

7:01 a.m.

Wednesday, October 27, 1993

[Chairman: Mr. Day]

MR. CHAIRMAN: Good morning, ladies and gentlemen. Thank you for the early morning meeting and for clearing your calendars of all other things at 7 o'clock to be here. It's much appreciated. Can we take a look at the agenda and see how that looks to everyone? It's fairly straightforward. Could someone move to approve the agenda?

MRS. HEWES: Agreed.

MR. CHAIRMAN: All in favour? Agreed.

I hope you've had an opportunity to read through the minutes. Can we have a motion for approval of the minutes as distributed?

MR. DUNFORD: So moved.

MR. CHAIRMAN: Clint. Thank you.  
All in favour?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: Thank you.

Just by way of information, then, on what we're hoping to do, we're hoping that different individuals had time to give some consideration to our discussions last week. Grant, I think you want to be at another meeting by 8; right?

MR. MITCHELL: Yeah, we have another meeting we have to be at. Thanks.

MR. CHAIRMAN: I would think it would be optimistic to think we could do (a), (b), and (c), but if we can work our way through at least (a) and (b) and see how far we get at that point. We'll entertain discussion on point (a) and hopefully move toward a decision in terms of a recommendation that we could feel good as a committee to bring to the Legislature in line for our November 1 deadline regarding the application of the sub judice ruling. We'll entertain discussion and suggestions on that line at this point.

Roy.

MR. BRASSARD: After the meeting like a lot of others, I guess, I went back to my office and read through this sub judice thing. I really like the model that B.C. has adopted, to be honest, and I've taken the liberty of writing it out. I probably should have had it typed out, but I would like to suggest that it reads this way . . .

MR. CHAIRMAN: This is as it reads in our material? It's tab 5, then, if people are looking for it.

MR. BRASSARD: Almost, Mr. Chairman:

A member will be called to order by the Speaker if that member . . .

(g) refers to any matter

(i) of a criminal nature where charges have been laid until passing of sentence and from the date of filing of Notice of Appeal until date of Decision by Appellate Court,

(ii) of a civil matter that has been set down for trial (or Notice of Motion filed as in an injunction proceeding) until judgement or from the date of filing Notice of Appeal until judgement by Appellate Court.

It's almost word for word as British Columbia has it there, but it seems to contain it well enough and cover the concerns that have been expressed earlier. I move adoption of this suggestion.

MR. CHAIRMAN: Okay.  
Discussion? Grant.

MR. MITCHELL: I'm happy to hear that Roy is thinking along these lines. I certainly am as well. I would like to ask him whether he would consider maybe two friendly amendments. One is that in the Nova Scotia case, the triggers are: once an action is commenced in either civil or criminal cases. What that means to me is that in civil matters sub judice becomes an issue when a trial is set down; in criminal matters sub judice becomes an issue when a trial is set down. So on the criminal matter side it goes a little bit beyond the time after the time that a charge is laid to the time that a trial is set down. I would ask whether you would consider just changing the criminal matters trigger to the Nova Scotia model.

Secondly, maybe this is implicit, but I think it's very important that there be Speaker prerogative and judgment no matter when the issue of sub judice arises. It may be that in some cases before a trial is set down, an individual or a group or society could be prejudiced. In other cases it may be that after a trial is set down, an individual or a group wouldn't be prejudiced by certain kinds of questions. In the B.C. case - the notes at least allude to this - when there is doubt, the Speaker would rule in favour of debate and against the sub judice convention. I want to have in our rule a sense of allowing for the Speaker's judgment, which of course would mean that we could make the case to the Speaker and he or she could rule accordingly.

MR. CHAIRMAN: On that point, Roy?

MR. BRASSARD: Well, just on that point. I assumed that the Speaker had that prerogative to start with, that he had the jurisdiction. I guess I need clarification on what is meant by the term "when action is commenced." That's what threw me off Nova Scotia. I felt that once I take action against you, it could be a very long, long case, depending on the circumstances, and that is why I lean towards the B.C. model. If you could clarify what you mean by "action is commenced" or what Nova Scotia . . .

MR. MITCHELL: Well, maybe I don't even have to refer to the Nova Scotia case. I'm simply saying: let's set that aside and say that if the issue doesn't really arise until a trial is set down in the case of civil matters, then I'm wondering whether we could say the same in criminal matters, although given that there will be Speaker judgment implicit or explicit in this process, I'm not as concerned, because this trigger time doesn't mean as much.

MR. BRASSARD: I'd like to hear from the others.

MRS. HEWES: Mr. Chairman, I need to see it; I'm sorry. Can we have a copy?

MR. BRASSARD: I'm sorry; I should have typed it out.

MRS. HEWES: Can we make some quickly? I don't mind it being handwritten.

MR. CHAIRMAN: Sure. We can get these copied here. Thanks, Louise.

MR. BRASSARD: I'm sorry, Mr. Chairman. I should have done that.

MR. CHAIRMAN: No. That's fine.  
Mr. Speaker.

MR. SCHUMACHER: As far as criminal cases are concerned, I'm a little concerned because there's always this concern over pretrial publicity. I would feel that we shouldn't be encouraging that, because it is the accused person who is going to be . . .

MR. CHAIRMAN: This would say, "From the time the charge is laid."

MR. SCHUMACHER: Yes.

MR. BRASSARD: That was the B.C. line. Mine reads slightly differently.

MR. MITCHELL: Yes, I would accept that point.

MR. CHAIRMAN: Okay; thanks for that point, Mr. Speaker.  
Clint.

MR. DUNFORD: Well, I would not have been as eloquent, but that was the point I was feeling uncomfortable about.

MR. CHAIRMAN: That point now is clarified then? Okay.  
Frank, do you want to make a comment?

MR. WORK: Actually, I was just going to reiterate what the Speaker said. I think the greatest potential for prejudice is actually after charges are laid, when a case receives its greatest publicity and the matter is big in everyone's mind, in criminal matters.

MR. CHAIRMAN: Nova Scotia – I know you're not specifically zeroing in on that one, Grant – talks about "matters before quasi-judicial bodies." Are you anticipating that, Roy; for instance, like a Labour Relations Board rumour that might be going on?

MR. BRASSARD: No. I didn't feel that it had the same implication. I feel we're back to definitions again of quasi-judicial bodies, and that could get pretty extensive. I feel that a person is compromised before the courts, and that is primarily the role of sub judge, but the quasi-judicial waters that limitation down.

MR. CHAIRMAN: I suppose the Speaker's prerogative could still kick in.

MR. BRASSARD: Well, yeah. I guess that was implicit in all my thoughts, that I thought the Speaker would have discretion regardless, so I didn't identify that, and I'm glad Frank did.

MRS. LAING: Would a quasi-judicial body include things such as the ERCB and workers' compensation appeal boards and those kinds of things? I mean, again there is a potential to damage reputations if some of these things are brought up, and also maybe to influence a judgment. I'm just wondering about that.

MR. DUNFORD: Well, I appreciate what Bonnie is saying. We talked last time around about fuzziness, and I think that if we bring in the quasi-judicial, we really do make it fuzzy. What about arbitration cases, then, in grievance procedures, the appeals that are in occupational health and safety situations? I mean, there

are probably 10,000 quasi-judicial bodies at practise, and I think it would almost render meaningless what we're trying to do here.

7:11

MR. CHAIRMAN: If I could editorialize. If the Speaker's prerogative is included and then, let's say, Bonnie felt very sensitive about a particular case, that could be brought to the Speaker's attention and then he could rule.

MR. DUNFORD: Yes.

MRS. LAING: If you look for instance at the PUB, where they're discussing rates, I mean, that might be something that would come in at question period. If you went ahead and debated it, there might be a chance to influence the decision that's made there. That's the kind of thing I'm thinking of, not minor things. I'm thinking of bigger issues that would impact a lot of people, like power rates and that type of thing too. You're almost taking it back when you start debating it in the House.

MR. CHAIRMAN: Gary.

MR. FRIEDEL: Your motion doesn't anticipate that the quasi-judicial bodies be included in it; does it?

MR. BRASSARD: No. I felt that that would fall under the Speaker's prerogative.

MR. MITCHELL: I would agree with Roy's answer and consideration in that regard. It can become so debilitating, and we couldn't even begin to anticipate all of the possibilities.

MR. FRIEDEL: I agree with that. Virtually everything that's out there could somehow or another be involved in some kind of a judgment.

MR. BRASSARD: Can I just ask you how you feel about it, because you get involved with the issues dealing with workers' compensation and so on? Do you have any concern with leaving that to the Speaker's prerogative?

MR. CHAIRMAN: I guess the Speaker's prerogative would give – let's say in a case of a Minister of Labour, for instance, if there was an LRB ruling, it would give that minister the opportunity to stand and say: "Look; this is a very sensitive matter, Mr. Speaker. You have the ability to rule that it's sub judge." In response to your question, with that comfort zone being there to ask the Speaker to rule, then I think that would cover it from my perspective.

This is a new type of WordPerfect that's just been developed. It's to give the informal look. So if we'd all like to just take a minute.

MR. DUNFORD: Well, for those of us that dabble in handwriting analysis, it's excellent.

MR. CHAIRMAN: Roy, do you want to just read it into the record?

MR. BRASSARD: Okay.

A member will be called to order by the Speaker if that member . . .

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(i) of a criminal nature where charges have been laid until passing of sentence and from the date of filing of Notice of Appeal until date of Decision by Appellate Court,

(ii) of a civil matter that has been set down for trial (or Notice of Motion filed as in an injunction proceeding) until judgement or from the date of filing Notice of Appeal until judgement by Appellate Court.

That's the motion, Mr. Chairman. I feel that it contains it well enough and yet allows opportunity for appeal to still fall within the jurisdiction of sub justice.

MR. MITCHELL: His wording in the notes – I would ask for his judgment on this – if added would address the issue of the Speaker's prerogative.

However, where there is doubt the Speaker should rule in favour of the debate and against the Sub Justice Convention. Where there is a probability of prejudice to any party, the convention will be applied.

MRS. HEWES: Is that moved as an amendment?

MR. MITCHELL: I would move that as an amendment, yes.

MR. CHAIRMAN: So that would be the wording, again if we use B.C., of the last two sentences:

However, where there is doubt the Speaker should rule in favour of the debate and against the Sub Justice Convention. Where there is a probability of prejudice to any party, the convention will be applied.

Roy, does that seem to accommodate – you had assumed Speaker prerogative there?

MR. BRASSARD: Yes. I excluded it primarily because I felt that the first sentence, "Where there is doubt, the Speaker should rule in favour of the debate," left it wide open and would challenge the Speaker's discretion, but I don't really have an immediate problem with it. I left it out deliberately, but it certainly could be added.

MR. CHAIRMAN: That second sentence seems to tilt it back.

MR. BRASSARD: Yes, it does bring it back into perspective all right.

MR. CHAIRMAN: On the amendment, then, discussion? I'll call for the question on the amendment.

MR. BRASSARD: Question.

MR. GERMAIN: I'm sorry; I didn't have my hand up fast enough.

MR. CHAIRMAN: Sorry; go ahead.

MR. GERMAIN: Are we saying here, if you read the first part of this rule, that the Speaker has no discretion whatsoever once you follow within these time lines, that his discretion only relates to before these time lines? Are we casting an absolute . . .

MR. CHAIRMAN: Well, the way this is read, it says, "Where there is doubt."

MR. MITCHELL: If we add the two sentences, we would solve that problem, but if we don't add the two sentences – these ones here; have you got it?

MR. CHAIRMAN: It's under tab 5, sub justice convention rule, and it's got the different provinces.

MR. GERMAIN: I may have been looking back here before.

MR. CHAIRMAN: The very last two sentences.

MR. MITCHELL: That's what we're adding. That's what my amendment would do. If we don't do that, it seems to me that we do create the problem that you're raising.

MR. GERMAIN: All right; but in those very notes we're working off, the sentence before seems to only give the Speaker discretion when the matter is before the dates.

MR. CHAIRMAN: I guess that's why that sentence isn't included.

MR. GERMAIN: Okay. So we're intending that not to be there.

SOME HON. MEMBERS: Yeah.

MR. BRASSARD: Just the last two sentences, yeah.

MR. CHAIRMAN: Other discussion?

On the amendment, then, all in favour? Opposed? Carried unanimously.

On the whole motion, then, as amended, a call for the question.

HON. MEMBERS: Question.

MR. CHAIRMAN: Discussion? All in favour? Opposed, if any? Carried, and that's unanimously.

If you trust the chair to work out the wording of the recommendation so that it will include the verbatim account as presented and agreed on by Roy, we'll get that to each person before the recommendation comes to the House to make sure everybody's comfortable with it.

MR. MITCHELL: Mr. Chairman, your intention is that we would bring this to the House on or before November 1 and that we would pass it at that time and have it debated before the end of the session? I'd like to do that so that we can be sure of something.

MR. CHAIRMAN: Yes.

Okay. Moving to feasibility of minority reports of committees and subcommittees; that's 4(b) on your agenda. Gary.

MR. FRIEDEL: For the sake of starting discussion on this, at the last meeting I had suggested that I liked the model that the New Brunswick Legislature uses. I therefore move that we adopt the portion that is in quotation marks.

MR. CHAIRMAN: Okay. Where are you, Gary? I'm sorry.

MR. FRIEDEL: It's the first page of the report called Minority Reports from Committees, near the bottom: New Brunswick.

MRS. SHUMYLA: It's under tab 6.

MR. FRIEDEL: Oh, I'm sorry; tab 6.

MR. CHAIRMAN: Tab 6; I was looking under the orange tab.

Tab 6, minority reports. All right; go ahead. Has everybody got that?

MR. FRIEDEL: Do you want it read into the record?

MR. CHAIRMAN: You're moving a suggestion?

MR. FRIEDEL: I move that we adopt it as a recommendation to the Legislature.

MR. CHAIRMAN: Yeah; sure.

7:21

MR. FRIEDEL:

The report of a Committee is the report as determined by the Committee as a whole or a majority thereof, and no minority report may be presented or received. A Committee may, in its discretion, include any dissenting opinions in its report.

MR. CHAIRMAN: All right. That's the motion.  
Discussion? Adam.

MR. GERMAIN: I'm not going to be able to support that, although I recognize it's probably worked well for them in New Brunswick for many years. We have to decide philosophically whether we're going to have and allow minority reports. I mean, this motion basically means that there is no minority report and that there is a discretion against even the inclusion of any dissent in the report. I mean, it sounds nice, but it really hasn't accomplished anything. I don't see what the concern is with attaching a minority report to a report as an appendix or in some fashion. What I hoped we would evolve to in this committee is that we would have some way in which minority reports could be recognized. We may have to put some brakes on them. We may have to require that they can be prohibited in the enabling resolution that creates the committee. If it's the type of committee that has to come to a consensus decision, they work until they do. But to say that you can't have minority reports and to say that the chairman won't even comment about dissent and honest debate in the report unless he's so inclined, seems to me to have accomplished very little in this area. All with respect, of course.

MR. FRIEDEL: Well, if I can address just one of the points you're making. The motion doesn't say: the chairman in his discretion. It says: in the committee's discretion. I just have a real problem with the purpose of a committee if its job is not to come to some kind of a consensus. In the short time here and in considerable time in previous municipal politics I have found that the whole purpose of a committee is to deal with an issue with a smaller group of people because a larger group can't come to a consensus. The purpose, again I'll reiterate, is consensus, not two or six or any number of personal opinions, which I believe happens if the committee is not mandated to do that.

MRS. HEWES: Mr. Chairman, I appreciate that, but I can't support it. I think the whole reason we're talking about this is to try to open up the scene, to try to allow for opinions, and to let the Legislature as a whole see the results from all members of a committee. While I respect what Gary is saying, I really don't think the New Brunswick model moves us anywhere. I don't think it really improves the situation at all.

Back to the classic example of the boundaries commission. If we hadn't had minority reports, if they had come in with some other kind of resolution of it, some half-baked consensus - excuse me, Mr. Chairman; don't put that in the minutes - if they'd come in with some consensus that really wasn't a consensus, we would not have had the kind of information we needed to know, that the legislation indeed was flawed. I think you have to have the capacity for that to know whether or not the charge to the committee was the right one and whether the charge to the committee allowed them to arrive at a consensus. I think the

capacity for the minority report would always protect that. That was an awful experience for me as a legislator to have to go through, but I think it really proved to me that minority reports tell you something that you desperately need to know before you arrive at any decision.

I don't think, Gary, with respect, the New Brunswick model really moves us far enough or in the direction that I would like. I don't think it's an advantage to us.

MR. DUNFORD: Well, I started out being a little uncomfortable about Gary's motion, but I was willing to, you know, sort of go along, because I see that's what committees are for. I would maybe want to substitute the word "compromise" for "consensus."

If our members of the opposition in this room are opposed to the motion, then I'm going to oppose it from the other direction in that it goes too far. As a reference I'm going back to *Hansard* from our last meeting. I'm looking at some of the words that Halvar Jonson raised, and I would make the point that we are here for some purpose. If in fact we were going to sit and discuss this thing and then allow a minority report, I know exactly what it would look like. There would be the Conservatives lined up on one side, and there'd be a minority report with the Liberals lined up on the other side. You know, we could do that in the House. I mean, I didn't have to get up at 7 in the morning to go through that kind of thing. So I'd suggest that we look at it from a spirit of compromise, that we've been sent here to try to come up with a recommendation or recommendations. If we have to put on it that a majority approved the recommendation, I don't have any problem with that, but simply to allow minority reports - we're in the House enough. We might as well get it done in there.

MR. MITCHELL: I think obviously the issue here is to an extent focusing on: what are the roles of committees? I think it's very limiting to say that all committees are charged with a mandate that in some sense requires a consensus. Some do. I would argue that it isn't some arbitrary requirement of consensus that will direct whether or not members will come to a consensus. I mean, there will be issues, for example, that maybe Gary simply couldn't agree with his caucus colleagues on, and that will be that. He couldn't endorse a minority report, for example, that said that recall would never work, or maybe Stockwell couldn't because Stockwell voted for recall in the Legislature. So we simply couldn't come to a consensus on that. The issue itself will drive whether or not there's a consensus, not some arbitrary rule that says you must come to a consensus.

Let's look at the nature of different committees. In the case of the constitutional committee, which I think was an exercise that really was a credit to all of us, it was clear that there was a great deal of advantage to Albertans if this Legislature, this government, all the members of the Legislature could come up with a consensus, that we could have a strong position in the constitutional debate. So we all understood that. We were all responsible and responded to that need, and we came to a remarkable consensus. On the other hand, the heritage savings trust fund hasn't got a specific question that it's asked. There's an infinite number of recommendations that the heritage savings trust fund could come up with because it deals with so many different possibilities. So why should my recommendation that receives 49 percent support of the committee never see the light of day?

A classic example is the former Member for Calgary-Fish Creek, Bill Payne. You know, year after year he proposed that there be a public task force that looked into re-evaluating the heritage savings trust fund. That recommendation, I believe, was never passed by the committee, and now the government in fact is

doing it or is saying that it's going to do it. How did Bill do that? Well, he was reduced not to having that expressed in the official, formal, credible way that a minority report, or at least a recognition in that report of minority-supported recommendations, would have given him. He was reduced undoubtedly to doing that behind closed doors in coffee clutches in smoky rooms – I don't have to put too elaborate a point on this – with cabinet ministers or whomever. It just debased the value of his idea. I'm not afraid of ideas. The Legislature will ultimately make the decision.

A final point about the question of consensus. I think the process is served. A committee can do all kinds of things that are still useful right up to not coming to a consensus. They can pare away unworthy arguments on both sides, and there can be agreement about that. They can highlight the issues. They can clarify the issues. They can present the case so that each side doesn't have to be rehashed at length in the Legislature. They can do a great deal without actually coming to a consensus. So to limit all those other possibilities, to focus only on the kinds of issues that might lend themselves to or require a consensus is to limit the usefulness and the productivity of the committee process in all kinds of other ways.

7:31

MR. CHAIRMAN: Frank had some information here.

MR. WORK: Yeah. I don't know if you – it was late arriving. There was a little thing called Minority Reports in Committees that the Legislative Assembly Office prepared. I'm not about to drag you . . .

MRS. SHUMYLA: Excuse me. It's just right under that next document.

It's right after the first one we were looking at.

MR. CHAIRMAN: It's under your tab 6. First the other provinces are referred to, and then it says Minority Reports in Committees.

MR. WORK: Mr. Chairman, on page 2 of that there are a couple of technical points that I was hoping the committee would keep in mind. First, at the top of page 2:

If this committee were to recommend minority reports, it would seem that the committee would also have to make a recommendation as to how the minority report should be treated by the Assembly.

And the next paragraph:

There is a difference between presenting a minority report and presenting dissenting opinions.

Maybe just to avoid any confusion between members who are saying, "Well, we want our ideas and opinions set out" and distinguishing that from saying, "Well, we want an alternate recommendation." Finally, there are three alternatives there, which I won't belabour at the moment.

Just for the purposes of applying this, for those of us who might have to apply it, it would be helpful to have the committee's advice on the weight to be attached to minority reports and the distinction between minority reports and simply a mechanism of presenting dissenting opinions by the committee.

Thank you.

MR. CHAIRMAN: Gary, and then Roy.

MR. FRIEDEL: Okay. I think a lot of the concern is: what is the minority report going to be? The debate in the Legislature usually centres on ideological differences or, you know, the political positioning that we're required to do depending on which

side of the House we sit. Unfortunately, I guess I feel that if we did have minority reports, generally speaking we would be doing just the same thing in the committee. The number of members on the committee roughly represents the percentage of the numbers in the Legislature. We'd be getting nowhere.

MR. MITCHELL: We could change that.

MR. FRIEDEL: There is a point made, and I'm not going to make it as an amendment but just toss it out for consideration. I think Grant mentioned it. There may be reasons at times when a committee is appointed where the consensus opinion is not mandated or maybe not even necessarily desired. Would there be some advantage to suggesting that the authority which sets up the committee – and in most cases where we're talking all-party, it would be the Legislature – in its mandate suggest that a minority report might be considered? In other words, normally it would be as we suggest here, but if for a special purpose a committee were set up where it was not required, it could be done in the actual mandate. Under normal circumstances it would be done where a consensus opinion is required.

MR. CHAIRMAN: I guess the easy answer to that, subject to other information from the Speaker, is that the Legislature in its wisdom can create anything it likes, even if there was a Standing Order, whatever on this.

MR. FRIEDEL: Then we're right back where we started though.

MR. CHAIRMAN: Well, a Legislature can stop the clock. It can call it Wednesday when it's Tuesday. So I guess in answer to that, Gary, ultimately a Legislature can do whatever it likes.

Bonnie, and then Grant. Oh, I'm sorry. It was Roy and then Bonnie.

MR. BRASSARD: Well, I certainly respect the points that Grant has raised because I think they're valid, but I come back to the basic premise that you turn it over to a committee to come up with some kind of a solution, so that they can look an issue in depth and come up with a clear recommendation. Minority reports don't do that. It allows, for want of a better word, a lack of commitment on behalf of all to arrive at some kind of solution. I wasn't directly involved in the boundary commission, and I'm thankful that I wasn't, to be very honest, but I was very discouraged when the final report came in with five different positions. To me that solved nothing. In fact, all it did, basically, was add to the confusion and open it up for further debate.

I guess I see a minority report giving me as a member of that committee an opportunity to have the best of two worlds. I can take a position knowing full well that the rest of the committee is going to overpower me and carry the day, yet I can still remain unanswerable, if you will, for the decision because I voted or spoke out against it in my minority report. To me that gets me off the hook, and there's a lack of commitment to resolve the issue that really bothers me. I'm not saying that that's what happened with the boundary commission report, but certainly everybody did their own thing, and that's not what committees are about. There's no consensus there at all.

I certainly don't want to be led by others, but I look at the examples that we have in front of us, and nine of them out of the 11 don't allow minority reports. Obviously, this question has been debated before and discussed in depth, and there is a consensus for you. So I guess I still lean to removing of minority reports but allowing full opportunity for dissenting opinion.

MR. CHAIRMAN: Bonnie, Adam, and Grant.

MRS. LAING: Thank you, Mr. Chairman. I agree with Roy. I think that having a minority report is an escape hatch, that people will put their energies into defining their own position rather than working towards a conclusion or a consensus or a recommendation or whatever that we need.

Someone has already mentioned the boundary commission. When you look back at the amount of money and time that was spent in the public hearings, I am certain in my mind that there was enough information to draw up a report. I was more than disappointed at the fact. I felt there really wasn't a real effort made to draw the information from the public hearings together to make a report.

I just see a minority report as a way out. Instead of concentrating on finding a solution, you're saying, "Well, it doesn't matter, because this is what I'm going to do anyway," and your energies go into doing your minority report. With the dissenting opinion noted, I think everyone then realizes it wasn't a majority, that people perhaps had other points of view.

I don't really feel that we should have a minority report. There's the confusion when it comes to the Legislature: which one do you debate; which one is the real report? I think it just adds confusion and makes things a little bit more chaotic.

MR. CHAIRMAN: Thanks, Bonnie.  
Adam.

MR. GERMAIN: I thought Gary was moving more onto the right track with his proposal about allowing minority reports in the enabling resolution. I would have preferred to flip that to say that they will always be permitted unless they're prohibited.

Let's flip the coin a little bit, and let me play devil's advocate on this. You say that no minority reports encourage consensus. Well, I think there's an equally sound argument that can be made that the failure to have a minority report basically means that there can't ever be any honourable agreement. If you're sitting in a committee and you're outnumbered on a thought process that may be ahead of its time or a long way behind its time perhaps, you're never going to have an opportunity to express it. You're going to have to suck-hole to the committee to see if it's even put in as a footnote that there was a dissenting opinion. How does that encourage debate among equals and freedom of expression?

7:41

I mean, I've sat on lots of committees as well, never in this government context, but the fact that somebody is free to write and express their point of view has never struck me as prohibiting a consensus. I mean, by our personalities as human beings we like to be consensus driven. We like to shake hands at the end of a meeting and walk out of a room and say, "Hey, it was a good day's work, and we got something done." I mean, we must be consensus driven as humans. If I only go to my experience in the courts and realize that out of every hundred lawsuits and court cases started, only one of a hundred goes to court. That's the percentage of time that people can't reach agreement, if you want to put it in that business context.

So let's permit minority reports. Let's allow people to put their money where their mouths are for once and see just how many times they are utilized or they are raised. As for the debate on them, a little one-page minority report attached to the back of a bundle consisting of the committee's report gives people who look at it a chance to say, "Well, you know, 80 percent of the people agreed on this point; 20 percent couldn't." Well, what's harmful

about that? There's nothing harmful about that. The minority report might indicate that of the 60 things we talked about, the minority agreed on 45 and we disagreed on 15. Then the people who sit in sober second judgment of our committee report, the Legislature or whoever we're filing the report with, can look at it and say: "Well, is there something here? Is there a lightning bolt? Is there a rattlesnake curling around in the grass here on these 15 or so points for which people could not get consensus?"

I've been in situations where I've received lots of reports from committees. I flip through and I go to the executive summary or the bottom line, and the first thing I want to know is: were they truly in agreement? If they were, that's very helpful, but if there was some little minor dissenting concern, then I want to flip and see what that dissenting concern was and focus my thought process there. I think it's the wrong approach to assume that minority reports will simply bring out the worst in people. They may bring out the best in people.

MR. CHAIRMAN: Just for clarification. Gary's motion is including sentence 2 there, "A Committee may, in its discretion, include any dissenting opinions."

MR. GERMAIN: Well, of course, in its discretion, and if you have the committee that won't allow a minority report, they can simply say, "Let's vote on whether we're going to allow any dissenting opinion at all."

MR. CHAIRMAN: I just wanted to clarify that it's the whole thing.

MR. GERMAIN: Yeah. I understood that.

MRS. KAMUCHIK: I just wanted to point out, Mr. Chairman, if I may, that I also added some information to the original Minority Reports from Committees that was distributed the first time, and it's how the House of Commons in the United Kingdom deals with dissenting opinions. Both *Beauchesne* and *Erskine May* have a way of dealing with dissenting opinions in their reports. If you look at your information at the bottom of the second page, you have the House of Commons and the quotes from *Beauchesne*. This was added after last week's meeting, so members may have missed that.

MR. MITCHELL: The United Kingdom, in which case it says:  
A member may also record his [or her] observations and conclusions in opposition to the majority by proposing an alternative draft report or moving an amendment.

MRS. KAMUCHIK: Also:

If a member disagrees to certain paragraphs in the report, or to the entire report, he can record his disapproval by dividing the committee against those paragraphs to which he objects, or against the entire report.

MR. MITCHELL: I want to say that I, too, liked the direction in which Gary was going: to raise the issue of formally giving the Legislature the opportunity to rule on whether or not a minority report would be allowed. I of course like Adam's proposal that it should always be allowed unless otherwise directed. While I respect what you're saying, Stockwell, that it's always the Legislature's prerogative, it seems to me that if there's a hook to hang an argument and a case on, if it can be laid out as a possibility in the rules, many rules in fact would apply to that. If it's always the Legislature's prerogative, you wouldn't need any rules at all. So it would define it to some extent.

I am concerned, Gary, that some of your reticence and others' reticence in this process is this perception that everything is drawn along party lines. I agree that most things have been, but I think that at the outset of this Legislature we really took a huge step in saying that things would be less frequently drawn along party lines. This isn't a step that's going to be realized immediately. It's a slow process, and it has to be a deliberate process, but there's no reason why we should shut doors along the way to that process. If we had it set up so that we'd simply define in a rule the Legislature's prerogative, then it gives us the focus around which we can make the case one way or another on minority. It emphasizes, therefore, discussion about the nature of the mandate of this particular committee versus that particular committee, all of which would improve the committee structure and allow us one further halting step along that process to opening up and getting away from this really demeaning at times and debilitating partisan discipline. Why any of us would want to stand in the way of that is a puzzle to me.

The boundaries commission has been used as an example. I think you can analyze that in another way. The reason that the boundaries commission couldn't come to a conclusion is because the criteria that it was given in the Act were mathematically impossible to fulfill, and in fact when the government's committee ultimately came up with a solution, they changed the criteria and allowed for more Edmonton and Calgary seats, which meant that the mathematical restrictions imposed by, on the one hand, the Supreme Court ruling – and I forget what the other hand was. It meant that it was possible to meet those guidelines. In fact, in that case the lack of consensus was a wonderful and important signal to a weakness in the process.

Just one final comment is that, as I said at the last meeting, we are all very, very concerned about peoples' feelings that they are cut off from this process, from the Legislature, and that they can't be heard. If we shut down the possibility of a minority report exercised responsibly – and it won't be just us. You watch over the years. It won't be just by opposition parties; it will be by members of the governing party as well, because you will feel the frustration. We had the ultimate minority report on the recall resolution. We had the ultimate minority report when one of your members stood up and voted with the opposition on the young offenders resolution and so on. It is so important that we open up this process, that we allow people in Alberta to understand that they can be heard even if perhaps their voice isn't a majority voice. That will benefit all Albertans in the long run, and it will benefit and be much, much more gratifying and satisfying for members on both sides of this House as well in the long run.

MR. CHAIRMAN: Gary and Bonnie.

MR. FRIEDEL: Thank you. I want to make it very clear that I'm certainly not opposed to information being brought up or discussed, and I think it would be fair to say that this is going to happen whether or not there's a minority report. It's going to be debated in the House, and virtually every opinion of every member could be brought up if discussion time permits.

I'd like to use the case at hand, this committee here. If, for example, a minority report were allowed, the whole purpose would be defeated. We would likely win, and several of us would say that there should be no minority reports, and the rest would say that there should be. What was the point of actually bringing it to committee then? It may have been debated in the Legislature to start with. I think this is a prime example of the reason why a committee is brought up, to bring in a specific recommendation, and it has to be a yes or no kind of a recommendation. It may be

filled out, fleshed out a little bit, but that in my opinion is our mandate.

7:51

I think, though, in all fairness, we probably start out in most all-party committees discussing, you know, the ideological positions or taking that position. But I find that in a committee you're more likely to be compromising as you get into the debate than you are in the larger group, in this case the Legislature. You're almost bound to maintaining that ideological position. I think we feel freer here. An example I'm going to use is the access to information committee that I'm on. I have to admit that the first two meetings were pretty much taken up with stonewalling and, you know, jockeying for position. But after it was done, we sat down and, amazing to say, after I think four weekends and about seven or eight hearings already, we're actually freely discussing and, heaven forbid, we're even looking at Bill 201 and saying that there are some good points in it. It's only because in a small committee we're feeling more open and, I guess, compromising. That is to me, then, the advantage of the committee. Again, just going back to my opening point, if this committee had a minority report, we would be sitting here wasting our time I think.

MR. CHAIRMAN: Bonnie, Grant, and Bettie.

MRS. LAING: Thank you. I'm going to go back to Grant's view that the public doesn't have their views expressed. Anytime I've seen a report done by a committee that's had public hearings, the points that the public has made that have been drawn from those hearings are listed in the report. So their views are heard. You don't need a minority report saying X, Y, and Z. I mean, that's included in the body of the report. I think that should continue when a committee makes a report: the committee should report fully on the discussions and the hearings that have been had. Therefore, you really don't need a separate minority report, because that's contained in the report as it's presented by the committee.

Thank you.

MR. CHAIRMAN: Thank you, Bonnie.  
Grant, then Bettie.

MR. MITCHELL: It's okay; I'll pass to Bettie.

MRS. HEWES: Mr. Chairman, I don't think compromise is always the best objective in a committee. It's nice to think that we can compromise, that I give way a little and you give way a little. But that in fact might, in my opinion, weaken the advice or the recommendation. It makes it perhaps less than clear, less than specific. You know, one likes the notion of compromise, but I think that if we are always faced with requiring a compromise, sometimes you end up with something that is really ineffective.

A minority report, on the other hand, Mr. Chairman, I think is a signal that compromise wasn't reached and shouldn't be reached, that a consensus was reached by a majority but that some or several members of the committee believed there was some other option or alternative, whose time perhaps had not yet come, that is flagged by that minority report. I mean, in politics timing is everything, and in our decision-making timing is everything.

I'm trying to think – and I'm sure I'll come up with examples – of where a minority report four or five years ago on an issue flags an option that maybe isn't right at that point but has got to be kept in your mind as circumstances change. I think minority reports help us to be more flexible in our thinking, as we should

be. Clearly when the recommendation then comes to the Legislature, the consensus opinion is going to prevail, I would think. At least you're made aware that there is another thought that has got to be registered someplace. I would like to see the potential for that put in our rules, Gary.

MR. MITCHELL: I would just like to make two quick points in response to Gary. I really do appreciate, you know, his making a proposal and wrestling with it as he has.

First of all, Gary, some of your argument is premised upon the idea that reports can have a minority component once they come back to the Legislature because they're debated, but not all of the reports are debated in the Legislature. In fact, most reports are never debated in the Legislature, and we never get a chance, therefore, in that forum to have the case made in the way that you're suggesting.

Secondly, much of the argument against minority reports is premised upon a two-part choice: that is, on the one hand, you have a consensus; on the other hand, you have a minority report. There's a third component, and that is where you get neither a consensus nor are you allowed to have a minority report. That is, you have a majority opinion expressed exclusively in a report, which doesn't embody a consensus at all. It just simply embodies a majority imposing its will upon the committee. So to say that we're going to have either/or just isn't the case.

The third alternative isn't a very palatable alternative, in my mind. It doesn't serve any purpose that couldn't already have been served in the Legislature, because it does exactly what the Legislature, as you say, would do. It just imposes the one party's discipline on the others. That isn't acceptable.

I think there are some elements here. I think you're accepting a dissenting opinion, and maybe what we're arguing about is: how do we define that, and how much goes into that, into the description and the reasons why there would be a dissenting opinion?

MR. CHAIRMAN: What I'd like to do, given the time and the fact that most people have spoken twice, other than the Speaker, is ask Gary to sum up and we'll call for the question. Immediately after that, I'll take direction from the committee, because what we're talking about is an example of the very issue we're arguing here. So I'll take guidance from the committee as to whether they would want the Chair, in the report to the Assembly, to report on the dissenting opinion on this point, depending on how the motion goes.

So, Gary, to sum up.

MR. FRIEDEL: I guess I'd just like to say that the point was made that there are three positions that can come out of a committee or the Legislature as a whole. Ideally, it would be nice if every issue could be decided by consensus; in other words, the best solution would be reached. Failing that, I would suggest that compromise is better than total disagreement. It's maybe not the best, but I think that a lot of the things that we do end up in some kind of a compromise because the alternative is not acceptable. If we even fail that and the majority rules, at least we're not worse off than had we been back at the Legislature and the same thing applies. I think having gone to a committee, you're given those options, and somewhere along the line you're going to come out with a decision and certainly in descending order the best or not the lesser of the good choices.

I still think, though, that the mandate of the committee is to try and resolve what may not be resolvable in the larger body by sheer numbers or by having to position for ideological party positions.

MR. CHAIRMAN: Calling for the question, then, on the motion as presented, that

the report of a Committee is the report as determined by the Committee as a whole or a majority thereof, and no minority report may be presented or received. A Committee may, in its discretion, include any dissenting opinions in its report.

MR. MITCHELL: Point of order. Mr. Chairman, do we have to vote on this right now?

MR. CHAIRMAN: Yes.

MR. MITCHELL: Why is that?

MR. CHAIRMAN: Well, as I've said, everybody's spoken: some, three times; some, twice. I think it's clear what people are feeling on this. A motion is on the table.

MR. GERMAIN: Can we move some amendments? Will your rules this morning permit us to move some amendments?

MR. CHAIRMAN: That would be up to the presenter of the motion, but I'm having one eye on the clock here. We met early specifically trying to acknowledge your own time frames.

MR. MITCHELL: Well, we can meet again.

8:01

MR. CHAIRMAN: I think the motion is fairly clear.

MR. MITCHELL: We can meet again. We have till November 15 on this issue.

MR. FRIEDEL: When is our next meeting?

MR. CHAIRMAN: Well, it's at the call of the Chair.

I think I'm going to have to exercise the discretion of the Chair. I think we've exhausted the discussion on this. As I said, the points have been well made, well put.

A call for the question on the motion as read. All those in favour? Opposed?

Have you recorded those numbers?

MRS. SHUMYLA: No. If I could get that again.

MR. CHAIRMAN: Opposed would be Mrs. Hewes, Mr. Germain, Mr. Mitchell.

Before you have to leave, I'd like to get direction from the committee on whether we acknowledge the dissenting opinions in the report as we present the recommendation to the Legislature.

MRS. HEWES: Please.

MR. CHAIRMAN: Is there consensus on that? Okay, that will be done.

MR. MITCHELL: Can we recommend a free vote in the Legislature on this particular issue?

MR. CHAIRMAN: Absolutely.

MR. MITCHELL: And the Whips will be off?

MR. CHAIRMAN: Well, our Whip isn't here, so I hesitate to speak lest he lash me.



MR. WORK: Mr. Chairman, if I may again. If you'll have a look at that paper, there are some alternatives for dealing with this that are applicable without altering what the committee has decided this morning. I mean, there are some other mechanisms available to account for differences. I'd just recommend that to you.

MR. CHAIRMAN: Thank you. Dr. McNeil had advised that he had contacted Barry Pashak in light of information on the public accounts. Barry was just leaving for points foreign, but he has advised – has that been sent to members yet?

MRS. KAMUCHIK: I don't believe so.

MR. CHAIRMAN: He made an extensive presentation in the Legislature on public accounts, and he has advised that that really summarizes what he feels in terms of recommendations and changes. So that will be distributed.

MRS. KAMUCHIK: Mr. Chairman, I stand corrected. It was distributed yesterday by Diane.

MRS. SHUMYLA: It's under the orange tab at the back.

MR. CHAIRMAN: Okay, great. So you have that, and Dr. McNeil is still contacting Ron Moore as the deputy chairman. So you'll have that information.

Are you comfortable again with allowing me and Mr. Mitchell to look at the next meeting date?

HON. MEMBERS: Agreed.

MR. MITCHELL: We'll try for 6 o'clock in the morning.

MR. CHAIRMAN: Motion to adjourn? Mr. Schumacher.

[The committee adjourned at 8:04 a.m.]

