



Second Session — Thirty-Second Legislature
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

Members, Constituencies and Political Affiliation

Name	Constituency	Party
ADAM, Hon. A.R. (Pete)	Ste. Rose	NDP
ANSTETT, Andy	Springfield	NDP
ASHTON, Steve	Thompson	NDP
BANMAN, Robert (Bob)	La Verendrye	PC
BLAKE, David R. (Dave)	Minnedosa	PC
BROWN, Arnold	Rhineland	PC
BUCKLASCHUK, Hon. John M.	Gimli	NDP
CARROLL, Q.C., Henry N.	Brandon West	IND
CORRIN, Brian	Ellice	NDP
COWAN, Hon. Jay	Churchill	NDP
DESJARDINS, Hon. Laurent	St. Boniface	NDP
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DOERN, Russell	Elmwood	NDP
DOLIN, Hon. Mary Beth	Kildonan	NDP
DOWNEY, James E.	Arthur	PC
DRIEDGER, Albert	Emerson	PC
ENNS, Harry	Lakeside	PC
EVANS, Hon. Leonard S.	Brandon East	NDP
EYLER, Phil	River East	NDP
FILMON, Gary	Tuxedo	PC
FOX, Peter	Concordia	NDP
GOURLAY, D.M. (Doug)	Swan River	PC
GRAHAM, Harry	Virten	PC
HAMMOND, Gerrie	Kirkfield Park	PC
HARAPIAK, Harry M.	The Pas	NDP
HARPER, Elijah	Rupertsland	NDP
HEMPHILL, Hon. Maureen	Logan	NDP
HYDE, Lloyd	Portage la Prairie	PC
JOHNSTON, J. Frank	Sturgeon Creek	PC
KOSTYRA, Hon. Eugene	Seven Oaks	NDP
KOVNATS, Abe	Niakwa	PC
LECUYER, Gérard	Radisson	NDP
LYON, Q.C., Hon. Sterling	Charleswood	PC
MACKLING, Q.C., Hon. Al	St. James	NDP
MALINOWSKI, Donald M.	St. Johns	NDP
MANNES, Clayton	Morris	PC
McKENZIE, J. Wally	Roblin-Russell	PC
MERCIER, Q.C., G.W.J. (Gerry)	St. Norbert	PC
NORDMAN, Rurik (Ric)	Assiniboia	PC
OLESON, Charlotte	Gladstone	PC
ORCHARD, Donald	Pembina	PC
PAWLEY, Q.C., Hon. Howard R.	Selkirk	NDP
PARASIUK, Hon. Wilson	Transcona	NDP
PENNER, Q.C., Hon. Roland	Fort Rouge	NDP
PHILLIPS, Myrna A.	Wolseley	NDP
PLOHMAN, Hon. John	Dauphin	NDP
RANSOM, A. Brian	Turtle Mountain	PC
SANTOS, Conrad	Burrows	NDP
SCHROEDER, Hon. Vic	Rossmere	NDP
SCOTT, Don	Inkster	NDP
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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON PRIVILEGES AND ELECTIONS

Tuesday, 6 September, 1983

TIME — 10:00

LOCATION — Winnipeg

CHAIRMAN — Mr. Andy Anstett (Springfield)

ATTENDANCE — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Penner, Parasiuk and Storie

Messrs. Anstett, Brown, Graham, Harapiak,
Lecuyer, Nordman, and Sherman

WITNESSES: Messr. Eric Maldoff, Alliance Québec

MATTERS UNDER DISCUSSION:

Proposed Resolution to amend Section 23
of The Manitoba Act.

* * * *

MR. CHAIRMAN: Committee come to order. Ladies and gentlemen, the purpose of this committee hearing and subsequent hearings is in accordance with a resolution passed by the Legislative Assembly which read, in part:

“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, the Standing Committee on Privileges and Elections will hold hearings.

This is the first in a series of hearings at eight locations across the province. We have an extensive list of individuals, totalling at this point 98, who wish to make representations to the committee here in Winnipeg.

Before we proceed to commence hearing those who are on the list, I have received the resignation of two members on the committee, Messrs. Harper and Harapiak. Is there any motion to replace those members on the committee?

Mr. Harapiak.

MR. H. HARAPIAK: Mr. Chairman, I am replacing Mr. Santos for this morning.

MR. CHAIRMAN: Is that agreed? (Agreed)

HON. R. PENNER: I would move that Mr. Parasiuk, the Member for Transcona, replace Mr. Harper on the committee.

MR. CHAIRMAN: Is that agreed? (Agreed) Thank you.

I believe as well, Mr. Penner, you had something you wished to present to the committee before we commence the hearings.

HON. R. PENNER: Thank you, Mr. Chairman. I would like to table, as was indicated by the Premier on August 16th, some draft amendments to the proposed resolution of the Government of Manitoba to amend Section 23 of The Manitoba Act. I would like, Sir, with your permission just to read three explanatory notes and then the amendments.

1. It is the intention of the government to introduce these amendments when the Legislature resumes its current Session to consider the proposed resolution to amend Section 23 of The Manitoba Act. The text of these draft amendments are subject to further amendments which may flow from briefs presented to the Standing Committee on Privileges and Elections - that's this committee - and from technical advice received from counsel including Legislative Counsel.
2. Secondly, as a prefatory note, during the course of these hearings one or more additional amendments will be tabled, one of which will deal with the term “significant demand” as presently contained in Section 23.7(2) in order to define that term more precisely.
3. The text of the proposed resolution as tabled by the Attorney-General upon its introduction in the House and the text as printed in the Order Paper and in Votes and Proceedings show a typographical variance as follows:

As originally presented, the modifying clause “established by or pursuant to an act of the Legislature of Manitoba” as it now appears in Votes and Proceedings placed in Section 23.7(1)(b)(iv) was placed originally so as to make it clear that it was intended to modify all of Section 23.7(1)(b) and not only 23.7(1)(b)(iv) and the amendments that I'm now dealing with take that variance into account so that if I may just point out that in 23.7(1)(b) where it refers to head or central office of courts and quasi-judicials Crowns and agencies, the modifying established by or pursuant to an act of the Legislature of Manitoba was presented to the Legislature and intended to modify all of (b), (b)(i), (b)(ii), (b)(iii) and (b)(iv) are all modified by that phrase established by or pursuant to an act of the Legislature of Manitoba.

Mr. Chairman, with respect to the amendments that I am now tabling, it is proposed with respect to 23.1, which speaks of English and French as the official

languages of Manitoba, to add the words "as provided for" in Section 23 and Sections 23.2 to 23.9 inclusive. Turning to 23.7(1), 23.7 being the clause that deals with services, wherever you have the term "head" or "central office" in 23.7(1) the term central office is to be deleted.

With respect to 23.7(1)(b), the words in that modifying clause "established by or pursuant to an act of the Legislature of Manitoba" the words "or pursuant to" are to be deleted from that concluding term so that it reads simply "established by an act of the Legislature of Manitoba."

Again with respect to the same concluding modifying clause 23.7(1)(b), the following words it is proposed to add "but not including any municipality or school board".

23.8, Sir, is a section which deals with enforcement of rights, 23.8(4) talks about a plan being approved by the court and it talks about it being instituted forthwith. The proposed amendment would remove the word "forthwith" in the second line thereof and replace it with the words "within such time as may be reasonably required".

Finally, it is proposed to add a new section and this, Sir, is the equivalent of a section that appears in the Charter of Rights and Liberties proclaimed in force in Canada last year, "Nothing in Section 23" - that's 23 of course of The Manitoba Act, "and Section 23.7 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this amendment with respect to any language that is not English or French."

That is submitted on behalf of the government by myself, Sir, this 6th day of September, 1983.

MR. CHAIRMAN: Thank you, Mr. Penner.

Before we proceed any further some concern has been expressed by members of the committee regarding the location of cameras and any possible disruption that the cameras to the rear of members on both sides of the committee table might cause, what is your will and pleasure?

Mr. Lyon.

HON. S. LYON: Mr. Chairman, I would suggest that we follow the customary practice in the committee, namely that the space allocated to our friends in the press be as is customary. I don't see why we're practising this overt form of discrimination against the print media forcing them to sit back when the others have the advantage of sitting so close to us and reading over our shoulders.

I would suggest that in the interests of our friends from the electronic media and in the interests of accommodating ex officio members of the committee who may wish to sit behind us or whatever, that the cameramen be asked to place themselves in the customary position, either at the top end of the committee room or at the bottom end of the committee room, so that the table is free and that members can read from their files without somebody peering over their shoulder with a lens, etc., etc. Not that my honourable friends here from the press would customarily do that, but I think we'll remember that the Minister of Finance in Ottawa found that somebody flashed a camera on the Budget once and he spent three weeks trying to get out of that kind of a problem.

MR. CHAIRMAN: I haven't seen any zoom lens yet this morning, however I think it's a reasonable accommodation. I had asked the Clerk of Committees to arrange seating such that we could maximize the space available for the public and an additional press table. That meant of necessity that members who are not official members of the committee would have to sit behind the normal members and the chairs against the wall. It meant that that is awkward for those members, so I would ask members of the media with cameras to move them either to the rear of the podium near the press tables or immediately behind myself, as Chairman. Would you move the cameras please?

Is there any other further business before we begin the hearings? I would also ask the camera people to ensure that they do not block the vision of the recorder in recognizing members.

Last week in perusing the list of individuals wishing to make representations to the committee, I raised with Mr. Sherman and Mr. Penner the concern that two organizations had travelled a great distance from outside the province to attend at these hearings, and rather than request that they wait for their positions on the list, which I understand are somewhat further down the list, No. 45, the Alliance Québec, and No. 71, the Fédération des francophones hors Québec, it was suggested by me, as Chairman, and agreed to forward to the committee as a suggestion that these two groups be advanced on the list and be heard first this morning. Is there any discussion of that suggestion?

It is moved by Mr. Penner to concur in that suggestion. Seeing no discussion, is that agreed? Agreed and so ordered.

I'd like then to call on Mr. Laurent Marcoux of Alliance Québec. Mr. Marcoux please.

MR. E. MALDOFF: Mr. Chairman, I am Eric Maldoff. I am the President of Alliance Québec.

Before we commence proceedings, I was wondering if I might beg the indulgence of the committee. We have come all the way to your province yesterday, a delegation from Alliance Québec, including our Vice President Michael Goldbloom, our Executive Director Geoffrey Chambers, and our Research Director Laurent Marcoux. I was wondering if seats might be arranged for them behind me in the sense that they may have certain technical matters that they may wish to respond to the committee on.

MR. CHAIRMAN: Certainly.

MR. E. MALDOFF: Thank you.

MR. CHAIRMAN: I've asked the Clerk to move some of the additional chairs on the side so that your support staff will have a place to sit.

MR. E. MALDOFF: Thank you, Mr. Chairman.

MR. CHAIRMAN: Please proceed.

MR. E. MALDOFF: Thank you, Mr. Chairman.

Alliance Québec is a politically non-partisan, public interest organization whose principal purposes are to advance the emerging consensus on language issues

between French-speaking and English-speaking communities, and to safeguard the institutions necessary for the well-being of the English-speaking community in Quebec. We are an organization with a membership of over 40,000 people in our province. We are the largest organization representing English speaking people in the province of Quebec. Our community in the Province of Quebec numbers approximately 1 million people, greater than the populations of several provinces of Canada.

The Alliance is fully cognizant of the social tensions which can be generated by linguistic problems. It is our belief, however, that with sufficient good will and mutual respect, such problems can be readily resolved. And they must be resolved. For the harmonious co-existence of French-speaking and English-speaking people within a united Canada is a source of richness which we are privileged to have. Our linguistic and cultural duality is not a burden to shoulder, but an immeasurable source of wealth.

Alliance Québec is firmly committed to the principle that English-speaking and French-speaking people can live and work together with dignity and mutual respect. We believe that this is to the advantage of all Canadians. Together we have built a great country and together we shall meet the enormous challenges of the 80's and the decades that follow.

We are dedicated to ensuring that Canada is a country in which all Canadians feel welcome, at home and secure. Canadians must feel that they are first-class citizens wherever they choose to live in this land regardless of which official language they speak. Not only is this just, it is necessary if we are to achieve the unity of purpose essential to meet the great challenges which await us.

We have travelled to your province to present this brief, because the constitutional amendment originally proposed by the Government of Manitoba is to be commended. The process of negotiation and conciliation pursued by the government is to be applauded as a shining example of responsible government. The content of the proposed amendments is to be supported because it is constructive, positive and just.

We do not share the views of those who believe that they can sit back and assume that justice and fairness will prevail. Only hard work and active participation will ensure Canadians the society they desire. Therefore, we have come to support actively an initiative which will make Canada a better place for all of us and our children.

We are also here because as English-speaking Canadians we understand what it is to experience attempts to deny the legitimacy of our community and, indeed, our language. We know the feeling of living in one of this country's two official languages and having our status as first-class citizens questioned because of it.

We have felt compelled to present a submission to this committee in order to correct any misunderstandings concerning the status of the English-speaking community in Quebec. Despite the pressure on our community exerted by our current government, we continue to receive more basic services in our language including universities, school boards, hospitals and social services than do our French-speaking

counterparts in Manitoba. We find it regrettable that reference is so often made to the lowest common denominator in these matters as justification for inaction or retrogression.

We deplore the cynicism of those who would contend that the rights of Franco-Manitobans should not be restored until the Quebec Government changes its laws affecting our community. It seems that for the most part linguistic majorities only express concern for linguistic minorities in other provinces when they wish to mistreat their own.

Manitoba will set a new standard for Canada. The impact of the recent development in Manitoba has been felt far beyond the borders of this province. Indeed, the proposed amendments may well usher in a new era of greater respect for both English-speaking and French-speaking people in Canada.

Yet, the issue at hand is one which transcends even the problem of the treatment of linguistic minorities across Canada. It is an issue of national unity, which goes to the heart of the survival of our country. For the government of our province has repeatedly attempted to justify its efforts to diminish the status of the English language by pointing to the mistreatment of French-speaking Canadians outside of Quebec. Considerable emphasis has been placed on the violation by previous Manitoba Governments of the constitutionally guaranteed right to use French before the courts and in the Legislative Assembly. Adoption of the proposed amendments of The Manitoba Act would undercut the argument of the Quebec Government and remove yet another pretense for the government's treatment of the English-speaking community in Quebec. Indeed, Manitoba's adoption of the amendments would deal a cutting blow to the Parti Québécois thesis that only an independent and separate Quebec can adequately protect the rights of French-speaking Canadians. For adoption of the amendments would present a considerable impediment to the present Quebec Government's efforts to divide Canada. The crucial importance of the proposed amendments can therefore scarcely be overstated. Indeed, the eyes of all who believe in a strong and united Canada have now turned to Manitoba.

Since the Forest case, there is no doubt that Manitoba has failed to abide by its constitutional obligations. Of this, there is no dispute. The issue, rather, is how best to remedy the problem and to right past wrongs. The solution, we submit, must be rooted in generosity, in understanding and in respect.

Alliance Québec commends the Government of Manitoba for its courage and vision in proposing the amendments to The Manitoba Act dealing with French language rights. Manitoba, in so doing, has addressed itself squarely to a most difficult problem of democracy: ensuring respect for the minority. In assessing the merits of the proposed amendments, it is well to bear in mind the words of Sir John A. MacDonald that the greatest test of constitutional freedom is to ensure that the rights of the minority are respected.

The proposed amendments to The Manitoba Act would accomplish that most difficult task in a just and equitable fashion. They would remedy a longstanding injustice and would, by providing certain government services in French as well as in English, update the guarantees of 1870 and bring them in tune with the

realities of contemporary government. Yet, the provision of the services contemplated in the amendments would not, if the Quebec experience is any indication, result in the loss of jobs or hardship for English-speaking Manitobans. Nor can they be regarded as pandering to one small minority among many others.

In putting forward their proposed amendments, the Government of Manitoba has acted with a generosity of spirit and a commitment to do justice which can only serve to inspire our fellow Canadians, both French-speaking and English-speaking. The Government of Manitoba must now complete its task in the same spirit, with a continued commitment to justice and respect.

We view the process of negotiation as having been a critical part of this solution which has been proposed by the Manitoba Government. Although the prospect of court-ordered bilingualism may be sufficient to warrant an agreement between the Manitoba and Federal Governments and the Société Franco-Manitobaine, the process of negotiation which has led to the proposed amendments has, in itself, been a positive and laudable endeavour. We applaud that negotiation and the negotiated agreement.

Unlike the Manitoba Government of 1890, the current government has entered into discussions with the franco-manitoban population concerning the constitutional protection of their language rights. In stark contrast to the government of 1890, the present-day government has proceeded by way of the Canadian democratic process, the essence of which lies in negotiation and discussion leading to workable solutions.

The constitutional protection of French language rights is not only consistent with democracy in Canada, but it is also an integral part of the Canadian political and constitutional tradition. The Government of Manitoba, in refusing to run the risk of court-imposed bilingualism, and in opting for a negotiated solution, has acted in accord with the finest traditions of the Canadian policy. Indeed its willingness to discuss the issue of the linguistic minority in question in a positive and constructive manner will stand as a remarkable example to other provincial governments, including our own.

I turn now to the question of the entrenchment of language rights. Opposition to the entrenchment of rights seems to be based in part upon the fear or distrust of any kind of constitutional provision, which would circumscribe the power of the Legislature. Yet the experience in Manitoba is ample proof of the need to guarantee basic rights. It speaks eloquently of the need for curbs on the powers of the legislative majority of the moment.

It should be remembered that the guarantee of language rights is of the very essence of Canadian constitutionalism. For amongst the several objectives of the architects of the Canadian Constitution, none was more important than the effort to accommodate the needs of French-speaking and English-speaking Canadians. This primary concern of the Fathers of Confederation was reflected not only in the federal system of government, which was adopted, but also in the entrenchment of Section 133 of the BNA Act of 1867, upon which Section 23 of The Manitoba Act was modelled.

Thus one of the very first human rights ever entrenched in the Canadian Constitution was related

to fundamental language rights. There can be no subject more appropriate for entrenchment in Canada.

With respect to the content of the proposed amendments. It is important that English-speaking Manitobans not allow themselves to be alarmed by bogeys. As representatives of English-speaking Quebecers, we see nothing in the proposed amendments which can reasonably give rise to fears of an injurious impact upon English-speaking Manitobans.

With respect to the language of the legislation, it is worth drawing attention to the fact that in 1971, at the Victoria Conference of First Ministers, Manitoba had publicly indicated its willingness to publish its statutes in French as well as in English. Manitoba had also agreed in 1971 to a constitutionally-protected right to use French and English in the debates of the Legislative Assembly. With respect to the Legislature, the proposed amendments are reasonable, clear, and indeed relatively modest in scope.

The amendment would, however, put an end to the long-standing failure to abide by the Constitution. There are few things more dangerous in our system than the failure to respect the Constitution, for such behaviour undermines the Rule of Law and imperils all of the rights and freedoms so deeply cherished by Canadians. The amendments are therefore to be warmly applauded. And yet, the proposed amendments respecting the Legislature would not only give effect to those rights entrenched in 1870 and accepted once again in 1971, they would do so in an equitable and rational manner.

The amendments would provide for a reasonable time frame for the translation of statutes, and they would exclude private acts and public municipal acts from the translation process. Hence, municipalities would be under no obligation to translate municipal by-laws. Moreover, the agreement with the Federal Government would minimize the costs involved in the translation of provincial laws. It is also worth noting that the contribution of the Federal Government to the cost of translating Manitoba's laws stands as a reminder that the issue at hand is one of import not only for Manitoba but for all Canada and for all Canadians.

The amendments would also recognize French and English as the official languages of Manitoba and Article 23.1 of The Manitoba Act would thus stand as a clear affirmation of the Canadian duality. We address our comments and our support to the proposal initially brought forward by the government in this regard. The symbolic importance of such an affirmation must not be underestimated. It would be the one outstanding feature of the amendments which would remain in the minds of Canadians long after the present controversy has abated. To remove or to narrow this provision, for whatever reason, would be to destroy one of the most far-reaching aspects of any law, and in particular of a constitutional law: its symbolic significance to the community. In this instance, the symbolic significance to Canada is of critical importance.

Overall, the proposed amendments and the agreement would provide an eminently reasonable and orderly method of doing justice at minimum cost to Manitobans. Viewed against the backdrop of possible court-ordered bilingualism, the amendments and the agreement represent a judicious solution to a complex problem.

The provisions of the amendments which go beyond Section 23 of The Manitoba Act are the subsections dealing with communications between the public and certain governmental institutions. As representatives of an English-speaking community, which is confronted by a government preoccupied with the past, we applaud the inclusion of such rights in the proposed amendments. They are progressive and forward-looking and would, in effect, bring the minority language guarantees of 1870 into the twentieth century. The intent of the linguistic guarantees of 1867 and 1870 was clearly to provide minority language rights in the sphere of the citizen/state relationship. At that time, however, the role of the executive in this relationship was considerably less important than it is today. It could scarcely be foreseen in 1870 that governmental services would grow so dramatically during the next 113 years. Today, governmental regulations and bureaucracy touch us all in an infinite variety of ways every day of our lives. Hence, to include such rights in the proposed amendments is to acknowledge the development of government in Canada during the past century. It is to be true to the spirit of Section 23 and its minority language guarantees. It is a contemporary response to present-day needs and realities.

Moreover, the recent experience of the English-speaking community in Quebec suggests that there is little substance to the notion of "creeping bilingualism," the idea that the amendments will lead to ever-increasing French Language Services to the detriment of English-speaking Manitobans. At the present time, despite the excesses of the current Quebec Government, English-speaking Quebecers continue to receive more basic services in our language than do our French-speaking counterparts in any other province of Canada, including Manitoba. These services extend to health, education, social and government services and encompass universities, hospitals, homes for the aged and a good public school system. Yet, there has been no deleterious impact upon the rights of the French-speaking majority in Quebec as a result. In particular, the provision of English services has certainly not led to any loss of job opportunities or upward mobility for Francophones within the Quebec provincial civil service. Thus, the Quebec experience demonstrates that providing certain government services in the minority language will not have an injurious impact upon jobs and promotions for English-speaking Manitobans.

In Quebec, every recent survey and opinion poll demonstrates that the overwhelming majority of French-speaking Quebecers wish to retain a healthy, viable English-speaking community in Quebec. And it can scarcely be overemphasized that these rights, including our traditional access to many government and other services in both languages, has been essential to our sense of well-being and our sense of belonging as Quebecers and as Canadians.

There seems also to be an inherent contradiction in the twin arguments that, on the one hand, Manitoba's French-speaking population is too small to warrant entrenched rights and that, on the other hand, such entrenched rights would lead to rampant province-wide bilingualism. Even if the percentage of Manitoba's French-speaking population were to triple some time in the future and thus attain a level similar to that of the English-speaking population of Quebec, the

experience in our province amply demonstrates that there would be no loss of jobs or other adverse impact upon English-speaking Manitobans. The provision of services is not a source of pressure on jobs or upward mobility.

We must conclude, therefore, that the fears of "creeping bilingualism" and the loss of jobs are groundless, and that Article 23.7 dealing with the communications between public and certain governmental institutions is an essential minimum for French-speaking Manitobans. Accordingly, we see no justification for the removal or reduction in scope of Article 23.7.

One central belief has led Alliance Québec to journey close to 1,500 miles to participate in the hearings of the Manitoba Legislative Assembly: our belief in the future of Canada. Our country's future will be deeply affected by the decisions which are soon to be taken in Manitoba. The issue at hand touches upon the principal leitmotif of the Canadian federation, the belief that both our French-speaking and English-speaking communities can survive and flourish within a single nation state. Adoption of the proposed amendments and, in particular, the provision respecting government services would give renewed strength and vigour to that ideal. Failure to do so would have a very serious effect. The Canadian federation would be seriously damaged and the Quebec Government's independence option strengthened as a consequence. As Canadians, we must demonstrate with concrete actions our commitment to mutual respect and tolerance, for it is in the development of a shared mutual respect that the strength and unity of Canada ultimately rests.

The proposed amendments would stand as an unequivocal commitment to justice and respect. They would stand for generations to come as a commitment to Canada. Alliance Québec therefore respectfully urges the Legislative Assembly of Manitoba to adopt at its earliest opportunity the proposed amendments to The Manitoba Act without reducing in any way the scope or significance of the amendments.

We urge you to do this not because of the spectre of the consequences which would result from failure to do so, but because the proposal is fair, just and right.

Mr. Chairman, as we entered the room today, we were handed a copy of what we understand to be a discussion paper put forward by the Honourable Attorney-General. We have yet to have the opportunity to study the contents of that proposal. However, we do note that there is provision for a reduction in scope of Section 23.1. We consider this to be a matter of great importance, and we can't overemphasize enough the importance and symbolic importance of an unequivocal affirmation of the importance and respect for both languages in Canada.

With respect to the other matters mentioned in the discussion paper, we would respectfully request the indulgence of this committee that we be granted the opportunity to reappear if necessary later on in the hearings to discuss or perhaps comment on those changes. In any event, we would be prepared to proceed to entertain questions and explain the position of Alliance and our support for the initial agreement by the Government of Manitoba at this time.

Thank you.

MR. CHAIRMAN: Thank you, Mr. Maldoff. Are there any questions by members of the committee?

Mr. Lyon.

HON. S. LYON: Mr. Maldoff, in the second-last page of your brief you make the statement, "adoption of the proposed amendments, and in particular of the provisions respecting government services, would give renewed strength and vigour to that ideal. Failure to do so would have a dramatically diametrical effect. The Canadian Federation would be irreparably damaged and the Quebec Government's independence option immeasurably strengthened."

In that connection, Mr. Maldoff, I would appreciate having the comment of your group or any of your colleagues who are with you with respect to that statement because you will be aware, of course, that the provisions for the extension of French Language Services in Manitoba have been going on, in my recollection, for at least 20 years. As a matter of fact, after the Forest case, there was renewed interest by the previous government in extending French Language Services in Manitoba. Statements were made publicly by our government and then subsequently by the New Democratic Party Government when they came into office in March of 1982 about the establishment of the French Language Secretariat, the provision of certain services in French to the people of Manitoba.

I would appreciate having your comment on why all of a sudden this program, which has been ongoing as a matter of government policy for some considerable time, achieves this kind of pre-eminence in your mind that Canadian unity all of a sudden is going to be struck down unless this program is all of a sudden entrenched as a result of an agreement which this government, the NDP Government, has chosen to make with the plaintiff in a case which had been dismissed at the trial and at the Court of Appeal and was on its way, may I suggest, to being dismissed in the Supreme Court when this government chose out of some kind of abject fear of having the court make its decision upon the case to enter into an agreement, the principal component of which was the entrenchment of the very same services that were already being offered as a matter of government policy. How did this entrenchment provision that is contained in the amendments to Section 23, how did it arrive at a position in your judgment where the Canadian Federation would be irreparably damaged and the Quebec Government's independence option immeasurably strengthened if this were not now passed or entrenched in the Manitoba Constitution?

MR. E. MALDOFF: Well, you've made several points, Mr. Lyon, which I think require reply. I'd like to deal with one which is not really to the essence of the question which you have raised, but the comment with respect to the ultimate outcome of the Bilodeau case before the Supreme Court. With the greatest deal of respect, I think that it's fair to say that this is a matter which ultimately the Supreme Court may find itself deciding upon. I would point out that, out of the Province of Quebec, we have had a decision of our superior court in the Collier case which is quite similar to the Bilodeau case in which our Superior Court struck down

certain decreed collective agreements enacted by the Government of Quebec because they were adopted solely in one language.

Therefore, I think — (Interjection) — yes, she was a teacher. The question, therefore, of what the ultimate outcome of the decision of the Supreme Court would be, I don't think is quite as certain as perhaps you might feel. We believe there is a significant likelihood that Mr. Bilodeau would achieve success before the Supreme Court of Canada and I think all parties concerned feel that a victory before the Supreme Court of Canada is not the way to solve the very serious constitutional problem currently facing the Province of Manitoba and therefore the Government of Manitoba has embarked on a very laudable process of negotiation and trying to arrive at a solution which is tailor-made to Manitoba of 1983, which is in accord with the realities of modern-day government, in accord with the realities of Manitoba society, and we presume since the Manitoba Government was democratically elected by the people that it is a fair reflection of the spirit and the current day realities in Manitoba.

HON. S. LYON: Government popularity has changed, Mr. Maldoff, as we all know.

MR. E. MALDOFF: Well, as you well know, Mr. Lyon, one wins elections and has a mandate from the people.

HON. S. LYON: One loses them by exercising that mandate in contradiction to what the people wish.

MR. E. MALDOFF: I could enjoy this a great deal, but the last election results might be a comment of certain positions of the previous government of Manitoba on constitutional matters.

HON. S. LYON: As the next one will be of positions of this government.

MR. E. MALDOFF: I do recall that you were opposed to entrenchment of rights at that time also.

HON. S. LYON: Along with seven other provinces, including Quebec.

MR. E. MALDOFF: They agreed after the election result in Manitoba.

With respect to the consequences within Quebec and for the Canadian federation that you have asked me to comment upon, we have forwarded to all the members of the Legislative Assembly some documentation included which was an article, an opinion piece written by Lise Bissonnette who is the Editor-in-Chief of *Le Devoir*, who reflects a very important current of thought within our province and is highly respected as an opinion leader within our province.

I think the essential thrust of her argument is that the constitutional amendment is different from mere administrative practice, that when one moves to enshrine - and I use those words advisedly - enshrine certain rights in a Constitution, one is saying that these rights are fundamental to our country, fundamental to our society. These are things we believe in and are committed to now and for the future. We will only change

them by special occurrence and by very extraordinary measures which are required to amend a Constitution.

Therefore, I don't think one can compare the process of administrative improvement of services to the French speaking community with the question of constitutionally making the affirmation that these are bottom-line issues, bottom-line values that we, as Canadians, share, and Canadians react accordingly. That's why the constitutional debate in the early 1980s was such an important debate for all of Canada and one that occupied so much interest and attention.

As Miss Bissonnette points out in her article, and this is a view widely shared within Quebec, there is to say the least, a considerable amount of cynicism within our province about the ability of English-speaking people and French-speaking people to live together in Canada. There is a wide-spread feeling, and not without justification, that the French-speaking population of Canada and of Quebec has to fight and scrape for every right, every inch of territory to ensure that it can feel at home and secure and feel that members of that community are first-class citizens in this country.

So when we move to the question of the proposed constitutional amendment, it's also a question of the spirit in which this is done. Is this going to be done in a spirit of generosity, in a spirit of respect, in a spirit of accommodation, in a spirit that says: let us join together as Canadians and start working to build a better Canada and get on with the job or is this again going to be a begrudging divisive fight where communities have to tear each other to bits?

I think, ultimately, the amendment proposed, however it comes to pass, will be an improvement and a benefit to Canada. But I also would point out that if this amendment is undertaken in a generous manner, in a spirit that shows that we want to make a fresh start of things in this country, it will be to the benefit of Canada, to the unity of our country, and it will definitely set aside the arguments of governments, such as ours in the Province of Quebec, which argues there's no hope for Canada, we must give up on Canada, we've had too many experiences in Canada - just look at the treatment of the Francophones of Manitoba 93 years ago; look at The Education Act in Ontario, in Manitoba, and so many other provinces of Canada in the early 1900's. Our government has given up on Canada, but there are a lot of Quebecers, who though cynical, though concerned, though doubtful, still want to hope, still want to believe, and Manitoba can play the role right now of giving our community as Quebecers, English-speaking, and French-speaking, that hope. We are urging the Government of Manitoba not to give the opponents of Canada the arguments and ammunition they need to further their case.

MR. CHAIRMAN: Before I recognize Mr. Lyon with another question, I would caution both members and witnesses that we seem to run into the same problem in committee that we do in the House. Long questions lead to long answers. We have a long list. I would caution both witnesses and members to try and keep questions and answers short and to the point.

HON. S. LYON: Mr. Chairman, to Mr. Maldoff, given the fact that, as I have stated, there was improvement

being made by government policy over several governments of Manitoba in the past number of years with respect to the provision of French Language Services; given the fact that there was no divisiveness caused in Manitoba as a result of those government programs, which I can tell you as a lifetime resident of the province were generous, were programs that were being offered with respect, were meeting all of the idealistic criteria which you have established as being the hallmark of the constitutional amendment; given the fact that it appears from the wave of public response that we have had since the government made public its desire to entrench French Language Services and extend them in Manitoba by way of a constitutional amendment; given the fact that entrenchment and extension are causing great division within Manitoba, whereas the previous program under government policy was not causing such division at all, do you still feel it's advisable for Manitoba to be divided merely for the sake of entrenchment?

MR. E. MALDOFF: I don't think it's ever advisable for a society to be divided. I think it's up to the elected leaders of the population to show leadership and try to promote harmony and unity. Inasmuch as even the previous Government of Manitoba was committed to the provision of these services, we would urge both the government and the opposition members to play an active and constructive role in explaining to the population that there is no grave and dire consequence that will flow from the entrenchment to these provision.

Obviously the opposition, when it was the government, felt that there would be no grave and dire consequences, and obviously the population didn't perceive any grave and dire consequences, because they did not rise up against the administrative practice and policy of the previous Conservative Government of Manitoba. Therefore the facts exist, there is no problem, and therefore the fact exists that leadership should be shown by all sides of the House, and we urge people to show that leadership, to explain that there will be no grave and terrible results that flow from this, it will actually promote and lead to a better Province of Manitoba and a better Canada.

HON. S. LYON: How do we know, Mr. Maldoff, how the court will interpret these constitutionally-entrenched provisions after they become part of the, as you say, the enshrined Constitution of Manitoba. How do you, or I, or anyone else know the extent to which courts will be called upon to make interpretations of these provisions which government, as a matter of policy, would never put into effect?

MR. E. MALDOFF: As a member of the Bar of the Province of Quebec, I have the greatest respect for the judiciary, the sound and reasonable judgment of these learned men who are appointed to serve our society so well. I have every confidence that as they are called upon to interpret any provision of law, they will do so in the spirit, and against the backdrop of the intentions of the Legislature and the people of Canada.

In terms of how this will be interpreted - one implies, or feels, that it is implicit in this question that perhaps

it's inappropriate for courts to play a role of interpreting the basic rights of Canadians. We question that. I think, with the constitutional amendment, The Canada Act, the issue of the absolute supremacy of Parliament has been forever put behind us as Canadians and we have opted for a Canadian constitutional arrangement, which does recognize that there are certain basic rights of Canadians which must stand above and beyond the reach of any Legislature.

I have no concern and no fear about it. As a man who led a province, and was the Premier of a province, you understand that even in the days before The Canada Act our courts were called upon to pass upon and interpret the distribution and division of powers established under Sections 91 and 92 of The British North America Act. This is a role the courts have played, and except for a certain Premier in Canada at this time, it seems that most Premiers throughout the history of Canada have had respect for and abided by the reasoned and sound decisions of our highest courts of the country.

HON. S. LYON: On the topic of enshrinement and chiselling in stone any provisions of the Constitution, you will be aware, Mr. Maldoff, contrary to the impression that you've left, that the supremacy of Parliament is maintained in the present Canada Act by virtue of the notwithstanding clause, or the opt-out clause so-called, which was specifically placed in the Constitution as a parliamentary check on the presumed, or hoped against excesses that courts might impose upon the people against the judgment and the wishes of the people as evidenced by many, many experiences in the United States.

That being the case that all of the so-called fundamental rights that are contained in the Canadian Charter of Rights are subject to a notwithstanding clause which permits the Parliament of Canada and/or the Legislatures of Canada to legislate their way out of constitutional predicaments which courts might impose, what would your attitude be if you insist upon entrenchment of French Language Services? What would your attitude be to a similar kind of opt-out clause which could be placed in this amendment, which would, as in The Canada Act, ensure the continued right of Parliament, or in this case the Legislature of Manitoba, to enact laws which are in accordance with the wishes of the people?

MR. E. MALDOFF: I think that there will be other witnesses who will testify before this honourable body on the precise constitutional matters and implications of various provisions in a very technical matter. I would not want to wade in to that kind of discussion beyond saying, first of all, that it would seem that the proposal you're putting forward is extremely hypothetical in nature and this is the first time that anybody has mentioned the concept of having an opting out with respect to these rights. But in addition to that, I think we should point out that there are certain rights that exist right now in the Canadian Constitution which stand above the touch and the reach of any legislative body in Canada. I would cite Section 133 of The British North America Act of 1867, and I would cite Section 23 of The Manitoba Act of 1870.

So the concept of putting certain rights above the touch and the reach of majorities that may exist from time to time has been recognized in Canada for quite a long time, I think since the days we got this country together and agreed that we wanted to have a country that would recognize the importance of both and the contribution of French-speaking and English-speaking citizens.

HON. S. LYON: Mr. Maldoff, not to get into a wearisome legal dispute with you, the right to change 133 and the right to change 23 of The Manitoba Act was always implicit, provided there was unanimous consent of the provinces and the Federal Government.

MR. E. MALDOFF: That is always the case in constitutional amendments.

HON. S. LYON: So nothing is enshrined though beyond the reach of Parliament for all time.

MR. E. MALDOFF: One has instituted measures which make such amendment a very serious and important matter, and it's beyond the mere whim of a legislative majority existing at a time. There are a series of checks and balances to ensure that, when one is dealing with the fundamental values of our country, we act in a very careful and considerate and thoughtful way not only to the interest of a momentary majority, but also to the interest of the minority that may exist at any time and on any issue.

When I say minority, I don't only refer an ethnic minority or linguistic minority. I mean the phenomena of a numerical minority that exists on any issue from time to time.

HON. S. LYON: Just an observation, Mr. Chairman, in Canada, without the benefit of very many entrenched rights at all, we have achieved a degree of individual freedom for our citizens which is the envy of, I would say, 95 percent of the world. So I think we have come quite a way under the system without entrenchment. I am not quite so persuaded as Mr. Maldoff that entrenchment is the be-all and the end-all and the answer to greater freedom of individual Canadian citizens. We have enviable freedom in Canada under the existing parliamentary system.

My particular question, however, would be this. In the brief at Page 7, it says, "The Government of Manitoba, in refusing to run the risk of court-imposed bilingualism and in opting for a negotiated solution has acted in accord with the finest traditions of the Canadian policy."

I wonder if Mr. Maldoff could tell us what risks of court-imposed bilingualism he was referring to which might have arisen out of the Bilodeau case, the thrust of which, of course, was to declare invalid all laws passed in Manitoba since 1870 because they weren't translated into French.

MR. E. MALDOFF: In using these words - and I would like to just comment on a comment of the Honourable Mr. Lyon. Yes, Canada does have, for the most part, a fairly enviable record in terms of liberty. But let me tell you, Mr. Lyon, and gentlemen of this committee

that I, as an English-speaking Quebecer, do not in any way envy the status or the treatment of Franco-Manitobans over the last 93 years and understand very well, and the experience we've had in Quebec is very minor compared to the experience of the Franco-Manitobans here. There is nothing to envy in that treatment.

With respect to the question of court-imposed bilingualism, I think the answer is very simple; that we are alluding in our brief and submission to you not to a concept that is of major concern to us, but to rhetoric and language which seems to be emanating from here. We are merely alluding to, it seems that certain opponents are running around, discussing the concept of a risk of court-imposed bilingualism. That is not our understanding of the issue and not our assessment of risk.

HON. S. LYON: Is it not true, Mr. Maldoff, that the government's own constitutional advisor, Mr. Twaddle, advised the government as far back as the spring of 1982 that the conditions that the government would be agreeing to in the agreement with which you find so much favour went far beyond any conditions that any court could ever have imposed upon Manitoba as a result of the Bilodeau case going on to trial before the Supreme Court? What I am wondering about is: what are these horrendous court-imposed bilingual conditions that you and the government stand in so much fear of from the very same court that you say should now be allowed to make decisions with respect to how departments are staffed to the exclusion of the elected representatives of the people?

MR. E. MALDOFF: With great respect, I think we have to start this discussion at the beginning point. We are not talking here of a newly-created problem. There is a fact which exists. There is a fact that there is Section 23 of The Manitoba Act. There is a fact that this is being challenged before the courts, and there is a fact that, because of the Forest case, it is quite clear that Manitoba at a minimum has violated its constitutional obligations.

We may be speculating a little bit right now until the Supreme Court ultimately deals with this issue as to what the consequences of the breach of that obligation would be. Certainly attorneys for Ms. Collier in Quebec are of that opinion, borne out by the Superior Court of the Province of Quebec, that the consequences are quite serious in the sense that all laws adopted contrary to the provisions of Section 133 in the case of Quebec and similarly Section 23 of the Province of Manitoba would be inoperative or null and void, which could create a situation where we have the illegitimacy of every law adopted by the Government of Manitoba since 1890 put in question and doubt, and undermine the authority of the government with its own citizens. I don't think that is the type of situation we want to see develop in any province of Canada.

The issue at hand is that, given the fact that there has now been an assertion by the highest court of the land that Manitoba through the 1890 Official Language Act has violated its 1870 constitutional obligation, how do we solve this problem? Well, we can resort to a solution which was made in 1870, and perhaps not

terribly appropriate to 1983 and we would submit not terribly appropriate to 1870, or one can do as the government has done and said, what was the real spirit of the 1870 guarantee? Let us come to a solution, negotiated with the French-speaking community, that will respond to the needs of the government and to the needs of Manitoba society in 1983 and reflect the spirit, because that spirit has now been accepted by the court, that existed in 1870.

I think that is what the government has done. To a certain extent, the amendment will save costs for the Province of Manitoba in the sense of the Federal Government will be assuming a certain amount of the translation costs. Not all statutes will have to be translated. In addition to that, there will be a delay of time to allow for the orderly rectification of the breach of a constitutional obligation, and the addition to that of the recognition that the intention in 1870 was to allow both French-speaking and English-speaking people to feel secure of government service to the extent there was government service at that time. Now in 1983, the same spirit is prevailing in recognition of the fact that government is immeasurably larger than it ever was in 1870.

HON. S. LYON: You say on Page 10 of your brief, Mr. Maldoff, "The amendment would, however, put an end to the long-standing failure to abide by the Constitution."

Wasn't it a fact that the Forest case in 1979, and the subsequent announcement by our government in the early part of 1980, that of course Manitoba would abide by the rule of law and that steps would be taken immediately to reinstate Section 23; in fact an amendment was presented to the Legislature and passed by the Legislature, nullifying the Act of 1890. Did that not then have the effect of restoring all of the negated constitutional rights? What further restoration is needed? How does the entrenchment of French Language Services, which was never contemplated in Section 23 of The Manitoba Act in the first instance, how does that bear upon the restoration, as you say here, or put an end to the long-standing failure to abide by the Constitution? There was no long-standing failure with respect to French Language Services except for their limited use in the courts and in the Legislature of this province. Is there not in your brief somewhat of a confusion of principles and the understanding that you have of the restoration of Section 23, and trying to somehow or other imagine that the amendments proposed by the present government are in fulfillment of what the court ordered in 1979? They are no such thing, except with respect to translation.

MR. E. MALDOFF: There are several points which have been raised in this question. I think the two most important of which are the following, or I would respond to them as follows. With respect to government services, you've made the comment that these were not contemplated in 1870 and we would respectfully submit . . .

HON. S. LYON: Except in the courts and the Legislature.

MR. E. MALDOFF: Well, I think if we go back and examine the scope of government and its interface with

its citizens in 1870, people looked to the government for legislation and looked to the government for justice. Those are the two areas where people had contact. We didn't have all sorts of boards dealing with marketing and farming and all those types of things which currently exist. We didn't have all these government departments covering a wide range of areas which touch people's lives on a daily basis. We would submit that in 1870 it was definitely contemplated that the place where government and the public interfaced would be an area which was protected, an area in which citizens would be assured their ability to deal with their government in both languages. In 1870, yes it was very restricted; in 1870 government initiatives were very restricted.

With respect to the assertion that the repeal might have rectified the problem arising as a result of the adoption of The Official Language Act of 1890, no that does not entirely remedy the situation. Yes, it may dispose of The Official Language Act and it may solve the problem for the future on the condition that the Legislature and the courts start functioning in both languages as of the date of repeal, but we still have 93 years of laws or 90 years of laws that were adopted in one language in violation of Section 23. That problem persists. That problem still exists as of this day.

HON. S. LYON: Mr. Chairman, that problem, since 1979, has been in the course of being settled. The job of the Legislature of 1981 or 1982 or 1983 is not so much to atone for the transgressions of previous Liberal majorities in the Manitoba Legislature, as it is to give effect to court judgments in response to our uniform respect for the rule of law and to do so in a reasonable manner.

The fact that translation can't be done overnight is a fact that any court would have to take into account. The court cannot, as you are well aware, order the impossible. That being the case, how do all of these other, I would say - or they have been described as quid pro quo items, such as the entrenchment of French Language Services - how do they, in any way, relate to the so-called restoration of constitutional rights or failure to abide by the Constitution? Are they not really extraneous to the re-implementation of Section 23, which was accomplished by the Supreme Court and acted upon immediately at the next Session by the Legislature of Manitoba. What further needs to be done?

MR. E. MALDOFF: I don't think that we should be approaching this issue from the point of view or from a perspective of atonement for past sins. The issue before us is how we start to move on to the future and to rectify an existing legal problem. That's not a question of atonement and no one is asking for atonement. What one is urging is that the solution to an existing problem be a just, fair and reasonable solution, one that Canadians and Manitobans can be proud of and put us on a footing to move forward with unity and with a sense of confidence in one another and the future of our country.

With respect to your comment about the court not being able to order the impossible, I would not like to speculate on the nature of what a court order could be in this case, but implicit in the line of argument that

you have mentioned, Mr. Lyon, is the concept that if a government violates the law and does it for a short time, then the violation is rectified. If a government violates the law and does it long enough, then you don't have to worry about the problem. I don't think that that's the spirit under which our courts will operate, and I think the fact that this situation has persisted for 93 years, will not really alter the approach of the courts in dealing with the issue and dealing with the fact that it is previously decided in this section that the Manitoba Government stands in violation of its constitutional obligation.

HON. S. LYON: Mr. Chairman, the problem in which Mr. Maldoff becomes inextricably bound when he comes to Manitoba to tell us what a great job the government's doing with respect to a constitutional amendment that affects only Manitoba, is that he is unaware, to some extent, or fails to mention if he is aware of it, the facts and the realities of Manitoba history which were as follows: that Section 23, between 1870 and 1890 was honoured almost totally in the breach, rather than in the observance, and while that is not something that I defend or anybody of this generation necessarily defends, it is a historic given in the history of Manitoba, which I say with respect, Mr. Chairman, to our distinguished witness is much different from the history of the Province of Quebec.

In the Province of Quebec, as one of the Supreme Court judgments said, the use of English was taken for granted. In the Province of Manitoba the use of French, even between 1870 and 1890, was not taken for granted. So, Mr. Chairman, that being the case, how does Mr. Maldoff interpret this amendment as being something that restores some historic right and is required? How does this quid pro quo of French Language Services come to be something upon which Canadian unity is going to founder if it now isn't passed?

MR. E. MALDOFF: With respect to the point that this provision was one more honoured in the breach, I really don't believe that that change is the legal status of the matter.

HON. S. LYON: But it's a historic fact.

MR. E. MALDOFF: Furthermore, as a member of the bar yourself, I understand, you would understand that words in documents are intended to have meaning, and if the provision of Section 23 was inserted in 1870, it was for a reason and it was for the purpose of recognizing the type of society that Canadians wanted to achieve for themselves.

HON. S. LYON: This is an opinion question, Mr. Chairman, but I understand that it was in May of 1980, my recollection is it was in May of 1980, that the vote on separatism was held in the Province of Quebec. It was in 1979, of course, that the Forest case was decided by the Supreme Court. It was in the winter of 1980, before the vote on separation took place in Quebec, that Manitoba announced the repeal of the 1890 law, and announced that it was going to move ahead with further French Language Services and so on in the Province of Quebec.

How would it be that those actions taken by the Supreme Court, by the then Government of Manitoba and the Legislature of Manitoba had so little effect with your group as to, as I recall, deserve no comment before - and this was in a crisis period or in a crucial period before the vote - whereas now, if we are to believe your brief this morning, unless these amendments concocted by the NDP and proved by the Franco-Manitoban Society and the Government of Canada, unless they are passed immediately in the words in which they first saw the light of day, then Canadian unity is somehow going to founder? How do you explain the fact that French Language Services were being provided, that Manitoba was proceeding on a reasonable course with respect to the reimplementation of Section 23 and that, at least according to your group, had no measurable effect upon Canadian unity or upon the separatist vote, and yet now, unless we entrench French Language Services word for word as contained in this agreement, Canadian unity somehow or other is going to fall apart even if Manitoba is divided right down the stem on the point?

MR. E. MALDOFF: Well, going back into history once again, at the time of the Forest decision, we were supporting another case which went to the Supreme Court at the same time, and that was the Blaikie decision, which was quite similar to the Forest case, and the predecessor to Alliance Québec did, in fact, herald the decision as an important indication that Canada was changing and coming to terms with itself.

The message in the referendum once again, and largely assisted by that Supreme Court judgment, was that Canada is changing, that it is possible to move forward. One of the issues in the referendum, in May of 1980, for Quebecers was, are you prepared to give Canada another try for a renewed Canada. Quebecers voted yes, with concern, with apprehension, but once again they made that bet and took that chance.

I would point out also that when the decision came out in 1979, in the Forest case, the reaction in certain French-speaking circles in Quebec was quite interesting. They looked upon it with favour, but at the same time they said isn't it interesting that when the English-speaking population is threatened in any way they get justice - Bill 101 was adopted in 1977, and the Supreme Court had disposed of this violation by 1979 - but when the French speaking rights are violated, it takes 93 years for the matter to get there.

Now, that was a rather cynical view, but once again it shows the attitude that there is not a fair deal, there is not equal justice for all people in this country. We've got to overcome that view. That's why this is a matter important to Canadian unity. That's why this is a matter important in Quebec. We're urging you not to feed the arguments within our province that would once again allow people to say, well, we've got a right, but boy what a fight we had to have and what a watered-down right at the end of the day, and is it really worth it to hang in the long haul for this fight, because we're just never going to get there, we don't really belong, we only get whatever we can tear out of people. We urge that the spirit that override this discussion in Manitoba be a positive one. We urge that Manitoba show that kind of leadership. We urge that Manitoba not, as I

think it has been doing to a certain extent, diminish its own reputation within this country, and perhaps even embarrass itself at the national level in terms of turning this issue into such a divisive politicized matter. We urge that the spirit that prevail be positive and supportive. We don't ask the people of Manitoba to adopt this because of the negative consequences which would flow from failing to do it; we're asking the people of Manitoba to do it as an active commitment to the future of this country, because what is being proposed is good, it's fair, it's just, and it makes sense.

HON. S. LYON: Mr. Chairman, not an unfair questions because it's one that I put to Mr. Maldoff when he and his colleagues were kind enough to visit with our Caucus some months ago.

Given the fact, Mr. Maldoff, that this proposal, advanced by the current Government of Manitoba, has caused a great deal of division within the social fabric of the province and among the people of Manitoba, how much division, how much acrimony must the people of Manitoba accept in order to achieve this blissful state of Canadian unity that you say is implicit in these amendments, and indeed to help the position of the Anglo minority in the Province of Quebec? How long must we remain as a province and as a people upon the altar of sacrifice for these high flown, high blown ideals that you state so eloquently in your brief?

MR. E. MALDOFF: We are not urging the people of Manitoba to present themselves on the altar of sacrifice for the English-speaking community of Quebec or for anyone else. You mention that the proposal has caused division. As in any debate, one can get into a very long debate as to who really caused the division in this matter, and who has really precipitated the division.

As you yourself have said, and as we mentioned a little earlier in our exchange, the previous Conservative Government of this province recognized that it was legitimate to provide these services. There's nothing terribly exceptional in this, and the arguments that are being raised right now are arguments that, guaranteeing these rights, are going to affect jobs, they're going to radically alter the nature of society, but yet the previous Conservative Government was taking very similar measures itself.

HON. S. LYON: Not by way of entrenchment.

MR. E. MALDOFF: Then the issue for you is entrenchment, but the issue is not whether these services will cause the dislocation that is suggested. Therefore it's clear that the dislocation is a bogey man in this issue, and there may be concern on the part of certain people, who don't like the concept of entrenchment of rights, but that's far from the problem of the dislocation that it is hypothesized at this point. If there was no dislocation at the time of your government, there will be no dislocation into the future with the entrenchment of the very same provisions.

HON. S. LYON: Mr. Chairman, can Mr. Maldoff give us a constitutional guarantee that the courts will always interpret these entrenched provisions of The Manitoba Act in reasonable, respectful, fair, honest, idealistic way,

as he says? Can he give us that undertaking today when the Chief Legal Advisor to the Crown can't give that undertaking, nor can any other lawyer worth his salt give that kind of an undertaking with respect to what the courts, or how the courts will interpret these provisions with respect to French Language Services, which go way beyond anything contemplated by Section 23, and represent the quid pro quo for this government negotiating, in the opinion of many of us, a bad agreement to get out of a case in which the plaintiff had an infinitesimal of succeeding. Manitoba, according to you, should accept this bad agreement because if it doesn't, somehow or other Canadian unity is going to be affected. Your argument, sir, with the greatest of respect, does not hold together.

MR. E. MALDOFF: Mr. Lyon, it is you that is suggesting that this is a bad agreement. The fact of the matter is that we support this agreement very strongly and believe that your own government - at the time you formed the government - your own actions indicate that the services that are going to be guaranteed are acceptable and reasonable services. I don't think this is a bad agreement in any way.

As to the question of guaranteeing interpretations by the court, I could be very glib and say, there are no guarantees in life and we all know that, but I'm not going to say that. What I'm going to say is that I have faith in the people of Manitoba; I have faith in the people of Canada; and I have faith that the judiciary, who are appointed from among the members of our society, will come to the appropriate decisions, at the time they are called upon to make those decisions. That is my belief in the future and the direction of this country.

HON. S. LYON: Mr. Chairman, just so Mr. Maldoff will understand that there is no great difference between the faiths that we share, I too, have faith in the people of Manitoba and in the elected representatives of those people from time to time. Why then should this government be presuming arrogantly to put beyond the reach forever of the people of Manitoba, through their elected representatives, services in French language, which can be multiplied by court decisions over which this government will have no control? If we commonly share this faith in the people of Manitoba, why then do we not leave the implementation of policy with respect to French Language Services in Manitoba in the hands of the people elected to make policy, that is the elected representatives of the Legislature - not the appointed members of the court, appointed by the Federal Government into federal court positions, over whom no elected representative has any control, unless a notwithstanding clause is put into this section as it was into the Charter of Rights?

MR. E. MALDOFF: In looking to the nature of our country, it's somewhat less simple than merely a question of existing majorities at any given time. When I speak of faith in the people of this country and the people of this province, I speak of the faith in our ability to devise and to have devised a political system, which is there to protect our basic values and to ensure that we can progress and move forward as a united society and a united country. In that way we have established

various provisions; we have established constitutional provisions; we have established constitutional customs, which have been tested all the way up to the Supreme Court of Canada, and all of these guidelines that govern our conduct with each other. I have faith in our ability to continue to have a system which can do that and respond to people's needs.

There is always concern about momentary majorities; there is always concern about people perhaps moving in that direction from time to time, but as Canadians, we've shown we ultimately come back to the right direction. That's the essence of it. In our court system itself, we have the principle of several levels of decision-making by the courts, in order to ensure that we're not dealing with one man's arbitrary opinion, but a system that ensures that all views are expressed and understood.

Certainly I would point out that the need to put certain matters of fundamental belief beyond the touch of momentary majorities can be explained or justified in no better way than what has happened in the past in this country, and indicating how important it is, and confirming how important it is, to give that security.

Canada is moving in a very positive direction. We look to things like the progress in the Province of Manitoba, even before the proposed amendment. We look to the national Conservative leadership convention, where we saw - in the election of Brian Mulroney as leader - that the issue of recognition of both languages as being a central issue for a national leader in this country. I think there are lots of indications that Canada is moving in that direction. We see the growth of French Language Immersion Programming. I believe that perhaps some of your children may even be participating in that. We see a recognition that this is important and all we're asking at this point is that we, in our Constitution, recognize the same values that we, as individuals, hold so strongly.

HON. S. LYON: Mr. Chairman, if, however, by putting these matters in the Constitution, to use your term Mr. Maldoff, "enshrining them in the Constitution," we are thereby doing potential harm to the progress that was already being made in the provision of French Language Services, to the great progress that was made in Manitoba without any constitutional amendment to French Language education, by various governments in this province, going back to the 1960's in particular, if, by enshrining these matters now in the Constitution you are going to do potential harm to the measurable progress that has been made in French Language education, French Language Services, why in heaven's name, would any government or any group such as yours, want to cause that potential of harm, that potential of division - it's not a potential of division, it's existing division - within the province? Why not leave the situation as it is, without benefit of a constitutional amendment at all, and let Manitobans continue to live in peace and amity without this new extraneous condition being imposed upon them?

MR. E. MALDOFF: First of all, I think it's very important for me to re-assert the role of Alliance Québec before this committee today. We are not the cause of action in the Province of Manitoba. We are here as witnesses

before your commission to give our assessment of the situation and to bring whatever information may help this committee and the people of Manitoba in their deliberation.

In terms of entrenchment, as you suggest doing potential harm, I fail to see in any way how that can do potential harm, when in fact this process was under way before the proposal even came forward. The ideas that are being put forward are sound and valid, accepted and respected by the citizens. If political leaders and opinion leaders in this province explain that to the population, that there's nothing terribly radical that's happening in terms of the actual relationships between people and society, then I don't think we will see any harm, and perhaps whatever public emotionalism that has arisen so far, can be quelled with reasoned and dispassionate explanations that this is for the benefit, this will not be harmful, that both sides of the House have agreed that these are valid measures to be taken. In terms of the actual provision of services, there has not been the harm in the past and there ought not to be any reason for harm in the future.

HON. S. LYON: But Mr. Maldoiff, you've said on three different occasions that you can't give any guarantee, anymore than I can, as to how the courts are going to interpret this provision once it is chiseled in stone and put into the Constitution - "enshrined" to use your provision. If you can't give that guarantee, if I can't give that guarantee, if it's being removed from the hands of the elected representatives of the Legislature for all time, then how can you go about pacifying the intuitive and I think legitimate fears of the people of Manitoba, unless you want to be some form of modern-day medicine man who's telling mumbo jumbo to the public which isn't true?

MR. E. MALDOFF: The question of what one can guarantee to the people of Manitoba or to the people of Canada is always a difficult question but, even when you were Premier of this province, there was a respect for our judiciary and for their ability to make decisions which are reasonable and just in the circumstances.

If the challenge was so great, if the fear of an irrational judiciary was so great, then I am absolutely shocked that we have not in the entire history of our Confederation seen a significant movement of political leaders to abolish our courts as being dangerous and a threat to our society. We have abided in the fact that these courts can make reasonable decisions even with respect to the exercise of powers by provincial legislatures, by interpreting the powers of those legislatures vis-a-vis the power of the Federal Government as entrenched in Section 91 of the BNA Act. This is a process we all respect, we all accept and our basic values in this society are that we can trust our courts. Until there is evidence that we can't, I'm prepared to continue to trust them.

HON. S. LYON: Well, that being the case then, Mr. Maldoiff, would it not be advisable in your opinion to scrap these amendments, and because you have no fear of the court making any irrational decision, let the Bilodeau case go to trial and let the court make its

determination upon the Bilodeau case and end the division in Manitoba?

MR. E. MALDOFF: If the suggestion is that one would rather have Manitoba live with an 1870 solution than a 1983 solution, I think that that's the prerogative of the people.

HON. S. LYON: The suggestion is the courts will not be irrational. That's your word.

MR. CHAIRMAN: Please proceed, Mr. Maldoiff.

MR. E. MALDOFF: Of course the courts will not be irrational and I'm not in any way suggesting that they will. What I am suggesting is that the 1870 arrangement in the context of 1983 could be updated to reflect modern-day realities and that that would be an appropriate measure for a government and the people of Manitoba to recognize. I don't think that any citizen of Manitoba would rather solve a problem by imposing 1870 solutions.

HON. S. LYON: Mr. Chairman, I have no further questions at this time for Mr. Maldoiff. I wish to thank him and his organization for coming to speak to us this morning and earlier coming to visit with members of the government caucus and our caucus. We appreciate their interest. Even though our views may not coincide, we appreciate that they are speaking out on behalf of Canadian unity as they see it, as, indeed, Manitobans are speaking out on behalf of Canadian unity as they see it here, both in good will and with the best interests of the country at heart.

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

HON. R. PENNER: Mr. Maldoiff, in one of the premises to a question, Mr. Lyon referred to the decision of the Supreme Court in Forest and went on to say that subsequently a government of which he was the head moved to deal with, in a positive way, the obligations posed by Section 23. I now have that statute in front of me. It's called an act respecting the operation of Section 23 of The Manitoba Act in regard to statutes.

I first point out to you, Sir, that it, in Section 1, says, in this act: official language means the English language or the French language. So, we have a statement by the previous government that as far as Section 23 is concerned, official language is the English language and the French language. I'd just draw that to your attention.

I now ask you whether, in your view, an act - and I have that act in front of me - which states that, if the bill for the act was printed in one language, at the time that it was distributed, then that - and I'll read the section - for greater certainty in interpretation of statutes of the province here to enact it, that bills for all acts hereto enacted shall be conclusively deemed to have been printed in the English language when copies thereof were first distributed to members of the Assembly. Then it says in an earlier section that in that case, in case of a conflict, the English language shall prevail. Do you deem that to be fulfilling the spirit of The Manitoba Act of 1870?

MR. E. MALDOFF: There is a similar provision in, I believe it's, The Interpretation Act of the Province of Quebec, which most members of the legal profession routinely disregard as not reflecting the spirit of Section 133 of The BNA Act. The widely-held view is that the spirit of 133 and consequently the spirit of 23 of The Manitoba Act was to put both those languages on equal footing and that subsequent mere legislative enactments which purport to put one on a stronger footing or a more important footing derogate from that spirit and therefore in all likelihood would not be upheld by the court.

HON. R. PENNER: My second and final question relates to a further premise of Mr. Lyon when he talked about entrenchment, enshrining, he used the words "chiseled in stone for all time." Is it not the case that pursuant to Section 43 of The Constitution Act, 1982, a constitutional amendment, which deals with the language issue affecting one province, only requires the vote of the Legislature and of the House of Commons? And if there would, let us say, unhappily for Manitoba, be a Conservative Government replacing this one and a Conservative Government in Ottawa, I make no value judgment on that, then presumably they would see eye to eye on the notions of the former Premier of this province that it shouldn't be all that difficult to change the Constitution, would you not agree?

MR. E. MALDOFF: With all due respect, I find that when one gets to the point of trying to speculate on how easy or difficult it would be to change the Constitution, one is in a realm that's beyond the competence of this witness. I think that the spirit of the amending formula was one which would ensure that there would be checks and balances in the system of constitutional amendment to avoid fundamental provisions being changed by capricious will of temporary majorities as to how difficult or easy it would be to actually produce a change or an amendment when there was merely a province and the federal government that were involved, I think that would depend in large part on the extent to which they were seeing eye to eye.

HON. R. PENNER: In any event you would agree, would you not, that it is much easier to change that kind of constitutional provision than one which requires the concurrence of seven Legislatures covering 51 percent of the population?

MR. E. MALDOFF: Absolutely. There is no doubt that the intention was that on a matter that was specific to one province, such as the one you've mentioned, that there was to be an amending formula which would be less onerous than the amending formula requiring the approval of seven provinces and special majorities.

HON. R. PENNER: Those are my questions and I, too, would like to thank Mr. Maldoff and the Alliance. I agree to this extent with the remarks of the Leader of the Opposition that I think they are, as they see it, performing a formidable task in terms of Canadian unity to which I think we all aspire.

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

MR. L. SHERMAN: Thank you, Mr. Chairman. Through you to Mr. Maldoff, Mr. Maldoff, I have some difficulty with the approach that the Alliance takes to the Canadian Federal constitutional system, particularly insofar as it is reflected in the Alliance brief, and I have a question or two that, as it turns out follows upon one or two of the questions asked by Mr. Penner, but they were not intended as follow-up questions to his.

On Page 6 of the brief, Mr. Maldoff, the Alliance cites the belief that, "democracy in Canada means no more than the rule of the majority of the people through the legislative majority of the moment." It says that this "is a simplistic belief." I would infer from that that the Alliance means, it is a superficial belief and it is an inaccurate belief. I would share that position. I think that is a point well taken. But on Page 7, the Alliance then goes on to propose that, "In the Canadian federal constitutional system, the will of the majority does not and should not necessarily prevail when it is merely the formal will of a mathematical majority."

My question, Mr. Chairman, through you to Mr. Maldoff, is whether the Alliance is saying or suggesting at this juncture that it is opposed to the amending process that currently obtains where the Canadian Constitution is concerned. In other words, given the history of the search for a patriated Constitution in Canada, which turned so fundamentally on the whole issue and the whole question of the amending formula and the amending machinery, how does the Alliance support that kind of statement on Page 7? How does that statement jibe with the historical journey towards a patriated Canadian Constitution with the kind of amending formula that is in existence at the present time?

MR. E. MALDOFF: I don't think that this is the time to enter into a discussion of an amending formula which was agreed to by nine provincial Premiers and the Prime Minister of Canada. That is an issue which is behind us and can be raised at some other time.

In terms of the issue of how one reconciles or understands the concept of the unbridled will of the majority with any amending formula, I see very little difficulty in the notion. The amending formula is a procedure which has been established to ensure that we are not dealing with a mathematical or the capricious will of a majority that necessarily exists at any time. We are dealing in the amending formula with a Federal Government, duly elected, and the governments of 10 provinces, duly elected, representing their constituents in turn who have to, in some way, agree that the proposed amendment is one which is in the interests of this country.

It is not merely a question of one province and the mathematical majority of that province saying, we wish to change the Constitution of Canada as follows in one way or another. We have put in a series of checks and balances that ensure that something beyond a mere 50 percent majority is required to change provisions touching on the fundamental values of Canadian society. I think it's easy to reconcile. Ultimately, change has to occur by some decision-making process. Even if one

argues that it's unanimity, it is still mathematical, that's 100 percent.

The point is, we have deviated and derogated from the ordinary rule where a simple bare majority can change or legislate, to say that it takes a very special procedure and an agreement of a wide range of people before something can change.

MR. L. SHERMAN: Mr. Maldoff, I appreciate that answer, and I find it expansive and educative in terms of the Alliance brief, because there certainly is no reference to the term "simple" or the application of the term "simple" in the point that the Alliance makes on this subject in that section of the brief. If the Alliance is saying that what is necessary here is more than the formal will of a very simple mathematical majority, then that alters the argument. But certainly no one can argue that the federal constitutional system in Canada does not respect the formal will of a mathematical majority, because it is based entirely and almost exclusively on that kind of parameter. If you are talking about a very simple majority, 50.1 percent as against 49.9 percent, then I take the Alliance's point a little more clearly. Thank you.

Mr. Maldoff, one other question, given the position that the Alliance takes with respect to the constitutional system and responsible and honourable democratic decision-making, are you saying that if a substantial mathematical majority of Manitobans demonstrated their opposition to the proposed resolution of this government that the Alliance would take the position that was unacceptable and unconstitutional?

In other words, no one knows at this juncture what the position of Manitobans is going to be vis-a-vis this proposed resolution, at least certainly not in a formal sense. That is the whole *raison d'être* for these meetings. We want to hear from the people of Manitoba. In the historic traditions of the province, I expect that everyone around this table is prepared to react and respond properly to the expressed will of Manitobans, but I wonder whether the Alliance is suggesting that kind of initiative by this committee should be precluded because of its views with respect to the federal constitutional system and the process of democratic change. Are you saying that if a majority of Manitobans demonstrated their opposition to this proposed resolution, the government should proceed anyway?

MR. E. MALDOFF: It would seem that the question which has been asked is leading in the direction of apparently certain thoughts that have been mentioned from time to time here in Manitoba about the possibility of a plebiscite or popular referendum on minority language rights. Speaking as a member of the English-speaking community of Quebec; speaking as an English-speaking Canadian; speaking as a person who is numerically in the minority in the province in which I live, I find the thought of a referendum or plebiscite on minority rights, whichever minority, absolutely appalling. I find it almost unbelievable that proposal would be considered in a serious vein.

The concept of protecting minority rights is the act of elected leaders looking to the best interest of their society as a whole, not just the majority which elected them at any given time, but all the citizens of that society

to ensure that we have a good, viable and socially just society. I can't think of many means that would be more divisive and really a serious threat to the whole concept of respect for the minority than constantly saying, well this is too hot an issue for me to really make a judgment call on about how I want to see my society go, so let's throw this thing to the lions - excuse the - that's with an "I" - and let's put this out in the public domain and have a public debate about how we feel about our minority this day.

We, in Quebec, have had a lot of experience, perhaps more than other Canadians, with the concept of a referendum. We know what that can do to a society. We know what can happen with the referendum when it's politically manipulated, and they can be very easily. If one recalls the referendum question in the 1980 Quebec referendum on independence, the question which was supposed to deal with, do you favour independence, yes or no, turned out to be a question that had about a 130-word preamble explaining the political position of the government of the Province of Quebec, and followed by a perfectly obscure question which the government was hoping it would be able to interpret in whatever manner it wanted.

I really would urge you as members of the Legislature of Manitoba not to follow down that course, and to demonstrate the leadership for which you were elected and to take on the responsibility for which you were elected.

MR. L. SHERMAN: Mr. Chairman, through you to Mr. Maldoff, I want to assure the delegation that I was not suggesting a plebiscite or a referendum be held on this question. I'm sorry if that was the inference drawn from my questions. I would like to correct that impression for the record. Nor do I think any of my colleagues have suggested at any time that a plebiscite or a referendum in the conventional sense should be held on this question.

We have argued that it is the kind of question that certainly could deservedly be put to the people of any jurisdiction in an election. It could be incorporated as part of a platform that a party was taking to the people at election time, but we have never suggested and I certainly have not suggested a plebiscite or a referendum.

Mr. Maldoff, you have made reference to the public arena. That is precisely where the proposal now sits. I, for one, am content with the fact that it has been injected into the public arena where it did not sit, I might say, four months ago when it was first introduced to us in the Legislature of Manitoba.

So my question to you, Sir, on this point is, whether the Alliance would not agree that the response from Manitobans that will be forthcoming presumably through this exercise now under way in this public arena is one that should be respected notwithstanding the Alliance's view on constitutional change.

MR. E. MALDOFF: I think the process of holding a public commission is a process of inviting people to make submissions, to bring forward their opinions for consideration by duly elected legislators so that the legislators can make an informed decision as to the direction they should go. I don't think it is a mere

question of tallying up how many briefs come in yes and how many briefs come in no, or whether the yes side got up and tore off their clothes and got very emotional and the no side stayed very calm and passionate.

I think the issue is a process allowing the public to have input into decision-making by people who are elected to make decisions, and allowing those decision-makers to get a sense of some of the views and perhaps bring to legislators' attention oversights, things that haven't been considered. We know the enormous workload that all of you gentlemen carry, and the process is one to allow the public to perhaps bring forward ideas that may have been overlooked in the ordinary course of doing any work of this nature.

So the process of consultation is laudable and responsible. I think one should be listening very carefully to that consultation, especially for new matters that hadn't been considered before and new information. In that sense, yes, I think that this process is an important process.

In terms of how you as elected officials ultimately deal with the information brought to you, that's what you gentlemen were elected for. and it was to exercise a judgment, not to just add up numbers or rate things on an applause meter.

MR. L. SHERMAN: In conclusion, Mr. Chairman, to help me, Mr. Maldoff, just to understand precisely where the Alliance stands on this question, is it safe to assume that the position of the Alliance is that these public hearings are all very well and good, but they should really constitute no more than a rhetorical exercise; and that regardless of what Manitobans say to this committee during these hearings, the government should proceed with its proposed constitutional amendment?

MR. E. MALDOFF: We are the first group appearing before you in this process of hearings, so it's hard to speculate on what may come forward. In the exercise of public hearings, and we have appeared before others in our province and in Ottawa at the Federal Government, I don't think that this should be treated as a rhetorical exercise. I think that would be really a manipulation of the public, a ploy of democracy that really isn't intended to be a substantive act by the government. But this is a process of consultation that we're going through, and I think that the role of elected decision-makers is to receive this input and see, not what necessarily the will of the majority of deponents may be before this committee, but to carefully analyze what people are bringing forward to see if there is something which has not been considered before, which is of merit, which would improve this matter, which would help the government come to an even more just solution.

The issue is not whether this is good for election or re-election, and let's get a - this is not an opinion poll that is being conducted here. This is a request by the Government of Manitoba for people to come forward and present thoughtful, reasoned positions to help the government understand a proposal or deal with a proposal which is put forward to the people. I think it must be understood in that light.

MR. CHAIRMAN: Further questions, Mr. Sherman?

MR. L. SHERMAN: No, Mr. Chairman. I would like to thank Mr. Maldoff for his presentation and his willingness to deal with the questions I've put to him. Thank you.

MR. CHAIRMAN: Mr. Doern.

MR. R. DOERN: Mr. Maldoff said that he deplored referendums. I want to ask him whether he deplores the democratic process or whether he deplores the electoral process which, in a way, is a referendum on the government?

MR. E. MALDOFF: This morning has been a very interesting exercise for myself. As a lawyer, I have appeared in court on occasion but, being on the other end of this, the cross-examining lawyers keep changing. Through the course of this, I have heard arguments that Parliament is supreme or more or less supreme and now arguments that perhaps the people are supreme and Parliament isn't supreme. I think we have to understand what process we use in Canada to make decisions.

We have recognized decision-making bodies. We have courts. We have trust in both of those structures working together to produce the kind of society we want to have. The concept of a referendum or a plebiscite being used as a decision-making process is to usurp the role of all those levels of decision-making that we, as Canadians, have agreed upon. It may be appealing at the moment for political and partisan reasons, to call to the people and say, don't you want to have a say on this issue? But there are ways that we have agreed upon, as Canadians, through which the public does have a say on issues and that is informed discourse before bodies such as this and debate before the House by elected members. We strongly support the values of our Canadian society and the approach we've had.

It was of great concern to us when in Quebec, the government of our province chose, instead of saying we will stake our mandate on independence, oh no, we won't stake our mandate on independence, what we will do is create a referendum, which really doesn't have any effect on what this government believes in, it's just another chance for the government to find out whether most people agree with the political party that formed the government. That was a usurpation of the democratic process in our view.

A democratic process is more than just majorities from time to time. It is a process of making decisions which respect the will of the majority, and the rights and the need to protect the minority, and we have an entire system that we have set up in order to do so. When we approach issues, we should always be thinking of improving that system and not moving back to forms of democracy which didn't work in the past and can lead to results which no Canadian would want to have.

MR. R. DOERN: Mr. Maldoff, you obviously were uneasy and feared the referendum in Quebec, but yet you won it, so what is your concern here?

MR. E. MALDOFF: I don't know if the honourable member was in Quebec during that period. It's an

experience I wouldn't like to live through again as a Canadian, or as a Quebecer. It was divisive; it was emotional; it was often irrational. We were subjected to demagoguery and manipulation. We experienced all the things we hoped in Canada that we would not experience. Yes, we won it because we were right, but the point is, that is not the decision-making process that we, as Canadians, should follow.

If a government has its views, it puts its policies and its platform forward and it stands on that policy and platform. We were not afraid of the referendum so much for the outcome, as we were afraid of the referendum for what it does to a society, dividing brother from brother, dividing parents and children, dividing a society in so many ways, family to family. We just do not think that's the type of emotionalism and divisiveness which responsible leaders would want to impose on their citizens. I think we all have responsibility to spare the citizens of this country that kind of an experience and to respect forms of decision-making which allow for all parties to recognize consensus and move forward together, after a decision is made.

MR. R. DOERN: So in your judgment elections are fine; elections are rational; elections are non-divisive. But referendums are not fine; they are not rational; and they are divisive?

MR. E. MALDOFF: Elections are not single-issue matters. Elections are questions when a series of measures are put forward to the population. Yes, there are times when population does have to make a decision and that's the ultimate way we ensure that our rights, as citizens, are protected or going to be advanced. But the fact of the matter is, there is an entire difference between an election campaign, where one is judging the quality of the candidate, where one is judging the platform that he stands for, on so many different issues and putting a single issue to the people. This is not a hypothetical debate. We're not debating a municipal by-law on whether we should change the zoning of a certain area.

What we're talking about are some pretty basic values here and the question one has to ask is, does one say to Canadians, well how do we feel about French-speaking Canadians this week? Well I don't think that's the approach. I wouldn't like to see that approach taken in Quebec. In the early days before the referendum, the Government of Quebec did attempt to do that by trying to, in some way, say that the English-speaking population weren't really Quebecers, that we really didn't belong there, that we are Canadian interlopers, that we were the cause of so much of the damage.

Certainly there was an attempt in the early stages - which our community handled with great responsibility and dignity by showing restraint - but there was an attempt to set our community as one of the issues in the Quebec referendum. Does Quebec belong to all Quebecers, or does it belong just to French-speaking Quebecers? Who does the state function for? My friends, I really would never like to live that again and I wouldn't want to thrust that on any group in our society, be they French-speaking Canadians, English-speaking Canadians, or any ethnic group or other group that exists within our society.

MR. R. DOERN: Mr. Chairman, if the P.Q. Government of Rene Levesque put a plank in its platform in the next election calling for separation, you would say that because it's in an election campaign it would be fine and rational and non-divisive?

MR. E. MALDOFF: I think, at that point, people assess whether they want to live for four years or five years, as is currently guaranteed, with this government. I think that the question would be put to people, as to whether they want to have this as their government. Yes, it would be divisive but at that point people are being asked to choose a government based on that option and many others. Because they not only have to ask the question, do you favour independence, yes or no, but at that point it is incumbent on those who propose the option, to elaborate the entire nature of the society they propose, as an independent Quebec society.

How are we going to deal with the debts that Canada has, and how are we going to divide up the assets that Canada has, and how are we going to deal with minority rights in this new independent Quebec that would be proposed in such a hypothetical situation, and how would we deal with a government, and how would we deal with the issue of sovereignty and international trade, and who are our allies going to be, what sphere of influence are we going to be, and how we going to defend ourselves, what sort of Navy are we going to have? All those issues would have to come forward at the same time and I'm quite prepared to see a government come forward with an entire proposal that doesn't just say - in your wildest dreams how would you feel about being independent - but says, this is what independence means, do you like that? At that point that's a responsible way to proceed with the debate.

MR. R. DOERN: So to sum up here, you're saying that some elections are divisive and most referendums are? Is that what you're saying?

MR. E. MALDOFF: I don't claim to be an expert on all referendums held throughout the world, throughout our history. I can only speak, based on the experience we had in the Province of Quebec, and speak on a very profound conviction that questions of basic values of Canadian society, like treatment of our minorities, is not the appropriate subject matter of plebiscites or referenda.

MR. R. DOERN: Your delegation has come here a number of times. They're obviously well financed. They have some pretty expensive literature that is being passed around. Could you inform us as to what your annual budget is and what your sources of funding are?

MR. E. MALDOFF: I don't have our financial statements with us, but I will be glad to give you - as long as you don't hold me to the last dollar on it - a rough breakdown. Alliance Québec was formed as a result of many organizations in the English-speaking community coming together and recognizing that if we were to have a future in our province and a future in Canada, we have to create an effective vehicle through

which our community could articulate its vision of Canada, our vision of the future. The organization is democratic in the sense that our leadership is elected, our policy is voted upon at an annual convention. We have 22 regional organizations around the province working on such issues as being able to get adequate health services, social services, government service in our language, getting our fair share of government resources allotted to us for cultural activities, for example, dealing with problems like the prohibition against bilingual signs and problems that were experienced with things like francization and overzealous bureaucrats, who are attempting to define their own political priorities within the Province of Quebec. So we have 22 regional organizations or chapters around the province that are actively involved, each with their own board of directors with at least a dozen people and hundreds of members. As I said, we have over 40,000 members.

In terms of the annual budget of the Alliance, and I would point out before coming to this that I believe, and please correct me if I'm wrong, the population of this province stands at approximately 1.2 million people.

A MEMBER: One million.

MR. E. MALDOFF: One million? Well the English-speaking population of the Province of Quebec, which is up against a government which has been dedicated to undermining us for quite a few years now, numbers one million people, and we have to service that entire community in the face of a government that only gives us service to the extent that we can drag it out of it.

Our budget in the past year was \$900,000 of which we received approximately 60 percent through the Official Language Minority Program of the Secretary of State of the Federal Government of which we received almost all of the rest by private contributions which we raised in a fund-raising campaign across our province to finance the operations of our community.

Our organization was established in January of 1982, and we have aimed to move to at least matching funding from our community on the principle that our organization and our community must be independent and completely independent in every way from government. We have in one year made a very substantial stride in that direction, having raised in excess of \$400,000 this time around. In addition to that, we have received funding to a fairly limited extent, but to the extent that the Government of Quebec was embarrassed into giving it to us from the Government of Quebec.

MR. R. DOERN: So, you receive approximately \$540,000 a year from the Federal Government?

MR. E. MALDOFF: Well, the amounts are changing as the years go on but, in the past year, it was roughly in that area.

MR. R. DOERN: Do you have regular contact with the Secretary of State or the Federal Government in regard to your policies or programs or personnel?

MR. E. MALDOFF: Absolutely not. No. In no way, absolutely not. I think the inference really would be of

concern to all of us who have been elected by our community to serve our community. We have contact with every level of government on a regular basis. We have more contact with the Parti Quebecois Government of the Province of Quebec than we have with the Federal Government and in terms of our policies as I told you, they originate from resolutions put forward by our regional organizations and are voted upon at an annual convention, the last of which took place in early June of this year. It's at that point that our policy is adopted.

MR. R. DOERN: How large is your full-time staff?

MR. E. MALDOFF: We have a full-time staff of approximately 25 people.

MR. R. DOERN: And your membership is 40,000, is that what you indicated?

MR. E. MALDOFF: Roughly, in addition to that, we have institutional member organizations which include all of our school boards, all of our hospitals, and there are over 13 of them, most of our junior colleges, most of our social service organizations, several of the theatre companies servicing our community, most of our universities and almost every other institution and association that services our community. The experience we have had in the Province of Quebec is that the Government of Quebec has tried to explain to the population that the English-speaking population of the province is a threat to the French-speaking population. We have experienced initiatives by the government on every front to weaken our community, be they in the area of allocation of resources to universities, be they in the area of the francization and excessive language requirements being imposed on English language hospitals, social services and educational institutions, be they in the area of commerce and business, be they in the area of culture.

Therefore, we have found that we have to respond as a community on every front that affects the quality of our lives in our province. The government has not missed a chance. It has gone so far as to legislate recently in the area of films and the availability of films in the Province of Quebec, now perceiving that the unrestricted access of a non-French language film in the Province of Quebec was also a threat to the future of our province. So, let us not underestimate what our community is up against and the fact that we have the resources at our disposal barely covers the challenges that we have to address.

MR. R. DOERN: How many trips have you made to Manitoba so far?

MR. E. MALDOFF: Two. This is the second trip.

MR. R. DOERN: And you indicated you are prepared to come a third time or more?

MR. E. MALDOFF: Well there are some things in life which are important and this is one of them.

MR. R. DOERN: Will you be visiting Manitoba to campaign during the next provincial election?

MR. E. MALDOFF: We do not get involved in partisan political issues. We are concerned about promoting better understanding between French-speaking and English-speaking Quebecers. We are concerned about a Canada in which French-speaking and English-speaking Canadians can live together. We are concerned about seeing a Canada in which both language communities put the language debate behind us so we can get on with talking about much more important issues, rather than dwelling on this in some interminable way.

MR. R. DOERN: Are you planning to travel to Saskatchewan and Alberta to advise or support any measures, or encourage any measures, to have those provinces become officially bilingual?

MR. CHAIRMAN: Order please. I fail to see the relevance of that question to the matter before this committee. Mr. Doern, can you explain the relevance.

MR. R. DOERN: Mr. Chairman, this is a group that is coming from Quebec to give us the benefit of their experience and advice and they have passed out a set of press clippings in their handout, one of which I'm familiar with from the Globe and Mail, Tuesday, July 5th, Manitoba's way could be a model for achieving bilingualism, from a professor of law at Ottawa University and I'm quite familiar with the article. The professor argues that the formula may be repeatable in Saskatchewan and Alberta and then after Manitoba becomes bilingual and Saskatchewan and Alberta become bilingual, then there'll be a big hole and that'll be called Ontario. Then Ontario should become bilingual. So there is sort of a domino effect here: first New Brunswick, then Manitoba, then Alberta, then Saskatchewan, then Ontario.

I want to know whether or not in anticipation of this, you are, in fact, in contact with people in these other provinces and, if any measures are taken, whether you will go across Canada and campaign coast to coast?

MR. CHAIRMAN: Mr. Doern, I still have reservations about the relevance of the question. I'm at the will of the committee, but I'm inclined at this point to rule the question out of order.

MR. R. DOERN: Well, Mr. Chairman, I simply put this question to Mr. Maldoff. He is prepared to visit Manitoba in regard to the language issue, is he prepared to go to other provinces and assist them as well?

MR. E. MALDOFF: I'll be glad to answer that question if it will be of assistance to the committee in getting on with its deliberations. We do not believe that the same solutions are appropriate or applicable in every situation in Canada. Each society, each province has its differences, has its history, has its distinctiveness. Solutions should not be imposed from some ideological lofty height, but rather should be constructed by reasonable people to respond to the problems that exist at any given time. We are committed to certain principles which I've mentioned before, and that is the achievement of a Canada in which French-speaking and an English-speaking people can feel at home, feel

secure, and live with dignity and mutual respect. To the extent that we see, as a result of developments in any province, the need to come and support initiatives taken by the people of that province, not initiated by us, we are prepared to come and assist people who stand for what we consider to be good and right and positive.

MR. CHAIRMAN: Further questions, Mr. Doern?

MR. R. DOERN: Yes, Mr. Chairman.

Can you indicate the approximate population in Quebec of people of German and Ukrainian descent?

MR. E. MALDOFF: I don't have the census statistics with me, and I really couldn't answer that question offhand.

In the Province of Quebec that has not been an overriding concern, and it's therefore not a statistic which is popularly published and appears regularly in our newspapers, or in other material. Perhaps you might have it.

MR. R. DOERN: I do. Mr. Chairman, according to my information from 1981 the German-speaking or German descent population in Quebec is about 33,000, and Ukrainian is 14,000, but in terms of Manitoba these are much larger groups of 100,000 and then some.

I'm just asking you whether you think there is any relevance whatsoever to the size of a particular group in relation to the government. For example, it's quite clear that in New Brunswick there is a sizable French-Canadian population and bilingualism probably makes a great deal of sense at the provincial level.

In Quebec, if you want to just take language breakdowns, and you want to break it into French-speaking and English-speaking, the English-speaking minority is the largest and significant in numbers. In Manitoba, the second largest group after the English-speaking, namely in terms of background etc., is the German community which is some 12.5 percent; the Ukrainian is some 11.6 or greater percent; and the French-speaking is about 8 percent.

I'm just saying to you, do you think there's any relevance in terms of numbers? For example, would you be arguing this if there was 1 percent of Manitoba's population that was French-Canadian, or if there was one person living in Manitoba who was French-Canadian, would you still say that this is important? Would you say that numbers are unimportant, that size of population is not a consideration?

MR. E. MALDOFF: After hearing that kind of an analysis, the Canadian mosaic, having met the Premier of the Province of Quebec on several occasions, I would be more than happy to introduce you to him because you share a very similar appreciation of Canada and a very similar understanding of the country.

MR. R. DOERN: You and Mr. Trudeau, share a similar view as well.

MR. CHAIRMAN: Order please. Earlier in response to a question I heard interjections from the Gallery, they are not permitted, I would ask that they not be repeated.

Mr. Doern, will you allow Mr. Maldoff to complete his answer?

MR. R. DOERN: I will, but I won't suffer any insults from him either.

MR. CHAIRMAN: Order please. Mr. Maldoff.

MR. E. MALDOFF: Premier Levesque is a highly esteemed Premier of our province. I can hardly understand why that would be considered to be an insult.

The fact of the matter is that in our province we have a government that is committed to taking our province out of Canada. The analysis they use in assessing the Quebec society, and the one they've tried to impose is that essentially Quebec is one composed of a variety of ethnic groups, and that we have the dominant ethnic group for whom the province really exists. I mean let's put it all aside and this government really exists for the dominant ethnic group being the French-speaking Québécois. Then after that we have a whole series of other ethnic groups, and we have Germans, Italians, Jews, English who walk around in kilts and blow bagpipes, and Portuguese, and several others. It's a very convenient analysis.

The fact of the matter is its fundamentally flawed. That's not the way Quebec society was developed, and it's not the way Canadian society was developed. There are a lot of ethnic groups in Canada. Canada is a pluralistic society, but Canadians have two languages in which Canadians function at the public level, French and English, and consequently we have within, certainly the English-speaking community of Quebec those who use the English language, the complete pluralism of Canadian society in the sense we have English-speaking German people, English-speaking Portuguese and on and on down the list.

By the same token, one of the great challenges that is now facing the Government of Quebec is how you suddenly start to deal with French-speaking Québécois, who happen to come from Haiti or North Africa, and are they really part of the dominant group for whom the society was really established. The fact of the matter is that once we accept that there are two languages, and that as Canadians live in either of two languages or both of those two languages, the numbers game really is of little importance, and I think that the question of the two languages is really one that is above serious debate.

The French-speaking community of Canada is not an ethnic group, nor is the English-speaking community of Canada. They are parts of two recognized linguistic groups in this country. I think the NDP, I think the Liberals, and the Tories all agree to this. I don't think that that's a subject of a great deal of debate.

MR. R. DOERN: I want to ask Mr. Maldoff this question, which I think is bothering a lot of people in Manitoba.

At the same time that the government is considering moving towards a policy of official bilingualism in Manitoba, the Quebec Government appears to be moving towards a policy of unilingualism and all of their actions, from what we see, appear to be uninfluenced and unaffected by anything that happens here or

anywhere else in the country. I want to ask you whether or not what I see as a movement is correct or not? Is it true or not, or is it your impression or not, that Rene Levesque is moving away from bilingualism at this very moment and moving towards unilingualism?

MR. E. MALDOFF: I think that's a very good question and goes to the essence of the serious concern that we face. Yes, I think that it's correct to say that the Government of Quebec is trying to put the province and its citizens on a unilingual footing and is moving in that direction by attempting to diminish the strength of many of the English language institutions in the province, and make it more difficult to get access to many government services in our language. They went so far as to attempt in Bill 101 to override Section 133 of The BNA Act guaranteeing the language of the courts and Legislature, and the Supreme Court ultimately found Bill 101 to have violated the Constitution in that regard.

As to whether they are unaffected by what happens elsewhere, I think certain facts must be put on the table. While the Government of Quebec has continually hammered the line that Quebecers must feel that they can live their lives in French and that there is no need to know English, we are seeing in the French-speaking population a dramatic rise in the number of people who are saying that they want their children to learn English so that they can live in the Canadian context in a productive and positive way. We are seeing opinion polls which show that - recently one by the Chambre de Commerce de Montreal - 91 percent of French-speaking Quebecers support a free choice in the language of education of their children; that 91 percent of French-speaking Quebecers favour bilingual signs which are currently illegal under Bill 101; that 86 percent of French-speaking Quebecers favour the right of English-speaking people to have access to English school.

Now the government is under pressure as it sees public opinion shifting in this regard, and one of the things it has done in our province is to convene a public parliamentary commission to be held this autumn on revisions to Bill 101. This is the same government which, five years ago, was claiming that Bill 101 was virtually constitutional, was virtually untouchable; that anybody who tried to in any way assail it was a traitor or in some way had been sold out to whatever forces existed. This is a government that is going to make hay with whatever ammunition it can be handed.

I can't promise you that in the immediate short term that, if the Province of Manitoba moves forward with this very constructive initiative, all will change in our province. What I can tell you is that for the people of Quebec that are moving in that direction, it will lend further evidence to them that they were right in moving in that direction. If this is rejected here or if the outcry is horrible and divisive, it will certainly be ammunition for our government to get up and say, you see, nothing has changed in this country, the whole Progressive Conservative leadership convention was really a sham and a ploy, and nobody really cares about both languages; the constitutional decisions of the Supreme Court are irrelevant; nothing has really changed; there is no hope. For those who still hold the cynical hope

in our country, their feeling will be, perhaps they've lost that faith and lost that confidence even more. Perhaps it is time to give up on Canada. The impact will be very great.

I don't think we should be looking at this issue on the basis of what is the lowest common denominator of this country. I don't think we should be advocating solutions which would create two unilingual zones which can only inevitably lead to a divided Canada. When there is no communication, when there are no links, at a certain point people don't feel any necessity to stay together.

MR. CHAIRMAN: Thank you, Mr. Maldoff. Mr. Doern, further questions?

MR. R. DOERN: I have further questions, Mr. Chairman. Are we not . . .

MR. CHAIRMAN: Yes, I just wanted to verify that you did have further questions. We'll proceed again at 2:00 p.m.

The hour being 12:30, committee stands adjourned until 2:00 p.m.