have related, dealt with the proclamation inherent in the Speaker's petition by the Lieutenant Governor. The second means of proclaiming a motion of the House was through that motion's subsequent adoption by the House and usage and the general adherence of the House to a particular practice since that time. Isolated exceptions, Professor Green explained, did not provide a precedent if those incidents were not continuous or consistent.

In short, Mr. Chairman, the proclamation was effected simply by doing, and Professor Green was adamant that a Royal Assent on a motion of the House can never be carried out lest it risk subverting the centuries of precedent which have established the privileges of Parliament as free from any role played by the Crown, except for that ancient proclamation following the Speaker's petition at the beginning of each new Parliament.

I am aware, Mr. Chairman, of the points Professor Green was attempting to relate about the proclamation for a motion of the House. This is no new, novel interpretation of the law. I was myself surprised that anyone even questioned the validity of the proclamation after the Speaker's ruling was delivered before this House. Professor Green came from a British legal background, as do I. The United Kingdom has no statutory instrument guaranteeing privilege today, as was also the case in the Northwest Territories in 1892. To suggest today in the United Kingdom that the Speaker's petition has no substantial effect as a proclamation of the rights and privileges of Parliament or, Speaker's petition aside, that a practice adopted by the House as authoritative within the Chamber can be judged as to its effectiveness by any tribunal outside the Chamber would be met with incredulity if not outrage by parliamentarians there.

Again, Mr. Chairman, Dr. Green's view was not isolated, unique, odd, or new. His opinions are reflected by such eminent world-class scholars as deSmith, Hood-Phillips, Blackstone, Petyt, Lock, and Raleigh, as well as writers members of this Assembly are familiar with, such as Sir Erskine May. It is, in my respectful opinion, those opinions which dispute what great parliamentarians have asserted for centuries, which must be regarded as new, novel, unique, and certainly odd. Article 9 of the Bill of Rights, 1689 is no illusion or theory. It exists and continues to have full constitutional force and effect in the Legislative Assembly of Alberta, as confirmed by the Supreme Court of Canada in 1981.

Mr. Chairman, questions were directed to Dr. Green concerning certain elements of his testimony. The major areas of contention seemed to be the interpretation of the word "proclamation," the effectiveness of the Speaker's petition, the effectiveness of Mr. Haultain's motion to abolish French in the spoken word in the Assembly, and lastly, the likelihood of surplus words in section 110 and the possibility of statutory law losing effect after practical disuse over a certain period of time.

Mr. Chairman, about the first points, I've already related to some degree Professor Green's assertions, how likely or unlikely committee members may consider them to be. The rest, such as Dr. Green's interpretation about Mr. Haultain's motion and its effect on the spoken word, are a matter of record on which Dr. Green and Dr. Dawson concur. Professor Green was very adamant that a motion of the House is a different legal process than an Act, and while an Act or ordinance requires Royal Assent or an instrument called a proclamation, a motion of the House does not, at least insofar as it relates to proclaiming that motion.

It was Dr. Green's assertion that regardless of the wording and structure and even possible defects in the motion of Mr. Haultain, the fact that Parliament adhered to a certain practice as if that motion were valid makes the motion valid and proclaimed. Mr. Wright disagreed and argued that statutory law and certainly constitutional law could not become inapplicable through disuse. Dr. Green disagreed. I would offer at this point, to clarify that particular issue, a quotation from S.A. deSmith in his book, *Constitutional and Administrative Law*, third edition, page 67. For committee members getting a copy of this brief, I'm presently on the bottom of page 16.

Stanley deSmith, Mr. Chairman, as most lawyers would know, was one of the greatest constitutional lawyers in the world and, with due respect to any witness we've had before this committee, as far as both the courts and the legal profession are concerned, an unimpeachable source. He wrote that while constitutional laws are undoubtedly meant to be obeyed, their disappearance can occur through disuse. Quote:

> The basic norm or ultimate principle underlying a constitutional order is that the constitution ought to be

> obeyed, then the disappearance of that order, followed by acquiescence on the part of officials, judges and the general public in laws, rules and orders issued by the new holders of powers, will displace the old basic norm or ultimate principle and give rise to a new one. Thus, might becomes right in the eye of the law.

Clearly, Mr. Chairman, S.A. deSmith agrees with Professor Green's analysis, but so do the courts. In the English case of Clayton v. Heffron (1961), the court conceded that statutory provisions could be invalidated by comparing their relevance to the end product foreseen by the legislation. Procedural niceties demanded by statute to effect a certain end might be considered directory rather than obligatory. The court wrote:

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

I will not go into any further legal analysis of Professor Green's testimony on this point. Clearly, he presented the case of Edinburgh and Dalkeith Railway Co. v. Wauchope (1842) and the case of British Railways Board v. Pickin (1974) to give further support to this line of reasoning himself.

The above cases determined that regardless of the validity or invalidity of anything done in Parliament, the courts were not empowered to review the procedural process through which these actions were carried out. It was enough that Parliament considered them through practice to be valid to make them valid in law.

These views have already been echoed in Canada, Mr. Chairman. I have already given reference to the Supreme Court of Canada in their Constitution Reference of 1981, which ruled that the proceedings within the Legislative Chamber and the adherence or nonadherence of rules governing those proceedings -- i.e., conventions -- could not be challenged or judged by any court and were only subject to the Chamber itself.

It is the last point -- i.e., surplus words -- which I would like to deal with here, Mr. Chairman, because that point was actively pursued by Mr. Wright. Mr. Wright would be happy to know that I do not entirely agree with Dr. Green on these points and to some extent support Mr. Wright in his criticism of the concept of surplus words. However, I'll only be qualifying Professor Green's comments rather than disagreeing with them outright. The wording of section 110 clearly referred to French language provisions, not only in the Legislative Assembly and in documents connected with the Legislative Assembly but in the courts. Clearly, section 110 anticipated reversing the effect of section 110 by way of an ordinance for those two separate areas, which is the territorial equivalent of an Act. An ordinance is a full-fledged statute requiring Royal Assent. A motion of the House is not such a statute and is much more limited in its scope. A statute is generally enacted to effect laws touching on matters outside the Legislative Assembly Chamber. Clearly, if the effect of section 110 were to be reversed with regard to the courts, such a reversal would have had to take effect by an ordinance.

Proceedings within the Chamber, however, can be regulated by two different means. The first can be by way of a statute: an Act or an ordinance. The second can be by way of a motion of the House. A motion of the House is completely competent to deal with matters arising within the precincts of the Legislative Assembly Chamber.

Clearly, section 110 was worded in such a way as to anticipate the reversal of that section by way of an ordinance which required proclamation in the full sense with which we are accustomed. Nevertheless, it did not rule out the possibility of a motion of the House effecting those matters coming within the jurisdiction of the Chamber. I note that section 110 reads:

> Provided, however, that after the next general election of the Legislative Assembly, such Assembly may, by Ordinance or otherwise, regulate its proceedings ...

It is the "otherwise," which was relied upon in 1892 to change the proceedings of the Chamber. Mr. Haultain could have passed an ordinance. Certainly, he would have had to do so if he wanted to change the language of the courts, but with regard to any matter touching upon the House, he could have passed either an ordinance or a motion of the House, either one being competent to deal with the matter. If section 110 anticipated an ordinance in all cases, then clearly not a single word would have been deemed surplus in the section. As the section, however, specifically provided for other means by which certain proceedings could be changed, all of them perfectly lawful, then section 110 must be interpreted in that light.

Again, Mr. Chairman, this is not an unusual thing. The courts will interpret a section in light of the circumstances allowed by that section. I feel that section 110, if it had been reversed by ordinance, would have been perfectly regular in its reading. By utilizing the "otherwise" clause and bringing about changes by way of a motion of the House, clearly the requirement for a proclamation must be interpreted liberally given those particular, and perfectly legitimate and lawful, circumstances.

Dr. W. F. Dawson

Dr. Dawson provided this committee with testimony centering on the subject of privilege as opposed to law. Dr. Dawson made very clear to members of this committee that he was not a lawyer nor would he in any way attempt to try his hand at legal analysis. Nevertheless, Dr. Dawson had, I think, a penchant for political commentary, and as a result, particularly with the close relationship privilege and law enjoy, gave commentary on many things legal as well as many things political.

Professor Dawson's first point was that if the courts should find that section 110 of the North-West Territories Act forms part of Alberta's constitution, then the Legislature, being faced with a constitutional requirement, would be obliged to satisfy that requirement. However, as to whether section 110 was constitutional in Alberta or not, Professor Dawson deferred to the courts.

I just simply cannot find consistency in Dr. Dawson's evidence. First, it is about Mr. Piquette's letter to the Speaker, for example, with which I have some difficulty, Mr. Chairman, not because I agree or disagree with what Dr. Dawson said; I just cannot distill exactly what he meant.

Page 71 of the transcripts of June 3, 1987, quotes Dr. Dawson as saying:

> ... 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.

The above quotation would seem, Mr. Chairman, to make Mr. Piquette's letter without doubt an object of consideration in this Committee on Privileges and Elections. Nevertheless, Professor Dawson went on with his testimony as if the term "publication of the House" had some other magic meaning with regard to the question of privilege.

I think, Mr. Chairman, with respect to Dr. Dawson, the word "publication" gained a new significance which was intended by the terms of reference of the government motion which referred to these matters to committee. Dr. Dawson gave his opinion that Mr. Piquette's letter could not be considered a publication of the House. I would have to agree, and in all honesty I could not imagine too many members of this committee disputing the fact. It is unquestionable that publications of the House are what is referred to in *Beauchesne*, citations 41 through 44.

This does not imply that the terms of reference for this committee are exclusively governed by *Beauchesne*'s use of the word "publications" as opposed to "documents of the House," the latter of which Dr. Dawson uncategorically agreed Mr. Piquette's letter could be considered to be. I think *Beauchesne* put more of an emphasis on the word "publications" that did *Erskine May* because this has been the scope of consideration of most cases of an alleged breach of privilege in this country. *Erskine May* refers more widely to "documents of the House," of which publications are part. And again with respect to Dr. Dawson, Mr. Chairman, other esteemed experts on parliamentary privilege have discussed privilege from the point of view of an unauthorized release of papers of the House generally.

In the book *Procedure in the Canadian House of Commons*, page 42 of chapter 3, dealing with privilege, the author describes privilege extending to the House's control "over documents in its possession," which includes those papers even desired by the Senate. So, Mr. Chairman, if I argued that we had one author asserting that the Assembly's privileges extended only to those documents considered publications of the House in the narrow sense, and another author asserting that the Assembly's privileges extended to all documents in its possession as part of the proceedings of Parliament in the wider sense, we would have some case to argue that one expert may know more than another. But in this case, both sources I've quoted were advanced by Professor W.F. Dawson. The authority I've quoted, being *Procedure in the Canadian House of Commons*, was written as a major treatise on parliamentary procedure and privilege by the very expert witness we brought before this committee.

Second, we also have another anomaly of different testimony being given before this committee about the Speaker's petition. That, then, was what the same expert wrote in his book dealing with the subject. Chapter 3 dealt extensively with the necessity of the Speaker's petition, Mr. Chairman, and Professor Dawson wrote on page 33 that:

> . . . the Speaker's claim for the "undoubted rights and privileges" is far from being an anachronism. This general statement supported by the one significant illustration -- freedom of speech -- is the important portion of the request. Among other things, it covers the wide range of the personal privileges of the individual member which rest largely on British precedents.

Mr. Chairman, contrast Professor Dawson's written statement, ". . . However, the Speaker's claim for the 'undoubted rights and privileges' is far from being an anachronism," with his spoken statement before this committee on page 74 of the June 3 transcripts that it largely is an anachronism. The two comments are completely contradictory, Mr. Chairman, as were many other comments Professor Dawson offered before this committee about the effectiveness of the Speaker's petition and the extension of privilege over subjects relevant to the terms of reference of this committee. According to my sources, Dr. Dawson's knowledge of legal concepts seems to be very limited and something he perhaps should not have ventured an opinion on, particularly as he evidently has not made up his mind about the subject.

In any case, Mr. Chairman, these are unimportant points. I only use them to illustrate that Professor Dawson's evidence is at best somewhat inconsistent. No doubt the Speaker's petition is a legal concept, and its effectiveness or ineffectiveness was hardly a matter to be commented on by an individual possessing no legal qualification whatsoever. The very fact that something is the foundation of the privileges of Parliament one year and completely worthless the next gives some indication as to the dangers of being unable to resist giving expert evidence on subjects beyond those you are reputedly an expert in.

Third, Dr. Dawson dealt with the question of reflections on the Speaker. Dr. Dawson suggested that the content of Mr. Piquette's letter and certain other comments in the House challenging the fairness of the Speaker's ruling were tempered, on the whole, and probably not breaches of privilege because, as he said:

> . . . 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.

It seems to me that the whole discussion of reflections on the Speaker was brought into a realm which may have been inappropriate for this committee to consider; that is, how unparliamentary are certain comments when directed at the Speaker to criticize his rulings.

All sources that I have researched indicate that the issue is not a matter of how parliamentary or unparliamentary the terms used to criticize the Speaker are. This is not the question. The breach of privilege, it seems, occurs regardless of how temperate or intemperate comments are, just that the challenge to the Chair occurs publicly as opposed to privately. The public nature of the challenge is more the issue than the challenge itself, and that, I think, is where the confusion develops. Dr. Dawson discussed what possible alternatives there might have been for Mr. Piquette and other members of the Assembly to have raised their objections with the Speaker, but what was largely ignored was the opportunity to privately discuss with the Speaker, in any terms imaginable, complaints about the Speaker's conduct during the Assembly's business. Criticism was public long before a private meeting was set up between Mr. Piquette and the Speaker. This would seem to be com-

pletely consistent with sources in both *Beauchesne* and *Erskine May*.

When Dr. Dawson appeared before this committee, he discussed reflections on the Speaker in the context of *Beauchesne*, citation 52, which was more general than *Beauchesne*, citation 117(1) or *Erskine May*, 20th edition, page 235. Both sources read the same:

> The chief characteristics attached to the office of Speaker in the House of Commons are authority and impartiality. Reflections upon the character or actions of the Speaker may be punished as breaches of privilege . . . His actions cannot be criticized incidentally in debate or upon any form of proceeding except by way of a substantive motion. Confidence in the impartiality of the Speaker is an indispensable condition of the successful working of procedure, and many conventions exist which have as their object, not only to ensure the impartiality of the Speaker but also, to ensure that his impartiality is generally recognized.

Mr. Chairman, this leaves little doubt that the whole intent of prohibiting an attack on the Chair is to preserve order. There is nothing to prevent a member from privately having it out with the Speaker when he feels unjustly victimized. It is the necessity to obtain order and to be seen as upholding the Speaker's rulings, which belong to the whole House, which are the important elements of these citations. The section on reflections on the Speaker, to which Dr. Dawson referred, had a much more general application and dealt mostly with individuals outside the Chamber. *Beauchesne*, citation 117, and *Erskine May*, page 235, are the appropriate citations here and leave little doubt that a public challenge on the Chair is undesirable and an important prohibition to preserve parliamentary procedure and order.

The fact is, Mr. Chairman, that the most incidental public criticisms on the Chair have been punished as contempts or breaches of privilege. For authorities, I give you Canadian House of Commons, Journals, June 4, 1956, page 692; and the British Parliamentary Debates, 1902 -- 107, 1924-1925 -- 184, 1951-1952 -- 500, 1956-57 -- 574, 1960-61 -- 634; and most recently, just a few days ago, in the New Zealand Parliament, which was reported in the *Times*, June 3, 1987, where Sir Robert Muldoon, former New Zealand Prime Minister, was suspended from Parliament for three days for criticizing the rulings of the Speaker in the House. In that case the Parliamentary Privileges Committee found the charges amounted to a very serious contempt undermining the authority of the Speaker. The precedents to which I have referred, Mr. Chairman, are not all new. Their dates certainly indicate that. For Professor Dawson to suggest that challenges to the Chair by members are not deemed all that serious by Parliament is new. The final decision rests with this committee as to which practice it intends to respect and adhere to.

Lastly, there was one issue Dr. Dawson raised which found all expert witnesses in unanimous agreement, Mr. Chairman, and that is the power of Parliament to define for itself what its own privileges are and to prescribe any remedy or reparation it deemed necessary. This is how the *Edmonton Journal* editorial will be judged, despite Dr. Dawson's personal advice to this committee, while at the same confirming the *Journal* was most certainly "over the line." Regardless of Professor Munro's, Dean Christian's, Professor Green's, or Professor Dawson's testimony, the fact remains that it is the opinion of this committee as to what does or does not constitute privilege that counts and not the opinion of any expert witness, regardless of how invaluable that witness may deem his political advice to be.

MR. CHAIRMAN: I hesitate to interrupt the counsel. The time is 6 after 12. I believe I have it correct this time. I would suggest to members that we continue and finish off the summation and then, rather than reconvening at 1:30, reconvene at 2 o'clock. Is that agreeable to members?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: Okay, proceed.

MR. RITTER: Thank you, Mr. Chairman.

MR. WRIGHT: Mr. Chairman, I will have some statement to make regarding this morning at close. I don't want to be taken as agreeing now to reassemble at any time this afternoon.

MR. CHAIRMAN: Carry on.

MR. M. MOORE: Mr. Chairman, what kind of statement does the hon. member have to make? Perhaps he would prefer to make it now.

MR. WRIGHT: [Inaudible] statements unduly at this point, Mr. Chairman.

MR. CHAIRMAN: Carry on, counsel.

MR. RITTER: Thank you, Mr. Chairman. To continue with Dr. Eugene Forsey.

Dr. Eugene Forsey

Dr. Eugene Forsey is undoubtedly one of the most respected constitutional minds in Canada. This is curious, because Dr. Forsey is a political scientist like Dr. Dawson and possesses no legal qualifications of any kind. Nevertheless, he offered this committee extensive legal analysis and opinions as they touched upon matters referred to this committee. Because Dr. Forsey and Dean Christian gave largely corroborating testimony, I will deal with their comments together. If I seem somewhat critical of Dr. Forsey's testimony, it is because I found it to be the most incredible of all, and while I have the greatest admiration for some constitutional work Dr. Forsey has carried out on behalf of Canada, the authorities, even those authorities Dr. Forsey himself says back up his position, go completely against what Dr. Forsey was saying before this committee.

Furthermore, Mr. Chairman, I'm already bracing myself for the inevitable attack that will be unleashed upon me by the press. I'm well aware of the perceived arrogance that must result when a younger lawyer, albeit a constitutional lawyer, challenges a man whose reputation has become almost venerable throughout his last several years. I've even seen him described in the local press as a constitutional wizard. Dr. Forsey himself seems a little uncomfortable with the extent his reputation precedes him, but wizard or not, unimpeachable or not, Dr. Forsey's opinions were, according to the classical constitutional authorities, completely without support or merit.

I do not propose to offer merely my opinions, Mr. Chairman. Opinions are what every witness gave before this committee earlier. My job is to quote authorities by page number, case, or other reference to back up the conclusions I've made. I have

taken great pains to ensure that I have done so, and if the authorities I've cited don't back me up, then I too will have to offer myself to the same intriguing extent that Dr. Forsey offered himself in a white sheet to apologize to the committee.

I've already examined in depth the subject of the Speaker's petition to which Dr. Forsey addressed most of his presentation. I will not go into the subject any more now as I've already done so at great length, except to say that if Dr. Forsey seriously subscribes to his analysis, he is at odds with great constitutional scholars such as Blackstone, Dicey, deSmith, Hood-Phillips, Petyt, Raleigh, Erskine May and, now it seems, judging from his book at least, Dr. W.F. Dawson. I've attached to copies of this brief a brief I wrote some time back about the Speaker's petition. At the end of this presentation I will ask the ... Well, I've already asked the secretary to distribute this. You have done so, haven't you? Thanks.

Dr. Forsey took great exception to the word "forthwith" when used to describe the proclamation of section 110. He insisted it had to be defined as "immediately" and could not have accommodated occurring before or 11 months after Mr. Haultain's motion. In his brief, Dr. Forsey wrote:

> Parliament cannot be supposed to have used the word "forthwith" in a Humpty Dumpty sense. You will recall that Humpty Dumpty said, "When I use a word, it means just what I choose it to mean."

Clearly, Dr. Forsey disliked the suggestion that "forthwith" could be used be in a sense other than immediately. Mr. Chairman, you've already given me the opportunity to quote once from *Black's Law Dictionary* to illustrate just how the legal meaning of a word can differ from the layman's meaning, and I would like the opportunity to read now Black's definition of the word "forthwith" in a legal sense.

> Within such time as to permit that which is to be done, to be done lawfully and according to the practical and ordinary course of things to be performed or accomplished; the first opportunity offered.

Mr. Chairman, if we are to accept Dr. Forsey's arguments on the word "forthwith," we must accept that Henry Campbell Black was Humpty Dumpty and the most respected legal dictionary in use today should be called "Black's Dictionary of Humpty Dumpty Meanings." We are reminded of Dr. Dawson's caution to the committee that a layman's definition of privilege is entirely different from the parliamentary or legal use of the term. In this case, Dr. Forsey displays his limitations as a lawyer and insists on a layman's meanings where clearly a legal definition is appropriate.

I would argue the same with regard to Dr. Forsey's objection to the use of the word "embodied" if I could even find it in *Black's Law Dictionary*, but it's not listed. To "embody" a proclamation, Dr. Forsey asserts, is a narrow use of the term. *The Oxford English Dictionary* defines it widely as:

> clothe ... with body; give concrete form to (ideas etc.); express tangibly (principles in actions etc.); (of thing or person) be an expression of (ideas etc.); form into a body; include, comprise ...

After reading this definition, even in a layman's sense, Mr. Chairman, I am convinced it is Dr. Forsey who is making words mean whatever he chooses them to mean and not the other witnesses or the Speaker.

Regardless of the above, I've already made the argument that section 110 in any case anticipated an ordinance rather than a motion of the House and therefore probably anticipated a proclamation of a statute in the most usual sense. However, it clearly also allowed for those changes affecting the Legislative Chamber to be changed by a motion of the House where any competent judge would interpret the section to include the rules applicable in that particular process.

The real thrust of the Speaker's ruling was that section 110 of the North-West Territories Act could not possibly be considered of constitutional force and effect in the province of Alberta. There are are two kinds of statutes, Mr. Chairman: ordinary ones and constitutional ones. Ordinary statutes have to obey the terms of the Constitution Act, 1867. If an ordinary statute from either a province or the federal government exceeds its scope of authority and goes into an area which is under the jurisdiction of the other level of government, it is of no force and effect because it is deemed unconstitutional or ultra vires. A constitutional statute, on the other hand, Mr. Chairman, can cross back and forth from provincial to federal powers all it likes. It is a statute enacted under the authority of the United Kingdom or Imperial Parliament, at least up to 1982, and therefore does not have to obey the Constitution Act, 1867, because that also is an Act of the United Kingdom Parliament and the United Kingdom Parliament can supersede its own statutes at any time it likes.

So the question is whether or not section 110 of the North-West Territories Act had constitutional or United Kingdom Parliament force and effect. We know the Manitoba Act, 1870, did; the Supreme Court said it did. The reason for this is because the Manitoba Act, even though it was passed by the federal Parliament in Ottawa, was given retroactive force and effect by the United Kingdom Parliament after it was realized that Ottawa had no jurisdiction to make the Manitoba Act itself in the first place.

As much as Dr. Forsey dislikes my interpretation, Mr. Chairman, I back up my comments with authority. Mr. Monk, who Dr. Forsey relied upon for his arguments, said on March 23, 1905, in the Commons on page 3071 of *Hansard*:

> The Manitoba Act itself was ultra vires -- was so considered by the legal advisors of the Crown in England -- and in order to make it valid, it was necessary to pass the Imperial Act, 1871.

Manitoba's language provisions, which were originally written by the Canadian Parliament, were ratified by the United Kingdom, giving them constitutional force and effect to supersede the federal/provincial division of powers in the Constitution Act, 1867. Despite Dr. Forsey's dislike of the word "ratified," Mr. Chairman, I hope you'll forgive me for adopting that word anyway. After seeing Dr. Forsey's aptitude for word definitions, I can't really put too much faith in what Dr. Forsey says about the meaning of the word "ratified."

The fact is, Mr. Chairman, Dr. Forsey's argument, when you finally distill the salient points from it, asserted that normally the language of the proceedings within a Chamber is within the jurisdiction of that Chamber only and no other authority. In other words, Mr. Chairman, Ottawa has no more right to make the Legislative Assembly of Alberta speak Ukrainian than Edmonton has the right to make Ottawa speak Cree. What happens inside the Chamber is entirely that Chamber's own business. This is one of the few points all witnesses were unanimous on. The only exception of course is that if a constitutional provision should provide that a Chamber must operate bilingually, then of course it must do so. We have practical examples with the National Assembly of Quebec, the Legislative Assembly of New Brunswick, the federal Parliament in Ottawa, and the Legislative Assembly in Manitoba.

We get back to the question, Mr. Chairman, of: is section

110 of the North-West Territories Act of constitutional force and effect in Alberta and Saskatchewan? Dr. Forsey admitted the North-West Territories Act itself was created by an ordinary Act of Ottawa. He also admitted that Ottawa has every right to regulate things normally within provincial jurisdiction when it pertains to a territory; a territory is not sovereign or equal. In other words, as far as a territory is concerned, the distinction between a constitutional statute and an ordinary statute becomes meaningless. A territory has no sovereignty of its own and is bound by anything Ottawa says.

The case is vastly different with regard to a province. So the question again is: is something that is perfectly legal between Ottawa and a territory also perfectly legal between Ottawa and a province? The answer is of course no. Dr. Forsey agreed with me on that point. Clearly today, if Ottawa tried by ordinary statute to make Alberta speak another language in its Chamber, it would be an unlawful Act. It would be ultra vires.

Now comes the difficult part. If a section of a federal Act is lawful when it applies to a territory and unlawful when it applies to a province, how can it remain in force and effect, much less even gain constitutional force and effect, when that unlawful provision is carried forward and is expected to apply to a province by yet another ordinary federal Act? There was no Imperial permission given to Ottawa to change Alberta's and Saskatchewan's language provisions or in any way exceed the scope of federal powers enumerated in the British North America Act, 1867. In other words, what would have been blatantly unconstitutional by Professor Forsey's own admission somehow became constitutional when Alberta and Saskatchewan became provinces. Dr. Forsey argued that because it was transitional, such an irregular situation could occur. For reference I would read out my exchange with Dr. Forsey at page 102 of the transcripts of June 10, 1987:

> MR. RITTER: So in other words, Dr. Forsey, because section 110 was transitional, what would have been a blatantly unconstitutional [Act] enacted by Ottawa became constitutional?
>
> DR. FORSEY: Well, you can put it that way, I suppose, if you want to. That, I think, is putting a gloss upon what I said.
>
> MR. RITTER: Well, you're quite free to clarify anything that I've said, Dr. Forsey.
>
> DR. FORSEY: Well, I don't think I can make it any clearer than I have. I've made my point; you disagree with it, clearly. That's entirely your business.

Mr. Chairman, I would put it to this committee that it is considerably more than just my business to disagree with Dr. Forsey. To suggest that an unconstitutional provision becomes constitutional merely because it is transitional is, to use Dr. Forsey's own words, preposterous. There is simply no authority of any kind whatsoever to establish that the federal government can give constitutional force and effect to ordinary federal statutes that interfere in provincial powers merely because of a transitional situation. It's sheer nonsense, and I would defy anyone to find some authority establishing the contrary.

There is a case, Mr. Chairman, for giving effect to federally enacted provisions which normally fall into provincial jurisdiction when two conditions exist, being (a) that there is an overriding necessity for such legal provision, and (b) the province, being a new province, has yet to make its own provisions covering the subject. That was the intent of section 14 of the Alberta Act, 1905. Alberta, becoming a new province, had no provincial laws on the books. The sum total of both territorial and federal laws required by necessity to maintain law and order as well as continuity were given interim, not constitutional, effect until the province could legislate its own laws dealing with those issues falling within provincial jurisdiction.

French in the Alberta Legislature was not a law of necessity. Furthermore, it had been, as far as both the territorial government and the federal government were concerned, a matter already dealt with at the local level. French was abolished in the Legislature, and there was no question of that fact by either territorial or federal parliamentarians. To suggest, as Dr. Forsey did recently, Mr. Chairman, that unconstitutional laws gain some new respectability and even surpass the effect of ordinary laws by becoming constitutional ones merely because they are carried forward in transition, is one of the oddest legal arguments I've heard for many years.

I would quote Mr. Demers, the MP from St. John and Iberville, in the House of Commons on July 5, 1905, at page 8841. Echoing my arguments here, Mr. Chairman, he said:

> That is the question. It is now a matter of formulating the principle that this Parliament has not the right to enact without any necessity special provisions when making a constitution for the new provinces.

Mr. Chairman, we know that Parliament did heed Mr. Demers. They did not put a language provision directly in the Alberta Act, which was demanded by some federal politicians at the time. The federal Parliament left no doubt that the province was free to regulate its language inside the Chamber as it saw fit at any later time. They were content with the fact that the Northwest had abolished the use of the French language within the Assembly.

Mr. Chairman, I found it somewhat disturbing that Dr. Forsey appeared to rely on great parliamentarians of 1905 to support his arguments. He named Mr. Fitzpatrick, Sir Robert Borden, Mr. Bourassa, Mr. Monk, Mr. Lemieux, and others to give authority to his assertions. Mr. Chairman, with the greatest respect to Dr. Forsey, I cannot imagine for one minute why he did this. A reading of the House of Commons debates on June 30, 1905, and July 5, 1905, show without any doubt whatsoever that Canada's parliamentarians were under the distinct impression that (a) Mr. Haultain's motion had been completely valid and lawful, (b) even the French spoken word in the Chamber had been abolished, and (c) it would be completely unconstitutional for Ottawa to impose language provisions on behalf of Alberta and Saskatchewan.

Both territorial and federal parliamentarians, Mr. Chairman, many of whom were Canada's greatest constitutional legal minds by Dr. Forsey's own admission, felt that to carry forward or enact any provision dealing with language in Alberta and Saskatchewan would have violated the terms of the Constitution and would have, therefore, been unlawful or ultra vires. Section 110 of the North-West Territories Act, as it related to language of the Chamber, was regarded for all intents and purposes as null and void. Mr. Bourassa said on July 5, 1905, at page 8849:

> In 1892, Mr. Haultain moved the abolition of the French language. At the time, there were two French Canadian representatives in the Legislature. One of them, Mr. Prince, spoke on behalf of the rights of the minority, appealed to the spirit of fairness of the majority, claimed equal rights for the two great Canadian nationalities, but his efforts were in vain and

the French language was done away with.

Sir Wilfred Laurier, responding to the demand by some members for a language provision amendment in the Alberta Act, said at page 8851:

> Now, if the House agreed to that amendment as desired by the Honourable Member for Labelle, and if we inserted in the Constitution which we are enacting for the Province of Alberta and for that of Saskatchewan, we would be interfering thereby with one of the rights of these provinces, that of deciding in what language the proceedings will be carried on in the Legislatures.

Lastly, Mr. Chairman, at page 8617, Mr. Lapointe noted to the House of Commons that the use of French was not provided in any way in the Constitution with regard to the Northwest. The provinces, it was agreed, would be the sole judges of that fact. I could go on and on, Mr. Chairman, because the debates are quite lengthy, and they are quite full of references by various members accepting and even guaranteeing the right of Alberta and Saskatchewan to determine their own language.

Mr. Chairman, the last point I would deal with is Dr. Forsey's assertion that of the hundreds of parliamentarians in Ottawa on both sides of the language issue for Alberta and Saskatchewan, of the 24 parliamentarians voting upon Mr. Haultain's motion in the Northwest Territories Assembly, and of the numerous legal advisors and civil servants, none were apparently aware that a major defect had occurred in the proclamation of that motion. Amongst the Northwest Territories Assembly was the future Chief Justice of the Territories Supreme Court. Amongst the House of Commons in Ottawa was the future Chief Justice of the Supreme Court of Canada and several eminent individuals who Dr. Forsey himself described as the best constitutional lawyers in the history of Canada. None of them knew that the Northwest Territories had somehow made a major mistake. Somehow Mr. Haultain's motion was not effectively carried out, this in spite of the fact that the motion had been the subject of debate for several days in the Northwest Territories Legislature and had even at one point caused Mr. Haultain to tender his resignation. It had been equally controversial in the House of Commons, Mr. Chairman, being debated for days and causing eminent parliamentarians at the time to rally behind the leaders of one side of the debate or the other.

In the territories at that time, Mr. Chairman, most laws had to be submitted to Ottawa for approval. Every new session of the Legislature was preceded by the Lieutenant Governor either giving or withholding the approval of Ottawa to allow certain laws to be passed. The Northwest Territories Assembly was completely captive to Ottawa. Every step of its deliberations was closely monitored by Ottawa. The debates of 1905 show without doubt whatsoever that Ottawa accepted Mr. Haultain's motion as being valid. Despite the great legal minds of the time, and indeed even the assertion of the Right Honourable Sir Wilfred Laurier himself, whose government created the provinces of Alberta and Saskatchewan, Dr. Forsey insists that they were all in error. There was a mistake in fact, he asserted, rather than law. In other words, they just simply didn't know all that was going on. Mr. Chairman, with all due respect, Dr. Forsey was stretching my credulity too far.

What I'm putting forward to this committee today is not a new idea. The one I am putting forward is the one that was adhered to 100 years ago by the very people who made Alberta and Saskatchewan happen. It is Dr. Forsey's ideas that are new. We have a small handful of scholars since 1962 who allegedly discovered a major glaring error which was somehow missed since 1892. Of the hundreds of people alive in both Canada and England at that time whose business it was to know exactly what was required in terms of procedure, these academics have displayed an arrogance which has to impress even me, Mr. Chairman, because they profess to know now what the greatest constitutional minds missed so long ago. We cannot bring back Sir Wilfred Laurier and his cabinet colleagues, but their words live on in the House of Commons debates at that time, and those words prove that they knew exactly what both the facts and the laws were.

We have here a very unusual situation, Mr. Chairman. We have an old man who was one year old at the time Sir Wilfred Laurier's government passed the Alberta and Saskatchewan Acts, and we have a young man who was born a long time after Sir Wilfred Laurier and his contemporaries died. Yet the young man adheres to the correctness and inherent intelligence of the parliamentarians of a hundred years ago. The old man denies his predecessors knew what they were doing and believes he has a new insight on an old and, what most people believed, settled controversy.

I said earlier that I fully expect to be severely criticized for my analysis, Mr. Chairman, but I will not back down from statements I can prove. All Dr. Forsey and Mr. Christian could offer were opinions and new and novel legal analysis which simply defies all conventional sources of constitutional learning. I don't know why these opinions were given before this committee. I would have thought such opinions so incompatible with the fundamentals of constitutional law that no one seriously would have advanced them, much less in a committee deciding a question of this importance.

I do not propose to deal with the evidence of Dr. Gary Garrison, Mr. Piquette, Ms. Barrett, or the other witnesses we've heard today. Their testimony is largely composed of personal accounts of circumstances of which I can offer nothing new to the committee. Their testimony is largely a matter for committee members and not for committee counsel to consider.

In conclusion, Mr. Chairman, I can only offer the following. It is my respectful opinion that, as per the Speaker's ruling, the only place appropriate to discuss Mr. Piquette's right to speak French in this Assembly is within this Assembly itself. I do not believe there is any constitutional right to speak French in this Chamber, in either Alberta or Saskatchewan. However, this Chamber is completely free to decide whatever it likes with regard to the language of its proceedings. Mr. Haultain's motion, as far as this Chamber is concerned, determined the matter. Alberta has a unilingual Legislature, and the existence of isolated precedents to the contrary do nothing to change that fact.

However, committee members are encouraged to look at the circumstances of Mr. Haultain's motion. The English-only resolution was not carried out by this government or indeed any party presently in the House now. It was carried out at a time when such phrases as "one language, one empire" were common. Canada had a colonial mentality and felt very much attached to Mother England. The Legislative Assembly today is completely free to update its motion or leave it as is.

Whatever the decision of this committee, Mr. Chairman, the Speaker's options are limited. He can only enforce the rules that the House makes. If the committee wishes to leave Mr. Haultain's motion in force, the Speaker will be obliged to enforce the provisions of that rule. Likewise does full competence to decide on the other matters of privilege before this committee fall within the Chamber itself. Our witnesses were unanimous on the point that the House can decide any issue affecting its

own privileges as widely or as narrowly as it wants. They will then form precedents of the House, Mr. Chairman, and have the force and effect of law inside this Assembly.

I have no recommendations to offer on any subject. You have my views, but they are only important insofar as they state that no outside authority obliges you to decide a certain way. The committee can recommend the adoption of French or it can leave things as they are. It can go somewhere in the middle with as many restrictions or conditions as it likes. This is a matter for members of this committee alone to decide without hindrance or interference from the courts, the press, or anyone else. I don't think there is much argument on whether or not this Assembly can determine its own proceedings. The real question is why it will make any recommendation to the full Assembly. The answer is because it wants to, not because it has to.

I hope my submission has been of assistance, and I would take this opportunity to thank all committee members, Mr. Chairman, for their kind attention. I am sorry that we seriously underestimated the amount of time. I would also mention to all committee members that attached with this brief is a copy of the brief I wrote some time back about the Speaker's petition, and another brief giving some statistics from the multiculturalism department, Mr. Anderson's department, on linguistic breakdowns of populations in Alberta.

Thank you, Mr. Chairman.

MR. CHAIRMAN: Thank you very much counsel. It's now at 12:30, and as I indicated, I would suggest that the committee reconvene at 2 o'clock, if that's agreeable?

MR. WRIGHT: Mr. Chairman, I'll reserve my remarks until then.

MR. CHAIRMAN: Very good.

Motion to adjourn until 2 o'clock. All in favour say aye.

HON. MEMBERS: Aye.

MR. CHAIRMAN: Contrary? The motion is carried.

[The committee adjourned at 12:32 p.m.]