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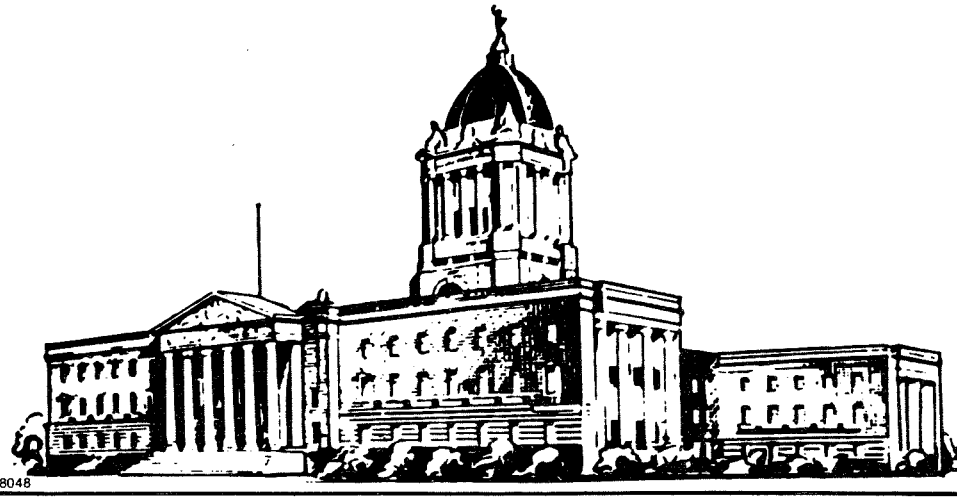
of the

Legislative Assembly of Manitoba

STANDING COMMITTEE
on
PRIVILEGES
and
ELECTIONS

31-32 Elizabeth II

Chairman
Mr. A. Anstett
Constituency of Springfield



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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Second Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON PRIVILEGES AND ELECTIONS
Monday, 19 September, 1983

TIME — 10:00 a.m.

LOCATION — Brandon, Manitoba

CHAIRMAN — Mr. Andy Anstett (Springfield)

ATTENDANCE — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Adam, Bucklaschuk, Evans, Penner and Uruski

Messrs. Anstett, Blake, Graham, Malinowski, Nordman; Mrs. Oleson

WITNESSES: Mr. Joseph E. Magnet, Société franco-manitobaine

Mr. Dennis Heeney, R.M. of Elton

MATTERS UNDER DISCUSSION:

Proposed Resolution to amend Section 23 of the Manitoba Act.

* * * *

MR. CHAIRMAN: The hour being 10 o'clock, committee come to order. Before we begin, ladies and gentlemen, one organizational detail to attend to.

The Clerk has received the resignations of Messrs. Ashton, Scott, Eyler, Lecuyer, Brown and Kovnats. They are to be replaced by Messrs. Malinowski, Evans, Penner, Uruski, Blake and Mrs. Oleson. Could I have a motion to that effect?

MR. H. GRAHAM: I would so move.

MR. CHAIRMAN: So moved by Mr. Graham. Agreed? (Agreed)

Ladies and gentlemen, welcome to the first meeting of the Standing Committee of Privileges and Elections in Brandon. I would draw to your attention the purpose of these hearings, which is set out in a resolution passed by the Assembly in the middle of August this year.

WHEREAS the Government of the Province of Manitoba has proposed a resolution to amend Section 23 of The Manitoba Act, which amendment concerns the translation of the statutes of Manitoba, or some of them; and the question of Government Services in the French, as well as the English language; and

WHEREAS the Legislative Assembly of Manitoba deems it advisable to hear the views of Manitobans on the subject matter of this resolution.

I would like to introduce the members of the committee who are here today. On my far right Reverend Malinowski, Member for St. Johns in Winnipeg; beside Donald Malinowski, Billie Uruski, Minister of Agriculture, Member for Interlake; beside him one of your local members here in Brandon, Len Evans, Minister of Community Services, Member for Brandon East; beside Len, John Bucklaschuk, Minister of Consumer and Corporate Affairs, Member for Gimli; beside him Minister of Municipal Affairs, Pete Adam, Member for Ste. Rose; beside Pete, the Honourable Roland Penner, Attorney-General of the Province of Manitoba; on my immediate left, Mr. Harry Graham, Member for Virden; beside Harry, Mr. Dave Blake, Member for Minnedosa; beside him, Charlotte Oleson, Member for Gladstone; Rick Nordman, Member for Assiniboia, City of Winnipeg Constituency; beside Rick, two visiting members of the Assembly, although not members of the committee certainly welcome to sit in, Mr. Russell Doern, Member for Elmwood in the City of Winnipeg, and Mr. Henry Carroll, your home member here for Brandon West.

Ladies and gentlemen, my name is Andy Anstett, I am the Chairman of the Committee, and that's your committee today.

You will notice that there is here in the committee meeting room a simultaneous translation booth in the event that there will be presentations in the French language. This is provided for the convenience for those members of the audience and the committee who are not familiar with the French language. If any presentations are to be made in French we would appreciate receiving advance copies for the interpreter so that they can have a look at the brief in advance to do a good job of translating it. In addition, we will take approximately a five-minute break at the beginning of any brief which is to be in French so that members of the audience may also sign out the small receivers which will allow them to listen to the translation as well.

So, with no further ado, I'll turn to the list of individuals we have for today's hearing. Mr. Penner.

HON. R. PENNER: Yes, Mr. Chairperson, in accordance with the usual custom in committee hearings of this kind, I would suggest that if there is anybody from out of the province that that person should be given priority. I understand that Mr. Magnet is from Ottawa, No. 21 on the list, and I would move that Mr. Magnet, and anyone else who may be - I don't think there is anybody else from out of the province - that Mr. Magnet be heard first. Well, I'll make that motion and we'll see of there's anybody else from anywhere else.

MR. CHAIRMAN: Is there any discussion? Mr. Graham.

MR. H. GRAHAM: Well, Mr. Chairman, we have a list before us. I believe it's No. 21, Mr. Joe Magnet from out of the province, is he representing the Société Franco-Manitobaine?

HON. R. PENNER: He is the lawyer of record for the Société Franco-Manitobaine in the Supreme Court case.

MR. H. GRAHAM: It was just pure curiosity to me. When we are talking about a Franco-Manitoban Society

and it's a person from out of the province that was representing them; that was the only concern I had.

MR. CHAIRMAN: I think Mr. Penner has clarified that, that he would have been the lawyer of record in the Supreme Court case in Ottawa and, therefore, is from Ottawa, having represented them there.

Is there any further discussion on the motion? Is that agreed? (Agreed) Adjust the list accordingly.

Any further business before the committee before we call then on the first witness?

Mr. Magnet, please proceed.

MR. J. MAGNET: My name is Joseph Magnet, I am Professor of Law at the University of Ottawa; the author of several books and many articles on Constitutional Law and Language Rights. I am the advisor to the Federal and Provincial Governments on constitutional matters; Chairman of the Select Committee of the Constitution of the Canadian Jewish Congress and its National Race Relations Committee; sometime legal counsel for the Conference of Catholic Bishops for the Canadian Jewish Congress; legal counsel for the Société Franco-Manitobaine and other minority associations.

I am pleased to appear before this committee this morning to present a brief on behalf of the Société Franco-Manitobaine.

My presentation is divided into two parts, Mr. Chairman. I would like to address first the process by which the Constitutional Resolution before you was tabled in the Manitoba Assembly; and I would like to deal secondly with certain concerns which have been raised about the amendments to that resolution of September 6th, tabled by the government.

First, on the origin of the resolution of July 4th. When the Red River Colony joined Canada as the Province of Manitoba in 1870, the fathers of the province agreed upon a fundamental precept of linguistic equality. That agreement was enshrined in the Federal Constitution as Section 23 of the Manitoba Act. It was based on long-standing law and practice of the immediately preceding provisional government and its predecessor, the Council of Assiniboia.

By law, the Council of Assiniboia operated bilingually, at least as early as 1849. Red River law required the Council to be composed of a certain proportion of French-speaking members. This is recorded in the minutes of the Council of Assiniboia to which I have referred you in my brief. Not only was the Council required to be composed of French-speaking members, Red River law also required that "all judicial business" be conducted through the medium of a judge, would address the court in the French, as well as in the English language. Again, I have referred you in my brief to the minutes of the Council of Assiniboia where this law is stated.

It is therefore clear that for many years preceding association with Canada, Red River governmental structures functioned under mandatory requirements for official bilingualism in the emanations of the then state, in the Legislature, the courts and the tribunals. Section 23 of The Manitoba Act merely continued Manitoban practice, although it did codify these practices in the more familiar language of The Constitution Act of 1867, Section 133. That is the original of Section 23 of The Manitoba Act currently on the books.

Legal bilingualism in all important emanations of Manitoba is a Manitoba tradition since well before creation of the province in 1870. Also, after federating with Canada in 1870, Manitobans became subject to a second order of government, the central federal state. Under Section 133 of The Constitution Act of 1867, the central state has been bilingual in the functioning of its Parliament, courts and tribunals since the beginning. In other words, Manitobans have been fully bilingual in all emanations of governments, save municipalities, since the beginning and before the beginning of the province.

After Riel was hanged in 1885, racial feelings here became supercharged. A wave of intolerance swept over Manitoba. The Manitoba Government became caught up in the poisonous atmosphere. It attacked the Francophone community by passage of The Official Language Act in 1890. This act was square in the teeth of the 1870 constitutional guarantee, because it purported to abolish bilingualism in the Manitoba Legislature and courts.

This act was ruled unconstitutional virtually immediately. Judge Prud'homme stated for the Manitoba Court: "Je suis donc d'opinion que le c. 14, 53 Vict. est ultra vires de la legislature du Manitoba et que la clause 23, de l'acte Manitoba, ne peut pas être changée et encore moins abrogée par la legislature de cette province." To translate, Mr. Chairman, Judge Prud'homme said: "I am therefore of opinion that The Official Language Act is ultra vires to the Legislature of Manitoba and that article 23 of The Manitoba Act cannot be changed and even less abrogated by the Legislature of this province."

The Legislature and Government of Manitoba ignored the ruling of the Manitoba court in that the 1890 act, declared unconstitutional, remained in successive revisions of the Statutes of Manitoba. The government did not resume bilingual publication of legislative records, journals or acts.

In 1909 Mr. Chairman, the 1890 act was again challenged in Manitoba courts and again found to be unconstitutional. Again the Legislature and Government of Manitoba ignored the ruling of the Manitoba Court in that the 1890 act remained on the Manitoba books, the government did not resume bilingual publication of legislative records, journals or acts as required by the federal Constitution. In 1976 the 1890 act was declared unconstitutional for a third time. The government did not respond. The Attorney-General of Manitoba stated: "The Crown does not accept the ruling of the court with respect to The Official Languages Act." This statement was commented on by Chief Justice Monnin, who said, "A more arrogant abuse of authority I have yet to encounter."

Nevertheless, the Legislature and Government of Manitoba ignored the court's ruling. The 1890 act remained on the Statute Books as it had previously; bilingual publication of legislative records, journals or acts was not resumed.

In 1979, Mr. Chairman, the Supreme Court of Canada in unanimous reasons declared the 1890 act unconstitutional for a fourth time. Since that ruling, the Legislature and Government of Manitoba have not reinstated the official bilingualism requirements of the Constitution.

Mr. Chairman, the legal history I have just recounted is the most flagrant disregard for the rule of law and the most blatant illegal government action ever encountered in Canada, or for that matter, in any other country in the world that I know of. It is a permanent stain on Canada's legal system. It invites others to disrespect the rule of law.

The Société Franco-Manitobaine have been discussing these matters with the Government of Manitoba for upwards of five years. The Société Franco-Manitobaine has long held the view - and still holds the view - that Manitoba's difficulties should be solved by negotiation and compromise in a spirit of reason, tolerance and understanding. It has been the view of the Société Franco-Manitobaine that discussion and mutual concession flatters the well-being of the Manitoba community more than would the anger and hostility engendered by law suits.

The Société Franco-Manitobaine negotiated long and hard with the Government of Manitoba, present and previous. The Société Franco-Manitobaine struck a deal with the Governments of Manitoba and Canada on May 17th of this year which it regards as an honourable and just settlement of Manitoba's longstanding illegal and unconstitutional behaviour. The May 17th package calls upon the Société Franco-Manitobaine to give up a lot. The Franco-Manitoban community will have to wait 10 years before the Revised Statutes of Manitoba are translated. This is three times as long as we think reasonable, and twice as long as the most charitable view of the evidence before the Supreme Court of Canada would allow.

It means, practically speaking, that this generation of Franco-Manitoban lawyers will not practice in French; that is a lot to give up. The Franco-Manitoban community has given up 9/10ths of the laws which the Constitution obliges the government to translate; that is a lot to give up. The Franco-Manitoban community has also given up its trump card; the sanction of invalidating Manitoban statutes enacted in defiance of the federal Constitution. By giving this up the government retains the initiative to devise and to implement a translation program and policy, and in so doing, to economize and to minimize bureaucratic distortions. These concessions, on behalf of the Société Franco-Manitobaine, required much soul-searching, and it produced divisions within the Franco-Manitoban community.

By the agreement of May 17th the Franco-Manitoban community have received three things in exchange: First, a guarantee that some laws will be translated; secondly, a declaration that French is an official language; and thirdly, a guarantee of French language services in certain governmental structures.

This package was arrived at after intense study, negotiation and consultation. It is a package which we regard as a fair, just and honourable solution of a difficult problem. It is a package which the Government of Canada - which speaks for all Canadians - regard as a fair, just and honourable settlement. It is a package which on May 17th the Government of Manitoba regarded, and perhaps still regards, as a fair, just and honourable settlement.

The Société Franco-Manitobaine is distressed that a reasonable settlement for scandalously illegal behaviour, continued for 93 years, should now be used for partisan political purposes. It is no secret that the debate spearheaded by Mr. Lyon has produced deep polarization in the Manitoba community, and created an open season for expression of uninformed views which have not been felt here since 1890. The eyes of all Canadians are riveted upon the actions of this committee, particularly are the eyes of the citizens of Quebec concentrated upon how you comport yourselves.

Mr. Levesque leads a one-issue party. That party is committed only to the fracturing of Canadian unity. It seems increasingly likely that intolerance in Manitoba will deliver him his one issue on a golden platter. If this honourable settlement of Manitoban bilingualism should flounder in a sea of misinformation, Mr. Levesque will justly ask the French population of Quebec what place is there for them in Canada. "Look there," he will say. "Look to Manitoba and tell me what you see for yourselves. Is there a place for you in Canada"? he will say. "No," he will say and he will be believed by many.

The actions of this committee are perched precariously on the most potent challenge to the Canadian Federation which has ever existed. In the weeks and months ahead Canada requires acts of leadership and of statemanship such as she has never required before. It is only by acts of the highest statesmanship, far above partisan politics, that Canada will approach that unity for which she has so earnestly striven and which she deserves to find in our time. I therefore appeal to your conscience, to your sense of fairness, and to your love of our country, and ask you to consider well the honourable agreement of May 17th, and to act accordingly.

As I have said, Mr. Chairman, the Société Franco-Manitobaine and the Government of Canada agreed to the constitutional resolution introduced in the Manitoba Legislature on July 4th. However, the Société Franco-Manitobaine nor the Government of Canada has agreed to the draft amendments tabled before this committee on September 6th. We are distressed that after long and strenuous negotiations, the government should unilaterally abrogate the accord which proved so elusive to find.

Nevertheless, the Société Franco-Manitobaine felt duty bound to consider the September 6th draft amendments in good faith to see whether, or how far, those amendments respected the spirit of the tripartite agreement of May 17th. We have completed our study and are now pleased to present the following observations and submissions on the draft amendments of September 6th.

Under the draft amendments, it is proposed that Section 23.1 should have added a clause to make the section read as follows:

"English and French are the official languages of Manitoba as provided for in Section 23 and Sections 23.2 to 23.9 inclusive."

A legislative statement such as "French is the official language of Quebec, or English and French are the official languges of Manitoba," is not an unknown phrase in Canadian jurisprudence. It has been interpreted by the courts, most notably by Mr. Justice Pratte in the Gens de l'air case, the citation appearing in my brief. Mr. Justice Pratte said this about such a legislative statement:

"To say that French and English are official languages is simply to state that these two languages are those which are normally used in communications between the government and its citizens . . . a language may be an official language in a country even though, for safety reasons, its use is prohibited in certain exceptional circumstances."

The implication here is that a legislative statement, such as, English and French are the official languages of Manitoba means that neither language may be prohibited in normal circumstances. This is the principle which is enshrined in the agreement of May 17th at S.23.1.

There is good reason for having such a principle in the federal Constitution, as respects Manitoba, or any other province. There have been many periods of local intolerance, during which Legislatures in the common law province, as well as in Quebec, have attacked official language minorities by prohibiting use of the minority language. I need only refer to the events of 1890 in the Province of Manitoba; to the prohibiting of French as a language of instruction in Ontario in 1912; or to the prohibiting of English as a language for use in signs, posters, and commercial advertising in 1977.

The Société points out that the May 17th agreement, which is before you as S.23.1 of the July 4th Constitutional Resolution, would prevent this, or future, Manitoba Legislatures from attacking the Francophone minority, or a future Anglophone minority, by prohibiting use of either language during periods of temporary intolerance which occur all too often in Canadian history.

This is what follows from the ruling in the Gens de l'air case. Our concern is that the amendment of September 6th eviscerates this protection. The September 6th amendment would appear to drain independent substance from S.23.1, converting it into a mere affirmation of the specific rights found elsewhere in S.23 and the Constitutional Resolution package.

It is the Société's view that the July 4th version of S.23.1 creates a useful check on the abuse of the power of the majority during the heated and difficult crises which can arise in the life of a community. Since the September 6th amendment appears to remove this check the Société regards it as undesirable and recommends, accordingly, that it be deleted.

Mr. Chairman, on S.23.7(1) the government proposes to delete the concept of "central office" from the services clause. Under this amendment the right to communicate with, and receive services from governmental structures in French will be available from the head office of certain governmental structures, instead of from the head, or central, office of those structures. This apparently arises out of a concern of the Manitoba Government Employees Association, as reflected in its brief before this committee, Page 3, that some would equate the term "central" with regional or district offices, and that the act should limit the terminology to simply head office.

The Société Franco-Manitobaine has studied this concern and does not agree with it. If the concept of district and regional offices are embraced within the term "central office", S.23.7(2), which refers to these offices, district and regional, would be wholly unnecessary. This is at odds with the principles of statutory interpretation if there is another reasonable construction.

We suggest that the concept of "central office" refer to central offices such as those created under the Judicature Act of 1879 in the United Kingdom. I have outlined this concept on Page 9 at the bottom of my brief. Under the 1879 act a central office was created consolidating offices of various officials of the court.

In Manitoba, the Provincial Court, for example, might have no head office, but only central offices, in the five judicial districts; whereas the Court of Appeal might have no central office, but only a head office. These are very important legal distinctions which, in our opinion, are preserved in the Constitutional Resolution of July 4th, but which are obscured in the amendments of September 6th.

We are also concerned about how the deletion might be interpreted under the Rules of Constitutional Interpretation. It is well understood that in contradistinction to the interpretation of statutes the constitutional record, including the debates before this committee and the Legislature, is admissible as an aid in interpretation of the constitutional text. Therefore, if there is a deletion of the central office concept from the July 4th Resolution introduced into the Legislature a court would strain to restrict S.23.7(1) in ways which might unnecessarily impinge on the services clause.

For these reasons we recommend that the proposed amendment be deleted.

The amendments of September 6th propose to delete the words "or pursuant to" in S.23.7(1) so that the right to receive services will attach to certain government institutions established by an act of the Legislature, instead of to government institutions established by an act, or pursuant to an act of the Legislature.

This amendment would allow government structures, which are established by regulation, or Order-in-Council, to be excluded from the obligation to provide bilingual services under S.23.7. Only institutions established by an act of the Legislature, as distinct from Regulation or Order-in-Council, would have to provide bilingual services. By manipulating the legislative machinery the government could decide in every case whether the tribunal was to be bilingual; for example, provincial legislation could be arranged so that all Manitoba Crown Corporations were established pursuant to the Corporations Act, instead of by special Act of the Legislature, as is now the case.

If this were done, no Crown corporation would have to be bilingual under the proposed amendments of September 6th, since Crown corporations would be established pursuant to an act of the Legislature not by an act of the Legislature.

The Société Franco-Manitobaine observes that this effectively removes any constitutional obligation on the government to provide bilingual services under Section 23.7(1). The choice whether to provide such services would then rest wholly with the government, as it has the initiative in deciding whether to create tribunals by acts or by regulation. In our view this eviscerates the protections of the services clause as it was intended in the May 17th agreement.

The government proposes to add the word "but not including any municipality or school board" to Section 23.7(1). The Société Franco-Manitobaine is pleased to observe that this amendment reflects the understanding implicit in the May 17th agreement.

The September 6th amendment proposes to replace the word "forthwith" in Section 23.8(4) with the words "within such time as may be reasonably required." We are concerned that this dilutes the integrity of the remedial clause, an institution within the embrace of Section 23.7 might delay changes until an incumbent unilingual personnel retires. It may well be that this will be found to be time "reasonably required," although it would certainly not be "forthwith." For this reason the Société deems the amendment undesirable.

My last point, Mr. Chairman, is with respect to Section 23.9. The government proposes to add a clause which, in essence, duplicates Section 22 of the Canadian Charter of Rights and Freedoms. This strikes us as sensible but it does cast a spotlight on Section 23.7(3). Section 21 and 22 of the Charter are sister provisions in the same way that Section 23.7(3) and Section 23.9 would be sister provisions under this amendment. This, in our view, suggests that the wording of Section 23.7(3) should be brought into line with the wording of Section 23.9 and we accordingly so recommend.

Well, Mr. Chairman, I apologize for making what I am sure must seem to some to be nit-picking technical legal objections, but I thought you might perhaps enjoy the opportunity to have a break from the first part of my brief. Thank you very much.

MR. CHAIRMAN: Thank you Mr. Magnet for your presentation. There are some questions from members. Mr. Penner.

HON. R. PENNER: Thank you, Mr. Chairman. Mr. Magnet, thank you very much for that thoughtful and well-researched brief. I would like to ask you a few questions for clarification, which may help this committee and ultimately the Legislature in its efforts to find the language which will preserve the spirit of the agreement of May 17th, and yet clarify where clarification is needed.

I'd like first of all with respect to 23.1 to ask you what, in your opinion as a constitutional scholar and lawyer, is the meaning of the term "official language"? Now you've cited one or two cases where some attempt to give meaning to that has been made but what does it mean? Does it mean for example that where the government acts and records and documents are in either one of those languages, they are official and their validity cannot be challenged because of the language? Is that what it means, or does it mean more?

MR. J. MAGNET: Mr. Penner, the concept of an "official language" is a concept well-known, both in terms of legal history and in terms of comparative law. Yugoslavia, for example, has five official languages and what this means in the Multilingual Yugoslav Federation, is that the languages enjoy equal status as language of government expression, as opposed to the language of the internal operation of government employees. This is the case in the Swiss Federation as well. The Canadian Consitutions - there are seven - have employed the concept of official language at least as early as 1760.

If one examines the specific manifestations of that term in those Canadian Constitutions and in the Yugoslav, Swiss and other sister multi-lingual federations, Cameroons, one will find that it refers to such things as the normal communication between the government and the citizens. This would be manifested in the Legislature, in courts and tribunals.

I do not know of a Federation where the concept of official language without more goes further and requires adjustments in the working environment of the Civil Service. This concept has been put forward in Canada, but not on the concept of official language, but rather on the concept of attributing to the official language equal status and this was done in Section 2 of The Official Language Act and Section 16 of the Charter. The difference between this concept and official language is that it goes to the internal functionings of the Civil Service, something, I point out, that has been left out of the agreements of May 17th. Official language, therefore in a word, refers to the normal communication in official manifestations of the state between the state and its citizenry.

HON. R. PENNER: Just on that point which in fact takes me directly to a point that I want to discuss with you and you focused very well on the issue. You, in your brief, referred to the case, the Association des Gens de L'air and you referred to the judgment of Mr. Pratte. I now want to refer you to the judgment of Mr. LeDain with whom Hyde agreed, so that they formed the majority judgment in that case.

MR. J. MAGNET: Both concurring with Pratte.

HON. R. PENNER: Right, but I want to refer specifically - I have the report as it appears in 89 Dominion Law Reports and I'm referring to Page 502 and here there are other provisions in the act I read, which impose specific duties on institutions of the Government of Canada, to give effect to the official status of the two languges. But Section 2 would appear to be the only provision from which one may derive a right to use French, as well as English, as a language of work, as well as a language of service in the Federal Government. "As such, it is my respectful opinion," says, Le Dain, "that these words are more than merely an introductory provision but, rather the legal foundation of the right to use French, as well as English, in the public service of Canada, whether as a member of the service, or as a member of the public, who has dealings with it." So there is authority here in the case that you cite for the proposition that the term "official language" may, in fact, be the legal foundation for a language of the workplace concept; would you not agree with that?

MR. J. MAGNET: No, Mr. Penner, I would not. Mr. Justice LeDain is there interpreting Section 2 of the Official Language Act of Canada.

HON. R. PENNER: Right.

MR. J. MAGNET: That provision is quite different than the proposed S.23.1 of the Constitutional Resolution of July 4th. Section 2 of The Official Languages Act, not only declares English and French to be official languages, but goes on to provide that the two official languages shall have equal status in all workings of the Parliament and Government of Canada, and Mr. Justice LeDain, in that case, is concentrating on the

declaration of equal status, which does give a language of work. This equally appears in the reasons of the Quebec Superior Court, and the Quebec Court of Appeal, in Joyal and Air Canada. You cannot read out of the first clause - English and French are official languages - a right to work in the provincial or federal Civil Service in the language of choice, but you can read that right out of what has been omitted in S.23.1 from the Declaration of Equal Status.

HON. R. PENNER: Fine, I take your point and I'll just pursue it a little bit further because, I think, we're coming to something quite important here. Section 2 of the Official Language Act reads "the English and French languages are the official languages of Canada for all purposes of the Parliament and Government of Canada, and possess and enjoy equality of status and equal rights and privileges as to their use in all the institutions of the Parliament and Government of Canada." And you are saying that it's that which provides the legal underpinning for the language of the workplace requirement.

MR. J. MAGNET: That's right, that clause, and only that clause, it cannot be read out of the first clause.

HON. R. PENNER: I believe that with some, I believe, minor exceptions Section 16 of the Charter, which now give a constitutional underpinning, as it applies to Canada, is very similar to Section 2 of The Official Language Act.

MR. J. MAGNET: Section 16 . . .

HON. R. PENNER: Section 16(1).

MR. J. MAGNET: Section 16(1) is an entrenchment of Section 2 of The Official Languages Act, just as Section 20 is an entrenchment of Section 9 of The Official Languages Act, and you would be quite right in concluding that in the federal Civil Service there are working rights in the federal Civil Service entrenched, which it is not the intention of the Constitutional Resolution of July 4th to entrench, at the provincial level, in Manitoba; the federal guarantee is broader.

HON. R. PENNER: Thank you for that. Indeed, I would not - and you will be familiar with this - that at one time, in the course of the discussions leading to the May 17th proposal, it was a proposal of the Société Franco-Manitobaine that the language of 16(1) be used for 23.1; they had advanced the proposition, did they not? I believe you helped draft that English and French are the official languages of Manitoba and have equality of status and equal rights and privileges, as to their use, in all institutions of the Legislature and Government of Manitoba; that was advanced at one time.

MR. J. MAGNET: Well, Mr. Penner you are a very hard negotiator and that was advanced on our behalf and we did give that up.

HON. R. PENNER: So that you will agree with me that it was the clear intention that there be no language of the workplace provision in the Manitoba Constitution.

MR. J. MAGNET: Yes, I would agree.

HON. R. PENNER: Well then I'm just wondering, if we are agreed on that, why is it that the proposed words of modification, in the amendments of September 6th, which were really designed to make what was implicit, explicit, why does the Société now object to those words; that is, the words that I tabled on September 6th, namely, that English and French are the official languages of Manitoba, as provided for in Sections 23 and 23.2 to 23.9 inclusive?

MR. J. MAGNET: The amendment tabled on September 6th concentrates the court's attention on the specific wording, and the specific institutions of 23 to 23.2 to 23.9, and it obliterates the attention which might otherwise be focused on the declaration of principal simpliciter English and French are the official languages of Manitoba, which would serve as a check on the government from preventing the use of English or French as a normal language; as, for example, is currently the case in Quebec, as has been the case in Manitoba, as has been the case in Ontario and other provinces. We feel that the spirit of Section 23.1 embraces a useful check on the abuse of majoritarian power to attack the minority by prohibiting the use of the minority language. We feel that the September 6th amendment, since it dilutes the statement of principle, and concentrates attention on languages, on rights elsewhere, would not serve the purpose of placing this check on the government, and that is why we are concerned with the September 6th amendment.

MR. DEPUTY CHAIRMAN, D. Blake, Minnedosa: Mr. Penner.

HON. R. PENNER: Up to this point it seemed - I think we were agreed - that the term "official language", certainly as interpreted in Canadian cases, one particularly, the Gens de l'air case that we've been discussing could apply to the language of service, government to the public, or the language of work, internal, and that the intention here of this agreement and proposal was to limit it to the language of service. Is it not the case, in your view, that the sections referred to in the proposed amendment, namely, Section 23 and Sections 23.2 to 23.9, in effect, cover all of the official organs of government and government service, other than municipalities and school boards, which we've already agreed should be exluded.

MR. J. MAGNET: We feel that language policy does not only fasten on the services provided to the public by the state. It also fastens on what the state prohibits and, as I say, Canadian history makes clear that the language, as a language of normal communication, between the citizenry, as opposed to between the citizenry and the state, has been prohibited during times of temporary hysteria in local jurisdications in Canada. We feel that this is not embraced in Sections 23.2 to 23.9, but on the Gens de l'air case, and other cases, the power of the Legislature to prohibit the language as a language of communication between citizens inter se would be retarded, and we feel that that is, given the experience of Canadian history, a useful provision.

I would just pose the rhetorical question that if Section 23.1 does not refer to this check on legislative power, then would it not be empty of juritical content, but merely serve as a declaration of principle; and I would think the answer to such a question would be, yes, it would be empty of content, and we feel that the September 6th amendment strains it in that way where it has, in our view, a useful role to play as part of the language policy of the provincial state.

MR. CHAIRMAN, A. Anstett: Mr. Penner.

HON. R. PENNER: I have no quarrel with you, Mr. Magnet, at all, on the need to protect the citizens of Canada anywhere against legislation, such as Bill 101 in Quebec, which attempts to interfere with the use between citizens and citizens with respect to the use of language, and let it be any language, English, French or any other language. Would you not think that with respect to that laudable objective that is something that constitutionally would prevent a bill like Bill 101 being passed anywhere in Canada, or indeed Bill 101 remaining in force, that the Charter is sufficient protection? I would suggest and ask you to comment whether or not Section 15 of the Charter, which comes into force on April 17th of 1985, a couple of years before our provision comes into force, whether the Charter, Section 15, would not provide protection against a majority attempting to interfere with language rights?

MR. J. MAGNET: It is highly doubtful that a guarantee for equal protection of the laws would interfere with a state regulating language policy by stipulating for the use of certain languages at certain times. The guarantee, at Section 15(1), in particular, does not focus upon discrimination by reason of language and it has been held in the Human Rights Boards of Inquiry decisions that language is not included as a prohibited ground of discrimination within the other categories of Section 15; namely, ethnic origin. So, for that reason, it's highly doubtful. It is possible, but it is highly doubtful that the equal protection and equal benefit guarantee of Section 15(1) would serve the same purpose that I have referred to as inherent in Section 23.1 of the proposed resolution.

HON. R. PENNER: Just with respect to Section 15(1), I note that the general provision in 15(1) is against discrimination of any kind and it then adds some examples, but it doesn't limit the possibility of it being applied to discrimination on account of language.

MR. J. MAGNET: That is so, Mr. Penner, and I think your point actually argues against the point that you raised earlier. Canada being a bilingual country at the federal level, one would certainly have thought that the constitutional history of Section 15(1), indeed of the whole patriation package, would have concentrated the legislators' mind on the need to include a guarantee for linguistic discrimination at Section 15(1), and therefore the ommission of it seems not so much to include it within the general guarantee of 15(1,) without discrimination for example, but rather that it is purposely left out.

HON. R. PENNER: One final question on this section and that is, as you know, some of the provisions of Bill 101 are under attack in the courts now, and indeed some of the provisions of Bill 101, as it was originally passed in Quebec, have already been found to be invalid for one or another constitutional reason, I'm right on that, am I not?

MR. J. MAGNET: Yes, that is so.

HON. R. PENNER: Are the provisions that most people outside of Quebec know about because of publicity, namely that you must use French-only signs, are they presently under attack before the courts?

MR. J. MAGNET: Yes, they are presently under attack before the courts in the Singer case and in a second case, but these cases have not succeeded in the Quebec courts. I do know that other attacks on these provisions are cooking in Quebec and also upon Section 1 of the Charter of the Official Languages, which declares French to be the official language of Quebec. These other cases fasten - perhaps you might like to consider yourself - on Section 6(2) of the Charter which guarantees mobility rights; the thesis being that language testing and that sort of thing interferes with the mobility guaranteed in Section 6(2).

I might add the observation that there is some plausibility to these challenges since similar challenges under the Treaty of Rome, which affects mobility guarantees in the European community, have succeeded in knocking down language testing.

HON. R. PENNER: So we may shortly have a precedent which says in effect that that kind of concern that arises from what the government of Mr. Levesque did, with respect to English language rights in Quebec, may not be done with respect to the French minority outside of Quebec.

MR. J. MAGNET: We may, Mr. Penner, or it may be that the Quebec Superior Court, which held that we have no such guarantee, is correct and that this ruling, which is now the law, will survive its appeals.

HON. R. PENNER: I now want to ask you a few questions with respect to other concerns raised relating to central office. The term "head or central office," as you know, when it was included in the proposal that was originally tabled in the House on July 4th, that is embodying the May 17th agreement, was taken from the Charter, the Constitution of Canada, which refers with respect to the Government of Canada and its obligation to provide services, and refers as well to head or central office. You would agree, would you not, Mr. Magnet, that in terms of the administration of government there is a considerable difference between the Government of Canada operating a federal state, operating out of the nation's capital, in terms of the head office of departments and then having to have central offices, regional offices, throughout the length and breadth of the country?

MR. J. MAGNET: I would agree.

HON. R. PENNER: Let's take it for granted that the intention is that the French-speaking citizens of

Manitoba, residents of Manitoba, should have the right, with respect to the various operations of the government, to obtain services and communication in their language. That's the basic intent.

MR. J. MAGNET: That is the basic intent.

HON. R. PENNER: Even with the elimination of the term "central," would it not be the case that where indeed you had something that might be a central office as distinguished from a head office, and therefore is eliminated by our proposal from 23.1, would it not in any event, Mr. Magnet, be covered by the significant demand section in 23.7(2). Really isn't that what we're after that we want to provide services on a reasonable basis so that we don't simply want to have someone in a position without any demand, but we don't want to have demand without someone in the position?

MR. J. MAGNET: Well, why are two concepts necessary, you're asking me, Mr. Penner? Why do you need a guarantee at the head or central office and another guarantee where there is significant demand? Well the answer . . .

HON. R. PENNER: Not quite right because you misunderstand my question, I'm not saying that we shouldn't have something like 23.7(2). I'm saying with 23.7(2) or an equivalent, aren't we covering all bases?

MR. J. MAGNET: Yes, I think I understand your question perfectly. Your question is, you've got 23.7(2) which provides services where there is demand, why do you also need services at the head office? Have I stated your question properly?

HON. R. PENNER: Yes, and you've asked me a question which in the context I can reply to although normally . . .

MR. CHAIRMAN: Order please.

MR. J. MAGNET: I'm unaware of having posed a question.

MR. CHAIRMAN: Order please. Mr. Magnet would you proceed to answer the question.

MR. J. MAGNET: The answer, I think, is that significant demand is a minimum standard. Indeed, I think, Mr. Lyon is quite incorrect when he says - I can refer to his speeches of May 18th, 20th, July 12th - he says that this turns over wholesale to the courts the ability to decide where there is significant demand, and that the government loses all initiative. I think this is quite mistaken, it does not turn over to the courts the ability to decide where there is significant demand. Indeed, the Legislature not only has the power, but retains the responsibility to determine where there is significant demand. In answer to your question, Mr. Penner, the significant demand is a minimum right, so that if the Legislature's determination is wholly unreasonable in the sense that no reasonable person could have made that determination of significant demand, then the courts are empowered to interfere. This is quite different than significant demand might mean in the ordinary parlance of speech.

Now I would add, also, that demand is very easily suppressed. If, for example, the government doesn't offer the service, people don't ask. It is very hard to stand in an Air Canada line and ask for service in French and be told to wait 45 minutes. So, if the right is not there, there is a suppression on demand, and there are other more incidious forms of suppression as well. The head office concept ensures that at the head or central office of the state, where its organs are subject to bilingualism requirements, there will be not only a minimum, but there will be service, and there will be no interference with the right to service by sub silentio, or indirect means of interfering with demand, the service will be offered and it will be available.

HON. R. PENNER: Could you amplify your point that with the resolution as originally tabled, and with respect to 23.7(2) dealing with significant demand, the Legislature still retains its right, or the government still retains its right to determine levels of service; is that what you said?

MR. J. MAGNET: Yes, it is for the Legislature, under these proposals, to determine where the demand is significant. It is for the Legislature to implement a policy of bilingual services in the stated institutions.

HON. R. PENNER: Right.

MR. J. MAGNET: It is for the Legislature to arrange its bureaucracy in such ways as to give a fair guarantee and a fair implementation of the guarantee to have bilingual services to its citizens, economizing on costs and other bureaucratic distortions.

My point is simply that if the government should be wholly unreasonable in doing this, in the sense of producing wide-felt community pressure, if the government should, although appearing to act in good faith, be doing something quite different, all that the entrenchment of significant demand does is open an avenue of redress; not for the normal functioning of implementation of service, but for that governmental action which falls below the threshold, which falls below the reasonable.

HON. R. PENNER: I thank you for that, I would agree with that.

Two other questions, or two other areas with a few questions. You were concerned by the proposed elimination in our amendment from 23.7(1)(b) of the words "or pursuant to", so that it would now read "established by an Act of the Legislature, not established by, or pursuant to an Act of the Legislature." You raised that question, and the particular area of concern, as I understood it, was that this eliminated the requirement to provide services where an administrative arm or agency of government was established by a Regulation, by Order-in-Council.

MR. J. MAGNET: That is correct.

HON. R. PENNER: Now this is not an offer, Mr. Magnet, I'm just raising a question. One has to be careful in

these legal proceedings. If that amendment were to read "pursuant to an Act of the Legislature, or Order-in-Council" - and that's not an attempt at drafting - would that meet the concern that you've expressed, or the Sociéte's expressed?

MR. J. MAGNET: Well the word "Act" is a term in this resolution of great art, and the word "Act" is defined specifically, earlier in the resolution, to capture the meaning of the word "Act" as ruled by the Supreme Court of Canada in the Blaikie cases. It would, therefore, be of concern to us if this meaning were departed from, since it would, in our view, dilute the integrity of the guarantee at the existing Section 23, which is the base upon which Section 23.7 means to build.

HON. R. PENNER: That's my point. Since the Supreme Court of Canada, in the Blaikie case, said that with respect to analogous, indeed similar provisions in Section 133 of the Constitution Act, 1867, the word "Act" included regulation; would not the term that we're presently proposing to use, "pursuant to an Act of the Legislature" necessarily import "pursuant to an Act or Regulation?"

MR. J. MAGNET: I think not, because the interpretation of the word "Act" is limited by the resolution itself to the meaning of the Blaikie cases, only in Section 23.3 and 23.6. Now this means . . .

HON. R. PENNER: For purposes of translation.

MR. J. MAGNET: No, no, I'm referring you to 23.2 where it says, in this section - being 23.2, and 23.3, and 23.6 - "Act" has the same meaning as it has in Section 23. The implication, therefore, is that "Act" in other sections, including 23.7, does not have the same meaning that it has in Section 23, inclusio unios, exclusio alterius - if some were included, the others are excluded.

HON. R. PENNER: We're going to have to be trilingual around here, we're going to have have somebody interpret Latin for us.

MR. J. MAGNET: Yes, I think, that would be a good idea. It therefore means that in Section 23.7 "Act" does not have the same meaning that it has in Section 23. This is our concern.

Now I might just answer your previous question, which is: If there were inclusion of Regulation and Order-in-Council, would this meet our concern? I would refer you to the problem of the collective agreements in Quebec, where a manipulation of the legislative machinery imposed collective agreements otherwise than by Act or Regulation or Order-in-Council. Obligations were imposed upon the teachers and they were done simply by filing documents in the Office of the Labour Commissioner General and providing legislative machineries to make those bind. Now this is a new form of legislation which would not be captured by the wording which you have suggested. The Société Franco-Manitobaine was concerned that the Quebec Legislature not manipulate the legislative process to dilute the guarantee of Section 133, and I suspect it would be equally concerned with your suggested wording that power not be left with the Manitoba Legislature to manipulate the legislative process to dilute the guarantee.

HON. R. PENNER: Would it be the case then that if 23.2(2), which you've read and I'll reread, in this section and Sections 23.3 and 23.6, act has the same meaning as in 23? If that were to include 23.7, that would meet your concern.

MR. J. MAGNET: I would then want to study the proposal again to see what exactly is meant by the deletion of the phrase "or pursuant to," and I would have concern during this study that the rules of constitutional interpretation would focus a judge's attention upon the deletion, even if as I suspect you are implying to me, the deletion is meant to be only stylistic. I would be concerned that a court might not so see it.

HON. R. PENNER: Well, I'll leave this thought with you on that. That is that there are indeed a number, particularly of Crown corporations which are in the nature of joint ventures essentially operating in the private sector where it does not seem reasonable to have to have the same kind of linguistic requirement. Just think about that.

MR. J. MAGNET: We should be most happy to have a list of those, so that we could study them.

HON. R. PENNER: Finally, Mr. Magnet, and I thank you for your answers which have been most helpful. You express a concern about the use of the word "reasonable" instead of "forthwith." Page 12 of your brief refers to our proposed amendment dealing with 23.8(4). We propose to eliminate the word "forthwith," which seems to demand instantaneous action, and substitute the word "reasonably." Surely, Mr. Magnet, as a lawyer of long standing and experience, you are familiar with the fact that the term "reasonable" or "reasonably" or the "reasonable person" is a term well known to our system of law. The courts have really had no great difficulty in interpreting the word "reasonable" and "a reasonable manner." You seem to suggest that the Government of the Day, whatever government it might be, could itself unilaterally determine what "reasonable" is. Surely, that's something that if necessary, and I don't think it would be, the courts would have no difficulty saying, "reasonable" doesn't mean forever.

MR. J. MAGNET: The word "reasonable" is a cost benefit word.

HON. R. PENNER: Precisely.

MR. J. MAGNET: In fact, in most legal systems in the common law world now, the word "reasonable," it's most potent emanation is in the law of torts taking economic analysis of this concept. We are talking here in Section 23.8(4) about the violation of a constitutional right. The wording in Section 23.8(4) requires the government to remedy that constitutional violation forthwith.

We do not think that when we are speaking of violation of constitutional rights, a cost benefit analysis which excludes the constitutional value of protecting the Franco-Manitoban minority is appropriate.

HON. R. PENNER: I'll just conclude, Mr. Magnet, by saying, it's an unfamiliar constitutional doctrine for me that the remedy to a constitutional breach need be necessarily unreasonable.

MR. J. MAGNET: I don't think that what is being suggested, Mr. Penner, is that the remedy be unreasonable. As you yourself have just said, the word "reasonable" is a legal term of art. As a legal term of art, it refers to a cost benefit analysis. As I have said, this is not a matter of dollars and cents. This is a matter of governmental violation of constitutional right. What ought, therefore, to be in the mind of the court is restoring the right forthwith.

HON. R. PENNER: Or reasonably.

MR. J. MAGNET: Forthwith.

HON. R. PENNER: Thank you.

MR. CHAIRMAN: Thank you, Mr. Penner.
Mr. Doern.

MR. R. DOERN: Mr. Chairman, I want to ask a few questions of Professor Magnet. I have the impression that he's a very fine professor of law, but I want to question some of his historical interpretations and do not share some of his exaggerated rhetoric about the situation in Manitoba, both past and present.

I just wanted to ask you, Sir, as a beginning to again clarify your relationship with the Franco-Manitoban Society. Are you their legal counsel or an advisor? I didn't quite understand that.

MR. J. MAGNET: I am legal counsel to the Franco-Manitoban Society.

MR. R. DOERN: Do they have other people who fall in that category, or are you their sole representative?

MR. J. MAGNET: I am the counsel of record in the Bilodeau case and, in that sense, am their legal counsel. I would assume that the Franco-Manitoban Society has other lawyers, probably lots of them, Mr. Doern, but I am not familiar with the internal workings of the SFM.

MR. R. DOERN: So you might be characterized as one of their legal advisors?

MR. J. MAGNET: You are free to characterize me, sir, however you choose. I am the legal counsel for the Franco-Manitoban Society. I represent them in these matters, and I represent them in the Supreme Court of Canada.

MR. R. DOERN: So if they attempt to get an injunction to stop the plebiscite in Winnipeg, you will be representing them there?

MR. J. MAGNET: That is a very novel conclusion, sir, from the premise that you've stated.

MR. R. DOERN: I am asking you: are you going to represent them to obtain an injunction against the Winnipeg plebiscite, or will that be handled by somebody else?

MR. CHAIRMAN: Mr. Penner on a point of order.

HON. R. PENNER: On a point of order, there's a premise there that has not been accepted . . . namely, Mr. Doern is proceeding on a premise which has no basis - at least, he's provided none - that someone is applying for an injunction, nor is there anything in the brief that deals with that issue.

MR. CHAIRMAN: I think the point of order is well taken. I think that it has been our practice that questions should be for questions of clarification of the material parts of the brief.
Mr. Doern.

MR. J. MAGNET: If I might just add, Mr. Chairman, I will not respond to any questions on either side that involve matters which are solicitor-client privilege. I would think it highly improper for any member to ask me to breach my professional confidence of my client.

MR. R. DOERN: Well, you'll have to forgive us, sir, because some of us are not learned professors of constitutional law or lawyers. We are just plain citizens.

MR. J. MAGNET: We're aware of that, Mr. Doern.

MR. CHAIRMAN: Order, order please.
Mr. Doern.

MR. R. DOERN: I would like to ask you about your remarks on Page 2. I'm not sure of your background in Manitoba history, but you talk about a wave of intolerance sweeping over Manitoba, and the Manitoba Government became caught up in a poisonous atmosphere, attacking the Francophone community by passing The Official Languages Act in 1890. That is one interpretation, an uncommon one, I believe.

There is another interpretation, that there was an influx . . .

MR. CHAIRMAN: Question please.

MR. R. DOERN: Yes, this is a preamble, Sir. There was an influx of many people into our province in the 1870s and 1880s and on. As a result of a shift in population, people felt that there was no longer a need to provide either the extent of services or, in an extreme case, any services at all. So I want to ask you whether or not you recognize that there was a significant change in the character of the Red River settlement by 1890.

MR. J. MAGNET: Mr. Doern, it is the most startling proposition of law I have ever heard that a shift in population should entitle a government to act in violation of the federal Constitution and in violation of the judgments of four separate courts for 93 years. I take

your point that you are not learned or a lawyer. I would simply point out to you that when governmental defiance fastens on particular local facts and results in illegal behaviour, every citizen is invited to disrepect the law and I would think that political leaders should make no such statements that urge the population to support disrespect of the law from the government or anyone else, or to encourage it.

MR. R. DOERN: Do you recognize that when a general principle is applied to a specific situation, it may produce a different result depending on that set of circumstances? So for example, if you are providing extensive services in the French language and then the population doubles or triples or falls in half or in tenth, that you may therefore adjust the extent of the services.

MR. J. MAGNET: I fail to see that stopping, unilaterally, the translation of statutes is an adjustment of services.

MR. R. DOERN: Well, would you suggest that there be expensive and costly provision of services in a province, if the population for example of the Francophone community fell to only one or two or three people? Would you still have an elaborate system for the provision of French Language Services, or might you adjust them downward?

MR. J. MAGNET: Mr. Doern, you are woefully uninformed about the cost of translating the statutes as provided for by these agreements. The cost is less than the Expos pay Gary Carter to catch for them. It's less than your salary.

MR. R. DOERN: On what do you base that? You're telling me that the translation of statutes, which cost maybe $100 or $200 a page and there's thousands of pages to be translated, costs less than $30,000 a year? Is that what you're telling me?

MR. J. MAGNET: Mr. Doern, you have the figures before you, as to the cost of these agreements, as respect statute translation. This is a 10-year procedure and it therefore has to be actuarily calculated as a present sum, based upon the 10-year life of the agreement, and if you were to calculate it on that basis, you would discover, Mr. Doern, that the cost is quite insignificant. I might add that it is also a startling proposition of law that the cost of an agreement should be a reason for deliberate, longstanding, unconstitutional and illegal behaviour by a government.

MR. R. DOERN: So you're saying that money is no object?

MR. J. MAGNET: Mr. Chairman, I would point out to Mr. Doern that I did not say that. I pointed out to him, a fact of which Mr. Doern is apparently unaware, what the cost of these agreements are. At no time did I say money was no object. I simply referred Mr. Doern to the cost of these agreements, and if he did not understand my words, he can read the cost of these agreements in the documentation which has been provided to him by the Attorney-General.

MR. R. DOERN: No, I understood you very well. You didn't understand my point, and that is, that you apparently feel that money is no consideration - I do. I happen to be concerned about taxpayers. You don't. You're not a taxpayer in Manitoba.

MR. CHAIRMAN: Order please. Mr. Doern, questions are for clarification. This is not a place to make speeches. If you have questions for Mr. Magnet, please place them.

MR. R. DOERN: Mr. Chairman, I want to ask him whether this wave of intolerance that was sweeping over Manitoba in 1890, according to him, might have been a wave of intolerance in regard to the cost of certain services; might have a wave of intolerance in regard to a lack of need; might have been a wave of intolerance in regard to changing population shifts; and might have been a wave of intolerance in regard to taxes being levied? Does he not recognize that people are concerned about those factors?

MR. J. MAGNET: Well I wonder how informed Mr. Doern is about the population shift which occurred between 1870 and 1890. I should be most happy to see his figures as to population changes during those periods. I should like to know exactly what level of population change he thinks is appropriate to induce a government to violate the rule of law and the federal Constitution.

MR. CHAIRMAN: Order please. Mr. Magnet, questions to members are not appropriate in committee. Questions are only to be directed at witnesses.

MR. J. MAGNET: Mr. Chairman, I am not directing a question to Mr. Doern. I am simply making the comment that it does not appear to me that Mr. Doern is informed about the level of population change in the 20 years preceding the 1890 act, and that if he were so informed, he might perhaps take a different view of the cost. I would also point out that in any case, population changes are no reason for governments to act illegally and unconstitutionally. I think moreover that Mr. Doern has a point that he might well put to the population of Manitoba at some time to ask them to seek a constitutional amendment. That is really the point at which he is driving. If he thinks that the Franco-Manitoban population should be stripped of its constitutional guarantee, he is perfectly entitled to initiate the Section 38 procedure or the Section 43 procedure of The Constitutional Act, to strip the Franco-Manitoban population of those guarantees or, I suppose in his language, to reduce the cost. But I do not think he is entitled to act illegally in stripping them of those guarantees, nor, Mr. Chairman, do I think he should encourage other people in this province to applaud illegal and unconstitutional behaviur.

MR. R. DOERN: Mr. Chairman, I am restrained from debating, so I'll ignore that. I will use, however, the favourite word of the witness, since he is uninformed of Manitoba history and ignorant of much of our tradition and history in this province, I want to ask him in spite of that weakness, whether he feels that numbers are a factor in the provision of services, or do you think that once you have a standard, you can apply it without reference to numbers and somehow or other arrive at

some practical procedure. If the population doubles or if it halves, is that a factor in the provision of services?

MR. J. MAGNET: Mr. Doern, as I have said and as I will repeat, the Société Franco-Manitobaine and myself take the view that numbers are a factor in the provision of services. This is why we support the agreement of May 17, 1983, which contains a clause for the provision of services dependent upon numbers.

MR. R. DOERN: On Page 4 you mention and lament the fact that, "This generation of Franco-Manitoban lawyers will not practice in French," because they are giving up some of the statutes translated into French, but I want to ask you whether you are aware of the fact that in the past three years a couple of dozen statutes - the figure was given of 25 statutes - were purchased that were translated into the French language. We spent some $600,000-plus translating those statutes and 25 of them were requested and sold to probably Franco-Manitoban lawyers. Do you think that that is of any significance?

MR. J. MAGNET: I think that is of great significance, Mr. Doern. This is another reason why we support the agreement tabled before this Legislature on July 4th. If the government translates a mere 25 statutes, as appeared to be the intention of the immediately preceding government, and makes those 25 statutes available only without a comprehensive package supporting the practice in French, the practice in French is not possible. It is only by a comprehensive agreement, which embraces those statutes used in practice, that the statutes in fact can be used. I can assure you that if the Government of Canada translated only The Atomic Energy Act and nothing else, that there would be no demand for it whatsoever, but I can equally assure you that The Atomic Energy Act, as part of the Statutes of Canada which are in both languages, is used all the time by the Bar of Quebec.

MR. R. DOERN: Mr. Chairman, there's been about three years of translations. I don't know the total number of statutes translated, but it was more than 25 and I'm simply saying that of the number translated, there was only a demand for 25 copies of the same or a variety. That seemed to be a very slight demand.

I would also like to ask Professor Magnet . . .

MR. J. MAGNET: Was there a question attached to that comment, Mr. Doern?

MR. CHAIRMAN: No, there wasn't, so I didn't recognize you, Mr. Magnet. I'm waiting for the question.

MR. R. DOERN: I want to also ask you about your comment on Page 5, in which you talk about this "deep polarization in the Manitoba community, and created open season for the expression of uninformed views . . . "etc., etc. My question is this. There are probably uninformed views on all sides of this question, including the people who support your position. I am saying, don't you think it is useful that there be an extensive public debate and process and discussion to clarify some issues, to raise some questions, and perhaps the whole thing might be characterized in part as an educational process?

MR. J. MAGNET: Mr. Doern, why are there uninformed views, I would ask rhetorically? I am looking at your speech in the Legislature on July 25, 1983, and I read the following, "Mr. Speaker, the Franco-Manitoban Society is regarded as a partner. Why are they a partner?" The question is answered by yourself, "Because the Federal Government made it a condition of negotiation that the government had to negotiate with the Franco-Manitoban Society."

Well, this piece of misinformation, Mr. Doern, is propagated by yourself. The answer to your question is quite simple; that when a government purports to take a major step affecting the rights of a community, it seeks the advice of that community as a partner. That is why. I am shocked that you should know of some secret, nefarious deal between Ottawa and the Government of the Day in Manitoba which made the Franco-Manitoban Society a partner. I must say that I know of no such deal. This is a piece of misinformation which has been laid before the population of Manitoba by yourself.

Another piece of misinformation has been laid before the population of Manitoba by Mr. Lyon where he says in the provincial Hansard at Page 4284 in his speech of 12th July that English and French as official languages in Manitoba have never been part of our history, never part of our political traditions. This piece of misinformation, as I explained, contradicts squarely the longstanding recognition of English and French as the language of this province, including not only since 1870 but before in the provisional government and before that in the Council of Assiniboia. Indeed, official bilingualism is a longstanding part of Manitoba.

Now to respond more directly to your question, do I think that there should be a public platform to spread this kind of malicious information about the resolution? Yes, Mr. Doern, I do. I think there should be a public platform, and this is it. I am happy that you are taking the opportunity to clarify your views in your questions to me so that other pieces of misinformation may be in the public forum and may be exposed at public hearings such as this.

MR. R. DOERN: I also might point out to you that your lack of Manitoba history shows when you keep calling something "Assiniboa." I have heard of a "boa" constrictor, but I do know that the name you're looking for is Assiniboia.

I want to ask you to clarify that point, because you raise a very intriguing point. You are suggesting to me and to this committee that the SFM was not put to the Manitoba Government as the voice of the Franco-Manitoban community. You're suggesting that is an option. You're suggesting that other groups, like Maurice Prince's group and individuals, could just as easily have represented the Francophone community or could share in that decision-making process?

MR. J. MAGNET: Mr. Doern, you are apparently uninformed as well about the status of the Franco-Manitoban association. It is created by a statute of this Legislature. That statute provides at Section 2 that the

Franco-Manitoban Society is created for the purpose of representing the linguistic, educational and cultural interests of the French-speaking population of Manitoba.

MR. R. DOERN: But you have just indicated a few paragraphs ago that you feel that it is not a condition of negotiations for the government to deal with the Franco-Manitoban Society. They could deal with anybody that they think represents that community or with other parties as well.

MR. J. MAGNET: Even I suppose, Mr. Doern, with yourself. Yes.

MR. R. DOERN: Right. I'm glad you clarified that.

Now I would like to ask you just a couple more questions. You have written other articles and made other comments about this, including in the Globe and Mail. I gather that you also have indicated that there is a domino theory at work here; that after Manitoba becomes officially bilingual, Alberta and Saskatchewan will face similar court challenges because of their Constitutions of 1905. Then Ontario, which is the big plum or the big target or the big goal, will then represent, I think you referred to, "a gaping symbolic hole blackening the middle of Canada." Those are your words. So are you suggesting then that Manitoba is really just the first step in a sequence of our neighbouring provinces, and then finally the big prize, Ontario, will become officially bilingual?

MR. J. MAGNET: Mr. Doern, if you would trouble to read my article carefully, you will see that I did not say that Alberta and Saskatchewan will follow Manitoba. Alberta and Saskatchewan already have separate court actions under way in which the guarantee for official bilingualism in Section 110 of The Northwest Territories Act is sought to be resuscitated; the thesis there being that section, which is basically the same as Section 23 of The Manitoba Act, was unconstitutionally interfered with after 1905. That is a legal and a constitutional question which, I suppose, you would say you are not competent to rule on. But that is not something which happens after Manitoba. That is something that happens now, and that happens no matter what Manitoba does. It is a separate legal constitutional problem.

With respect to Ontario, it is my view that the Government of Ontario should, on behalf of its 500,000 Francophones, opt into Sections 16 to 20 to the Charter of Rights. I would point out that the Government of Ontario is taking steps to do that. It is taking steps in the regard of statute translation; it is taking steps in the regard of provision of court services; it is taking steps in regard of the kind of services you find in Section 23.7 of this agreement.

The conclusion, I would expect at some future time, would be an opting in to Sections 16 to 20 or to some form of them. I, Mr. Doern, will applaud on that date, because I think it is right and just and honourable that 500,000 Francophone citizens of Ontario should have the rights which are enshrined in those sections.

MR. R. DOERN: A final couple of questions, Mr. Chairman, are the court challenges that are taking place in Alberta and Saskatchewan federally funded or financed?

MR. J. MAGNET: I believe that there is a program of court challenges, the details of which I'm not entirely clear about, which offers funds for litigation by minorities under Section 93 of The Constitution Act and its successor provision, Section 17 of The Alberta Act, Section 17 of The Saskatchewan Act, as well as Section 23 of The Manitoba Act and Section 133 of The Constitution Act of 1867. Whether the government at Ottawa has taken the view that Section 110 of The Northwest Territories Act falls within that mandate, I do not know. I do know that counsel in Saskatchewan has had a private fund-raising campaign among the French-speaking population of Saskatchewan, and that he was able to raise sufficient funds to enable him to proceed to trial in the Saskatchewan Queen's Bench.

MR. R. DOERN: You say that the challenges in Alberta and Saskatchewan are separate and apart from Manitoba, do you?

MR. J. MAGNET: That's right.

MR. R. DOERN: But they have in common that they are federally funded?

MR. J. MAGNET: Well, Mr. Doern, I just replied to your question and told you that while there is a Court Challenges Program, the Alberta and Saskatchewan cases are different in that they do not fit under the constitutional provisions I mentioned. It may be, for all I know or apparently for all you know for that matter, that there is federal funding, but if there is, I am unaware of it.

I also said that at the Queen's Bench level, the funds so far as I am aware and I believe this is a matter in the public press, were provided by the Francophone speaking population of Saskatchewan.

MR. R. DOERN: Do you also recognize that given the present situation where only New Brunswick and Quebec are officially bilingual, that if Manitoba becomes officially bilingual that this will put pressure on the governments of Saskatchewan and Alberta, and also put pressure on the Ontario Government and that there is in fact a connection? There is a political connection; there's probably a legal connection as well. A person could make a stronger case, the greater number of provinces that go this route.

MR. J. MAGNET: Mr. Doern, your question is loaded with the same kind of misinformation that your July 25th speech is. In your July 25th speech you say people who don't want this resolution are concerned about introducing bilingualism on an offical basis into the province. Mr. Doern, in Manitoba, as in Alberta and Saskatchewan, there is no question whatsoever about introducing bilingualism. There is a question about respecting the rule of law which contains a constitutional provision for bilingualism. You may be concerned about introducing bilingualism; others are concerned about respecting the Federal Constitution, both in Manitoba and in Saskatchewan and Alberta.

MR. R. DOERN: Mr. Chairman, some of us are concerned about the practical application.

My final question is this: are you an advisor to any groups in Alberta, Saskatchewan or Ontario, or to any of those governments?

MR. CHAIRMAN: Mr. Penner, on a point of order.

HON. R. PENNER: Yes, I want to take objection to that question because that kind of question does hit at something that's very important in our society and our rule of law, and that is solicitor-client privilege. It is not open to a witness, unless it is relevant to a point for clarification, even to identify his clients with respect to whom he is not appearing. That's highly improper. I'm speaking here in my capacity as a lawyer, a member of the Law Society of Manitoba, and one, who I think, with most people understands the importance of solicitor-client privilege in our system of law.

MR. CHAIRMAN: More importantly to the point of order, I would suggest, Mr. Doern, that the question does not seek a clarification of material contained in the brief. The question should limited in that regard.

Mr. Doern.

MR. R. DOERN: On the point of order, the witness is producing speeches of mine and commenting on them and this is my final question and I think he may be prepared to answer it. If he's breaching his confidence, I'm sure he won't. But if he has already been appearing, or if he is known to be an advisor to any group or government in Alberta, Saskatchewan or Ontario, perhaps he could answer the question; if he doesn't care to answer it or if this would be a breach of legal tradition, then he's free not to. I simply ask him whether he is in fact advising any other groups or governments as I've mentioned.

MR. CHAIRMAN: The question, in my opinion as your Chair, is out of order because it does not seek clarification of the brief that the witness has presented or clarification of his relationship to the group he purports to represent here. It's an extraneous question dealing with other matters.

MR. R. DOERN: Anyway, I will close at that point then, Mr. Chairman, and thank you.

MR. CHAIRMAN: Thank you, Mr. Doern.

Questions from other members? Mr. Penner.

HON. R. PENNER: Just two additional questions for clarification. There has been reference in the exchange between Mr. Doern and Mr. Magnet about the concept of introducing bilingualism and Mr. Magnet has answered that.

Are you aware, Mr. Magnet, of the fact that the previous government, headed by then Premier Sterling Lyon, in the 1980 Session passed an act respecting the operation of Section 23 of The Manitoba Act, Section 1 of which says, "in this Act official language means the English language or the French language?"

MR. CHAIRMAN: Order please. The awareness of the witness of something extraneous to the brief is also not relevant to the committee. The witness didn't deal with that matter in the brief. I don't think it's appropriate.

On a point of order, Mr. Graham.

MR. H. GRAHAM: Mr. Chairman, on that point of order, I think that the point that Mr. Penner is trying to establish here is one that is very germaine to the very text of the presentation that has been made, and I think it would be very proper for that type of question to be asked.

MR. CHAIRMAN: I will acquiesce to the will of the committee. Please proceed, Mr. Magnet.

MR. J. MAGNET: I am aware of an act respecting the operation of Section 23 of The Manitoba Act.

HON. R. PENNER: And of that provision passed by the previous government making for the purposes of the operation of Section 23, English and French the official languages?

MR. J. MAGNET: I am aware of that provision and a provision which apparently attributes authenticity only to the English text of statutes, which provision is clearly unconstitutional because it flies in the teeth of the interpretation of Section 23 of The Manitoba Act offered by the Supreme Court in the Blaikie cases.

HON. R. PENNER: One final question then. Mr. Chairman, if this is out of order, you'll rule, and I'll abide by your ruling. There was discussion about the Court Challenges Program. Just one question, is it not the case, Mr. Magnet, that under the Court Challenges Program, the Federal Government has contributed money to the defence of English-speaking rights in Quebec?

MR. J. MAGNET: I would imagine that is so, Mr. Penner. I am not aware of the arrangements with Alliance Québec with the Federal Government, nor am I aware of the arrangments of the Société Franco-Manitobaine with the Federal Government, but I would imagine that the mandate of the Court Challenges Program embraces both.

HON. R. PENNER: In fact, there has been federal funding under that program for the MacDonald case presently before the Supreme Court.

MR. J. MAGNET: I am aware that Mr. Rouston (phonetic) has received federal funding.

HON. R. PENNER: Thank you.

MR. CHAIRMAN: Further questions, Mr. Downey.

MR. J. DOWNEY: Thank you, Mr. Chairman. I apologize for getting here a little late. However, I am not a member of the committee, but I understand as a Member of the Legislature that I do have the opportunity to ask a question or two of the witness.

To Mr. Magnet, I am somewhat concerned about the recent comments coming out of Ottawa that the Prime Minister is anxious to get involved and to support the

Province of Manitoba in their wishes with this particular amendment to the Constitution. Has that request come from the group which you organize or represent, or any other request that you are aware of, Mr. Chairman?

MR. J. MAGNET: I am unaware of any such request, but then again I am not that apprised of the internal workings of the SFM. I am not surprised to hear that the Government of Canada takes an interest in these matters since any constitutional resolution, such as that tabled on July 4th, requires the consent of the Parliament of Canada on behalf of all Canadians. I would therefore think that the Government of Canada is intensely aware and concerned about the actions in this Legislature.

MR. J. DOWNEY: Mr. Chairman, to Mr. Magnet, do you believe that the Federal Government should get involved in trying to influence what is happening within the province before it is properly presented to the House of Commons?

MR. J. MAGNET: As I point out, the Government of Canada has its own interests to pursue in these matters and they are properly and constitutionally concerned with these matters. As to whether I think that the Government of Canada should do this or that, I can't see that it would assist the deliberations of this committee one whit and I, myself, have not really directed my attention to that question.

MR. J. DOWNEY: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Graham.

MR. H. GRAHAM: Thank you very much, Mr. Chairman, through you to Mr. Magnet. While I realize that there are many people still wanting to be heard, I think that the very fact that Mr. Magnet is a constitutional lawyer and this isn't the first constitutional lawyer we have heard from, we had another one appear before us but in each case the witnesses have been representing a party that has been involved in the negotiations. But you have raised some very interesting points and I may deal, if I may, with some of the questions going backwards, rather than at the beginning.

You made mention of the text of the statutes that were included in the legislation of 1980, the use of the word the "English text" I believe was very unfortunate and I would like to ask you if you would have the same concern if maybe the language of that legislation had been, instead of the use of the word "English," if they had used the language of expression when the legislation was passed. Would that have alleviated your concern?

MR. J. MAGNET: I'm sorry, Mr. Chairman, I did not understand that question.

MR. H. GRAHAM: Well, the basic thing in 1980, was they were trying to validate statutes and translate them and there was an argument about the translation. Should it be the language that was first used in the passage that should have preference, in case of any question as to the translation that occurred, would that be a problem?

MR. J. MAGNET: Mr. Chairman, I'm making a deep effort to comprehend the question being put to me, but I am failing. Perhaps I could ask you to assist me with the point that Mr. Graham is driving at.

MR. CHAIRMAN: Mr. Penner on a point of order.

HON. R. PENNER: Perhaps I might, Mr. Graham, be of assistance if I just quoted the section you are referring to. Section 3.2, which troubles Mr. Graham and he asks you about, reads - that is of this act respecting the operation of Section 23 of 1980, "for greater certainty in the interpretation of the statutes that the province heretofore enacted, the bills for all acts heretofore enacted shall be conclusively deemed to have been printed in the English language," when copies thereof were first distributed to members of the Assembly. And an earlier section says that, "Where there is a discrepancy between the two languages English shall prevail."

MR. J. MAGNET: And the question, Sir, deals . . .

MR. H. GRAHAM: Would you have the same concern if they had said, instead of the English language, that the language that had been used in the initial passing of the statute, would that have alleviated any of your concern, because we're dealing only with interpretation of the translation?

MR. J. MAGNET: Mr. Graham, if you read the judgment of Chief Justice Dechene in the Blaikie case reported in 1979, National Reporter, which judgment was adopted on matters of detail and history by the Supreme Court of Canada in that case, you will discover that the court requires that equal authenticity be attributed to the English and French versions of all statutes. Section 3.2 therefore provides that it would attribute official or authentic status to either the English or the French version depending upon the method of enactment through the Legislature. That is clearly unconstitutional under the ruling of the Supreme Court of Canada in the Blaikie case. The statutes must be equally authentic and cannot be made to depend, as to their authenticity, upon their manner of introduction in the Legislature.

MR. H. GRAHAM: Well, Mr. Chairman, maybe that answers some of my concerns. I'm not a lawyer. I'm just a little farmer from Western Manitoba, but we have had attempts made since that time to translate statutes and we are succeeding rather slowly, I'll admit, but one of the problems that we have had was that in 1980 we advertised and indeed tried all available means to get translators, and in the process 53 applicants wrote the Federal Civil Service exam and only one passed. Now does that give you some understanding of why the present wording that is in Section 23.8(4) where we take out the word "forthwith" and put "within such time as may be reasonably required," does that give you an understanding of why that may have occurred?

MR. J. MAGNET: Mr. Graham, perhaps you are aware that at the same time as these advertisements, which you refer to were being run in Manitoba, the Government of Ontario established a legal translation

unit and fully staffed it. Perhaps you are also aware that at the same time the University of Ottawa established a Legal Translation Unit and fully staffed it. Perhaps Toronto and Ottawa are attractive places to live, but it may interest you to know that at the same time the University of Moncton established a Legal Translation Unit twice the size of that of Ontario and fully staffed it. I therefore am not enlightened by the matters to which you have drawn my attention.

MR. H. GRAHAM: Mr. Chairman, at the same time Mr. Magnet has brought to our attention that Ontario is proceeding and has been proceeding for several years and taking steps to implement French services in that province, have all those steps been taken by statutory means or has there been some attempted constitutional means?

MR. J. MAGNET: The Government of New Brunswick, as you will know Mr. Graham, has taken its action by constitutional means which far outstrip the limited proposals now before you. The Government of Ontario has proceeded by statute. The Government of Manitoba has proceeded by constitutional text and it so proceeded in 1870.

MR. H. GRAHAM: Mr. Chairman, one of the points that Mr. Magnet raised and caused me some concern was in the interpretation of the services that would be provided from head office of any branch of government. Could you give me your interpretation of what services you would expect from the head office of any branch of the government?

MR. J. MAGNET: I would expect that services would be implemented in such a way that the governmental structures referred to in Section 23.7(1) and 23.7(2) would be able to deliver French Language Services to client citizens on request.

MR. H. GRAHAM: I believe you made mention earlier of the example of Air Canada, where if there was a 45 minute delay, that it wouldn't be of much interest to you, while they went looking for the people that could provide that service. Would you expect that immediate French services should be available at any head office, or would you be satisfied with only certain people in that office being able to provide those services?

MR. J. MAGNET: Mr. Graham, I think that governments have experienced that only certain people in those offices are required, but I would invite your attention to consider that sufficient number of people would be required so that when, for example Mr. Graham, you wait for service at the Air Canada counter in Montreal, you will not be unduly inconvenienced by waiting for service in English.

MR. H. GRAHAM: Would you expect the senior officer of any head office then to be bilingual?

MR. J. MAGNET: I don't think that one can reply categorically to your question, Mr. Graham. The office is a creature of the Constitution as foreseen by Section 23.7. The beauty of the proposal that's before you now is that the government is left with the initiative in deciding how those services shall be implemented in the most cost-effective and bureaucratically efficient manner possible.

The difference might be that if the Bilodeau case were to succeed, and if Section 23 were to be implemented completely, the 163 quasi-judicial bodies now captured by Section 23 of The Manitoba Act might well be required to implement bilingual services forthwith, without the ability to economize and to minimize bureaucratic distortions, as would be their prerogative under these agreements.

MR. H. GRAHAM: Mr. Chairman, through you to Mr. Magnet, when you talk about language - there was an exchange between you and Mr. Penner dealing with language of service and language of work - would it be your opinion. or could you give me your definition of the difference between the language of service and the language of work?

MR. J. MAGNET: The language of service is the language in which the government delivers its services to citizen clients who require them. The language of work focuses on employees of the government who work and communicate with superiors and inferiors in the office in whatever language the case may require. The language of services focuses on the government client; the language of work focuses on the government employee.

MR. H. GRAHAM: Mr. Chairman, there has been quite a bit of talk, and I believe it was mentioned in the speeches and in the presentations that were made when this resolution was introduced, that we were putting forth a bilingual program in Manitoba; that this resolution would have a Made-in-Manitoba form of bilingualism. I believe that there is probably a second form of bilingualism, and that's the federal form of bilingualism. Do you, Mr. Magnet, see any serious difficulties between the federal form of bilingualism and the Made-in-Manitoba form causing problems in the future?

MR. J. MAGNET: The Société Franco-Manitobaine prefers the federal form of official bilingualism, and it was its hope that the Government of Manitoba would agree to opt into Section 16 to 22 of the Charter. Through long and difficult negotiations that has not been possible. What has been possible is a Made-in-Manitoba solution, as you refer to it, which is reflected in the text of these resolutions before you. We have studied these; we have negotiated for these, and we support them.

MR. H. GRAHAM: That federal bilingual program, is that on the basis of the Constitution of 1867, or The Official Language Act of 1968?

MR. J. MAGNET: There is nothing in these agreements which take their inspiration from the initiatives made by the Governments of Canada and New Brunswick in their statutory Official Languages Act. These agreements take their inspiration from the constitutional text of Sections 16 to 20 of the Canadian Charter of Rights and Freedoms.

MR. H. GRAHAM: Mr. Chairman, if all this base from the constitutional aspect of the Constitution of 1867, why would it be necessary, then, for the Federal Government to pass The Official Languages Act in 1968.

MR. J. MAGNET: Mr. Graham, if you read The Official Languages Act of 1969, you will discover that it makes provisions for many things which are not provided for in the constitutional text. For example, it makes provision for bilingual districts which fasten on services when the minority population is a certain percentage; it makes provision for an Official Language Commissioner. The reports of that Commissioner have been a tremendous leap forward in the understanding of the problems of official bilingualism in our multilingual federation. It makes provision for other things which are not covered by the text of Sections 16 to 22 of the Charter, or that are covered by these agreements.

Mr. Graham, I would recommend to you, if I may, that you read The Official Languages Act of 1969 which I find inspiring, and that you consider whether it might not find a place on the statute books, in some form, of Manitoba.

MR. H. GRAHAM: One final question, since The Official Languages Act of 1969, as you say, is statutory, would you find it not consistent if Manitoba provided their services statutory, rather than constitutional?

MR. J. MAGNET: Mr. Graham, you may be aware that there is a special joint committee of the Parliament of Canada on official languages, and that this committee has examined the functionings of The Official Languages Act, and it has been the conclusion of that committee, expressed in its reports of both 1980 and 1981 to Parliament, that entrenchment is the preferred solution.

It did refer to the failure to implement some of the statutory guarantees in the Act of 1969 in the following language: "arbitrary, irrational, impossible to justify." Given that experience by a tripartisan committee which has developed considerable expertise, I am minded to think that the constitutional solution is to be preferred, and I know of no serious commentator which has made the case otherwise.

MR. H. GRAHAM: No further questions.

MR. CHAIRMAN: Mr. Carroll.

MR. H. CARROLL: Mr. Chairman, I would like to preface my question to Mr. Magnet by saying that these hearings are open hearings, and that he has every right to be speaking at these hearings. I would like to further say that the purpose of the committee going out in the country and leaving the City of Winnipeg was so that we can get as much input from the citizens of Manitoba as we can possibly get. I am happy that the committee is doing that.

I am noting that there are over 50 briefs, almost all of them from people living in southwest Manitoba. My question to Mr. Magnet is was there any particular reason why he, coming from the East, wouldn't go to the Winnipeg hearing, but would take up half-a-day of our hearings here in Brandon?

MR. CHAIRMAN: Order please. I find that a reflection on the choice of location of any witness to be inappropriate, and I'm not sure that I can ask Mr. Magnet to even begin to reply to that question.

Further questions, Mr. Carroll?

MR. H. CARROLL: No further questions.

MR. CHAIRMAN: Any further questions from members of the committee? Seeing none, Mr. Magnet, thank you very much for being with us here today.

MR. J. MAGNET: Thank you very much, Mr. Chairman. It's been a pleasure for me to appear before you and offer what assistance I could.

MR. CHAIRMAN: First on our list, after Mr. Magnet, is Mr. Dennis Heeney. Mr. Heeney, please.

MR. D. HEENEY: Thank you, Mr. Chairman.

Even though I have been relegated to second position here on the agenda, I would like to take this opportunity to welcome the committee to Southwestern Manitoba and particularly to the City of Brandon. While I don't live in Brandon, it is my hometown where I do most of my business, so I welcome the committee. I think it is useful for all of the province and good public relations that the government officials and our MLAs see fit to leave the City of Winnipeg and journey out to the boondocks once in a while to see what's going on in rural Manitoba. I think it's useful and I hope that something useful does come out of these hearings.

I would just like to make one comment before I begin and that is that I notice that you have simultaneous translation in French. I don't intend to use that, however, I would suggest it might be more practical if you would consider simultaneous translations for presentations made by the legal profession, because most of us out in the audience are lay people and don't understand what was said for the last two hours. I think when there is such an exchange between the legal profession, as there was this morning, where they don't seem to even yet know what they meant, that perhaps we should consider some language other than the present two we're dealing with, so we can communicate with each other.

My name you have, I am the Reeve of the Rural Municipality of Elton and I am appearing on their behalf today. Since the proposals of September 6th were not available to us, then our presentation was based on the original amendment and some of these remarks may be obsolete, but since I just saw this this morning, it's really difficult to comment without further study.

Earlier this year our municipality joined 125 other municipalities in Manitoba to oppose this amendment. In August, we passed a further resolution which requested the Provincial Government to hold a public referendum on the issue and in particular pertaining to the matter of entrenchment. Copies of this resolution have been forwarded to the Premier and the Attorney-General. So, in this particular instance, we see two issues and there are several, of course, related issues. But, the two main ones are: first of all, the French Language Services as they presently exist, what the province's legal obligation under Section 23 of The Manitoba Act is, and any future extension or addition to those services.

The second issue is the methods that we're going to use to implement these services. They appear at the present time to be either the choice of political process, which is, I believe, provincial legislation and statute, and the other is entrenchment in the Constitution by an amendment to The Manitoba Act. This involves the Federal Government and the Senate in what we believe should be a Manitoba matter only.

Under this amendment process the Federal Government cannot force Manitoba to make any additions to the present act, but it can prevent them from making any deletions. In other words, should we pass this amendment now, some government or the people of Manitoba in the future could not have it changed. Of course, that's what the Franco-Manitoban Society are anxious to have happen. The Federal Government would not make these deletions if they did not agree with them even though an overwhelming majority of Manitobans should wish to make these changes or deletions.

I think that in a democratic system that is a rather strange way of proceeding when the minority can have something placed in the Constitution, but the majority who are affected by it can't have it deleted.

So, on the first issue of the present Manitoba Act of 1870, Section 23 states as follows, and I won't quote it because we're all familiar with it, except to comment that it says that either English or French may be used in the courts or in the Legislature, but it says both languages shall be used in printing of all acts of the Legislature and published in these. I think that section is quite clear as to what Manitoba's legal obligation is. I would suggest that Section 23.7(1) and (2) very clearly go far beyond the present legal obligation.

So, the question we want to know is why? Why, after 113 years does there seem to be so much urgency in further entrenching so many additional rights and privileges for a 6 percent minority which is now smaller than it was when the act was originally incorporated?

Question No. 2 is: why does there appear to be so much urgency to entrench these additional rights when recent provincial governments have legislated, from time to time, rights for the French-speaking minority which were not objected to by either the non-French majority or the French-speaking minority?

Question No. 3 is: why does the Provincial Government see such urgency to fulfill its legal obligation when for 93 years the people and the governments of Manitoba have apparently been operating illegally?

It seems strange, to put it mildly, that the present government and the Federal Government and the Franco-Manitoban Society should suddenly see such urgency in meeting these ''legal obligations'' by entrenching the proposed amendment, when so doing, in the present manner, will mean a continuance of a disregard for Section 23. If we make this deal or accord between the three mentioned parties, we continue to disregard Section 23 by translating only 400 of the 4,400 statutes now in existence, and we do so without rescinding Section 23, then we will continue to be acting illegally and could at anytime in the future be challenged by anyone, including myself, to force the matter to be decided and interpreted by the Supreme Court, which could well result in the same decision as the present government now seems to fear and is attempting to avoid.

I understand there is one section here that appears to override Section 23, but, to me, I can't see any purpose in having that kind of a clause. Either you agree with Section 23 or you rescind it. It seems to me that again it's a case of where lawyers just trying to confuse the issue.

Simply agreeing to some deal or effectively making an out-of-court settlement is not only showing disregard and disrespect for the present Manitoba Act, it's leaving us wide open in the future for the very thing the government is trying to avoid and which they have referred to as legal chaos. This could be the result should the Supreme Court rule that all Manitoba statutes not written in both languages were invalid. Surely this is short-sighted and much less of a good deal than the present goverment would have us believe. No doubt this deal would be beneficial and well received by the 5 or 6 percent of the French-speaking Manitobans and the sympathetic Quebec-based Federal Government. Mr. Chairman, if the amendment proceeds against the wishes of the 94 or 95 percent of non-French speaking Manitobans, then it may very well be a bad deal for the majority.

At the present time, the Premier and his government may believe or they may think that the majority of Manitobans support this proposal, in fact, they do not know, and until they do know, they are acting, in our opinion, in the most dictatorial and totally undemocratic manner. It is our opinion that the government, in attempting to gain public support, has been giving the people of Manitoba false, misleading and biased information all at the expense of the Manitoba taxpayers.

We object to the manner in which this information process has been handled for the following reasons:

Objection No. 1 - the Premier and other government members have stated many times that they wish to inform the public of what was happening and why. Yet at no time was there either a copy of Section 23 of The Manitoba Act or this proposed amendment contained in this document here. It was never circulated freely to the people of Manitoba. It was available, but it was never circulated. We feel that the public should have been given these two very important documents and facts and at least given some credit for their judgment capabilities.

Objection No. 2 - the government spokemen, including the Premier, have repeatedly stated that Manitoba would not be going bilingual, yet Section 23.1 states that English and French shall be the official languages of Manitoba, which clearly means bilingualism.

Objection No. 3 - this government has no mandate from the Manitoba people to make any changes to our Constitution to The Manitoba Act. It was never an issue in the last or any provincial election campaign.

Objection No. 4 - references are made by government officials, including Mr. Penner, that the proposal simply allows Manitoba to fulfill its legal obligations. It's quite clear that Section 23.7(1) and (2) go far beyond Section 23 of The Manitoba Act, which clearly is our only present legal obligation.

Objection No. 5 - municipalities, school boards and others have been ensured repeatedly that they will be affected, yet nowhere does it state that they will be exempted. Now, I see that the proposal of September

6 does suggest that the municipalities and school boards will be exempt. I hope that's what that means.

Objection No. 6 - the pamphlet states that entrenchment will guarantee exactly what rights are involved. Yet, Section 23.7(2)(a) and (b) is anything but exact. In fact, it is so inexact that we would suggest it guarantees full employment for the legal profession forever.

Objection No. 7 - a reference is made to voluntary participation and yet nowhere in the proposal is there any reference to this voluntary aspect.

Objection No. 8 - the suggestion is made that should the Supreme Court rule that Manitoba laws were invalid, then legal chaos would result. Certainly, that's a very distinct possibility, but surely no one can believe that five out of nine judges of the highest court in the land, with years of experience, with diversified cultural and regional backgrounds, would make such an irresponsible decision. In our opinion, this is pure scare tactics on the part of the Provincial Government used to convince the people of Manitoba to support their position. Realistically, we can expect to have to make all of the translations, but we can also expect ample time to make the transition.

I see that you have in 23.8(4) changed "forthwith" to "within such time", even though it doesn't apply necessarily to this aspect.

Objection No. 9 - the information package circulated by the Manitoba Government contains five newspaper editorials, which are obviously biased in favour of the proposal. We feel that an information package should contain information and facts only and leave editorializing and personal opinions for another time and place, such as this. Such action was in poor taste, especially when funded by the tax-paying public who do not necessarily share the views of the Manitoba Government or the Franco-Manitoban Society.

Objection No. 10 - the pamphlet also suggests that the proposal will finally settle the matter in a fair and practical way and avoid court cases; (a) to make a proposal of this nature with no mandate, and quite possibly against the wishes of the majority is not fair. Mr. Chairman, we suggest it is grossly unfair, to say the least. The cost of implementing this proposal including all of Section 23.7(1) and (2), in our opinion, would be much much greater than the cost of translating 4,400 statutes. This certainly doesn't seem practical, especially in light of Manitoba's present huge accumulated deficit.

We agree that avoiding court cases is a commendable goal and, in our opinion, it will not be achieved by this proposal, whether it's legislated or whether it's entrenched; that is, by statute or Constitution. Apart from the possibility of a challenge similar to Mr. Bilodeau's in any event, the vagueness and the poor drafting of the proposed amendment, particularly Section 23.7(a) and (b) will, as we have indicated, guarantee the courts and legal profession will be fully employed for many years.

Now this leads us into the aspect of Issue No. 2, which in our opinion has been virtually ignored and yet is, in principle, by far the most important, and that deals with the . . .

MR. CHAIRMAN: Order please. Mr. Heeney, that might be an appropriate place, at the beginning of Issue No. 2, to take our break. Our normal hour of adjournment is 12:30 p.m. and you still have a fair amount of material to go through, so I think what we'll do is adjourn for now and come back at 2:00 p.m.

The committee is adjourned and stands adjourned until 2:00 p.m.