[Chairman: Mr. Stewart] [2:01 p.m.]

MR. CHAIRMAN: Will the committee come to order, please. Just off the top I thought perhaps I should -- we had not made any arrangements in respect to further meetings of this committee on a formal basis. Since there's a 24-hour call at the Chair rule, I thought it might be appropriate that if need be, perhaps the committee meet again tomorrow at 2 o'clock, and I will have notice go out, if the committee wishes, on the 24-hour basis.

MR. WRIGHT: We find ourselves in great difficulty, Mr. Chairman.

MR. CHAIRMAN: Oh, I see.

MR. WRIGHT: We have a meeting that's been planned of our caucus. We put it off from last week to this week. Friday we'd be free.

MR. M. MOORE: Mr. Chairman, we have a cabinet meeting tomorrow as well, but I think the importance of completing the work of this committee should allow those of us who are members of this committee to move out of the cabinet meeting and arrange our affairs so we can be here tomorrow at 2 o'clock. I would move that we do convene again at 2 o'clock tomorrow in the event that we don't complete our deliberations today.

MR. CHAIRMAN: Well, okay, that's a motion from Mr. Moore. Any further discussion? Mr. Gogo.

MR. GOGO: Yes, Mr. Chairman. I had other arrangements, but I will cancel them if it's necessary to be here tomorrow. Could I have an indication as to how long the committee might run though?

MR. CHAIRMAN: Well, I think if we commence at 2 o'clock tomorrow, we would run from 2 to 5 and then maybe even into the evening if it were the wish of the committee, if it's required.

MR. GIBEAULT: Mr. Chairman, I wonder if we could delay discussion of this until near our conclusion this afternoon, just in case the committee is ready to wrap up its considerations.

MR. CHAIRMAN: Well, I guess my difficulty with that is twofold. I've got a motion on the floor, and secondly, I've got this 24-hour deadline situation.

MR. WRIGHT: Well, I would like to move that we waive the 24-hour rule, providing we make the decision at the conclusion of today's business and table the motion till then. I'll make one and then the other perhaps.

MR. CHAIRMAN: Okay. That's a tabling motion, I presume.

MR. WRIGHT: I was hoping that . . . Well, I'd like to make the subordinate motion that in order to allow the tabling one to make sense, we waive unanimously the 24-hour rule.

MR. CHAIRMAN: Very good.

MR. HORSMAN: On a point of order. I'm sorry; I arrived just a few minutes late. But I have a little difficulty with that in view of the fact that there are members who are not here.

MR. WRIGHT: That's so in the Chamber too.

MR. HORSMAN: Yes, that's true. I just don't want to have any procedural concern raised by -- I assume there wouldn't be any from members of your caucus, but there's no Liberal member here, nor has there been, as I understand, for several meetings. That's the only concern I have, that somebody might raise an objection to not giving 24 hour's notice to members who aren't present.

MR. M. MOORE: Mr. Chairman, on a point of order. We have a motion on the floor that we meet tomorrow at 2 o'clock. That motion must properly be dealt with before we can entertain another one, and if that motion fails, then we can entertain another one. If it does not fail and passes, then we would meet at 2 o'clock tomorrow unless the committee wishes when we conclude this afternoon or this evening to deal otherwise with the second motion that would alter that one. So I suggest we have to put the question on meeting at 2 o'clock tomorrow, and then if the hon. members still wish to deal further with the meeting time after having known what happens today, they're free to do so at the conclusion of the meeting. But that shouldn't preclude the motion proceeding that's on the floor.

MR. WRIGHT: Mr. Chairman, I would table the motion to the end of the meeting, at which time it will be removed.

MR. CHAIRMAN: Okay, that's a tabling motion, and there's no debate on tabling motions.

MR. M. MOORE: Sorry, I didn't hear that.

MR. CHAIRMAN: There's no debate on the tabling motion.

MR. M. MOORE: I didn't hear the motion.

MR. CHAIRMAN: The motion is to table your motion until the end of today's meeting, to be taken off the table and disposed of at that time.

Are the committee members ready for the question on the tabling motion? All those in favour of the motion, please signify by saying aye.

SOME HON. MEMBERS: Aye.

MR. CHAIRMAN: Contrary, raise your hands. I declare the motion defeated.

Is there any further discussion on Mr. Moore's motion?

MR. WRIGHT: Yes, I'd like to amend it to 9:30 a.m. on Friday.

MR. CHAIRMAN: Okay, an amendment to Mr. Moore's motion. Is there discussion on the amendment?

MR. ANDERSON: Mr. Chairman, I wouldn't be available at that point, so I'd oppose the amendment, not knowing how many other members might be available or not that day.

MR. WRIGHT: I'm speaking to the amendment, Mr. Chairman. I've explained, but for the benefit of any who weren't here, that

our party has a caucus meeting all day tomorrow and the following day. I realize there are some other individual commitments which, if they prevail, would mean that one or two members might be absent, which is a little different from all of us having to be absent, unless of course we skip the caucus meeting.

MR. CHAIRMAN: Any other discussion on the amendment? All those in favour of the amendment, please raise your hands. Contrary, if any? I declare the amendment fails.

Are you ready for the question on the motion?

SOME HON. MEMBERS: Question.

MR. CHAIRMAN: All those in favour of Mr. Moore's motion, signify by raising your hands.

MR. R. SPEAKER: Mr. Chairman, I just came in. Could I first hear that motion?

MR. CHAIRMAN: Yes. Do you have the motion, clerk?

MISS CONROY: Mr. Moore could correct me if I don't have it properly. I have: moved that the committee convene at 2 o'clock on Wednesday, June 24, in the event that the committee has not yet completed its deliberations.

MR. R. SPEAKER: Thank you.

MR. CHAIRMAN: Thank you. I'll call the question on the motion again. All those in favour of the motion, signify by raising your hands. Contrary? I declare the motion carried.

The committee will now resume and, as I indicated earlier, following the summation by counsel, we would give an opportunity to members to direct any questions to counsel relating to the summation.

MR. WRIGHT: Mr. Chairman, before we get to that stage, I'd like to move that committee counsel be discharged on the grounds of a gross failure to fulfill his functions in an impartial summary of the evidence and in fact using the summary of the evidence -- or summation, so-called -- to simply make a detailed argument against the evidence and the arguments of the witnesses, upholding the point of view which he expressed in his original brief.

Also, it appears to expand that there is, as it were, a manifest conflict of interest here, in that it appears that he advised the Speaker on his original ruling and is now, it is very clear, intent on backing up that original ruling and disregarding, except to dismiss for some reason or the other, opinions to the contrary. This I characterize as a gross failure in his function, and I move that he be discharged.

That's all for now, Mr. Chairman.

MR. M. MOORE: Well, Mr. Chairman, on more than one occasion since this committee first met members have undoubtedly disagreed with either the evidence that was submitted by the various people who appeared before the committee or the cross-examination that was done by other members of the committee or counsel for the committee. Today was no exception. The hon. Member for Edmonton Strathcona raised objections several times today to the proceedings of the committee based upon the fact that that member did not agree with what was being said. Counsel has an obligation to sum up the proceedings as counsel has seen them, and the very fact that one hon. member, or perhaps more, does not agree with the counsel's summation is no reason whatsoever for anyone to suggest that counsel ought to be dismissed. I find that a rather outrageous suggestion, particularly coming from an individual who, although not very experienced in parliamentary procedures, certainly has some background in the legal profession. That ought to lend some credibility to proceedings like this in his mind.

So I suggest, Mr. Chairman, that we've nothing more in this case but one hon. member having a disagreement with the summation given by counsel this morning and this afternoon. And I might note in concluding that counsel did indicate that in all likelihood there would be some strong objections. We've just heard them, but that's no reason to discipline counsel in any way.

MR. HYLAND: Mr. Chairman, the same comments as Mr. Moore.

MR. HORSMAN: Mr. Chairman, I certainly oppose the motion. Nobody expected the counsel to this committee to be neutered in terms of presenting an opinion to this committee. We expected the counsel to give us a legal opinion at the end of the proceedings. He has done so. The fact that the hon. Member for Edmonton Strathcona doesn't like the opinion is hardly grounds for a motion of that kind. I made it very clear -- for example, I didn't like the opinions of some of the witnesses who appeared before the committee, and I don't necessarily agree with everything that the committee counsel has given us in his lengthy legal opinion. Nonetheless, it is his opinion, and I think to suggest that he's been guilty of gross failure to carry out his responsibilities is an undeserved and unwarranted motion, and I ask members to defeat that.

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

MR. SIGURDSON: Yes. Thank you, Mr. Chairman. In speaking to the motion, I'm of the opinion that counsel was prejudiced prior to even making the submission, and after hearing it and reading the submission later on, I think that the prejudice comes out. It's unfortunate that when Dr. Forsey was here and started off in his opening remarks, I saw counsel lean over to the Chair and say something. I heard and I saw counsel say something to the Chair that I thought showed a great deal of disrespect to the expert witness that was here at the time. For those reasons I think the summation has been prejudiced and that counsel ought to withdraw.

MR. FOX: Well, I agree with the motion too, and unless in my newness as a member in this Assembly and not being familiar with this sort of proceeding I misunderstand the role of committee counsel, then I think what we've been presented with this morning is entirely inappropriate and out of order. Parliamentary Counsel, as I see it, should be here to advise members on the admissibility, legality, relevance, whatever, of presentations and to ask, hopefully, questions that elicit fair testimony from witnesses that appear before us. But I think what we have here before us goes well beyond that. It seems to me to be an extensive attempt to defend the Speaker's ruling, that the counsel himself admitted he had some input in developing, to go at great length and quite beyond propriety, I submit, to chastise and criticize and belittle the presentation of expert witnesses in an attempt to substantiate the infallability and irrefutability of

the Speaker's ruling presented in this Assembly some months ago.

I was hoping that what we would have had was an objective summation of evidence, which is what Mr. Wright was calling for, a summation of evidence. It's not that he was concerned that he disagreed with some of the things counsel said; it's just that it wasn't what it was purported to be. I just think it's totally inappropriate. If counsel is willing to withdraw from his role as counsel and have this submitted as evidence from a learned witness with some considerable background, then I'd be more than prepared to consider it in that light. But in fairness, and I'm sure other members of the committee would realize this, if this statement were presented to some of the witnesses whose testimony was chastised and belittled here, they would have probably all sorts of things to say and contentions to raise with the Parliamentary Counsel. We could be involved in procedural and constitutional wrangling of some length. I'm not sure that anything that happened here is of any substantial use to the committee.

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

MR. GOGO: Thank you, Mr. Chairman. As a member of this committee I'll make my decisions based on the evidence I've heard. Undoubtedly a Parliamentary Counsel or committee counsel's summation will play a part in that. But I think Mr. Wright's motion is clearly one of shooting the messenger, and I would oppose it.

MR. RUSSELL: Well, it's a preposterous motion. If they objected to a perceived conflict of interest, why didn't they bring that up at the beginning? The counsel has been sitting at that Table for the entire session advising the Speaker, and they speak as if they only discovered that today. Where have they been? I don't particularly like all the opinions expressed either, by the counsel or by many of the witnesses, but that's what our duty is as committee members. To put this motion to the committee at this time is ludicrous, and it needs to be defeated as quickly as possible.

MR. R. SPEAKER: I would say this: it's been one of the more lengthy presentations in terms of counsel that I've observed in my 24 years, and so it's a precedent in that sense. But when the hearings first started, the first witnesses indicated that in Alberta both languages, French and English, were the legal right in this Assembly, and that presentation was made. Now, there wasn't any significant evidence that turned that attitude around until the presentation of our counsel here today where I saw that there is another side with some substantial evidence. I think that was presented well and is going to help me in my final decision-making, and that's satisfactory.

Now, some of the other opinions about the witnesses: I share some of those in terms of the depth of presentation, the research in presentation, their emotion about presentation. I share that with the counsel, not to take each one and itemize how I feel about them. So there is more material on which we can make a judgment, and on that basis I don't think there's evidence enough here to dismiss the counsel on it.

MR. CHAIRMAN: Very good. Mr. Wright.

MR. WRIGHT: Mr. Chairman, of course I don't like the opinion expressed, but that certainly isn't the basis of the motion. The basis of the motion is a failure to do his duty. His duty was to make a fair summary, whether he agreed with it or not, of the evidence of the witnesses, expert and nonexpert alike, although it's quite proper in the case of the merely factual witnesses simply to say what he did, which is obvious -- what they have said -- and it's very recent. But some guidance in the way of compression of what the witnesses said is surely the prime duty when it comes to summary.

And then I have no objection, too, to some legal reference being made with respect to the witnesses after that, once their evidence has been fairly summarized. Not using new points, however. But what was exceptionally unfair and should surely have been apparent to the gentleman as a lawyer as well as a functionary in this House was to bring up a number of new points which he did not put to the witnesses when they were called and which means that they did not have the chance to make a response. You know, so much of our practice is premised on the idea of hearing the other side and giving a person a fair chance to respond, and that was signally not observed in his presentation.

In addition, we had not one brief, which is fair enough, but in effect three briefs: one at the beginning; another not called for, not part of the agenda, with his alleged summary of evidence; and a third in the alleged summary itself, which was an extended diatribe against those with whom he disagreed. I believe the motion is inevitable.

MR. CHAIRMAN: Is the committee ready for the question?

SOME HON. MEMBERS: Question.

MR. CHAIRMAN: All those in favour of the motion, please signify by raising your hands. Contrary, if any. I declare the motion defeated.

Do committee members have any questions of counsel in respect of the summation?

MR. FOX: Is counsel under oath?

MR. WRIGHT: The question was asked, "Is counsel under oath?" But I don't think that's necessary, Mr. Chairman.

In your statement, Mr. Ritter, you quoted, with approval as far as I can remember -- I didn't have the brief at the time, so I haven't found it in there -- statements to the effect that Parliament will have to disregard the court if the court makes a ruling on law which the Parliament disagrees with. How far do you carry that?

MR. RITTER: Mr. Wright, I said that Parliament may disregard the courts if it chooses to do so, yes. I would carry that as far as Parliament wants to carry that.

MR. WRIGHT: But the precedents you quoted were English ones, were they not?

MR. RITTER: Some were, yes. There was a Speaker's ruling in the House of Commons which I have in my office, Mr. Wright, where the Speaker made a ruling in that House that a particular decision that had been handed down by the courts affecting the privilege happened to agree with what he would have ruled. But he said that had it not, he would clearly have been free to depart from it.

MR. WRIGHT: But in that case it was a matter of privilege not dealing with a question of law perhaps?

MR. RITTER: Well, Mr. Wright, I think we've established that privilege and law are apt to have different interpretations. What Parliament regards as privilege may in fact be regarded as law by the courts. Parliament has made it very clear that it is its opinion that matters to Parliament, not the court's.

MR. WRIGHT: But of course in the United Kingdom there isn't a written constitution, except in various bits and pieces, certainly not on the constitution of Parliament.

MR. RITTER: Certainly not a constitution like we would understand the U.S. Constitution or something like that, yes.

MR. WRIGHT: Here what we're dealing with is something that is a provision in the Alberta Act, which is a constitutional Act.

MR. RITTER: Well, Mr. Wright, I would suggest that some parts of law that are imported by the Alberta Act are not in fact constitutional, which was the whole basis of my brief.

MR. WRIGHT: Yes. At any rate we're dealing with some written law, whatever its status.

MR. RITTER: If it relates to the privileges of Parliament, Mr. Wright, it's written law only inasmuch as it bases completely on the nonwritten constitutional law of England.

MR. WRIGHT: Yes. Are there other questions?

MR. CHAIRMAN: I'll just check, Mr. Wright. Are there other members who have questions for counsel? You may proceed, Mr. Wright.

MR. WRIGHT: Thank you.

MR. CHAIRMAN: Excuse me, if I see another hand up, then I will interrupt you perhaps and make sure that we give the others an opportunity to participate.

MR. WRIGHT: Yes, fair enough, Mr. Chairman.

Well, let's see now. You're saying that if something is written down in a statute that deals with the language of parliament -- I use that with a small P, being the Legislative Assembly in the case of Alberta -- we can disregard that in the Assembly?

MR. RITTER: What kind of statute, Mr. Wright, a constitutional statute or an ordinary statute?

MR. WRIGHT: Let's deal with any statute first.

MR. RITTER: Well, there is a difference between the two. Obviously, we're not allowed to ignore a constitutional statute. We are entitled to ignore an ordinary statute.

MR. WRIGHT: Yes, all right. Well, dealing with that then, Mr. Ritter, in the case of the formation of the province of Alberta, the British North America Act did permit by 1905 the enactment of provisions to form new provinces, did it not?

MR. RITTER: Now, which British North America Act are you referring to, Mr. Wright?

MR. WRIGHT: I really don't know, but I mean . . .

MR. RITTER: Well, I'll assume you're referring to the 1871 Act.

MR. WRIGHT: It's all one Act with amendments.

MR. RITTER: No, with respect, it isn't, Mr. Wright; it's many Acts since 1867. The Act that authorized Ottawa to create the provinces of Saskatchewan and Alberta was embodied in the British North America Act 1871, section 2.

MR. WRIGHT: Which was not an amendment to the British North America Act?

MR. RITTER: No, in fact, it was not.

MR. WRIGHT: All right. Well, at any rate, regardless of where it was, Parliament was permitted to form new provinces?

MR. RITTER: The federal Parliament, yes, out of the Northwest Territories, correct.

MR. WRIGHT: That's right. And I notice you didn't quote when dealing with the evidence of Dr. Forsey his agreement with me that the analogy was correct: that it's like launching a ship, that the builder of the ship, namely the Parliament of Canada, had complete jurisdiction to form that ship and furnish it but once it was launched had no more.

MR. RITTER: I'm very glad you brought up that analogy, Mr. Wright, because in fact I would have created the analogy that you're buying a car from someone and someone says, "Well, I'll put in all the options for you," and you say, "No, thank you; I'd like to put in my own options, thank you very much." So I couldn't quite agree with the analogy that you gave Dr. Forsey.

MR. WRIGHT: That's fair enough; I go along with that analogy too. But where was the purchaser of the car stipulating that you didn't want the options?

MR. RITTER: The purchaser of the car in fact had a continuous effect from the Legislature of the Northwest Territories Assembly, Mr. Wright, that in fact territorial laws also had continuous effect in this province and in Saskatchewan and in fact, as was regarded correct by the federal parliamentarians, they had dealt with the language issue.

MR. WRIGHT: Yes. But what I'm getting at is: are you saying that in 1905, before the passing of the Alberta Act, the federal government -- then called, of course, the Dominion Parliament -- did not have the jurisdiction to set up the province and stipulate what it wished as being the starting institutions?

MR. RITTER: I'm saying that they had the jurisdiction to set up the province, Mr. Wright. They did not have the jurisdiction to stipulate what the Constitution of that province would be, which exceeded the 1867 Act.

MR. WRIGHT: Let's look at that, Mr. Ritter. They did not have the jurisdiction to say what the Constitution would be: you

mean for the future?

MR. RITTER: That is correct.

MR. WRIGHT: Yes, we agree there, but at the starting point they had full jurisdiction to say what the Constitution would be.

MR. RITTER: No, they did not, Mr. Wright. The Constitution of all provinces of Canada was defined by the imperial Act of 1867. It had nothing to do with the Alberta and Saskatchewan Acts.

MR. WRIGHT: Yes. Well, what in the British North America Act of 1871, then, or any other Act of the imperial Parliament forbade them stipulating the language of the Assembly of the province to be formed?

MR. RITTER: The Act was the 1867 British North America Act, sections 92 and 91, Mr. Wright.

MR. WRIGHT: But that does not deal with the formation of provinces.

MR. RITTER: That's why they had to create the 1871 Act, Mr. Wright.

MR. WRIGHT: Exactly. So what in the 1871 Act, then, forbade them stipulating the language in the Legislature?

MR. RITTER: As a specific clause, Mr. Wright, there was no stipulation on language at all or prohibiting.

MR. WRIGHT: All you're saying is that there's a division of powers.

MR. RITTER: I'm saying that the division of powers that was already in existence at that time in this country under the 1867 Act had to be adhered to unless the imperial Parliament gave specific authorization to exceed those division of powers.

MR. WRIGHT: Absolutely. So what you're saying is: there's a division of powers and the language of the Legislature is entirely a provincial matter.

MR. RITTER: That is correct, unless it was changed by some other imperial Act, yes.

MR. WRIGHT: Or as in the British North America Act itself, was different from the start; e.g., the Legislature of Quebec.

MR. RITTER: Exactly, and New Brunswick and so on, yes.

MR. WRIGHT: Yes. I can't remember that New Brunswick was in that Act, but anyway . . .

MR. RITTER: Not from the start, but it was in the 1982 Act, yes.

MR. WRIGHT: But we're talking about a situation before the province exists. We're talking about furnishing the boat or putting options on the car, Mr. Ritter.

MR. RITTER: I agree.

MR. WRIGHT: So you're saying that the Parliament could not do anything for the new province before it became a province, in setting up, that they couldn't do after?

MR. RITTER: I'm not suggesting they couldn't do anything. Obviously, laws of necessity, necessary to the peace, order, and good government of a new province, could be enacted. French language in the Legislative Assemblies of Regina or Edmonton was not a necessity and therefore could not be enacted by Parliament.

MR. WRIGHT: I agree that it wasn't a necessity, but where do you get that interpretation of their powers in setting up a province?

MR. RITTER: The Rt. Hon. Sir Wilfrid Laurier, Mr. Wright.

MR. WRIGHT: Yes, but where in the legislation, Mr. Ritter?

MR. RITTER: In the legislation? Which legislation are you referring to?

MR. WRIGHT: Any legislation.

MR. RITTER: The 1867 Act specifically gives Canada the same privileges as does the United Kingdom Parliament enjoy. Every Parliament is completely cognizant of all matters arising within its precincts.

MR. WRIGHT: Yes, but you're talking about the division of powers. I'm talking about the ability to form new provinces, which you say came along in 1871.

MR. RITTER: Yes, the 1871 Act, Mr. Wright, by section 2 gave the federal Parliament the right to create Alberta and Saskatchewan, nothing more, just create them. Section 4, on the other hand, when it dealt with Manitoba, specifically adopted even language provisions. It did not do so with Alberta and Saskatchewan.

MR. WRIGHT: Yes. Where does it say in the 1871 legislation, then, that gave the Parliament of Canada the power to create the provinces of Saskatchewan and Alberta, that the only thing they could say about the Constitution of those two provinces was what was a matter of necessity?

MR. RITTER: The power to create the province, Mr. Wright, was given under section 2 of the 1871 Act. It is implicit in law, as you know, that all the other constitutional documents in force and effect have to continue as if in force and effect unless the imperial Parliament gave specific permission to depart from that preset formula. What you are suggesting is that if it had been any other way, then Alberta and Saskatchewan could have been created on fundamentally different provincial powers than other provinces enjoy in this country, and that's a proposition I simply can't accept.

MR. WRIGHT: Well, that's an academic point it seems to me. You agree that they had the power to set up a parliamentary body within the province?

MR. RITTER: I do, because it was given to them by the imperial Parliament.

MR. WRIGHT: Would you consider that a matter of necessity?

MR. RITTER: No, I wouldn't. But that's why there was a specific statute created to allow them to do so even though it wasn't a necessity to; 1871 would be an . . .

MR. WRIGHT: That's what I'm talking about. It gave them the power to set up a province.

MR. RITTER: That is correct.

MR. WRIGHT: Did it give them the power to set up parliament in the province?

MR. RITTER: No, it did not. That was already under the terms of the 1867 Act.

MR. WRIGHT: No, that just assumed, that in each province there'd be a parliament.

MR. RITTER: Under the 1867 Act, Mr. Wright, it specifically is enumerated that each province shall have a provincial Legislature which is cognizant of its own proceedings.

MR. WRIGHT: Exactly, yes. So it would be implied that one of the things they would do would be to provide for a parliament in the province of Saskatchewan and in the province of Alberta when formed.

MR. RITTER: It wasn't implied, Mr. Wright It was specific and express.

MR. WRIGHT: In the 1871 Act?

MR. RITTER: In the 1867 Act. Eighteen seventy-one was merely a four-paragraph Act which gave them the authority to create the two new provinces of Alberta and Saskatchewan.

MR. WRIGHT: Exactly. But the 1867 Act did not give them the authority, it seems, to create new provinces.

MR. RITTER: That is correct. That's why we required the 1871 Act, to give the Ottawa government the power to do so.

MR. WRIGHT: Exactly. So you just had to read into that that in creating a province, they would have the power to do all that was reasonably necessary to get the province in reasonable working order.

MR. RITTER: Well, you're reading in a little further than I would read in, Mr. Wright. But you said it yourself; they could do anything that was reasonably necessary, yes. And I can't accept that French in the Legislature was a necessary provision.

MR. WRIGHT: Reasonably necessary?

MR. RITTER: I can't accept that, no.

MR. WRIGHT: But perhaps they could have thought it was reasonably necessary to specify the language of the proceedings.

MR. RITTER: I agree they could have thought it was. The debates of 1905, though, Mr. Wright, show that they uncategorically did not think that it was necessary.

MR. WRIGHT: Because they thought it already had been settled.

MR. RITTER: That amongst other reasons. I quoted a number of things. They thought (a) that it had already been settled and (b) that they never had the power to legislate that for Alberta and Saskatchewan anyway.

MR. WRIGHT: Oh, where do you get that idea?

MR. RITTER: I read you the quotes, Mr. Wright. I can read them again if you like.

MR. WRIGHT: Oh no. They were all to the desirability of legislating something that the province should settle for themselves.

MR. RITTER: That's correct, yes.

MR. WRIGHT: Exactly. So they continued what they thought was there before?

MR. RITTER: No, because there was the discussion in the House that some hon. members were under the impression that they had the right to re-reverse the original reversal of section 110 and stick it back in again. It was the Rt. Hon. Sir Wilfrid Laurier that clarified the position and said that it was the feeling of Parliament that they did not have the right to do it. It had (a) already been dealt with at the territorial level, but (b) when it came to a province, then they no longer had that right to even legislate.

MR. WRIGHT: Okay.

MR. FOX: Mr. Ritter, I'm just wondering -- I'd like to understand the circumstances surrounding the passage of the Haultain motion a little more clearly. Is it your contention that the Haultain motion effectively extinguished the right to use French in this Assembly?

MR. RITTER: It is my assertion that it did, yes.

MR. FOX: And it's your assertion that that is the case even though it didn't refer in any way to the language spoken in this Assembly.

MR. RITTER: That's a very good question, because quite frankly I was not sure of that myself. It specifically excluded that. All I can do, Mr. Fox, is merely rely on what the impression was and what the actions carried out in the various Legislatures and parliaments concerned were, and they certainly assumed that it meant to abolish the language. But to be quite honest with you, without being a historian -- and we could argue semantics of what was included in that or not -- I can't really answer you authoritatively. All I can say is that it was quite definite that the federal House and the Legislature in the Territories thought that it somehow had eliminated French use completely.

MR. FOX: So you're saying that you think the Haultain motion was strong enough in its wording to effectively extinguish the

right to use French in this Assembly even though it didn't say so. Yet it purports to extinguish the right to publish in French certain *Journals* and proceedings of this Assembly, which, as you explained to us, continued to be published in French for some years after. I'm just confused how it almost seems a selective interpretation to me, and I'm trying to be very open in this. Here we've got a motion that doesn't say that it extinguishes the use of French in this Assembly, yet you're prepared to say that it does. On the other hand, this same motion that extinguishes the right to publish in French certain documents of the Assembly obviously didn't, because those people who were involved in all this debate continued to publish some of their records and *Journals* in French. There's just an inconsistency there that I hope you can rectify for me.

MR. RITTER: Yes. If I understand you correctly, you're saying, "Okay, if they thought the motion was valid, how come they were still printing the *Journals* in French?" Is that what you're asking? The practice belies the . . .

MR. FOX: That's part of it, yeah. Half of it.

MR. RITTER: There's a very big difference, Mr. Fox, between doing something because you have to and doing something because you want to. If this Legislature decided completely gratuitously for the Ukrainian population of this province to print all its laws in Ukrainian, no one could come back next year when it stopped doing so and say, "But you have to." There's no law to do so. Parliament, and in this case the Territories' Legislature, had a substantial French minority, and according to Grant MacEwan this was done as a service to those people. Whether or not they were obliged legally to do so is a completely different issue.

MR. FOX: So you're saying on the one hand that this Haultain motion that said it is desirable that, you know, English be the language or whatever meant that it could be either done or not done?

MR. RITTER: That's correct, yes.

MR. FOX: But on the other hand, the wording of that motion was sufficient to extinguish the right to use French in this Assembly even though it didn't say so.

MR. RITTER: Well, it certainly, as I said, was regarded as such. This is something which I'm not even convinced on all myself. I think it was a badly worded motion or what have you. The Legislature certainly felt and the Parliament in Ottawa certainly felt that it had for all intents and purposes covered all aspects of French language. That's, you know, what was acted on, and this is obviously what would have given it legal effect through time.

MR. FOX: Now, if I understood another piece of evidence submitted by you --and again it's fairly complicated in my mind -- you maintain that the North-West Territories Act was not a constitutional Act and therefore the provisions of it do not carry forward into the Alberta Act.

MR. RITTER: It was not a constitutional Act as far as its relation to a province was concerned, no.

MR. FOX: So nothing contained therein is relevant to the Alberta Act or what happened in Alberta.

MR. RITTER: Oh, that's not what I said at all. The necessary portions of the North-West Territories Act which were carried forward. For example, companies that had been incorporated under the Northwest Territories Legislature, things like this that had been done for continuity and by necessity, were carried forward, mutatis mutandis, by section 14 of the Alberta Act. The unnecessary provisions, which were unnecessary for a number of reasons -- being that the Assembly had already dealt with them locally or whatever -- could not be carried forward because what was blatantly constitutional as regards Ottawa and a territory could not be considered constitutional necessarily as regards Edmonton and Ottawa.

MR. FOX: So even though that motion clearly stated that any change that was to be made to the use of -- am I going on here? That's all right?

MR. CHAIRMAN: Carry on, Mr. Fox.

MR. FOX: Any change, as far as the use of languages in the Assembly, would have to be proclaimed forthwith even though it was very specific about how any changes to that Act needed to be made. You're saying that it was redundant or immaterial or didn't matter at all.

MR. RITTER: If I understand your question correctly, it was completely immaterial regardless of whether Mr. Haultain made that motion or not. The minute we went over into a province, that status, whether or not it had been reversed by Mr. Haultain's motion, was completely immaterial.

MR. FOX: So you're prepared to say that as apparently deficient as the Haultain motion is in terms of purporting to extinguish the right to use French in this Assembly even though it doesn't say so, it's virtually irrelevant because -- well, we don't even need to be talking about it because the . . .

MR. RITTER: The minute sovereignty was created in Alberta at the provincial level, the status of Mr. Haultain's motion, the status of section 110, became completely irrelevant.

MR. FOX: And how do we decide what portions of the North-West Territories Act ought to be carried forward into the Alberta Act and which ones ought not to be carried forward? Is this a matter of selective judgment again, or do we . . .

MR. RITTER: It's selective judgment, Mr. Fox, by the Supreme Court of Canada, and we're slowly going through that painful process right now. No one can give you a definite what was necessary and what isn't necessary when it refers to a grey area. The only one whose decision counts on most matters is the Supreme Court of Canada and, as far as matters touching upon Parliament, is this Legislature.

MR. FOX: Do you think that the absence of a substantive proclamation or a visible printed proclamation of the Haultain motion is -- well, I'm just trying to get at your statement that Dr. Forsey seemed to discover this deficiency or other people since 1962 have discovered this deficiency that the Haultain motion was apparently not proclaimed. Do you think that revelation or

opinion on their part casts aspersions on the experts that were involved at the time or since?

MR. RITTER: I think if we are to take what people like Dr. Forsey and Dr. Dawson said, we must conclude that the people of 100 years ago were very ignorant.

MR. FOX: Would it not be fair to say that some of those people perhaps just assumed -- I mean the idea that it would not have been proclaimed was so ludicrous to them that they never thought to look into it? Is that a possibility?

MR. RITTER: What are you asking me to give evidence on, Mr. Fox? What people might have been thinking 100 years ago?

MR. FOX: You did that quite substantially here. Of interest to me, soon after you challenged Dr. Forsey's statements in that regard in the Assembly, an article appeared in the paper the very next day about a young math wizard who'd discovered a deficiency in Sir Isaac Newton's calculations some hundreds of years ago. Does that mean that everyone who's studied math in the interim is ignorant or deficient, or is it that it never occurred to them to challenge some basic assumptions made by somebody then?

MR. RITTER: Well, I'm suggesting that the study of law and the study of mathematics can hardly be compared, and when I gave my speculation about what people might have been thinking 100 years ago, Mr. Fox, I also backed it up with their actual statements that were uttered at the time.

MR. FOX: Or portions thereof.

MR. RITTER: Or portions thereof, granted. The debates are a very, very thick number of documents. If you thought my presentation was long before, I could have really kept you here for weeks. But whether something was missed 100 years ago, that was clung to and certainly monitored every step of the way by Ottawa, and every law that was passed that related to constitutional documents in the Northwest Territories had to be approved at the federal level before permission was given for the Northwest Territories to pass those laws. I should think under the possibility that this was something being worked with on a day-to-day basis and was very actively pursued, the likelihood of all those people completely forgetting about the constitutionality or the absence of the proclamation is reaching quite far. I just can't believe the people were that stupid.

MR. CHAIRMAN: Mr. Wright.

MR. WRIGHT: Yes. Now, your proposition is that it would be ultra vires the Parliament of Canada to legislate provisions for the new province which were not reasonably necessary to its formation?

MR. RITTER: I would agree with that, Mr. Wright.

MR. WRIGHT: That's your proposition.

MR. RITTER: Yes.

MR. WRIGHT: Now, looking at the Alberta Act, would you say that specifying the seat of government was a reasonable necessity?

MR. RITTER: For its initiation, yes, absolutely. But then keeping in mind that the seat of government is normally a provincial thing, if the province didn't like what the federal government prescribed, they could change it.

MR. WRIGHT: Yes, of course, because that is within exclusive provincial jurisdiction once the province is formed, isn't it?

MR. RITTER: Absolutely correct.

MR. WRIGHT: It's the same with the great seal.

MR. RITTER: I'm not sure if I would call the great seal absolutely necessary, but for practical purposes, for the sake of argument, certainly I'll go along with that.

MR. WRIGHT: And when the writs should be issued for the first election is a matter within provincial jurisdiction.

MR. RITTER: I think certainly it would be, but I would agree that the federal government could consider that a matter of necessity to preserve democracy in Alberta, absolutely.

MR. WRIGHT: And the status of certain corporations and societies in the new province, would you agree that's within exclusive provincial jurisdiction if they're provincially formed societies?

MR. RITTER: If it's provincially incorporated, absolutely; for the maintenance and continuance of trade and commerce, yes.

MR. WRIGHT: Right. And you say that that's a matter of necessity?

MR. RITTER: I would think so, yes. These are my opinions, Mr. Wright, not being a Supreme Court judge. He may well rule otherwise, but I'm giving you my opinions

MR. WRIGHT: And would you say that the law regarding the position of separate and public schools in the province to be formed, to stipulate for that was a matter of necessity?

MR. RITTER: No, I would not say that is a matter of necessity. However, that's an irrelevant question, because that was provided for constitutionally and therefore was beyond even questioning. That was not a matter decided well within provincial jurisdictions. The 1867 Act provided for the public and separate schools.

MR. WRIGHT: Well, with respect, it was altered for the provinces of Alberta and Saskatchewan.

MR. RITTER: I'm aware it was, but it was done so imperially. The fact is, the question was taken out completely from the hands of the federal Parliament in Ottawa. It was done so at the request of London.

MR. WRIGHT: I'm sorry; it's part of the Alberta Act.

MR. RITTER: That's correct, Mr. Wright, but the school provi-

sion was also contained in another imperial Act, allowing those provisions to be enacted in the Alberta Act.

MR. WRIGHT: Well, not these provisions, but that's another argument. But you say that that's not a matter of necessity. They were specifically empowered to do that.

MR. RITTER: Well, obviously if somebody is very, very committed to the idea of having separate schools, they might very well argue that it was necessity. Personally, again from my own opinion, I can't see that having two school systems is fundamental and integral to the operation of a new province. But you're quite free to disagree with me on that point.

MR. WRIGHT: And the rights of the Hudson's Bay Company in Alberta, was that a matter of necessity?

MR. RITTER: The Hudson's Bay Company was actually a royally chartered corporation, Mr. Wright, therefore beyond the jurisdiction of Alberta. They had a charter from the King.

MR. WRIGHT: Yes, but because they were not federally incorporated, then they fell within provincial jurisdiction once the province was formed.

MR. RITTER: No, they fell under imperial jurisdiction, Mr. Wright. They were chartered in London.

MR. WRIGHT: Well, does that mean to say that if a company is chartered in Philadelphia, the province of Alberta has no jurisdiction over it if it operates in Alberta?

MR. RITTER: If Alberta is a colony of Philadelphia, it certainly doesn't. Canada was a colony of Britain. Therefore, it could not in fact prevent imperially incorporated companies from doing something that the imperial government wanted them to do.

MR. WRIGHT: Canada was a colony of Britain in 1905?

MR. RITTER: Yes, it was, Mr. Wright.

MR. WRIGHT: Yet you say that legislating the Constitution of the Assembly itself was not a necessity?

MR. RITTER: Would you repeat that question, please?

MR. WRIGHT: You say that legislating the Constitution of the Assembly itself was not a matter of necessity?

MR. RITTER: No, I didn't say the Constitution. I said the language of the Assembly. That's a very minor part of the Constitution, Mr. Wright.

MR. WRIGHT: So you think that legislating the Constitution of the Assembly in the province to be formed was a matter of necessity.

MR. RITTER: On necessary aspects of the Constitution, Mr. Wright, yes. [interjection] On necessary aspects of the Constitution, absolutely.

MR. WRIGHT: Well, I can't understand the force of your qualification there. What matters in the Constitution of the Assembly were reasonably necessary and what not?

MR. RITTER: Oh, I see. Well, they're impossible to itemize, Mr. Wright, because as I say this is something that is a matter to be decided by one of the higher courts, and I'm certainly not a justice sitting on that court. But what matters of the constitution were necessary and were carried forward? I would certainly think it was safe to say that the language of the Assembly was not, and this was so regarded as well in the federal Parliament in Ottawa. They felt it was not a matter of necessity.

MR. WRIGHT: So you agree, then, that section 14 of the Alberta Act which says that

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

was intra vires.

MR. RITTER: I think those were quite necessary aspects of Alberta's Constitution, absolutely.

MR. WRIGHT: But you say that there could be aspects of the Constitution of the Legislative Assembly of the Northwest Territories which it was not necessary to carry forward, and therefore it would be ultra vires of the Parliament of Canada to pass a provision which implied the continuation of those particular provisions.

MR. RITTER: Yes, exactly. As I said, Ottawa could legislate anything with respect to a territory, but once we became a province, a lot of those things which they took responsibility for formerly, automatically relinquished. Ottawa had no control over things that were given within our authority here in this Chamber.

MR. WRIGHT: Well, you'll get no argument from me, or anyone here, I think, on that. But we're talking about before the province was formed.

MR. RITTER: Before the province was formed, Mr. Wright, Ottawa had a right to do anything it wanted in Northwest Territories, except what the imperial government said it could do.

MR. WRIGHT: I'm talking about before the province was formed, but with regard to the statute forming it, before the statute was passed and at the moment that it was passed.

MR. RITTER: Are you asking me: could Ottawa enact anything they wanted with respect to the creation of Alberta and Saskatchewan?

MR. WRIGHT: Well, providing they were the matters covered in section 92 of the British North America Act, of course.

MR. RITTER: Absolutely, no argument.

MR. WRIGHT: Yes, all right. But then this is different from what you've just said, that they could only provide for the things that were necessary.

MR. RITTER: No, it's not different from what I said. They could only provide for those things that were necessary if they did not fall within section 92. In other words, those items that fell within section 92 of the Constitution Act, 1867, they could not legislate for unless there was an overriding necessity, for continuity's sake or whatever. Yes, they could exceed it on a very temporary interim basis until the province could actually take over itself.

MR. WRIGHT: But that was my statement, that they could provide for anything that fell within section 92 in the Act setting up the new province, if they so desired.

MR. RITTER: If that was your statement, Mr. Wright, then I apologize for misunderstanding it. That's quite correct.

MR. CHAIRMAN: Mr. Fox.

MR. FOX: I'm wondering -- Mr. Ritter, you made some reference to custom sort of extinguishing, if I'm right, statute over time. Like parliament adopts certain procedures and traditions, and carried out over time they become part of what is considered . . . [interjection] Yeah. Dr. Forsey made some reference to that sort of thing happening, as well, over time. I'm wondering: can you add any quantitative judgment to that term "over time"? Dr. Forsey seemed to think that even practices adopted over a period of centuries weren't considered in the British parliamentary tradition to effectively extinguish statute, yet what I'm understanding you to say is that because even though French has been used in this Assembly on many occasions since 1905, over time it's effectively extinguished.

MR. RITTER: There is no magic number, Mr. Fox, because if we were to . . . I mean, obviously it depends on the nature of the law and how much it has been departed from before we can consider a parliamentary convention to have changed through time. Conventions are -- to most layman they sound like very nebulous concepts, but in fact their quite real, but the reason they're so nebulous in one respect is because there is no magic figure. I mean, I just discovered in Petyt the other day -- I was reading his writings of 1689, and he said that it's a parliamentary convention that the Speaker's privileges not only extend to himself but to his horse, and everybody stopping him or his horse would be subject to the full wrath of Parliament. Well, if anybody seriously said today, "My goodness, we stopped David Carter's horse; we're up for contempt of the House" . . . You know, I think it's safe to say that that's a convention that has died because it's so obviously ridiculous in today's situation.

Now, the question which this committee has been brought together on: is it still ridiculous to consider that French in the Assembly is or is not valid? What's the convention of Parliament? And that's a matter not for me to decide, but for the committee members.

MR. FOX: Well I'm just wondering, because you ventured into discussions on it, what your opinion is. Is something that is generally true in the Assembly over the last 80 some odd years enough to extinguish something that may or may not have been in the statute?

MR. RITTER: I think if we're looking at the general practice of this Assembly, the furthest we can go back is to the very day the first parliament met in this province, and we can't go back any further, except for those continuous laws that held forth in the Northwest Territories Legislature. I think that if the general practice has been basically one of a unilingual Legislature, that is this convention, that is the convention of this particular Legislature. That is not to say it can't be changed.

MR. FOX: Well, on the fact that it can be changed, everyone seems to be in agreement with that. It's a matter of what is or has been the practice of this Assembly. I'm wondering if you consider, then, a few short years in the relatively young history of this province to be sufficient to extinguish by tradition what may or may not have been in a statute. Do you then consider it sort of irrelevant that French has been used on a number of occasions in this Assembly over the time that it's been in existence?

MR. RITTER: Yes.

MR. M. MOORE: Mr. Chairman, we've now spent the last 35 minutes questioning counsel. There have been questions from two members, most of which are a repeat of information that has been brought forward to this committee during the course of all of its deliberations, including the summation by counsel this morning.

We finally resorted to one member of the committee just now asking counsel for counsel's opinion again. So we've moved well beyond the matter of questioning counsel. The committee has as well before it a number of matters that have been referred to it for questions in total by the Assembly that must at some point in time be dealt with.

I therefore move that the committee conclude its questioning of counsel at 3:05 p.m. and we move to the other matters that have been referred to the committee by the Assembly.

MR. WRIGHT: Mr. Chairman, I had got to the end of my first point and had a few more to ask our counsel. I ask you to rule this motion of closure out of order.

MR. FOX: I object in the strongest possible terms to that motion. The hon. member himself was prepared to acknowledge the weight and value of this lengthy document, and then he expects that we should be able to question it sufficiently in a matter of a few minutes.

I'm beginning to feel like I'm working on the railroad here, that we're continually being railroaded into closing down testimony on Professor Dawson at 10 o'clock, even though he was the only person with sufficient expertise and privilege to be able to address this assembly, and now because some hon. members find it convenient, we're faced with closure on questioning of Parliamentary Counsel. I just think it's totally unacceptable, but I have little doubt as to the outcome of the vote.

MR. M. MOORE: Mr. Chairman, the motion has nothing to do with closure of whatever. It has to do with unnecessary duplication and waste of committee's time by asking the same questions that have been asked before to get the same answers that have been given numerous times, so much so that the hon. Member for Vegreville finally again resorted to asking for opinions. That wasn't the reason why we have an opportunity to question counsel. If the hon. members believe that they can conclude without being so incredibly redundant as they've been the last 30 minutes, then it's entirely different.

The only thing that we've got here now is a filibuster by two members of the committee's time when we should be dealing with other than a redundant discussion, and debate is what it's really generated into, largely between counsel and the hon. Member for Edmonton Strathcona. Truly there must be some point in time when, Mr. Chairman, you as chairman or the committee has to take some action to end such an issue.

MR. FOX: Well, I hope the hon. member has time to reflect on his statements and perhaps in quiet moments might read both the testimony given, purported to be a summary of evidence by Parliamentary Counsel, and the questions we've asked. Perhaps he will see that having been presented with 39 pages of opinion, which he was prepared to accept like that, he is now somehow objecting to my asking the hon. Parliamentary Counsel some matters of opinion. Clearly, his opinion is important to the members of this committee on some matters and not on others, but I do have some more questions that have not been asked of Parliamentary Counsel and that have not been asked to any other witness of the committee. To reiterate, I've not asked any question of Parliamentary Counsel twice, and I'm sure he'd concur with that.

MRS. HEWES: Mr. Chairman, I would suggest that it's important to the committee that all members have opportunity to ask whatever questions they feel are relevant, but that it's your responsibility and jurisdiction, sir, to rule out of order any questions that are repetitive, and I would expect you to do so.

MRS. OSTERMAN: Mr. Chairman, while I sense some frustration in my colleague's comments in terms of some of the questions having been asked as well of other witnesses in this same area, I believe that if we were to look at our own procedures that we have used over the past number of meetings, at least the ones that I attended earlier, we've had many pages of presentation by a witness that could have lasted a half an hour or so, and then beyond that we've spent up to a couple of hours in questioning.

So on this very important matter I think that length of time would not be out of line in respect of what we have done in the past. As I understand it, the questioning began about 2:20 p.m., and it would occur to me that a couple of hours of questioning, should it go that long -- and if there are only two members asking questions, obviously it's not going to go that long -- but it would occur to me that that's about appropriate in line with the questioning that was needed of others giving evidence in a similar line, although this now is a little different format.

MR. CHAIRMAN: Are you ready for the question? [interjection] Sorry, Mr. Wright.

MR. WRIGHT: [Inaudible] on the propriety of the motion itself.

MR. CHAIRMAN: I think the propriety of the motion is that the committee itself can determine its own rules. That is the basis upon which we have gone to date.

MR. WRIGHT: So that questioning can be shut off at any time?

MR. CHAIRMAN: Well, we certainly don't want to shut off meaningful questions to clarify the submission of counsel, but I do agree that there's some sense in setting limitations of some order on the deliberations of the committee in this respect. I want that to be a reasonable time to enable that, and I was about to suggest that we might set a given time on the clock when that might take place.

Mr. Gogo.

MR. GOGO: Mr. Chairman, I wanted to ask your guidance. Are we not operating under section 62 of Standing Orders?

MR. CHAIRMAN: Well, I think it's subject to the committee determining its own rules.

MR. GOGO: Well, I just want to comment, Mr. Chairman. It is a somewhat lengthy report. It's perhaps not complex, but I can understand the desire of hon. members to take whatever time they deem necessary to put questions to counsel. I sense Mr. Moore's frustration with what he perceived repetitive questions, and I think we all get frustrated at that, but perhaps it's just the nature of the day today.

MR. HORSMAN: On a point of order. The motion is obviously now out of order because it's now past 3 o'clock.

MR. CHAIRMAN: Mr. Moore, would you like to amend your motion?

MR. M. MOORE: Well, Mr. Chairman, the reason for my motion was that I listened carefully for 40 minutes. There were two members who alternately took turns asking questions of counsel. There were duplications on almost every occasion of questions that have been asked or answers that have been given earlier in this session. There was also oftentimes by counsel a repeat of the statements counsel made in summing up today.

Now, we can listen to that all day. You multiply 20 minutes times 15 members of the Assembly, and you've got several hours. I presume there were no other members who wished to speak because, Mr. Chairman, early in the proceedings you said that the same rules will apply, one question and two supplementaries or whatever it is, and you would acknowledge anyone else who put up their hand. So I presume no one else was to speak, and we were only to have a repeat of the redundancy that had been going on from 2:20 till 3 o'clock. Those are the reasons I moved the motion.

Now, if there is a suggestion of an adjournment time for this part of our deliberations that is reasonable, that the committee members can agree to, I'd be certainly prepared to withdraw my motion. But if there is no suggestion that there's going to be any time limit on this line of questioning and this redundancy, then I would sooner see the motion defeated. But surely there has to be some way, Mr. Chairman, for you to be assisted or guided by members of the committee.

MR. WRIGHT: I think it's wrong in principle to put a limit on, except that of relevance and good order, so that if, in your judgment, there are questions that are repetitive or quite irrelevant, then that is a place for you to make a ruling, Mr. Chairman. It seems to me it would be impossible to go on ad infinitum without being repetitive or irrelevant, so at that point you can be shut down. But I assure you that there's no suggestion of a filibuster or anything approaching that. I have a number of questions, which I made notes on as counsel was giving his evidence, and I do not believe I've been repetitive.

MR. M. MOORE: Is it possible, Mr. Chairman, that we might

get some idea from the Member for Edmonton Strathcona about how long he believes his questioning might take, in order that we could then pass some judgment on what would be fair from his point of view?

MR. WRIGHT: I really can't guess, because it's not a question of just asking a question and getting an answer. It depends entirely on the answer you get. I can't venture. But certainly it will be through this afternoon. I mean, sometime before the two hours is up, for sure.

MR. M. MOORE: Mr. Chairman, I'm prepared to withdraw the motion that I had made that we adjourn this portion of our discussions at 3:05, in favour of another suggestion from some hon. member. Perhaps the one that was made by Mrs. Osterman, which would have allowed the committee two hours for questioning, would be most appropriate. So I'll withdraw my motion in favour of that motion, if it was one, or leave it to someone to make it.

MR. CHAIRMAN: Mr. Russell.

MR. RUSSELL: Well, Mr. Chairman, I say this somewhat with tongue in cheek. We've got this thing that lawyers like to do, and that's argue ad nauseam about how many angels you can get on the head of a pin. I think you're caught up in it, too, because you're a lawyer, and you're not maybe being strict enough with respect to the points Mrs. Hewes made about repetitiveness. So let's get on with it.

SOME HON. MEMBERS: Agreed.

MR. CHAIRMAN: Okay. Well, are we proceeding, or is there . . . Mr. Moore.

MR. M. MOORE: In light of the discussion, Mr. Chairman, I would move that we conclude questioning of counsel by 4:20 p.m. this afternoon.

MR. CHAIRMAN: Okay, I'll accept that as a motion. Is there any further discussion on that motion?

MR. WRIGHT: Is that 4:15, you say?

MR. CHAIRMAN: 4:20.

MR. RUSSELL: Does that mean that we're obliged to go to that time?

MR. CHAIRMAN: I think it means a maximum time.

SOME HON. MEMBERS: Question.

MR. CHAIRMAN: All those in favour, please signify. Contrary? Carried.

MR. FOX: If the Chairman needs someone to defend his legal background, it may well be that the Chairman merely appreciates the nuances of the finer points of some of the questions asked.

MR. CHAIRMAN: Or doesn't understand them.

MR. WRIGHT: Well, I must say that I wasn't aware there were any fine points, Mr. Chairman.

MR. CHAIRMAN: Okay, where are we now? Mr. Wright?

MR. WRIGHT: Yes, thank you. Now, you said, Mr. Ritter, if I got it right, although I suppose I could find it in your written submission here, that to criticize the Speaker for attacking one's own privilege is itself a breach of privilege. Did I hear you right on that?

MR. RITTER: If you attack the Speaker publicly, Mr. Wright, yes.

MR. WRIGHT: And would you consider the submission that Mr. Piquette made on why the Speaker's ruling was wrong was an attack on the Speaker?

MR. RITTER: I always dislike getting into criticizing an hon. member of this Assembly, Mr. Wright. But the truth of my opinion is that I feel that if Mr. Piquette had a legitimate grievance, it should have taken the form either of a private discussion with the Speaker or in fact a motion against the Speaker.

MR. WRIGHT: But the way of bringing a point of privilege to the floor is on the floor of the Chamber, is it not?

MR. RITTER: Yes, you give notice of the alleged breach of privilege, Mr. Wright, and then you follow it under Standing Order 15(2).

MR. WRIGHT: Which is what Mr. Piquette was attempting to do, wasn't it?

MR. RITTER: That's correct. I think the only thing that I would consider irregular or out of order, certainly as far as my experience with the practice of other Parliaments is concerned, is when all sorts of comments come from the floor to the Chair against the Speaker and try to . . . It's somewhat akin to once a judge hands down his ruling, you start arguing the point with him, and this is something that you'll definitely find yourself up for contempt for in a court. It's no different with a Speaker.

MR. WRIGHT: Yes, but that didn't occur here except in the form of objecting to a breach of privilege.

MR. RITTER: The facts, Mr. Wright, are going to have to be decided by committee members.

MR. WRIGHT: But I just wondered what you were talking about when you said that to criticize the Speaker for attacking one's own privilege is itself a breach of the Assembly's privilege.

MR. RITTER: I was speaking in general terms, Mr. Wright. I wasn't making any reference in particular to anything said or done by a member.

MR. WRIGHT: You agree that if, in attempting to follow Standing Orders and say what was objectionable in the member's opinion to a ruling of the Speaker a submission is made in reasonably temperate language, that could not possibly be itself a breach of privilege?

MR. RITTER: That is dependent upon how temperate the language is, what the point was that was being discussed, and how many times it had been brought up, Mr. Wright. In other words, it depends completely on the context. If it is perceived by the House as being a challenge on the authority of the Chair -- an unruly crowd chastising the judge for making a decision they don't like -- that could be regarded as a breach of privilege, yes.

MR. WRIGHT: Yes, but here the question was whether he should have been permitted to speak in the French language in question period, wasn't it?

MR. RITTER: Mr. Wright, you're asking me to go back to facts which have to be decided by the committee members, not myself.

MR. WRIGHT: All right. Let's assume that the case is that a member is objecting to being ruled out of order because he used French in the Assembly in question period. And let's assume that following Standing Orders he claims that a breach of privilege and states his case pursuant to Standing Orders.

MR. CHAIRMAN: Mr. Wright, are we moving into the area of hypothetical or are we . . .

MR. WRIGHT: Well, simply because he won't say what this has reference to.

MR. RITTER: For the sake of argument, Mr. Wright, if we had a situation such as a member being ruled out of order by the Speaker, regardless of what the situation is, if the member did not accept that ruling of the Speaker immediately and without question and carried on a challenge to the Chair to argue the rationale at length, that could be regarded as a breach of the Assembly's privileges, because the Speaker is entrusted to maintain order. And his decisions, right or wrong -- that's the important thing, even if they're wrong decisions -- have to be seen to be respected by all members of the Assembly.

MR. CHAIRMAN: Can I move over to Mr. Gibeault.

MR. GIBEAULT: Yes, thank you, Mr. Chairman. To the committee counsel. You indicated, Mr. Ritter, that an attack against the Speaker would constitute a breach of the Assembly's privilege, as I understood your comments.

MR. RITTER: It could constitute a breach of the Assembly's privileges. The Assembly is the only one who can say whether it crossed that line of merely being disrespectful or breaching the Assembly's privileges.

MR. GIBEAULT: Right. On page 698 of *Hansard* of April 9 it would appear to be the Speaker's opinion that:

> The *Edmonton Journal* on today's date has come dangerously close if not exceeding the privileges of this Assembly by publishing a personal attack on the Speaker in their editorial, and I would refer this matter back to this House for its consideration.

In your lengthy submission to us earlier today, you made no reference to that, although I assume that you assisted the Speaker in his statement which included that segment. Could you comment on why you neglected to mentioned that in your summary this morning?

MR. RITTER: Are you asking me to answer whether or not I think the *Journal*'s editorial was a breach of privilege?

MR. CHAIRMAN: I don't think that's what he's asking.

MR. RITTER: I'm sorry. I'm not getting the gist of your questions.

MR. CHAIRMAN: He's wondering why in your summation there was no comment with respect to that aspect.

MR. RITTER: That's not a comment that I could make, because it's such a subjective thing that it's the committee members themselves who can only make that decision. Was that beyond fair comment? Was that so intemperate as to constitute a breach of privilege? These are not questions that I can answer. Only the members of the Assembly are the ones who can answer that question. Are they sufficiently outraged by the attack on their Speaker to feel this is a breach of privilege?

This is a different area of breach of privilege from a member challenging the Chair. A member, in many respects, is under a lot more strict guidelines than the press. The press has been given a fairly liberal hand. A member has to be much more adhering to the order of the House than a member of the general public because he is a member, and that onus on him is expected.

MR. CHAIRMAN: Mr. Gogo. Sorry, Mr. Gibeault.

MR. GOGO: On that same point, Mr. Chairman, to Mr. Ritter. Mr. Gibeault is quite correct. There's no reference to that, and I would like to ask the counsel: is that because there was no evidence to that effect presented at the hearings?

MR. RITTER: Well, it hasn't been something that was discussed at length. The only one who mentioned it, I think, specifically was Dr. Dawson. And his opinion was that yes, in his opinion, it definitely constituted a contempt. At the same time, he made some other comments which regarded how wise it might be to pursue the thing, which really had nothing to do with what this committee was interested in. It was just basically: did it or did it not constitute a contempt? But with respect to Dr. Dawson, his opinion doesn't matter either. That's why I simply didn't bring it up in my brief, because it's a matter of . . . I'd have to gauge how offended each and every one of you were, and that's obviously not my job.

MR. FOX: I realize some members have difficulty with you venturing opinions, but you've stated that you don't want to get involved in what is fact here, and we are dealing with your opinions, and they're important to us.

In your opinion, did Mr. Piquette fulfill his obligations to this Assembly by, in the first place, seceding to the Speaker's ruling and putting his question only in English to the hon. Minister of Education as required, rising at the end of question period and expressing his concern about that ruling and his intention to deal with it further, and then subsequent to that presenting the Speaker with the text of his concern? Did he fulfill his obligations to the Assembly in terms of its rules and procedures by those three actions?

MR. CHAIRMAN: Mr. Fox, with respect, I think we're sort of treading into areas which are the very conclusions that this com-

mittee is charged with.

MR. FOX: Well, again with respect, Mr. Chairman, we'll also have to do some discussion and consideration of the relevance of some of the information presented regarding the Haultain motion, section 110, Canada Act, all these sorts of things. They're germane to some of the four points before us, and Parliamentary Counsel has ventured his learned opinion on those. I fail to see the difference between this and that.

MR. CHAIRMAN: Well, I think the purpose of the questioning is to clarify the summation. Questions that relate to why he did not specifically deal with a certain area that was in evidence before the committee is a fair question, and so on. But once we get into asking for the very conclusions that the committee is going to have to consider and ultimately decide, it seems to me that it's usurping the role of the committee.

MR. FOX: Well, those decisions may already be made, and I might be one of the few people here who doesn't know what they're ultimately going to be. But it is important to me to know, given Mr. Ritter's background in matters of privilege and procedure in other Houses, whether or not Mr. Piquette fulfilled his obligations to this Assembly by agreeing to put his question in English only when required to do so, expressing his concern about the Speaker's ruling at the earliest possible opportunity -- that is, after question period -- and then by fulfilling whatever standing order it is that requires him to send a letter. And that, it seems ... You're the chairman. If you rule that out of order ...

MR. CHAIRMAN: If counsel is prepared to address the question, keeping in mind the recommendation or at least the comments that I've made in that regard, then that's fine.

MR. RITTER: Yes, Mr. Chairman. I can answer those questions, again cautioning that it's only my opinion that is being offered here, and I'm certainly not trying to influence the deliberations respecting the final decision on a particular member.

Mr. Piquette did in fact follow the Speaker's ruling eventually when he was asked to put his question in English. The Speaker's objection was on a point of order. Mr. Piquette did argue the point, in fact proceeded to answer his question in French before finally, after enough admonishment, seceding to the authority of the Chair.

About his arising after and in fact on the next day, it struck me that there was in fact a debate which was opened up on the right of the Speaker to make that ruling. As I say, whether the Speaker has a right or not was completely independent of the issue of rising to challenge the Speaker on that point. The rising after and the rising the next day brought into a debate arguing whether or not the Speaker had the authority to cut somebody off on a point of order. And that would have been seen, I think, as a challenge on the authority of the Chair.

MR. FOX: Now, in fairness, you heard Mr. Piquette's testimony yesterday in which he outlined, with reference to *Hansard*, what happened. He began to put a question in French that he intended to put in English as well. The Speaker ruled him out of order and said, "En anglais, s'il vous plaît." He didn't say, "En anglais, s'il vous plaît, seulement," which meant only in English. Is it fair to assume that perhaps Mr. Piquette felt that the Speaker was urging him to get to the English part of the question, and so he was merely, in his second attempt, restating the French and then was about to ask the English part of the question to the hon. minister and was prevented from doing so, at which point it became apparent to Mr. Piquette that the Speaker did mean in English only, and then he complied?

MR. CHAIRMAN: I think we're really getting into some areas. Now you're trying to determine what was in the mind of the Speaker at the time that he spoke those words or in the mind of Mr. Piquette. And I really find that going a bit beyond the bounds.

MR. RITTER: I just don't know, Mr. Fox.

MR. CHAIRMAN: I have on my list as well now, and the list is building, Mr. Wright, Mr. Gibeault, and Mr. Horsman. Mr. Wright.

MR. WRIGHT: Yes. You cited Topham's case in which two justices decided a case which Parliament said was within its own jurisdiction and were themselves arrested and jailed. Now, that was not a case dealing with an alleged statutory right, was it?

MR. RITTER: No, Mr. Wright. It involved a Sergeant-at-Arms who had allegedly assaulted someone on the precincts of the Assembly. He raised an assault action against the Sergeant-at-Arms, the court found against the Sergeant-at-Arms, and Parliament put the two justices in contempt.

MR. WRIGHT: And I noticed when you were reading it you skipped over the date, which was 1689.

MR. RITTER: Yes, 1689 it was. I do have the date in the brief, Mr. Wright, yes. That was not meant to be coy on my part.

MR. WRIGHT: Oh, no. I guess you said that since 1689 there had been incredible advances. I'm sorry.

MR. GIBEAULT: Mr. Chairman, I'd like to go back to this question of the Speaker's referring the issue of the *Edmonton Journal* back to the House. I assume when the Speaker said he refers the matter back to the House that the mechanism for that is this committee, the Privileges and Elections Committee. Wouldn't that be the case?

MR. RITTER: I would think so, because the House referred it to committee, yes.

MR. GIBEAULT: In that case then I guess we have to, as members of the committee, try to make some assessment of that. I wonder if counsel could advise us if he is aware of any similar cases of media representatives who were brought up on questions of privileges of the House in Alberta or elsewhere? And if so, under what circumstances?

MR. RITTER: Mr. Gibeault, I really don't have my sources with me. All I can say is that I know of some cases generally. I cannot give you specific citations. In 1934 the closest in Alberta was that a Speaker's warrant was actually issued for the arrest of one editor who resided in Lethbridge. He in fact was never taken into custody. He came in voluntarily.

In the federal House there have been all sorts of instances of

being cited for contempt. Certainly in the British House, even presently, there has been a tendency to in fact take the arrest of the newspaper editor or reporter involved. However, this is becoming less and less common, simply because if any of you are familiar with the British tabloids, you will be aware that there is some pretty sensational stuff in there, and if you're going to be arresting someone, you're going to be doing it on a daily basis.

The important thing that we have to remember here, though, is: were there any instances of arrests being taken against newspapers and contempt being cited against newspapers in 1867, because the Legislative Assembly Act dictates that our precedent is formed. We kind of stand still in time. We take the British practice as it was in 1867, and in fact there are many cases of that. Unfortunately, I just don't have any resources at my fingertips to give you, but I can certainly undertake to find them.

MR. GIBEAULT: As counsel, would it be your view that in order to help us make some decision about this matter that the Speaker has referred to us regarding the *Edmonton Journal*, we should make arrangements to hear from a representative of the newspaper before we make that decision?

MR. RITTER: What we're dealing here with, Mr. Gibeault, is the question of fact: what appeared in print. In my knowledge of cases where a newspaper is cited for contempt, what has appeared in the printed word has been the only object put before the committee, regardless of why it appeared, how it appeared, and the circumstances surrounding it. Unless, I imagine, it was a complete accident that it ran in the press, it would have to be assumed to be judged on its merits. In other words, looking at the printed word is what this newspaper has been cited for, and anything from that this committee could certainly go further or not.

MR. HORSMAN: Mr. Chairman, I'm really going to withdraw my question. I had put my hand up when Mr. Fox was engaged on his effort to put the counsel in the minds of the Speaker and Mr. Piquette at the same time. I was going to ask some supplementaries if the counsel had ventured to respond to that formidable challenge. Since he quite properly declined to do so, I will withdraw my question.

MR. FOX: The prospects are frightening, I agree.

Mr. Ritter, you tended to discount in your evidence summary here the presentations of several of the learned witnesses -- Dr. Forsey, Professor Dawson, and Mr. Munro -- on the basis that they didn't have proper background in law, specifically constitutional law, and that they ventured into areas beyond their expertise. But you dealt only in a very cursory way with the evidence presented by the dean of the Faculty of Law, Tim Christian, who I believe lectures in Canadian constitutional law, and I'm wondering: do you reject his submissions out of hand as being spurious or ill-founded, or did you just lump them together with your consideration of Dr. Forsey so as to diminish the weight that the committee might give them?

MR. RITTER: That's like asking me, Mr. Fox, when did I stop beating my wife? It's a tough question to answer. I have great respect for Tim Christian. He's a friend of mine, and I have every bit of confidence in his ability as a lawyer, particularly as a labour lawyer. But I did say in my brief, and I made it very clear -- and I hoped I wasn't being unfair by lumping Dean Christian and Dr. Forsey together for some purposes simply because their testimony was largely supportive of each other. When I dealt with Dr. Forsey, the points that Tim Christian presented to this committee, again without recounting them again, were very similar.

For example, Tim Christian mentioned that he felt that section 14 of the Alberta Act carried forward to section 110, and you already have my opinions on that. There were many things. In fact, I felt that all his testimony that he related was also echoed by Dr. Forsey, which is why I dealt with them together. If I was unfair, it certainly wasn't intended. It was just that, as you are aware, my brief was extremely long. My brief was not all that brief anyway, and I wanted to make sure I got through all the witnesses that I wanted to consider.

MR. FOX: So you were prepared to in a sense discount some of the presentation by Dr. Forsey on the basis that he lacked sufficient background in constitutional law to venture those opinions. But you're not questioning Dean Christian's background in Canadian constitutional law, and yet you'd reject his testimony out of hand.

MR. RITTER: Oh, on the contrary. I do not agree with Dean Christian's constitutional legal analysis. Dean Christian is not a constitutional lawyer. I say that in the most respectful sense, because certainly I wouldn't want to talk about labour law with Dean Christian around. He would cut me to ribbons. But we have an academic disagreement, and I think I can hold my own against Dean Christian any day of the week. But that's my opinion, and as arrogant as it might be, you have my opinion that I do not agree with Dean Christian. I do not think his background in constitutional law is sufficient to have been an expert witness on the matters on which he was asked to testify on, without disrespect to Dean Christian. As I say, he's formidable in certain areas of law, and I wouldn't want to touch him.

MR. FOX: Does he lecture in Canadian constitutional law or . . .

MR. RITTER: He does indeed, and I lectured in all sorts of things that I shouldn't have been put in either, Mr. Fox.

MR. CHAIRMAN: Mr. Wright, followed by Mr. Hyland and then Mr. Gibeault.

MR. WRIGHT: I guess I have to keep on hoisting my hand, do I, Mr. Chairman?

MR. CHAIRMAN: I think that's the rule that everybody else is applying, and I guess it should apply equally.

MR. WRIGHT: I didn't understand that.

> Now, you said on page 15 of your summarizing brief that Dr. Green's view was not isolated, unique, odd or new. His opinions are reflected by such eminent world-class scholars as . . .

and then a string of names -- deSmith, Hood-Phillips, et cetera -- all eminent people. What views of Dr. Green are you saying were espoused there?

MR. RITTER: I'm particularly referring, Mr. Wright, to the fact that Parliament is independent of the courts and independent of the legal system.

MR. WRIGHT: Yes. But it was in the context of the Speaker's petition, and the relevant part was because of the Speaker's petition having been granted, either before or after or both, that this automatically provided for the proclamation of the resolution.

MR. RITTER: With regard to the Speaker's petition specifically, Mr. Wright -- I just want to see which authors I named here -- I know that Hood-Phillips, deSmith, Blackstone, and Lock wrote extensively on it as being the foundation and the cornerstone of [inaudible].

MR. WRIGHT: And do any of them say that resolutions are regarded as specifically proclaimed, even when Parliament says that they have forthwith to be proclaimed in due form?

MR. RITTER: No, they do not, Mr. Wright. That's such a basic and fundamental theory of why the Speaker's petition exists that it is taken as a given.

MR. WRIGHT: I see. So it's fundamental but none of them mention it.

MR. RITTER: No, I didn't say that. They all deal with it quite thoroughly as being the foundation and the cornerstone of parliamentary privileges.

MR. WRIGHT: And you're talking about the Speaker's petition?

MR. RITTER: Yes.

MR. WRIGHT: I'm talking about the proposition that the Speaker's petition will entail the automatic proclamation of something that Parliament says has to be proclaimed forthwith.

MR. RITTER: You're quite right, Mr. Wright. That is not specifically spelled out by those authors.

MR. HYLAND: Mr. Chairman, mine is one of clarification. It follows on the questions Mr. Gibeault was asking, and that was -- I believe that the instructions that the committee were given were instructions of the House; i.e., a motion passed by the House as a result of a statement by the Speaker but not instructions from the Speaker per se to this committee. I want clarification on that to make sure that that's right, because I think that's important, the distinction of the two.

MR. CHAIRMAN: Yes, Mr. Hyland. The terms of reference are contained in the motion that is among your materials, under the heading "Terms of Reference". That motion, the motion of the Assembly, constitutes the terms of reference and the questions that are put before this committee.

Mr. Gibeault.

MR. GIBEAULT: Yes, Mr. Chairman. Just to follow up on the earlier line of questions, we were talking about the *Edmonton Journal*'s editorial. It was there, it was printed, we could examine it, and so on. It seems a lot of our exhibits are of the same nature. We had Mr. Piquette's letter and we had various other items, all of which we subjected to various cross-examination about intents and when things happened, why they happened, and so on. I'm wondering what would be the difference between this particular editorial and these other documents that have been before our committee that we shouldn't have any further consideration of the authors of that editorial.

MR. RITTER: The very nature of the document itself, Mr. Gibeault. And as I say, I'm only communicating to you what is normal practice in parliamentary procedure. This committee is completely free to depart from it. But when evaluating newspaper articles, what has happened is that they generally have been evaluated on the basis of the printed word as was published in the newspapers, the reason for this being that that is all the rest of the public sees. They do not see some of the mitigating circumstances which changed the intent, that type of thing. In other words, the editorial was published "as is." The public has no opportunity to hear: "Well, gosh, we didn't really mean it, it ran by accident, somehow it got inserted in the computer, or I just don't know."

What has been happening on occasion is that when there are very real mitigating circumstances which would somehow imply that it really was an honest mistake, the newspaper has in fact contacted the Parliament involved, and if there were mitigating circumstances the newspaper has been allowed to print those as well.

MR. GIBEAULT: Then as a supplementary, I'm wondering here, in cases that are similar -- and I would think libel and slander cases might be similar; people write things or print things in newspapers and magazines -- they are always allowed, when there is a charge brought against them, to make their case or appear before those who will be passing judgment, are they not? I guess I'm wondering what the difference here is with this particular editorial and why the authors here should not be heard, as other people who are charged with offences or violations are allowed to have their say?

MR. RITTER: This is not a libel case, Mr. Gibeault. This is a contempt case, and there's a very, very major difference. A newspaper may in fact be used to arguing cases on a defamation action. What's fundamental to a defamation action is the intent and the damage done. That is not required in the [contempt] action. Whether we're talking about a contempt of court or a contempt of Parliament, both are treated exactly the same. If you're cited for contempt in a court, Mr. Gibeault, you also don't have the opportunity to tell the judge, "Well, gosh, you know, I lost my head for a moment," or something, because the nature of a libel charge is that fair comment is a defence. Truth is a defence. That is no defence for a contempt charge.

MR. FOX: I wonder, Mr. Ritter, in reference to these Journals or publications of the Northwest Territories in the late 1890s, you mentioned to us at the beginning of your submission that some were printed in French and others weren't, at various times. That seems to me to be in contravention of the spirit and direction of the Haultain motion. I'm wondering why some of them would have been published in French.

MR. RITTER: Well, I made very clear, Mr. Fox, that there is a difference between printing something in two languages because you have to and printing something in two languages because you want to serve your constituents or whatever. There were in fact parts of Alberta and Saskatchewan and the Northwest Territories -- presently -- that have large French-speaking populations, and in fact I see no inconsistency with Mr. Haultain's motion. He merely removed an obligatory requirement. But any-

body can do anything they want voluntarily.

MR. FOX: Do we have any evidence to suggest that French was not used in the Assembly of the Northwest Territories in that period of intervening time?

MR. RITTER: Yes, we do, Mr. Fox. We have Mr. Grant MacEwan's historical brief, which I read an extract from, which indicated that there were only two members of the Assembly itself who could even converse in French, being Mr. Haultain himself and Mr. Tweed. Then there was the Lieutenant Governor, who wasn't really part of the Assembly. None of them used [French]. I think you'll find the extract in my brief.

MR. CHAIRMAN: Mr. Wright.

MR. WRIGHT: Yes, Mr. Chairman. You mentioned that there are some laws that can fall into disuse and cease to be laws. Have I summarized that correctly?

MR. RITTER: Being careful to use what we call "laws," because it would include conventions and that type of thing, but yes, that's correct.

MR. WRIGHT: Yes, well, conventions certainly. But the prescriptive law -- that's to say, the written law embodied in statutes and so on -- cannot be repealed by disuse, can it?

MR. RITTER: The British courts certainly would disagree with you on that, Mr. Wright. If they deem that certain things of that law were directory rather than obligatory, they can fall into disuse.

MR. WRIGHT: Oh, yes. The instance you cited was that of a regulation which they deemed at some point to have become inconsistent with the purpose expressed in the parent Act. Right?

MR. RITTER: That is correct. There is more than one case that I cited though, Mr. Wright.

MR. WRIGHT: Yes, but that makes the point I'm making: that what governs as a statute itself, which if the regulations cease to be in conformity with it, or never were of course, they are ultra vires.

MR. RITTER: I'm sorry. I didn't get your question.

MR. WRIGHT: If because of change of circumstances it turns out that the regulations don't fit the purpose of the Act, then the court can say the regulations are becoming inapplicable?

MR. RITTER: Yes, that's correct.

MR. WRIGHT: But what you cited was the instance of the Speaker and his horse; that interference with his horse was like interference with the Speaker.

MR. RITTER: Yes. Well, that wasn't a statute I was citing. That was an example of a convention, Mr. Wright.

MR. WRIGHT: Exactly. And that of course conventions can disappear in the same way that they arose, by use or disuse, or disuse and use.

MR. RITTER: You'll get no argument from me on that.

MR. WRIGHT: And by the way, it wasn't just the Speaker and his horse. It was every member and his horse and servants to and from Parliament and while at Parliament, wasn't it?

MR. RITTER: Well, in fact at the time, 1689, privileges were only claimed by the Speaker and, I take it now, his horse. It was the privileges extending to all members which occurred about 100 years after that, Mr. Wright. But I appreciate the correction anyway.

MR. WRIGHT: Are there others wishing to get in, Mr. Chairman?

MR. CHAIRMAN: Yes, Mr. Fox, who waives in your favour. Mrs. Hewes.

MRS. HEWES: Mr. Chairman, I just want to follow up on Mr. Gibeault's question about the *Journal* editorial. Mr. Ritter, apart from Dr. Dawson's commentary there's been very little in the evidence regarding that. That's correct, isn't it? I've been trying to get through all of this.

MR. RITTER: Yes, that's correct. I think it was something that was dealt with very little. It was entered as an exhibit, but aside from that it wasn't a major matter to be considered.

MRS. HEWES: And while you in your original analysis and here in your summary statement to us dealt with many other matters, that is not part of what you've analyzed for us; that is, you haven't given us in regard to that issue any in-depth review of precedent or an analysis of where it relates to past activity or how the committee might proceed with it. There's been no direction from you. Is there some reason for that?

MR. RITTER: Yes, there's a big reason for that. In fact, I can't give you any precedent in this province because in every case there was an apology offered before someone could actually be punished for that. To use the practice of other Parliaments is something that is so subjective and in fact varies from year to year, and it's fair to say that it's almost completely a matter of how personally offended were you as a member, and all members of this committee of this Assembly, by the insults to your Speaker. This is a very difficult thing for anybody to advise on. Did you feel sufficiently moved enough to figure that there should be an apology, that there should be a fine, a jail sentence, whatever? We can't get any precedents from this particular Assembly because we just haven't been around long enough since 1905.

[Mr. Gogo in the Chair]

If we were to look at the British practice and the Ottawa practice, we find that there is again a big distinction between the various Houses. Ottawa is a much more diluted form of Westminster. We find that they have tended to be a lot more tolerant to attacks on the Speaker, but then in certain circumstances they haven't. Professor Dawson gave some very [inaudible] examples of referring to the Speaker as a gambler who's running out of too many Liberal cards, I think it was, or

something along those lines, which didn't strike me as particularly serious. But that was responded to by all parties with outrage, and to read the debates, it was an extremely interesting thing to see all the parties rally behind the Speaker on that.

It's a difficult thing to give a precedent to, because it's almost completely subjective. That doesn't sound very just, as I say, but you try doing that too many times and you're quickly voted out. You can't do the same with a judge, who's a little bit grumpy and cites you for contempt every time you look at him sideways.

MRS. HEWES: So, Mr. Ritter, Dr. Dawson then says that the old Hewes family axiom, "If you don't want the dog to come back, don't feed it," was his general suggestion to the committee, it seems to me.

But I am curious, Mr. Chairman. We don't seem to hesitate to bring in precedents or examples, illustrations from other Parliaments on any other issue. But I take it it's not your intent, Mr. Ritter, as counsel, to give us any assessment of this particular . . .

MR. RITTER: I can give you an assessment, Mrs. Hewes, at any time. I mean, whether or not I can -- if you would like me to produce some actual precedents for you, I can certainly get those as well. I have tried to avoid getting into that particular subject because this Legislature has never yet decided for itself where its breaking point will be. Personally, if I were still working at the Lords or some other Parliament, this would definitely -- a comment like the *Journal* gave would have been unheard of. It would have been an intolerable contempt. But this Legislature may not in fact draw the line quite as far down as the House of Lords does. Certainly the Commons now in Westminster is becoming a little more liberal. What we have to look at as far as actual precedents are the practices of the Westminster House of Commons in 1867, and I think you'll find them a lot stricter than probably most members would have considered it to be nowadays, given the priorities we've given to a free press and that type of thing.

MR. DEPUTY CHAIRMAN: Mr. Wright.

MR. WRIGHT: Yes. In dealing still with the question of laws falling into disuse, you will agree that in the case of the Manitoba reference -- actually it was an appeal on a speeding ticket, I think . . .

MR. RITTER: We're talking about the Queen v. Mercure, Mr. Wright, not the constitutional reference.

MR. WRIGHT: No, no, no. I say the Manitoba is actually a case, a regular case. I regard it as the Manitoba reference, but it wasn't technically. That . . .

MR. RITTER: Before I go on -- I'm sorry, am I getting the name of the case wrong? Mr. Horsman is giving me looks here.

MR. HORSMAN: Just on a matter of a point of order, the Queen and Mercure is the case before the Court of Appeal of Saskatchewan. The Manitoba case was a different case.

MR. RITTER: Thank you, Mr. Horsman.

MR. WRIGHT: Yes. It's the one I mean, the one that . . .

MR. RITTER: The one to which you're referring, yes.

MR. WRIGHT: I mean the case concerning the validity of all laws in Manitoba since 1880 or something, I guess. In that case, it was the fact that the laws had not been printed in the two languages since the 1880s sometime, hadn't it?

MR. RITTER: That's correct.

MR. WRIGHT: But it hadn't repealed the statute at all.

MR. RITTER: No, it hadn't, Mr. Wright. And as I pointed out, the Manitoba case is strikingly different from the Alberta and Saskatchewan cases.

MR. WRIGHT: In that?

MR. RITTER: In that respect, absolutely. Manitoba, I agree, was decided correctly by the Supreme Court of Canada -- which I don't intend to be a big magnanimous concession on my part. I believe that the Supreme Court of Canada adequately gave notice to the fact that the Manitoba Act was given authority by the imperial Parliament with regard to its language provisions. Alberta and Saskatchewan never received such authority from the imperial Parliament.

MR. WRIGHT: Yes. But we're dealing here with the repeal of a provision by a non-use, and it was found, as a preliminary to that, that there was a valid legislation in point of language.

MR. RITTER: I believe they were acting unlawfully, yes. But there's a . . .

MR. WRIGHT: In not doing it up to the present?

MR. RITTER: In not doing it up to the present, correct. There's a qualification, however, in that if a court should find that Parliament or a Legislature has been acting unlawfully, the second there is a very real question of enforcement, how are you going to make them act lawfully? And that, I think, is largely what Manitoba has opted to do. It's not correcting things of 100 years back. And I think that particular reference to which you refer did not invalidate the laws that were printed only in English for a public policy reason as well, did they not, Mr. Wright?

MR. WRIGHT: Oh yes, they made transitional provisions, certainly.

MR. FOX: One of the matters before this House, Mr. Ritter, as I understand it, is whether or not the release to the media of Mr. Piquette's letter to the Speaker constitutes a breach of the Assembly's privilege. Professor Dawson dealt with that in some measure, and you have also. I'm wondering if you could state clearly for me: in your opinion is that letter to be considered a publication of the House?

MR. RITTER: As a publication of the House, no. As a document of the House and therefore covered by privilege, yes.

MR. FOX: So you're saying that the release of a document of the House without the prior permission of the House constitutes a breach of privilege?

MR. RITTER: In the widest sense, Mr. Fox, yes.

MR. FOX: Does that mean that if I were planning on rising under the provisions of Standing Order 40 with a proposal to request unanimous consent of the House to deal with rescinding the 23-cent increase in the price of gas, for example, if I showed that to the media prior to its being rejected in the Assembly or accepted, I would have breached the privilege of this Assembly because that was to become a document of the House?

MR. RITTER: Are we assuming, Mr. Fox, that it has already been filed in the Clerk's office?

MR. FOX: No.

MR. RITTER: Were you asking for unanimous consent? If you're doing it before it's actually introduced in the House, then I can't see it being considered a document of the House. So I couldn't consider that scenario you give me as a breach of privilege.

MR. DEPUTY CHAIRMAN: Mr. Wright.

MR. WRIGHT: Yes. Mr. Ritter, you have today come up with a number of replies in point of evidence of other people and propositions and so on, to the testimony of Mr. Dawson and Mr. Forsey. Why did you not put these points to them when you asked them questions, in all fairness, so that they could reply, if they saw fit?

MR. RITTER: You will recall, Mr. Wright, that I was actively pursuing questions with both those witnesses, and in fact it was the Chairman who cut me off.

MR. WRIGHT: Oh, I see. So you would have put these things to them had you been allowed, on two successive nights?

MR. RITTER: Yes.

MR. WRIGHT: But you didn't tell the Chairman that you had more.

MR. RITTER: The Chairman, in fact, knew that I had more -- we've just changed chairmen, but I think he can verify that fact -- but we had to open it sometime to the committee members. I would have been quite delighted to monopolize the entire time of the committee with my questions, but there were other questions to be asked which were equally important.

MR. WRIGHT: But having failed to be able to put these things to the witnesses, now do you not think it unfair to raise them in the absence of their replies?

MR. RITTER: No I don't, Mr. Wright.

MR. DEPUTY CHAIRMAN: That concludes the questions. Is there anybody else who has a question before counsel?

Mr. Fox. [interjection] Well, I'm sorry. Just simply indicate to the Chair, and the Chair will . . .

MR. WRIGHT: Well, I have a lot of questions. I said I'd go for the rest of the afternoon.

MR. DEPUTY CHAIRMAN: With respect, the Chair is unaware of that.

MR. WRIGHT: I'll just hoist my hand again.

MR. DEPUTY CHAIRMAN: If the hon. member wants to use the left arm periodically, the Chair will recognize him.

Mr. Fox.

MR. FOX: Mr. Ritter, in your submission here you didn't venture to comment on what you think or would suggest to this Assembly in terms of appropriate practice from this point on. Although you've said it's clearly up to us, you've not ventured any opinion. Is there a reason for that?

MR. RITTER: Yes. I think that until I'm elected by the electorate of Alberta, I'd best save my opinions for myself or my political science class that I lecture to. But certainly you don't have to have your time wasted by me, telling you what I think the government should do or what I think this committee should do.

MR. FOX: Were you at any time pressured by people, either on this committee or in other positions in government, not to comment on what might be the proper practice of this Assembly in the future?

MR. RITTER: I can give you an unqualified no. As a matter of fact, the only one who knew my brief before I presented it was my secretary who typed it.

MR. FOX: But you are aware of what proposal will be coming forward to this Assembly from what may be called the government side of the committee, or . . .

MR. RITTER: I can honestly say now I don't. I had some pretty good suspicions, and again that's in dealing with all parties. I had a fairly good suspicion of what your particular caucus, Mr. Fox, was doing. I was never officially notified or told or in any way privy to these deliberations. And quite frankly, I don't know what's going to happen now. So . . .

MR. DEPUTY CHAIRMAN: Mr. Wright.

MR. WRIGHT: Yes. You mentioned with regard to section 110 that it anticipated an ordinance rather than a motion of the House. How can you say that?

[Mr. Stewart in the Chair]

MR. RITTER: It said an "ordinance or otherwise." I think the way it was worded -- the context of the situation, the context of the proclamation requirement, that type of thing -- it is not unreasonable to suggest that they anticipated an ordinance. Certainly if they were dealing with the language of the courts, Mr. Wright, it would have had to have been carried out by an ordinance.

MR. WRIGHT: Yes. Grammatically certainly, the requirements of proclamation applied equally to the "ordinance" or "otherwise."

MR. RITTER: I do not agree. I think the proclamation if it's

applying to the "otherwise" must be interpreted in the context in which that motion took place. That's not unusual in law.

MR. WRIGHT: Well, I'm just looking for section 110. The wording is:

> . . . that after the next general election of the Legislative Assembly, such Assembly may, by ordinance or otherwise, regulate its proceedings, and the manner of recording and publishing the same; and the regulations so made . . .

That has to be, grammatically, by ordinance or otherwise, doesn't it?

MR. RITTER: I would think that that's a fair comment, yes.

MR. WRIGHT: Yes.

> . . . shall be embodied in a proclamation which shall be forthwith made and published by a Lieutenant Governor

and so on.

Thank you.

MR. FOX: I'd like to get back again to Mr. Piquette's letter, which I'm trying to find in all of the papers before me. But I do believe it was described in the Speaker's ruling as a publication of the House, right? And you've differentiated that now, and you describe it as a document but not a publication.

MR. RITTER: Yes. I don't think there's any magic or any significance whatsoever in the words "publication of the House." I think if it's a document of the House, publication or otherwise, it's covered by privilege, and Dr. Dawson would agree with me on that point.

MR. FOX: Okay. Then if I were to plan to rise at the end of question period under the provisions of Standing Order 40 and request the unanimous consent of the House to deal with a motion, and at the time I rose to do that someone on my staff distributed a press release with the reasons behind my requesting unanimous consent along with the copy of it, would I be breaching the privileges of this Assembly by releasing a document of the House without permission of the House?

MR. RITTER: You could never be considered to be breaching the privileges of this House unless the House decided that you had. Obviously, I think it's fair to say that the House would never interpret the rules so strictly as to undermine the actual operation of this Assembly's business. If you distributed your motion to the press at the same time you were introducing it to the House, unless it was something that was of such a serious nature that the Assembly had somehow been violated, that the institution itself had been violated, I couldn't see anybody raising that as a real concern. Remember, it can only be deemed a matter of privilege if somebody raises it as a matter of privilege and says "why?" There has to be some just cause for it. It's not just a strict set of rules.

MR. FOX: So as a document of the House we could be dealing with Mr. Piquette's letter as something separate and different from other documents of the House because some members of the Assembly want to do it that way. Is that . . .

MR. RITTER: In both cases, both the scenario that you gave me and Mr. Piquette's letter, both can potentially be deemed breaches of privilege. That must be clear. The fact is that Mr. Piquette's letter was acted upon by this government, by this Assembly -- excuse me; I have to be very careful to distinguish the Assembly from the government or any other caucus -- and in your case the scenario you gave me could also potentially have been a breach of privilege. That's all dependent on what particular insult the House has suffered because of it. Now, I daresay that if it was a fairly routine motion that you distributed to the press, that's a normal part of your party's operation. Any party's operation is to let the press know what it is that you're doing. But if it's something that's so integral to the procedure and to the dignity of the House that someone feels somebody has been slighted or insulted, then that can always be raised as an issue of privilege.

MR. CHAIRMAN: Mr. Wright.

MR. WRIGHT: Yes. Dealing with that point, Mr. Chairman, the question I have is: what relevance in these proceedings do documents of the House have other than publications of the House? You will agree that Dr. Dawson was making the distinction between publications and documents.

MR. RITTER: Yes, he was indeed. Are you asking me what relevance they have?

MR. WRIGHT: In these proceedings inasmuch as . . . Well, all right, what relevance in these proceedings?

MR. RITTER: I think they're extremely relevant inasmuch as Mr. Piquette's letter has become a subject of consideration for this committee.

MR. WRIGHT: Yes. And that became a document of the House at some point.

MR. RITTER: I don't think there was any disagreement, certainly amongst the expert witnesses, that Mr. Piquette's letter was a document of the House.

MR. WRIGHT: Yes. But if it wasn't a publication of the House, he could do exactly what he wanted with it, surely?

MR. RITTER: No, I disagree. I think . . . [interjection]. Sir Erskine May and W.F. Dawson in his own book, Mr. Wright. He describes the privilege occurring -- the breaking point is when something can be considered a document of the House. Certainly a publication is a document of the House, but the privilege rules apply. Again, if you read that extract I gave you in my brief, W.F. Dawson says that a document of the House is what is covered by privilege.

MR. WRIGHT: Covered by privilege, the member's own privileges. But we're talking about the privilege of the Speaker and . . .

MR. RITTER: With respect, Mr. Wright, you say the member's own privileges; I'd like to know where you get that.

MR. WRIGHT: The Speaker said, "This letter was addressed to me in my capacity as Speaker and, as such, must be considered a publication of this House" -- not a document, a publication. Then he cites *Beauchesne* section 41, and you will agree that

section 41 of *Beauchesne* speaks only of the publications of the House.

MR. RITTER: I agree that *Beauchesne* speaks only of the publications of the House; that is the heading of that particular category. But I cannot see where you're finding justification to consider that the extension of privileges only applies to the member individually, because privilege is generally regarded as something the entire Assembly is concerned with. That would be a disturbing precedent I couldn't subscribe to, Mr. Wright.

MR. FOX: If I interpreted Professor Dawson's comments correctly, he said in regards to the release of the letter -- and indeed the contents of the letter, but let's just deal with the release of the letter to the media -- that if someone's privilege has been breached or if privilege has been breached -- you know, if one would make that contention -- he can't for a moment imagine what privilege has been breached. Do you concur with . . . ?

MR. RITTER: In reference to what, Mr. Fox?

MR. FOX: To the release of the letter. I'd have to go back and find it, but he said that it seemed to him, I think, in fairness, an extreme interpretation to suggest that privileges may have been breached by the release of this document of the House. He said that if a privilege has been breached, he can't imagine what privilege it would have been.

MR. RITTER: I certainly understand what Dr. Dawson meant. I don't agree with Dr. Dawson because it's not Dr. Dawson who decides what the privileges of this Assembly are; it's the members of this committee and the Assembly itself. I think, with respect to Dr. Dawson, he had a penchant for political commentary and what he would do if he were in elected office. I think that's a very easy thing to fall into. We all do it, and you, of course, have good reason now.

With respect, Dr. Dawson also said that this Assembly can decide whatever its privileges extend to. And quite frankly, maybe he couldn't imagine it as being a breach of privilege, but with respect, some other members of this Assembly might. It's their opinion that counts, not Dr. Dawson's.

MR. FOX: But it's fair to say that Dr. Dawson wasn't pretending that he was telling us what we should or should not find. He was merely saying that on the basis of his years of experience and as editor of *Beauchesne*, which does tend to govern the activities of various Legislatures, he could not imagine what privilege has been breached. That was merely an opinion based on his experience, not direction to this Assembly.

MR. RITTER: I absolutely agree. Dr. Dawson gave his opinion, which differs from *Erskine May*'s, and with respect, and I know it's inappropriate, but I spoke also to Philip Laundy, who is doing the sixth edition of *Beauchesne*, who couldn't imagine what Dr. Dawson had to say about privilege that he would have agreed with. So you see, what we had was the opinion of one man. My opinion differs, *Erskine May*'s opinion differs, and Philip Laundy, who's now an editor for the sixth edition of *Beauchesne*, disagrees. So it ultimately comes back to being put on your lap.

MR. WRIGHT: You did say that you were cut off in questioning Dr. Dawson, I think. If you turn to page 76 of the transcript, I think you will find you're mistaken there. I'll just read it while Mr. Ritter's finding it.

> MR. RITTER: You can understand of course, professor, that this is a very important matter for the committee in its consideration of the questions referred to it, and this was the purpose of seeing if you could shed any light on us in helping to clarify the matter at all.
>
> Mr. Chairman, I have no more questions. I would just leave it to the committee now to continue on. Thank you.

MR. RITTER: Mr. Wright, I hope you're not telling me what was in my mind when I said that now. I mean, I was getting all sorts of signals from the chairman, and pointing to his watch, and I think the chairman would back me up on that.

In all cases, I had several more questions to ask, but I obviously had to give way out of courtesy and, of course, under the whip of the chairman.

MR. CHAIRMAN: Are there any further questions from any members?

MR. WRIGHT: I have some, of course, but if in the meantime anybody else wants to get in . . .

MR. CHAIRMAN: There's nobody else, Mr. Wright, so you may continue.

MR. WRIGHT: Now, you said that the Manitoba Act was necessary because at that time the Parliament of Canada did not have the right to create a province.

MR. RITTER: Under section 133 of the old Constitution Act, 1867, they had the right with certain lands, but that certainly did not extend to all the things they purported to have authority to do. That's why the 1871 Act was passed, to give retroactive lawful effect to the Manitoba Act of 1870.

MR. WRIGHT: Yes. I see we've covered this earlier, Mr. Chairman.

MR. CHAIRMAN: I was about to mention that, Mr. Wright.

MR. WRIGHT: Now, you spoke of the undoubted competence and learned nature of Messrs. Fitzpatrick, Borden, Bourassa, Monk, et cetera, in 1905, as did Dr. Forsey . . .

MR. RITTER: That's correct, yes.

MR. WRIGHT: . . . and raised the improbability of their being mistaken about the repeal of the language provisions in section 110.

MR. RITTER: I don't think it's beyond possibility that any one of them could have been mistaken. What I was suggesting to this committee was that it was highly unlikely that hundreds of parliamentarians and all the support mechanism and legal advisers could have all been mistaken. It just seems very improbable that they all didn't know what they were doing.

MR. WRIGHT: But you will agree that there's a distinction between a matter of constitutional law and a matter of fact.

MR. RITTER: Oh, I would absolutely agree.

MR. WRIGHT: And it's certainly possible they might all have thought that the thing was published.

MR. RITTER: I should think it was extremely unlikely, Mr. Wright. The Northwest Territories had a procedure they had to adhere to in those days, where their laws had to be submitted for prior approval to Ottawa virtually on a day-by-day basis. Given the amount of time that was expended in both the House of Commons and the Assembly and the massive debates -- in Mr. Haultain's case it was even a career decision for him -- I cannot really accept easily the possibility that somebody was mistaken as to the facts all along the line and nobody really knew what the facts were.

MR. WRIGHT: But consider this, Mr. Ritter: there was a set routine for proclaiming -- I suppose gazetting, really, you'd say -- ordinances.

MR. RITTER: There was a set routine, absolutely, for proclaiming ordinances, but I have yet to discover, in all Commonwealth legal sources, ever an example of a proclamation in a formal instrument sense for a motion of the House. The closest we have ever come to it is the proclamation of the joint resolutions of the provincial and federal governments to amend the Constitution now since 1982, which really isn't a motion of the House. But that's about the only example I've seen of a departure and proclaiming something else that wasn't specifically an Act. I just can't imagine what it would . . .

MR. WRIGHT: Well, when you criticize the reliance of those who came to a contrary conclusion in the '60s, on academics relying on academics and so on, you aren't suggesting that really the thing has been published somewhere in the formal sense that we are contending for?

MR. RITTER: As an instrument called a proclamation of this motion? No, I'm very, very confident in the ability of these people to research something. If it had been there, they probably would have found it, yes.

MR. WRIGHT: Okay.

MR. CHAIRMAN: Any other member who has a question of counsel?

MR. HORSMAN: Mr. Chairman, I believe it would be in order now to start dealing with the matters referred to this committee by dealing with the questions that have been posed to us. I would then propose a motion which I have prepared, copies of which are available for members of the committee.

I could, just in making some opening comments, indicate that this is a motion which would deal strictly with question 1 which is proposed in the resolution, which is:

> Be it resolved that the following matters be referred to the Standing Committee on Privileges and Elections, Standing Orders and Printing:
>
> (1) whether or not a question of privilege arises when the proceedings of the Assembly are conducted solely in English.

For the record I would read my motion as follows:

> Be it resolved that because:
>
> (a) the constitutional rights of members to speak in French in the Assembly cannot be determined by the committee conclusively; and
>
> (b) the essence of privilege is whether or not a member has been deprived of any right, without which he is unable to carry out his functions as a member;
>
> the committee finds no breach of privilege arising by virtue of the proceedings of the Assembly being conducted solely in English.

Now, Mr. Chairman, I wish to just expand a little bit upon the wording. We've had a mixed bag of opinions presented to this committee over a period of time, with a clear difference of opinion relative to the impact of section 110 of the North-West Territories Act and section 14 of the Alberta Act. We've had opinion on one side of that question and on the other, and as has been quite clearly stated by counsel today in the brief and in his remarks which he made, this is a mixed question of law and privilege, particularly relating to the subject as to whether or not . . .

MR. WRIGHT: Mr. Chairman, on a point of order. I'm sorry to interrupt the hon. member, but I can't really intelligently deal with this motion until I understand which are the questions presented to us, since they weren't in the resolution numbered, as it were, identifying. Could you quickly, before proceeding with your statement with regard to question 1, as you call it, tell us how many questions you see and what they are?

MR. HORSMAN: Well, speaking to the point, in the resolution which I have in front of me, the committee meeting of Privileges and Elections, the first meeting of the committee, May 6, 1987, the questions referred to the committee were indeed numbered 1, 2, 3, and 4. And for matters of clarity, I am dealing with question 1 only in this part.

MR. WRIGHT: Okay. Thank you, Mr. Chairman.

MR. HORSMAN: As I was saying, we've had different opinions as to whether or not section 110 of the North-West Territories Act is in force and effect in the province today and, therefore, binding upon this Assembly. We've had quite a major conflict in the opinions of the various witnesses on that particular point. Furthermore, we've had a very marked difference of opinion, from even those people who claim that section 110 is in force and effect in Alberta, as to whether or not it is within the power of this Assembly unilaterally to change the rules by ordinance or by statute or otherwise as to the use of French. We've had Professor Munro tell us in no uncertain terms that he believes that section 110 is constitutionalized, and that being the case, it is impossible for us as an Assembly now to unilaterally deal with this matter, and that French is constitutionalized in this Assembly and that it cannot be dealt with solely by this Assembly.

On the other hand, a witness, Dr. Forsey, who maintained that indeed section 110 is in force, in effect, maintains very strongly that the Legislative Assembly can do what it likes with respect to language now. That makes it very difficult for us to determine that question and to answer the legal question implicit in that matter. We've had very conflicting evidence on that subject, and therefore that is why I've worded the first paragraph in the manner which I have.

With respect to part (b),

> the essence of privilege is whether or not a member has

been deprived of any right, without which he is unable to carry out his functions as a member.

I think the evidence is clear with respect to Mr. Piquette, the Member for Athabasca-Lac La Biche. It's clear that he is bilingual, perfectly fluent in English and therefore able to carry out his functions as a member by reason of that fact. Therefore, it is my view that it leads inescapably to the conclusion that there has been no breach of privilege for any member or the Assembly arising by virtue of the proceedings of the Assembly being conducted solely in English, as has been the case since 1905 with respect to the publication of all laws, ordinances, motions, *Hansard*, Votes and Proceedings, Orders of the Day, and all the other documents that are before the Assembly and have been before the Assembly.

The only exception, and this came about as a result of the Constitution of Canada after the 1982 Act, is that constitutional amendments of the Constitution of Canada must be printed in both French and English. I would recall to the attention of hon. members of the Assembly, those who were here and those who were not, that when the first amendment to the Constitution was moved in this Assembly -- I moved that particular motion relating to the establishment of a series of aboriginal rights conferences under the Constitution -- for the first time that motion was printed in both official languages of Canada because it is a constitutional requirement of the Constitution Act of 1982. And that of course ties into the arguments advanced today by the Parliamentary Counsel that we cannot ignore constitutional Acts. That is binding upon us. Similarly, with respect to the motion on the current Order Paper in the Premier's name relative to the amendment of the Constitution to give effect to the Meech Lake accord, that is also printed in French and English.

Other than that, Mr. Chairman, there is no evidence of any kind whatsoever that laws or any other documents of this Assembly or any of its printings and so on have been done other than in English, aside from the occasional use of French or other languages on very unusual occasions. We, of course, are not at an advantage of having had *Hansard* in the Assembly going back to 1905. It was not until after the general election of 1971 that *Hansard* was in fact published, and therefore we cannot ascertain whether or not there were speeches of any length or comments of any length in any other language than English. I think it's quite clear that this has been, by common usage and understanding and custom, a unilingual Legislative Assembly, and that leads me clearly to the view that there is no breach of privilege of any hon. member by reason of the fact that the Assembly proceedings are conducted solely in English.

Under those circumstances, I am pleased to place this motion before this committee for consideration by the members.

MR. CHAIRMAN: The motion is received, and I have Mr. Wright and Mr. Fox on my list to speak to the motion.

Mr. Wright.

MR. WRIGHT: Thank you. "The constitutional rights of Members to speak in French in the Assembly cannot be determined by the committee conclusively" is part (a), and I respectfully agree with that. There were several witnesses, Mr. Chairman, who said that we shouldn't be deciding questions of law in this committee. I think one witness said he wouldn't touch it with a barge pole. And that is so; we just aren't equipped to decide questions of law. Yet the right to speak French is in fact a question of law because it all turns on whether that right was carried into the Alberta Act.

That being so, I find subsection (b) of the resolution inconsistent, because it then makes a finding about privilege -- i.e., makes a finding about law -- having said that we aren't equipped to determine those things. It seems to me if you accept (a), then you have to say that on the question of breach of privilege as to French or not, which is treated in the rest of the resolution, we cannot come to a finding. So we do not find this acceptable; at least I don't find it acceptable, Mr. Chairman.

MR. FOX: Well, I'm concerned with this motion as well. I do agree that it's certainly difficult for members of the committee, myself included, especially those of us without extensive background in legal or constitutional matters, to determine whether or not the right to speak French in this Assembly exists. I don't see any disagreement amongst the witnesses or the members of the committee that it is certainly the right of the Assembly to decide what we do from this point on; we can determine whether or not we have the right to use French in this Assembly. But it seems to me, from the careful consideration of all the evidence presented to us, that even though it's the right of this Assembly to determine whether or not the use of French be denied, that has never been adequately done. I haven't seen anything in the evidence presented to me that tells me that this Assembly dealt in a determinative way with the use of the French language in the Assembly. Indeed, we've seen many examples in the past where it has been used and where members haven't been ruled out of order for doing so. And that's certainly not to reflect on the competence of previous Speakers for not recognizing they were allowing rules to be breached.

So it seems to me that the constitutional rights of members to speak in French in this Assembly does exist. I base that, I guess, on my consideration of evidence presented by a noted historian who spent some considerable time looking into this, the Dean of the Faculty of Law who lectures in Canadian constitutional law, who spent some time looking into this, a generally acknowledged constitutional authority. Mr. Forsey, from his perspective, felt that this right clearly exists, and even an editor of *Beauchesne* did allude to that right. The witness before us who tended to refute that evidence -- you know, an expert on international terrorism or whatever, with some backgrounding in British parliamentary law; I don't believe he has ever lectured in Canadian constitutional law, although I may be corrected on that -- disagreed with the presentation given to us by several other witnesses. So it's the challenge for us as members of the committee, I guess, to weigh the pros and cons of all of this.

It seems to me that the North-West Territories Act, 1891, dealt very specifically with the language to be used in this Assembly. It dealt very specifically with what changes would need to be made or how the changes would need to be made in order to make that null and void. It was suggested by Professor Green that that motion had a bunch of extra words in it, that even though it said that any changes shall be proclaimed forthwith, it probably didn't mean "shall be proclaimed forthwith." Yet he was prepared to accept that the Haultain motion, which he felt extinguished the right to use French in this Assembly, was so well worded and well drafted that it could mean things it didn't even say, and that was that the right to speak French in this Assembly would be extinguished.

I just found it to be an incredible intellectual contradiction, or logical contradiction, between those two pieces of evidence and the way in which Professor Green and Parliamentary Counsel dealt with it, and because of that I guess I do determine in

my own mind that the right of members to speak French in this Assembly clearly existed up to and including April 7 and, indeed, exists to this point in time. We're within our rights as an Assembly to deal with that from this point on, but I don't believe we or our predecessors have dealt with it in a substantive way.

MR. CHAIRMAN: I hesitate to interrupt the debate. It is 4:30, and I have four people on my list. In view of the fact that we started at 2 rather than 1:30, I would be in the hands of the committee as to whether it's the intention of the committee to perhaps adjourn at 5 o'clock or whether some other answer to that is appropriate. Mr. Fox.

MR. FOX: Some of us who may be traveling back and have other arrangements would find that awkward, but I'm in the hands of the committee. We did sit an extra half hour longer this morning.

MR. CHAIRMAN: That's right.

MR. OLDRING: I move we adjourn, Mr. Chairman.

MR. CHAIRMAN: Okay. Mr. Oldring is moving that we adjourn the debate on this. We'll deal with that, but just take a moment on other business in case there is any and . . .

MR. WRIGHT: Mr. Chairman, could I just put it on record that in case there is any doubt I entirely agree that, speaking legally, the right to speak French exists. In saying we should decide it, it's because of the nature of the committee, not because of the nature of the question.

MR. CHAIRMAN: Okay. We have a motion by Mr. Oldring for adjourning debate on this particular motion. Then I'll move to other business, just in case there is any, and we'll conclude.

SOME HON. MEMBERS: Agreed.

MR. CHAIRMAN: Mr. Oldring moves that we adjourn debate on this motion until tomorrow at 2 o'clock. All in favour?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: The motion is carried.

Item 6 on the agenda is Other Business. Is there any other business to come before the committee? Mr. Moore.

MR. M. MOORE: Mr. Chairman, presuming that tomorrow afternoon at some point in time the committee deals with the motion that's presently on the floor, it would be my intention to move another motion that deals substantially with question 3 and in part with question 4, particularly with regard to the Speaker's summary of his remarks on April 9 where he indicated that the House itself must provide some remedy to the situation. I would therefore like to serve notice that I will be presenting to the Assembly tomorrow a motion which I believe provides some remedy to the problem with regard to the use of a language other than English, and I have given your secretary a copy of the motion that I intend to move tomorrow, Mr. Chairman. My purpose in doing this now is so that members will have some opportunity to reflect upon the nature of the motion between now and when we meet again tomorrow. So if the secretary could hand those around, I'd be pleased to speak to it tomorrow.

MRS. HEWES: Mr. Chairman, my question is on the same issue, on procedure. I'm not aware that the committee has at any point determined that the motion is going to be separated into its parts. Has the committee decided that it's going to be dealt with in this fashion? We have here a motion regarding question 1. I would have preferred to see all motions regarding all parts on the table before we start the debate on specific questions.

MR. CHAIRMAN: Well, a motion has been put by a member. The motion I presume, or at least I have ruled, is in order and the debate has ensued with respect to that. I think it clearly identifies that it is in reference to paragraph 1 of the terms of reference. As I understand Mr. Moore, he is proposing a motion in respect to 3 and 4.

MR. M. MOORE: Yes. It deals largely with number 1 and also with point 4, and I'm just serving notice that I intend to move this motion tomorrow. I suspect there will be other motions moved to deal with the items, but I thought it appropriate to serve notice now in the written form so that members would have some opportunity to reflect on the content of the motion.

MR. CHAIRMAN: Yeah. Well, that's . . .

MRS. HEWES: Mr. Chairman, my reason for asking the question is that I think it might be useful if we spend a few minutes at the beginning of tomorrow's meeting determining what the sequence of events is going to be from here on.

MR. CHAIRMAN: Well, I'm certainly open to that, and we can discuss that tomorrow and proceed from there. I think the first item of business tomorrow will be, since there is a motion on the floor, to pursue that motion. Then we will come to that particular point. There is a motion on the floor.

MRS. HEWES: Just again, then, there has been no request or any determination by the committee to separate the items.

AN HON. MEMBER: They are separated.

MRS. HEWES: They are separated, but to deal with them separately.

MR. CHAIRMAN: Well, I presume the committee can deal with it in any way it sees fit. I presume that was taken into account by Mr. Horsman when he made his motion.

MRS. HEWES: Thank you.

MR. WRIGHT: Mr. Chairman, my point was merely that since it may well be -- and I think is the case -- that the various items 1, 2, 3, and 4 are interconnected, we might be smart to consider each separately in terms of questions and so on but to vote on them at the end, one after the other, in case we realize when we get to 3 that, by gosh, this alters 1 in some way. But we can consider that tomorrow.

The second point is that we welcome indeed the initiative to regulate matters for the future represented by the motion for consideration tomorrow by the hon. minister, although I say

nothing of the particular terms of it.

MR. CHAIRMAN: Right.

MR. FOX: I just wanted to ask, Mr. Chairman -- I appreciate the initiative of Mr. Moore in terms of providing all members of the committee advance notice of his motion so that we do have time to consider it. Would it be in order to ask if any other members have motions they intend to pursue tomorrow, and if they do, would they consider it helpful for the rest of us to be able to spend some time thinking about them before we consider them tomorrow? Tomorrow is the last opportunity for the committee to meet, and if there are any other motions, I for one would certainly appreciate being given their substance so I can deliberate them.

MR. CHAIRMAN: I don't know whether or not any other member has a motion determined at this point in time ready for purposes of notice.

MR. GOGO: Well, I think Mr. Musgreave has one. He won't be back till tomorrow, but I would think other motions are going to come forward. I'd just . . .

MR. WRIGHT: Mr. Chairman, there was a motion suggested by Ms Barrett when she gave evidence. I think that was circulated perhaps, wasn't it?

MR. CHAIRMAN: Yes.

MR. WRIGHT: Yes, good. So there is that anyway. [interjection]

MR. CHAIRMAN: Yes, it will have to be made by a member of the committee.

MR. WRIGHT: Oh yes, of course. But that was the NDP one that we had in mind, along the lines of the suggested one by the minister of health.

MR. CHAIRMAN: Mr. Hyland.

MR. HYLAND: Mr. Chairman, I would think after -- you know, we've probably all been thinking about this for quite a while, and after all we heard today and the exchanges we heard today and yesterday, over the evening and through to the next afternoon we may well put something together, any of us. Being as what's happened the last two days, I would suspect others are also contemplating what motions should be put forward in order to deal with the orders from the House.

MR. CHAIRMAN: If there are no other items of Other Business, is there a motion for adjournment?

[The committee adjourned at 4:41 p.m.]