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of the

Legislative Assembly of Manitoba

STANDING COMMITTEE

ON

LAW AMENDMENTS

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Thirty - First Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS
Tuesday, 3 June, 1980

Time — 10:00 a.m.

CHAIRMAN — Mr. J. Wally McKenzie (Roblin)

MR. CHAIRMAN: I wonder if the committee will come to order. Today we will e dealing with Bill No. 2, Bill No. 3, Bill No. 14, Bill No. 18, Bill No. 20, Bill No. 21, Bill No. 28, Bill No. 35, and Bill No. 43, and there are others as well.

On my list, I have Professor A. R. Kear, Mr. George Forest, Mr. Walter Hlady, and Mrs. Gilberte Proteau who want to speak on Bill No. 2.

I have Mr. Abe Arnold who wants to speak on No. 3; Mr. D. H. Olson wants to speak on Bill No. 14, Mr. Arnold wants to speak on Bill No. 14, Mr. Edward Lipset wants to speak on Bill 14.

Bill No. 18, I have Mr. John T. W. Wiens; Bill No. 20, I have Mr. Abe Arnold; Bill No. 21, Mr. Abe Arnold; Bill No. 28, Mr. Abe Arnold, Bill No. 35, Mr. Abe Arnold; Bill No. 43, Alice Steinbart, and a Family Law Submission from the Manitoba Bar Association.

Are there any other citizens here this morning that wish to make presentations to any one of these bills? Would you please come to the microphone and put your names into the record please?

Your name, Sir?

MR. DUNCAN: Mr. Chairman, the name is Duncan, in connection with Bill 14, An Act to Amend the Law Society of Manitoba.

MR. CHAIRMAN: Thank you, Mr. Duncan. Any others?

Then with the permission of the committee, we will proceed on Bill No. 2, An Act Respecting the Operation of Section 23 of The Manitoba Act in regard to the Statutes, and I call on Professor A. R. Kear.

BILL NO. 2 — AN ACT RESPECTING THE OPERATION OF SECTION 23 OF THE MANITOBA ACT IN REGARD TO STATUTES

MR. A. R. KEAR: Good morning, Mr. Chairman, and members of the committee. I could just as easily present my remarks en français si vous voulez but I would think this would be more . . .

A MEMBER: Oui, s'il vous plait.

MR. KEAR: . . . certainement. Il est dans notre pays deux langues officielles depuis 1848. Since 1848, there has been two languages in Canada that had been recognized by government, by the Legislature of the Parliament of Canada and additionally by the British Parliament. This Legislation in 1848 revoked British legislation in 1840 abolishing the use of the French language in the province of Canada. When Manitoba entered Confederation in 1870, there was section 23, which I'm sure you are familiar with, which sets forth, in almost parallel language, the terms set forth in Section 133 of The British North America Act. The import of Section 23 of The Manitoba Act was to place the two languages, English and French, on exactly the same footing as in the parliament of Canada and as in the Legislature of the province of Quebec. That is to say that members of the Legislature of Manitoba, the Parliament of Canada, and the Legislature of Quebec, could use either English or French in debates, the records and written proceedings of these three Legislatures were to be published in both English and French, and both languages could be used in the Canadian courts, in the Quebec courts, and in the Manitoba courts.

Now, to emphasize the constitutional nature of the two languages in Canada, The Manitoba Act of 1870 was specifically ratified and confirmed as being constitutional by the British Parliament in 1871. In other words, the British Parliament enacted The British North America Act in 1867, making both languages legal, constitutional and equal; the legislation creating the province of Manitoba, adopted by the Parliament of Canada in 1870, did exactly the same thing, and in 1871, the British Parliament ratified the quality of the two languages in the province of Manitoba.

Now, the question that we really have to ask ourselves is, what kind of society do we want in Canada? And I'm speaking not only of the province of Manitoba, I'm speaking of Canada at large. We could have a Constitution, or we could operate illegally, as Manitoba has operated illegally since 1890. And thanks to the Supreme Court of Canada the two languages are once again constitutional, not only in the province of Quebec, but also in the province of Manitoba.

So to make it clear, we have two languages constitutionally guaranteed in Canada. Three governments are constitutionally bilingual, the government of Canada, the government of Quebec, both by Section 133 of The British North America Act, and the government of Manitoba by Section 23 of The Manitoba Act. From the viewpoint of practical politics, we have to ask a larger question, and we have to move beyond the law, the written law, and that is why I'd like to ask you these questions.

How should a permanent, linguistic majority treat a permanent linguistic minority? Let me repeat the question, because it's not an easy question, and the answers are not easy either. How should a permanent, linguistic majority treat a permanent linguistic minority? One of the democratic rules of the game is that the majority rules, the minority has rights, and until the next election the majority party remains in office, with the minority party having the opportunity of forming the government at the next election. This rule is well known to all of you here, and I don't need to elaborate. This is the way in which the legislature of the province of Manitoba operates, and every other legislature in Canada.

But when we come to languages we're in a different situation. A language minority can never

become a language majority. The English language minority of Quebec, for example, has progressively become smaller rather than larger. The English language minority of Quebec, therefore, can never become the majority language and therefore impose its kind of legislation on the province of Quebec. Well, in Manitoba, when Manitoba entered Confederation in 1870, the two languages groups were just about equal in terms of numbers, and later the balance went in the direction of the English language majority. And you know what happened in 1890, and that doesn't need any repeating.

So the question then is, how should a permanent linguistic majority treat a permanent linguistic minority? And I would say this is the central and key issue in Canadian politics today. Now, there are several ways in which legislation and parliaments can react. One way is what I have described on another occasion as black letter law, and black letter law means that a lawyer is given instructions to draw up the piece of legislation and he drafts the legislation to confirm precisely, in precise legal terms, to the requirements of the law, and then he does not draft the legislation with any other than precision. Or, the other way in which legislation can be drafted with respect to languages, is in a broad spirit of trying to promote a society in which the linguistic majority and the linguistic minority can live in peace.

And the way this can be done is to look at the kind of legislation that has been adopted by the parliament of Canada in 1969, in The Official Languages Act; by the legislation that has been adopted in the province of New Brunswick, similar to The Official Languages Act adopted by Parliament in Ottawa.

Now, what would be the consequences of legislation adopted in the way I am suggesting? The consequences would be that in terms of Manitoba's law, Franco-Manitobans, or French speaking Manitobans, would be made equal to English speaking Manitobans. More precisely, they would become full-time citizens like English speaking Manitobans, because French speaking citizens of Manitoba have always paid taxes, like English speaking Manitobans, and since they have always paid taxes and since they are equally citizens, they should also get governmental services in their own language. And this is especially true since the Supreme Court decision on December 13, 1979.

Well, instead of listening to me, I think you might like to listen to a gentleman that's a little better known to you, and I would refer to John A. MacDonald. John A. MacDonald spoke these words in 1865, during the Confederation debates. Now, to put this in context, the Confederation debates of 1865 took place after the Quebec conference of 1864. The Quebec conference of 1864 set forth the general principles and the practical institutions by which we now govern ourselves. These principles have not changed; these institutions have not changed. And the Quebec resolutions were debated at length in the Legislature of the province of Canada in 1865. And this is what John A. MacDonald said on that occasion: I have very great pleasure in answering the question put to me by my honourable friend from the county of Quebec. I may state that the meaning of one of the two resolutions adopted by the Quebec Conference is this, that the rights of the French Canadian members as to the status of their language in the federal Legislature, shall be precisely the same as they are now in the present Legislature of the province of Canada in every possible respect.

I have still further pleasure in stating that the moment this was mentioned in the Quebec Conference, the members of the deputation from the lower provinces, meaning the Maritime provinces, the members of the deputation from the lower provinces unanimously stated that it was right and just and without one dissention voice, gave there adhesion to the reasonableness of the proposition that the status of the French language as regards the procedure in Parliament, the printing of measures, and everything of that kind, should be precisely as it is in this Legislature of the province of Canada. And at this point, the honourable members of the province of Canada's Legislature responded, hear, hear. Later, Macdonald said this: I desire to say that I agree with my honourable friend, that as it stands now, the majority governs. And here is where we want to get at the question of the majority and the minority.

I desire to say that I agree with my honorable friend, that as it stands just now, the majority governs, but in order to cure this, it was agreed at the Quebec Conference to embody this provision in The British North American Imperial Act. Again, hear, hear. This was proposed by the Canadian government for fear an accident might arise subsequently and it was assented to by the deputation from each province that the use of the French language would form one of the principles upon which the Confederation should be established and that its use as at present should be guaranteed by The Imperial British North America Act, 1867.

These are the words of John A. Macdonald. What about the leader of the French-speaking Canadians during the same debate? And I am referring now to George Etienne Cartier. And what did he say? Now when we were united together, if union were attained, we would form a political nationality with which neither the national origin nor the religion of any individual would interfere. It was lamented by some that we had this diversity of races and hopes were expressed that this distinctive feature would cease. The idea of unity of races was utopian. It was impossible. He's using race in the same sense that we use the language group. Distinctions of this kind would always exist. Dissimilarity, in fact, appeared to be the order of the physical world and of the moral world as well as in the political world. But with regard to the objection based on this fact, to the fact that a great nation could not be formed because lower Canada was in great part French and Catholic and Upper Canada was British and Protestant, and the lower Protestants were mixed, it was futile and worthless in extreme.

Look, for instance, at the United Kingdom, inhabited as it were by three great races. He's referring to the English, the Scots, the Welsh, and the Irish. Had the diversity of races impeded the glory, the progress, the wealth, of England, of the glories of the Senate, the field and the ocean, of the successes of trade and commerce, how much was contributed by the combined talents, energy and courage of the three races together. In our own federation we should have Catholic and Protestant,

English, French, Irish and Scotch, and each by his efforts and his success would increase the prosperity and glory of the new confederacy. He viewed the diversity of races in British North America in this way. We were of different races, not for the purpose of warring against each other, but in order to compete and emulate for the general welfare. We could not do away with the distinctions of race. We could not legislate for the disappearance of the French Canadians from American soil. The British and French Canadians alike could appreciate and understand their position relative to each other. They were placed, like great families, beside each other, and their contact provided a healthy spirit of emulation. It was a benefit rather than otherwise that we had a diversity of races. Of course, the difficulty would, he said, would be to deal fairly by the minority. And it's curious when you hear these words, that Cartier and Macdonald equally addressed themselves to the question of majority language and minority language rights.

Well, after 1867, there was a series of decisions taken in the Parliament of Canada and all of these were unanimous, that both English and French languages would be placed on an equal basis in the government and Parliament of Canada and in the functioning of the Parliament of Canada. When Louis Riel organized the provisional government in 1869 there was a convention elected by the English and French speaking parishes in the Red River Valley. The result of this convention was the Manitoba Bill of Rights. Under Article 16 of Manitoba's Bill of Rights adopted in 1869, Article 16 provided that both languages would be used in the Legislature and in the courts of Manitoba. Article 16 became Section 23 of The Manitoba Act in 1870.

What happened on December 13th, 1979? The Supreme Court of Canada announced its decision on two pieces of legislation. It announced its decision on Quebec's Charter of the French language and it also pronounced on The English Language Act adopted by the Manitoba Legislature in 1890. The Supreme Court of Canada, by unanimous decision, set aside the 1890 Manitoba Act and set aside those parts of the Charter of the French language that infringed on the English language minority rights in the province of Quebec. So what the Supreme Court of Canada did by unanimous decision was say that in Quebec, as in Manitoba, the two languages are equal, constitutional can be used in the courts and Legislature.

I would submit to you, gentlemen, that perhaps the most important question facing Canada today is the matter of languages in Canada. And I say this as a person who has lived and studied in the province of Quebec. I say this as a person who has lived and studied at the University of Lavalle in Quebec City and I say this as a person teaching at the University of Manitoba.

Languages are the key to social peace and quiet in this country and I think that this Legislature of the province of Manitoba has now the historic opportunity of doing something in a positive way, and I would suggest adopting what I would regard as appropriate kind of legislation. Two things are therefore important. First of all, that we follow the Canadian Constitution, and secondly, by doing so, we can best promote good relations between English-speaking Canadians and French-speaking Canadians. What is needed in Manitoba, I believe, is legislation, not the kind of legislation that you have in front of you, but legislation similar to The Official Languages Act adopted by Parliament in 1969, similar legislation adopted by New Brunswick, and if you adopt the legislation that I am suggesting, there would be these advantages.

First of all, both languages would be placed on an equal footing in the province of Manitoba. And if you want a model for this, look at The Official Languages Act that Parliament adopted in 1969.

Secondly, this would begin the transformation of the Public Service in Manitoba where necessary. And I say, where necessary, because not even Francophones want everybody in Manitoba to speak French. That is of course, unrealistic. I can't speak for Francophones, I'm an Anglophone myself, but I can function in both languages. But I think the important thing is to get at the provincial Public Service.

Thirdly, this would apply also to Crown corporations. In other words, the Crown corporations would provide services in French to French-speaking citizens of Manitoba.

Fourthly, what is needed is an official languages commissioner. The present piece of legislation you have in front of you does not provide for an official languages commissioner and the purpose of an official languages commissioner are set out in The Canadian Act of 1969, and the purpose of this would be that the official languages commissioner would become an officer of the Legislature, same as your Auditor General, and the official languages commissioner would be responsible for implementing the legislation. The function and role of the official languages commissioner and the legislation would be to protect the language rights of the minority.

Fifthly, what could be done is to establish an advisory committee on languages. An advisory committee of languages that would assist a Minister of the government to implement the right policies in the Public Service.

And, sixth, the worst thing you could do is simply to adopt a present piece of legislation, include an item in the budget and say that's the end of it. The difficulty with a budgetary item is that it's at the whim of the government. A budgetary item can either be too easily reduced or abolished according to the whim of public opinion.

I would suggest then, gentlemen, that what you really want to do to promote social peace in Canada and perhaps provide a model to other provinces, is to adopt the kind of legislation that Parliament adopted in Ottawa in 1969 and the province of New Brunswick adopted the same year.

I would be willing to answer any questions.

MR. CHAIRMAN: Thank you, Professor. Any questions for Professor Kear? We thank you very much for your presentation, sir. Thank you.

I call Mr. Georges Forest.

By the way, before we proceed, are there any citizens here from outside the Winnipeg area who would like to make a presentation today? None. Proceed, Mr. Forest.

MR. GEORGES FOREST: Mr. Chairman, I was just wondering whether you were, in order for the members here present to better follow my discourse, distribute the copies or is it a matter of distributing later?

MR. CHAIRMAN: The Clerk will look after that.

MR. FOREST: Amongst these, I also have brought from Quebec, one of these little stickers for every member of the committee. I would like to draw your attention in referring to this, and I will come to it later. Because of the time schedule, I only finished printing or mimeographing or photocopying these copies early this morning, after midnight, and I collated them at 6:00 o'clock. The copies are still fresh; don't rub them too much. My photocopier isn't of the best quality. And that's it. There are also a few errors as you can imagine with my own personal lack of constant use of French in Manitoba, my French education having only started at Grade 7, I still make some errors. I made a monumental error in Quebec during the debate on the referendum question speaking in the constituency of Laprairie. The main speaker was Michel Gratton, representing one of the constituencies near Ottawa in the Quebec National Assembly. In talking about our seven children I made the mistake of saying nos sept zenfants instead of nos sept enfants. Mr. Gratton understood sept zenfants as being sixteen children, therefore when he took the stand he said, ladies and gentleman, Mr. Forest comes to us with two distinct messages from Manitoba. One is that we can amend the constitution without destroying it, and secondly, he has a message for you mesdames. With his sixteen children, he wants this to be the last time you say Non, merci.

Monsieur le président, mesdames et messieurs les députés. Ce n'est pas la premiére fois que je me présente devant un comité parlementaire comme le vôtre pour ajouter au débat sur un projet de loi. Je suis venu en 1960 avec une délégation de plus de 800 citoyens de la ville de Saint-Boniface d'alors, pour dire notre inquiétude face à la formation d'un nouveau palier de gouvernment dit Gouvernement métropolitain. On voyait dans cette forme d'ingérence un pas certain vers l'amalgamation et avec cela un certain danger pour la survivance de la communauté historique de Saint-Boniface.

Puis, je suis venu encore en 1971, cette fois pour continuer ma lutte à rebours, en protestant devant la machine bureaucratique qui inéluctablement enfirouapait les politiciens municipaux dans son rouage. Et puis comme nous le constatons tous, d'un coup de plume, la belle ville de Saint-Boniface n'est plus. Elle fut alors remplacée pas un format communautaire de citoyens sans une administration propre à eux et sans contrôle sur leur avenir.

C'est durant les années 50 que le maire de Winnipeg d'alors Stephen Juba disait: Donnez moi le contrôle de Saint-Boniface et j'en ferai un Petit Paris. That translated in English: Give me control of St. Boniface and I will make of it a Little Paris.

Ce Steve Juba a joué un rôle de premier plan dans le mouvement de centralisation. Il est celui qui m'a le plus poussé à poser des gestes contre les forces de centralisation et d'assimilation.

Ma lutte a réussi. Le français est redevenu une langue officielle au Manitoba. Je demeure toujours ferme dans ma conviction que seul un statut particulier peut assurer à notre communauté de Saint-Boniface sa survivance comme entité vivante et progressive. Il faut éviter que l'on fasse du district de Saint-Boniface un lieu de culture commercialisé qui serait voué à devenir le quartier français de Winnipeg. D'ici à ce que le français soit restauré complètement dans la province, ce statut particulier est de prime importance.

Monsieur le président, je suis dans l'embarras. Je veux parler la langue de ma mére, un droit légitime que j'ai dans ces lieux. Mais si je continue, je sais que je ne parle qu'à quelques personnes et aux murs qui comme certains n'ont pas d'oreilles pour écouter. Alors, pour ne pas perdre votre temps et le mien, je capitule devant l'intransigeance de mon gouvernement et je parlerai ma deuxiéme langue.

Je n'ai pas d'objection à parler l'anglais, ma deuxiéme langue officielle. Ce fut la langue de presque toute mon éducation. C'est dans cette langue que j'ai appris le terme British fair play. C'est par mon éducation et en coudoyant mes compatriotes de langue anglaise que j'ai développé le caractére de persévérence. C'est en anglais que j'ai connu et surtout depuis les quatre derniéres années, même si c'est de façon superficielle, le systéme juridique du droit commun.

J'ai aussi confiance qu'il est nécessaire dans la communication, d'avoir l'anglais et le français pour celui qui ne veut pas se borner à un territoire limité. Il ne faut pas avoir un handicap personnel, comme celui qui se borne à ne vouloir parler que l'anglais ou que le français au Canada. On est handicapé dans nos communications comme citoyens canadiens si l'on ne parle pas les deux langues officielles de notre province et de notre pays.

Je m'excuse devant ceux et celles qui comme vous, Monsieur Desjardins, seraient en mesure de tirer profit de mes remarques en français. Toutefois, même si la majeure partie de ma présentation se fera en anglais, la langue commune du Manitoba, je reviendrai de temps à autre afin de me prévaloir de mon droit et de respecter le principe même qui fut établi en 1870 par la section 23 de l'Acte du Manitoba que voici: ''L'usage de la langue française ou de la langue anglaise sera facultatif dans les débats des chambres de la Législature; mais dans la rédaction des archives, des procés-verbaux et journaux respectifs de ces chambres; l'usage de ces deux langues sera obligatoire.''

Mr. Chairman, Mr. McKenzie, I note from the records of the Manitoba Legislature that you were the last one to speak on Second Reading of Bill No. 2. Like the 10 other speakers before you, you evidently did your best to show support for the proposed legislation. I shall come back to that later in my presentation.

In 1961, in this very Legislature, I appeared before the Law Amendments Committee leading a delegation of more than 800 citizens of St. Boniface. We were protesting at the time the advent of metropolitan government which we saw as a prelude to total amalgamation. In 1971, I, again, appeared here before the Law Amendments Committee to express opposition to the City of Winnipeg Act

creating Unicity, the amalgamation of all 13 cities and municipalities.

On today's occasion, I appear before you to add my remarks to the debate on the proposed Bill No. 2 which stems from a traffic ticket issued in English only in violation of the City of Winnipeg Act of 1971, Section 80, Subsection 3, which reads as follows: All notices, bills or statements sent or demands made to any of the residents of St. Boniface community in connection with the delivery of any service or the payment of a tax shall be written in English and in French.

On my two previous visits here, I was crusading for the preservation of one of Canada's two great cultures. I often wondered, what has happened to the rights secured by Louis Riel in his provisional government's list of rights entrenched in the Manitoba Act. We have now gotten an answer to that question and my presence today is to speak on the urgent need to restore those rights, shamefully violated in 1890.

I am embarrassed as a Manitoba citizen in these, the great halls of government, though I have a constitutional right to speak French in this Legislature, my use of that language is officially considered as being a privilege, perhaps, just a courtesy. By re-reading the text of Section 23 of the Manitoba Act, 1870, you will note that the French language is an entrenched constitutional right and not a privilege. Here is the text of Section 23. Either the English or the French language may be used by any persons in the debates of the Houses of the Legislature and both those languages shall be used in the respective records and journals of those Houses.

To exercise my right to speak French in this Legislature without the benefit of simultaneous translation is like being given the privilege of house arrest, of being shackled in the exercise of one's constitutional rights. Freedom of speech is a fundamental right. Tied to my constitutional right, my freedom of speech is impaired when it is evident that most people within hearing distance cannot understand what I am saying in French for lack of simultaneous translation.

I make no mistake, Mr. Chairman, when I state that the Legislative Act of 1890 was an ignominous Act. The recent Supreme Court decision declared that law to be unconstitutional, null and void. To follow through on the December 13, 1979, Supreme Court decision, Manitoba must restore the full effect of Section 23 which I have read to you earlier. Further, I believe that it is the responsibility of all members of the Legislature, not just the members of the government in power, to see that the law of the land is respected and upheld. The court case which resulted in the Supreme Court decision was a case against an unjust law of the last century. I pointed this out to our Premier in a letter of last January 4th. I spoke to the Honourable Sterling Lyon in these terms: I have always firmly believed and I still firmly believe that my court case was not against my government but rather against a law which, as it is now ruled, was illegally passed in the last century by the government of that day.

I have been apolitical since 1968 when a Canadian statesman, well known to everyone, spoke of A Just Society. I felt that I could make a contribution outside of political ranks towards obtaining justice in our society. I have enjoyed that public stance because I am certain that it has made the difficult venture that I have been on during the past four years, much less horrendous.

I wrote to Premier Edward Schreyer on March 27, 1977, as a concerned citizen. I said this in my letter. (See Appendix 2) "La justice au Manitoba doit être rétablie avant qu'il y ait discussion sur une nouvelle constitution."

I must regrettably say that I got no response to my letter, not even an acknowledgement. What I was saying to Mr. Schreyer was: Justice must be restored in Manitoba before there is discussion on a new Canadian Constitution. Chief Justice Freedman's historic ruling in the Manitoba Court of Appeal April 25, 1979, which was confirmed or upheld by the Supreme Court on December 13th, was an answer to a long litany of prayers and just in time. Where would Manitoba be in the constitutional debate if the 1890 law had not gone unchallenged? Constitutional language justice has been restored by the Supreme Court. However, there is a situation bordering on contempt by the legal advisors of the government of Manitoba.

In a recent publication of the Manitoba Law Journal, Volume 10, No. 3, in an article entitled, Validity of Manitoba laws after Forest; What is to be Done, Professor Joseph Eliot Magnet, Member of the Faculty of Law, University of Ottawa, wrote on Page 251. (see Appendix 3) In any event, it strains credulity to pretend that Section 23 of the Manitoba Act is merely procedural. The section originated in the negotiations and compromise between Canada's two great peoples. It was meant to protect both of them. Certainly it was meant to protect Franco-Manitobans. Section 23 is not a matter of constitutional procedure; it is a matter of constitutional right. It is strange to think deliberate violation of that right is immune from judicial review.

Lorsque le Manitoba est entré en confédération en 1870, son territoire comprenait un plus haut pourcentage de parlant français que de parlant anglais. Dans leur livre History of Manitoba, Messieurs D. Gunn et C. Tuttle en page 467 parlent du recensement demandé le 16 juillet 1870, le lendemain de l'union. La population du Manitoba comprenait 11,963 habitants, comme suit: Blancs 1,565, Indigénes 558, Métis français 5,157, Anglais 4,083.

Voici le scénario tel que décrit par l'historien G.F.G. Stanley dans sa conférence à la Société historique de Saint-Boniface le 17 janvier 1970.

À cette époque, dit-il, la conférence était devenue fait accompli au Canada et on essayait d'amener la Riviére-Rouge et les Territoires du Nord-Ouest au sein de l'union fédérale. Le mouvement expansionniste vers l'ouest était inspiré par l'Ontario et recevait un plus grand appui dans cette province qu'au Québec. C'étaient les Ontariens qui se dirigeaient vers la Riviére-Rouge afin de pousser à l'annexion canadienne. Les conséquences en sont bien connues. Le caractére agressif de la minorité canadienne, ses sentiments de supériorité de la population locale, le manque de discrétion des arpenteurs envoyés à la Riviére-Rouge par le Canada, l'apathie des dirigeants de la Compagnie de la Baie d'Hudson; la réunion de tous ces éléments

avait produit un sentiment général de malaise à la colonie.

Louis Riel n'était pas responsable de ce malaise, mais il en faisait partie. Il partageait les sympathies et les appréhensions, les angoisses et les aspirations de son peuple. Son éducation, son éloquence, tant en français qu'en anglais, son dynamisme, la tradition laissée par son père - l'homme qui avait mené la population locale dans son opposition au contrôle du commerce de la fourrure par la Compagnie de la Baie d'Hudson - tout le désignait comme chef en dépit de sa jeunesse. Presque inévitablement, il devint le porte-parole de tous les inarticulés de la Riviére-Rouge. Comme John Brown, il avait entendu l'appel.

Assisté par l'abbé J.N. Ritchot, curé de Saint-Norbert, Riel organisa les Métis français, interdit l'entrée dans la colonie du Lieutenant-Gouverneur désigné par le gouvernment fédéral, l'honorable William McDougall. Il se saisit du Fort Garry, le principal poste fortifié de la colonie; il convoqua une assemblée des habitants et s'occupa à réaliser l'unité de pensée entre les colons français et anglais. En ceci il échoua. Toutefois, il se rendit maître de la colonie Riviére-Rouge, défit une tentative canadienne de saisir le pouvoir, établit un gouvernment provisoire et s'assura l'appui du journal local. Louis Riel accomplit tout cela en moins de trois mois, alors qu'il n'avait que vingt-cinq ans. Il avait montré un ensemble d'énergie entreprenante, d'astuce et de sincérité qui est souvent la marque de la grandeur.

La liste des droits comprenait la clause qui garantissait le systéme scolaire confesionnel. Dans l'acte du Manitoba cette clause fut interprétée par la section 22. Cette section fut violée avec la section 23 en 1890. C'est la section 23 qui nous préoccupe aujourd'hui.

Again, quoting from a recent Manitoba Law Journal, Volume 10, by Joseph Eliot Magnet, he said, When Manitoba joined Confederation in 1870, her territory contained more French than English-speaking settlers. The French Metis and the Confederation negotiations had a principal concern — the survival, post-confederation, of their community. As everyone was aware, union with Canada implied massive immigration into Manitoba, principally from Ontario, that raised the spectre of assimilation. Sir Francis Hincks made this point expressly in the Canadian Parliament while debating the Manitoba bill: It was perfectly clear, said he, that when the difficulties were settled and the Queen's authority established, that a vast emigration would be pouring into the country (Manitoba), from the four provinces, but principally, there was no doubt, from Ontario, and the original inhabitants would thus be placed in a hopeless minority . . .

In March 1870, the Riel provisional government sent three delegates to Ottawa to negotiate association between the Red River settlement and Canada. The delegates carried with them a Bill of Rights, forming the major part of their mandate. That Bill of Rights contained provisions designed to ensure the survival of French. Note this one: Clause 17 provided that the Lieutenant-Governor be familiar with both English and French. Clause 18 provided that the judges of the Supreme Court speak both English and French. Clause 16 dealt expressly with the language of government, and it's read as follows: That both the English and French languages be common in the Legislature and in the courts, and that all public documents, as well as the Acts of the Legislature, be published in both languages.

Clause 16 was regarded as a fundamental constitutional guarantee for Franco-Manitobans. It assured them full participation in the machinery of government without the necessity of assimilation. Clause 16, without substantive modification, became Section 23 of The Manitoba Act, by which Act the Red River Settlement joined Confederation. Section 23 provides, and we've already read that.

Rev. Norbert Ritchot, one of the three Red River delegates to the Ottawa negotiations, remarked on Section 23 in his journal: 23. This clause is in conformity with Article 16 or our instructions . . .. The Manitoba Act was retroactively confirmed by the Imperial Parliament in 1871. It therefore forms part of fundamental Canadian constitutional law, beyond the powers of the Manitoba Legislature or the Federal Parliament to abridge.

Immigration from Ontario proceeded rapidly, as expected, after Manitoba joined the union. Franco-Manitobans quickly became a minority. English settlements, however, was territorially separate from French. The two cultures were concentrated in different districts. Territorial separation prevented assimilation and preserved the cultural duality of the province.

In this condition French flourished. Provincial legislation encouraged it. Provision was made for bilingual municipal notices. Similar legislation stipulated for bilingual proclamations, electoral forms, and voters notices. Mixed juries in criminal trials were an affirmed right. In some districts, mixed juries were allowed by legislation in civil cases.

There were certain difficulties, however. In 1874, Mr. W. F. Luxton, who was committed to abolishing separate schools, was elected to the Manitoba Legislature. Resolutions so provided were introduced in the Assembly. Some modification to the educational system was made in 1876. In 1879, an attempt was made to limit the official use of French. Despite these disturbances, the French community remained secure, without public criticism from the English and without public complaint from the French.

This relatively easy state of affairs came to an abrupt end in 1885, with the supression of the Metis rebellion and the hanging of Louis Riel. Racial and religious feelings became supercharged. Intensity of feeling reached a peak when the Mercier government in Quebec passed The Jesuits Estate Act of 1888. That Act dealt with compensation moneys payable to the Jesuit Order for the loss of their Quebec estates. The Act provided that the Pope should allocate the money in respect of certain disputed claims. While the affair inflamed feelings in Ontario and Quebec, Dalton McCarthy, a Conservative MP, carried it to Manitoba. The issue, he said, gave the politicians something to live for; we have the power to save this country from fratricidal strife, the power to make this a British country, in fact as well as in name.

McCarthy stirred up sufficient animosity as to make Manitoba respond. In 1890, provincial legislation abolished the then prevailing system of dual sectarian schools. The system was replaced by

a single system of non-sectarian schools paid for by public funds. All Manitobans had to contribute to that supporting tax base. Sectarian separate schools, French Catholic schools, lost all provincial financial support. At the same time, Manitoba unilaterally cut down the constitutional guarantee in Section 23 of The Manitoba Act, by providing The Official Language Act, which we all know about. At any rate, it's now defunct.

The Schools Act was challenged immediately. In city of Winnipeg versus Barrett, the Acts were held constitutionally valid. In Brophy versus the Attorney-General of Manitoba, the Privy Council explained that while intra vires, the Act did not affect rights of the Roman Catholic minority in such sense as to entitle them to apply to the Governor General in Council, to make remedial laws under provision of Section 22 of The Manitoba Act. Application to the Governor General in Council was made. The Dominion government asked the Manitoba government to restore Catholic educational rights. Manitoba refused. Dominion remedial legislation was prepared. Before it could be passed, the Bowell government was defeated. Laurier came to power in 1896. In 1897, his government reached a compromise with the Greenway government in manitoba on the school question.

Because the controversy centered on The Education Act, and because a compromise ultimately was reached, no attack was made against The Official Language Act until 1909. In that year, the St. Boniface County Court ruled The Language Act unconstitutional. The judgement was ignored. It was not even reported.

I have added this note in Mr. Magnet's report: There was another case, Mr. Chairman, which was only brought to light in May of 1979. The case was heard in 1892. In 1892, Judge Prudhomme ruled the 1890 Act unconstitutional in a ruling rendered in the County Court of LaVérendrye in Sainte-Anne, Manitoba. The case was entitled, Pelland vs. Hébert.

In early May of 1979, a certain Guy Babineau, researching on bilingualism in Canada, sent me photocopies of material found in the library of the Quebec Legislature. These consisted of: Le Manitoba of 9th of March 1892; L'Èvénement of 15th of March 1892; L'Èlecteur of the 16th of March 1892.

The Prudhomme Judgement of February or early March 1892, as reported in full in Le Manitoba, reads like his later judgement on the Bertrand vs. Dureault case heard in St. Boniface. Both of these rulings were unknown to Judge Armand Dureault in 1976 when he gave his historical decision.

In 1976 — I'm going back to Mr. Magnet — in 1976, the same St. Boniface County Court again ruled The Language Act unconstitutional. That judgement also was ignored. The Attorney-General of Manitoba stated, The Crown does not accept the ruling of the court with respect to the constitutionality of The Official Languages Act. Mr. Justice Monnin of the Manitoba Court of Appeal thought that was arrogant. He said, A more arrogant abuse of authority I have yet to encounter. Now the Supreme Court of Canada unanimously have ruled The Language Act constitutionally defected. The three incidents, 1892, 1909, 1976 are blatant examples of near criminal action on the part of the Manitoba authorities of those dates. Standing out as a beacon of justice in Canadian history is the Quebec experience of protecting, even spoiling its English speaking minority. If the Canadian experience which started in 1867 by The B.N.A. Act and continued in 1870 by The Manitoba Act had been allowed to go on unimpeded as was unfortunately the case of 1890, it is safe to believe that the Saskatchewan and Alberta provinces entering Confederation as they did in 1905, would have done so within entrenched school and language rights as was the case for Manitoba.

Even now, there is substantial argument in favour of the recognition by the two latter named provinces to make French an official language. Let me draw to your attention as a sound argument, the federal government's amendment to The Northwest Territory Act in 1877 giving the same constitutional guarantees to the French language in those territories, which included the Yukon and the areas now constituting Saskatchewan and Alberta. Nothing has been done since then to repeal that law.

It is with this broad knowledge of our Canadian history that I have long ago set my aim on a distant objective where principally through education, Canadian citizens from coast to coast will not only speak Canada's official languages but will preferably speak a third, a fourth or a fifth. I am presently on a self-imposed period of reflection. Also, I have to attend to business which has suffered because of my government's legislated injustice. I hope to finalize plans for a final assault on the difficult escarpment on top of which I am certain to find in generations to come, the Canadian identity which has eluded us in the past.

There is an element of justice in my vision inasmuch as we can hope to improve relations between people by promoting better communications. I am certain that we could have peace in our country and in the world if we could speak to a person with a man's tongue, listen with his ears, see with his eyes, feel with his heart when we speak his language.

Monsieur le président, je me réserve que quelques mots sur le sujet spécifique qui est celui du projet de loi devant nous. Tout ce que j'ai de bon à dire de ce projet de ce Projet de loi n° 2, c'est qu'il est rédigé dans les deux langues officielles du Manitoba comme il se doit de l'être. Mais à quoi bon un projet de loi bilingue lorsqu'il n'est pas pratique voir même logique de parler français au palais législatif du Manitoba? Le député de langue française qui voudrait se prévaloir de son droit de parler français l'en est empêché par l'obstination du gouvernment qui lui refuse de comprendre le vrai sens de l'article 23.

Mr. Chairman, I must regretfully say that Bill No. 2 has only one good point and that is, of it being drafted in Manitoba's two official languages. When I first saw the bill and its contents, I asked myself this question: Why should it be necessary to pass a law in order to apply a previous one? The only answer I can find is, One acts this way when one desires to limit the effect of the said previous law.

Ladies and gentlemen of this committee and through you of rhe Legislature of Manitoba, I would like you to feel the sense of responsibility that is now yours to avoid the pitfalls of 1890. Yes, I am prepared to predict that the passage of Bill 2 as it is

now worded, limiting as it does by interpretation where there is conflict, the official status of one language or another, may render the bill subject to judicial review and possibly have it suffer the same lot as did the iniquitous law of 1890. You should find no comfort in Bill 82, passed in the Quebec National Assembly last December, stating that the French text would be the only official text when there is conflict. Either the languages are equal or they are not. There is no way that one can interpret one language to be more equal than the other.

Mr. Chairman, allow me once more to return to the legal opinion published in the Manitoba Law Journal under the authorship of Joseph Eliot Magnet. At page 255, the learned man had this to say: How far ought the Supreme Court of Canada go in Manitoba's case? The answer depends on several factors: The nature of the rights denied; the weighing of public and private interests; the posture assumed by the Manitoba government. Some would add another consideration: That the Supreme Court of Canada is not constitutionally entrenched, as is the Supreme Court of the United States, but owes its existence rather to an ordinary federal statute of 1875. It is said accordingly that the court has less justification to assume an activist stance. In my view, that argument rings hollow. We are dealing with nothing less than legislative subversion of the constitution. If the fear be that the Legislature will subvert the court for trying to protect the constitution, that is a risk I would be prepared to assume. In any event, there is no need for a court to possess a constitutional review jurisdiction if it is unable or unwilling to carry out that function.

The nature of the right Manitoba has denied is very specific. Section 23 provided for the mandatory use of French in legislative records and journals, and publishing of legislative Acts. Manitoba proscribed this. Section 23 also provides for the permissive use of French in court proceedings. Manitoba proscribed this too.

What prejudice has been caused by Manitoba's ninety-year denial of these rights? It seems to me that there are three forms of prejudice suffered. First, Franco-Manitobans have suffered certain social disabilities. They have been kept out of the legal profession. They can not plead in the courts in French. They can not file documents in French. They can not have access to Manitoba legislation in French. This is the stock in trade of the lawyer; his mouth, his pen, his statutes. If Franco-Manitobans were to have full participation in the legal profession, they had to assimilate. They still do. Secondly, Franco-Manitobans have suffered certain legal disabilities. They were guaranteed a bilingual court system. They did not get it. Criminally accused were tried in English. Civil trials were conducted in English. This will continue. Third, Franco-Manitobans have suffered certain political disabilities. Records of debates were available only in English. So was legislation. Full participation in the political process required a certain facility in English or assimilation. But this will change, at least in part. Now he was writing at this time early in January, I presume. The Manitoba Attorney-General's Department has said that it is going to translate current provincial statutes, private Acts, municipal Acts and legislative records and journals. Counsel for the Legislature say the process will take years to complete.

What interests are involved, said Mr. Magnet. I think it is clear that Manitoba's 60,000 French-speaking inhabitants have an important interest in having these disabilities removed. In certain ways, their status has been attacked. Secondly, in a country predicated on cultural and linguistic duality, such as Canada, there is a public interest of the highest importance in protecting the constitutional guarantees of English and French minorities wherever found. Our common destiny together depends on this basic understanding. If temporary majorities are allowed to use their power to subvert the constitution and attempt to exterminate or disable the other group, then no one anywhere in Canada has any linguistic or cultural security. Either we are committed to protect our basic constitutional understandings, or we must live in fear of majoritarian aggression. Our country cannot survive in this latter way. Finally, there must be the sober realization that Manitoba's personal resources are very much limited. There are very few bilingual judges or lawyers, and no French-unilingual ones. A cadre of French-speaking judges and lawyers can not be produced overnight. The constitution can not command the impossible.

What posture has the Manitoba government assumed? Its record is not flattering. It authored the illegal legislation of 1890. It refused to obey a declaration of unconstitutionality in 1892, 1909. It refused to respond to a declaration of unconstitutionality in 1976. It was arrogant. It said it did not accept the ruling of the court; it abused its authority. Even now, there is no indication that Manitoba intends to comply with the letter or spirit of Section 23. It appears willing to take the easiest step only — translating of statutes, records, and journals. The Supreme Court ought to go very far indeed. Manitoba's time has run out.

Procedurally, the court's jurisdiction could be engaged in various ways, said Mr. Magnet. Two examples lie close at hand. A public spirited citizen could bring a class action on behalf of all prejudiced Franco-Manitobans asking for certain forms of mandatory relief. Or, in a defence based on constitutional defect, to an information under a provincial statute, such as a parking ticket or other traffic offence, the court could invite amicus curiae briefs from interested parties on the question of relief.

An appropriate first step, remedially, would be for the imposition on the Manitoba Attorney-General, as a party defendant, to come forward with a plan that promises within realistic time limits to comply prospectively with the specific requirements of Section 23. That means a plan must be devised to move towards a bilingual court structure as well as a translation program. In the interim, a court translation system could be provided. Alternatively, a travelling French-speaking circuit court or courts could be formed to conduct civil and criminal trials in French on request. Secondly, the Attorney-General should have the duty to prepare a realistic plan that will compensate Franco-Manitobans for the past exclusion from the legal profession. Third, the Attorney-General should have the duty to bring forward disabilities from the legal government action.

If the Manitoba government is dilatory or recalcitrant, said Mr. Magnet, the court itself on request could fashion constitutional relief or the case could be sent back to the first instance for this purpose. The nature of relief is a matter for pleading and proof, but certain examples come readily to mind. The establishment of a program of legal studies leading to degree in Law, could be ordered established in the French language. Canada has that capacity. The University of Ottawa has such a program currently in advanced startup stages. So does McGill. The University of Moncton shortly will graduate its first French-speaking common law class. Some students in the Ottawa French program are Franco-Manitobans. They view Ottawa's program as their first hope ever to enter the legal profession while maintaining their cultural and linguistic heritage. If the Manitoba Legislature refuses to appropriate funds to implement the order, said Mr. Magnet, Manitoba lands could be encumbered or sold.

Constitutional relief by imposition of affirmative duties on government chaffs against the hitherto known limits of Canadian constitutionalism. It challenges to the utmost the theorist of Canadian government. So be it. The alternatives are decidedly unappealing. Manitoba's statutes can not be invalidated. Nor can the Canadian constitution become a toothless mouthing of platitudes, without any bite and incapable of affording protection. A fair reasonable and just, if novel, solution lies close to the hand that dares to grasp it.

Mr. Chairman, on the 29th of April last, in a letter to the Attorney-General, the Honourable Gerald Mercier, I wrote requesting the translated text of that which had been uttered in the House in the French language. I have not as yet received the said translated text. Also, I pointed out to the Honourable Attorney-General that he would be wise to go beyond the Attorney-General's department for advice on how to apply Section 23 of The Manitoba Act. I pointed out that because of the slowness in putting into application the said Section 23, his legal counsel are still on the defensive and risk being perceived as being political counsellors. My exact words were: 'Puis-je vous recommander d'aller à l'extérieur du département du procureur général pour vos conseils sur l'application de l'article 23 de l'Acte du Manitoba. À en juger par la lenteur de la mise en application dudit article 23, vos conseilleurs juridiques sont encore sur la défensive et l'on risque de les percevoir comme des conseillers politiques."

I was somewhat appalled by the answer received recently. Perhaps I am not sufficiently politically oriented. Perhaps I don't realize that everything a politician says has got to be politics, but I was dismayed at being told that, so it is the case, the Attorney-General's Department are political advisors. I could understand how the government could even for political gains resist my court case up to and including the Supreme Court of Canada. However, now that Section 23 of The Manitoba Act is law and the only interpretation to it can be either clearly understood or referred back to the Supreme Court for clarification. The Attorney-General's Department including the Minister should avoid, like the plague, interpreting constitutional rights for political ends.

This is why, Mr. Chairman, that this question must be one of conscience and justice involving all members sitting in the Legislature and outside of political partisanship. Mr. Chairman, I am still confident that our Premier can take on the role of Kingmaker in the upcoming debates on Canada's renewed constitution. If attitudes do not change and if there is no sincere accommodation made for Canada's two official languages across the land, there can only be difficult times ahead.

Manitoba has a mandate, a role to play at this all-important crossroad. I would urge you to impress upon our Premier to bring to the conference table in Ottawa next Monday, a definite timetable restoring this province in all aspects of government departments, court offices, etc., the bilingual character which was intended to be in 1870.

In 1874, Louis Riel is quoted as having said all we want is the application of The Manitoba Act. Nothing more, but equally nothing less. Since the lawyers of tomorrow in Manitoba would be well advised to be bilingual and thus avoid the continued embarrassment of translation, and since all students in Manitoba should not be denied the opportunity of studying law and practising it in this province, French should be taught from kindergarten up and that teaching in French should have the same treatment as the teaching in English, Manitoba's other official language.

Finally, Mr. Chairman, ladies and gentlemen, I would like to share with you a prayer which I have recited for many years and to which I attribute my sense of justice for all in these difficult times. The Prayer of St. Francis which you will find at Appendix 4.

> Lord, make me an instrument of Your peace.
> Where there is hatred, let me sow love.
> Where there is injury, pardon.
> Where there is doubt, faith,
> Where there is despair, hope,
> Where there is darkness, light, and where there is sadness, joy.
> O Divine Master, grant that I may not so much seek to be consoled, as to console;
> To be understood, as to understand;
> To be loved, as to love;
> For it is in giving that we receive —
> It is in pardoning that we are pardoned;
> And it is in dying that we are born to eternal life.

The last four years have been quite demanding on both my time and financial resources. I had hoped that with the Supreme Court's decision, Manitoba's unfortunate past history would be quickly corrected. I was wrong. That does not appear to be coming about. Bill No. 2 is but window dressing. It is an Act of a government that is afraid to provide leadership. Bill No. 2 may only be political posturing in preparation for the next provincial elections.

Monsieur le président, mesdames, messieurs, je n'ai pas perdu tout espoir car j'ai grandement confiance que le pire du probléme est résolu. Néanmoins, il nous faut beaucoup plus de bonne volonté de la part de notre gouvernment que ce qui est perçu jusqu'à date. C'est dans l'espoir renouvelé que j'ai de voir déboucher au Manitoba, un nouvel

esprit de compréhension et de justice que je vous laisse à vos délibérations. Que Dieu veille sur vous.

May God inspire you, Mr. Chairman, ladies and gentlemen.

MR. CHAIRMAN: Merci, sir. Any questions? Mr. Doern. You are prepared to answer questions, Mr. Forest?

MR. FOREST: I am, yes, definitely.

MR. RUSSELL DOERN (Elmwood): Mr. Chairman, I wanted to first of all congratulate Mr. Forest for his excellent brief. I think it's one of the best I've ever heard before a Legislative Committee; well researched, interesting and provocative in part.

I just wanted to ask a few questions concerning the brief and your democratic crusade. I believe it's correct that you were, I think, supported financially to an extent by the federal government in terms of court costs, is that so in terms of this research?

MR. FOREST: Yes, my lawyers costs were supported. My own personal expenses have not been.

MR. DOERN: On Page 15, you mention at the bottom, that Mr. Luxton in 1874 was committed to abolishing separate schools and was elected to the Legislature and so on. I just wanted a clarification. You talk about abolishing separate schools. I assume you meant funding for separate schools.

MR. FOREST: At that stage I am quoting Mr. Magnet, it isn't my own. I am not fully aware of the presence or purpose of Mr. Luxton in the Manitoba Legislature.

MR. DOERN: You also talked in your brief on Page 20 as being committed to multilingualism as opposed to bilingualism. I just wonder if you could explain that. One would assume that you would be in favour of bilingualism.

MR. FOREST: Official bilingualism. But by and large for all Canadians to know more than two languages because the proximity of other countries is now so close. I am told that in Europe people effectively speak more than two languages or more than one because of them being so close together. Such is the case because of transportation. I'm sure that I'm not predicting the Minister of the Department of Labour's prerogative when I suggest that perhaps within this generation, the work week may be only four days and can you imagine someone leaving by plane for South America, jumping over to Africa, into Europe and back to work the next Monday morning? That's all possible. Therefore, the best tools to have when you're travelling are languages. Not only that, just recently a professor in Japan indicated that — and this will be a comfort for members of the legal profession — he indicated that those people who work their minds the most are less likely to become senile and he does point out lawyers as being the people who are less likely to become senile. I think that it is high time — (Interjection)— . . .

MR. DOERN: Mr. Chairman, that is not my experience.

MR. FOREST: It is high time I believe that we delve into the development of the human mind and I'm sure that restricting either to one or two languages, when there are other people that have great advantages in maintaining their language including Ukrainians and German, two great groups in Manitoba.

MR. DOERN: So you see multiculturalism and multilingualism as being . . .

MR. FOREST: One culture. My object is to see in Canada in generations to come, if we could only be there, the Canadian culture, which will be from the two main strains of our people and to which all other groups would have added their contribution. To think less is to perpetuate a Balkanization country, where perhaps in Ontario they would say that in Toronto, Italian and English will be the two official languages, what else would be in Manitoba and Saskatchewan and Alberta? That is not the case. I think it's got to be along the lines of the two official languages and contributions from the others. The English that you and I are now speaking is not what you will be hearing commonly in five generations from now. The vocabulary will have changed so much. Even today — and this bit of information was given to me by a professor just three weeks ago in Montreal — since 1066 with the invasion of the Normans into England, no less than 8,000 words in the English vocabulary come from France. Why should there be such a struggle between the two? I think that we are made to work alongside one another and I think if it were possible to steal this word 'concord' from the English and French aircraft industry, this is what we have to aim at, is working together in concord in order to arrive at what I say, and I place this future of tomorrow, the identity on a plateau which will take no less than two or three generations to reach.

It's going to be difficult but we must aim at that. Not to aim at it is to continue our political or our individual inadequacies and we are possibly at that stage. We're so afraid of our own capabilities that we tend to build a fence around it.

MR. DOERN: Mr. Chairman, you also talked on Page 24 about temporary majorities and majoritarian aggression and it would seem that in a sense that you do not trust the public will or the elected representatives of the people. I assume that what you are saying is that you want linguistic rights entrenched in the constitution, that's what you see as your . . .

MR. FOREST: No doubt, no doubt but I already consider that the rights are entrenched in Manitoba's Constitution and as I mentioned in 1977 in my letter to Mr. Schreyer, I was hoping then that justice would be brought back to Manitoba before we discussed constitutional changes, so be it. I am certain that Manitoba's contribution from the position we now have, should be paramount. It is the key I think to the resolution of the Canadian difficulties right now. I think it is incumbent on this Legislature and it is incumbent on our Premier to take that position. I can see on the 10th or if not on the 9th of this month,

l'émoi, the resounding feeling of relief across Canada if the Premier of Manitoba were to lay on the table, a plan, a program, pointing out what Manitoba is going to do to wipe out for all times those discomfitures that have been created as a result of the 1890 law. There is no other solution. To think otherwise is to allow a person to go impaired, crutches, des cataplasmes, bandaids and other solutions are not adequate.

MR. DOERN: Well, Mr. Chairman, I think that Mr. Forest is now hoping or dreaming out loud . . .

MR. FOREST: Oh yes. The future belongs to dreamers.

MR. DOERN: And although you say in one section of your brief, you hope that this is the role that the Premier may take, you also say that the bill is simply window dressing and an act of government that's afraid to provide leadership. So if we want to talk about actions as opposed to future actions, you're saying that Bill No. 2 really is a drop in the bucket and really is not a major step forward in the direction that you want to go.

MR. FOREST: I think it was just a matter of a day or so after the ruling, and I blew my top. I called The Tribune when I saw in the page published weekly, I think on Mondays, the pictures of seven or eight people stating, 'Do you think that French should be an official language in Manitoba?' I got onto the line and I possibly bit a part of Donna Harvey's ears off when I told her. I said, that's irresponsible journalism. French is an official language in Manitoba. Why open up the debate to the public? This is my contention, that the government could go about its duties to implement Section 23 without fanfare, without legislation and just put it in law. If there are questions let's refer to the legal society, let's refer to the Supreme Court, but there is no need to pass a law in order to make sure of that Section 23. There's a time factor but you don't have to legislate the time factor. I'd be prepared to wait another 20 years to see the things go on.

But as I mentioned, and I think you all feel conscious I hope, that when Mr. Desjardins has the constitutional right to speak French, which he is quite capable of doing, that he should not be understood. Are you laughing at him? What's happening? Has he got a right or a privilege just to go on record as pointing out that he speaks two languages? Until everyone in this House in future years would be members that have been raised and can speak two languages, such as is the case in the National Assembly of Quebec, there is only one individual that I am told that insists on speaking English in Quebec and that's Mr. Shaw and he does it just to maintain that the English will stay there. But he understands French like everybody else and everybody else understands Mr. Shaw when he speaks English. Manitoba would be in the same forum, on seraient dans le même plateau, we would be on the same state of circumstances if 1890 had not occurred. I'm suggesting that we start now, preferably through the educational system. We have to learn mathematics. That reminds me of a little anecdote that you may have heard. Mr. Trudeau was speaking in B.C. and he said to a classroom of children, Are you having French shoved down your throat They said, Yes, a big resounding yes. Later on he came back and he says, are you having mathematics shoved down your throat and the yes was much louder.

MR. DOERN: I think this concept, I've heard it expressed for the first time by my colleague for St. Boniface about the right to be understood but I must say that certainly must be, although it is one that I think we can understand and appreciate, I don't know if that's a right. I think, again, that is a hope or a dream as opposed to something that is just around the corner. I think we're probably looking at something less optimistic, namely, the right to speak, the right to be understood may be a considerable distance away.

MR. FOREST: Why are you speaking to me, Mr. Doern? Are you speaking for me to understand you or are you speaking to the microphone?

MR. DOERN: I'll think about that.

MR. FOREST: No, I'm not supposed to question, I'm sorry. This is the point. What is the use of my being here speaking, what is the use of recognizing the officialdom of French in Manitoba if it is a privilege or a second baggage that one's carrying along with him? Either it's going to be recognized . . . there are two institutions and I've developed this theory over the years, the past four years, two institutions in a man's life that are important and that is the Legislature and the courts. To be able to make laws in one's language can respect that man's official position, and if some day he should have to plead in court for his very life, should he have to do it in a strange language or not in his own comfortable language, that of his mother. This is where, I think, the concept of the two official languages were anchored in these two institutions mainly. 1870 didn't say, well, the Department of Agriculture would have to be bilingual or Health or otherwise. They didn't have welfare in those days.

MR. DOERN: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mrs. Westbury.

MRS. JUNE WESTBURY (Fort Rouge): Thank you, Mr. Chairperson. Through you to Monsieur Forest. I also want to congratulate you on the excellence of the presentation. I enjoyed it very much, both in French and English. Having it printed in front of me, I was able to follow the French as well. On Page 21, you said in both French and English that Bill 2 has only one good point and that is of being drafted in Manitoba's two official languages. What, in your opinion, sir, is the very least that should have been presented to this Legislature to comply with the Supreme Court decision?

MR. FOREST: As part of my answer to Mr. Doern, the very least would be to go ahead and do it without saying anything because public debate, I can understand, can create controversy. Even my having risked using certain images and certain opinions in this is dangerous. You know, it's risque. What I think

is the minimum is a timetable. If the government were to say, yes, at the next session we will have simultaneous translation. So what? The mechanism isn't that expensive and it's going to create jobs. It will, above all, create that image that Manitoba is recognizing the official status of its two official languages. People from Quebec or elsewhere could be listening in the gallery to what is being said by our honourable members speaking in English. Students in emergent schools could benefit from the use of the good language that is used in the Legislature.

MRS. WESTBURY: Mr. Chairman, to Mr. Forest again. Do you feel that in passing Bill No. 2 that we're likely to encourage a complacency in ourselves which will make us feel as though we have complied with the provisions without in fact — I also said in my remarks in the Legislature that I thought there should have been a timetable presented or words to that effect — do you feel that this is likely to make us feel complacent and that we have, in fact, complied with the requirements when, in fact, it really means very little to ordinary Manitobans.

MR. FOREST: The publication of statutes in both official languages, Mr. Chairman, is the very last portion of Section 23. I have on occasion and particularly for that time when I sat with Mr. Mercier on the 18th of January to discuss, I broke down Section 23 into four parts. The first part has to do with speaking in the House; the second part is the translation or having the documents in both official languages. I might stop on that point; I'll come back to it rather. The third point is the courts, and the last point is the publication of documents from the Legislature.

On that second point, and I think it is important, in the French text of Section 23, besides records and journals there is the use of procès-verbaux, which means minutes. My contention is that Hansard or the Debates and Proceedings is the minutes of what is going on in the House. There is nothing in Section 23 that says official minutes. Un journal could be the Free Press, the Tribune. Un journal is a journal, something done journally, every jour, a record. And how many times I've heard or read in your records, stating from the record, Mr. Chairman or Monsieur le prèsident. Mr. Desjardins said this in 1962, you know. Is it a record or is it not? The French text says, obligatoire which is compulsory. The English version says, must. I find the word must is not as strong as compulsory. This is what I am saying.

MR. CHAIRMAN: Mr. Mercier.

HON. GERALD W.J. MERCIER (Osborne): Mr. Forest, you are aware, are you not, that both the federal government through parliament, and as you refer to in your brief, the Quebec government, both those jurisdictions have statutes which deal with an attempt to establish rules for conflicts in interpretation of statutes which are done in both languages?

MR. FOREST: Mr. Chairman, I have been made aware of the fact that there does exist even in this Legislature in Manitoba an Interpretation Act.

MR. MERCIER: M'huh.

MR. FOREST: All right. Let's resort to amend The Interpretation Act. Let's not create a bill which will interpret only because of the French. I think if there is any room for legislation to interpret legislation, it will be under The Interpretation Act. But I don't believe that outside of what is now known as The Official Languages Act of Canada, 1969, that both English or French in all government legislation in Ottawa have absolute equal status. I think they do. They have absolute equal status, and if there is any question between one or the other, it's up to the Supreme Court to iron it out.

MR. MERCIER: Mr. Forest, are you aware that subsequent to the decision to the Supreme Court of Canada, the Manitoba government announced the appropriation of some 500,000 to develop and establish a number of positions with respect to translators and contracting out with private firms for translators, and as a result of the lack of expertise in the Manitoba government, which I am sure you will understand, the resources of the federal government have been used through the Federal Bureau of Translation to advertise, screen applicants, carry out tests in Ottawa, Montreal and Toronto for the filling of those positions. Are you aware that that has been going on for the past few months?

MR. FOREST: Yes, Mr. Chairman. Mr. Chairman, through you; Mr. Mercier, I am fully aware. As a matter of fact, I have in my rough notes a question that I wanted to put to the committee and possibly officially to the Attorney-General's department or whichever department is responsible for the translating duties. What has happened since then? Has anyone asked, what is being translated? And in order to show my concern, are the four particular Acts that revolve around my own court case, The City of Winnipeg Act, The County Court Act, The Court of Queen's Bench Act, The Summary Convictions Act, are those being translated? Are those priorities? Will they be done in 1982? This is the point.

MR. MERCIER: Mr. Chairman, I ask a further question. Mr. Forest, are you aware that a number of bills presented to the Legislature through the assistance of three translators on loan from the government of Quebec have been introduced in both languages, those being such Act as The Law Fees Act; The Loan Act; The Education Administration Act, which has been introduced in English but I can tell you has been translated; The Interim Appropriation Act; The Powers of Attorney Act; The Suitor's Money Act; The Sanatorium Board of Manitoba Act; and as well, The Public Schools Act has been translated, just completed by the Quebec jurists before they had to return to Quebec last week. Are you aware that those Acts, as well as the bill before us, of course, The Power of Attorney Act, that this work has been under way for the past . . .

MR. FOREST: Oh, I am fully aware of that, Mr. Chairman. If you were to tell me that you have 16 caretakers in the House, I wouldn't be much concerned. If you should need 40 caretakers in the House, it's still a government problem and you have

to resolve it. But let's not say that there is such a monumental objective now for the next five years, that we'll do this first, and then perhaps go on to something else. After the sandbags to stop the flood there is the cleaning up, and I think we should be at the cleaning up stage at this moment, rather than trying to prevent perhaps the flow of good intentions that can come from Section 23 from really pouring out. I think this is where the attention should be given. It should be given to, as quickly as possible, even if it should take generations, but at least set the machinery in process to wipe out the dire effects of 1890.

MR. MERCIER: Mr. Forest, are you aware that a senior legal translator, who is presently the chief reviser for the Supreme Court of Canada will be on loan to the province, possibly for two years, to supervise and train the translators we are about to hire and help us organize the legal section of the Translation Services Branch, and in addition, to set up a group of experienced, free-lance translators? Are you aware of that?

MR. FOREST: I was not aware, Mr. Chairman. I was not aware of that and I think it's great news. I am tempted at times to take a sabbatical leave from business and go into law and possibly into translation because there is a lot of work to be done, and I think that it's got to be concentred. But by the same time and the same token, I don't intend to be back and debate or to make a presentation on the Educational Act's amendment that you are doing. But I am serious when I suggest that if we are to resolve the problem once and for all for the future, you better consider French as being a course subject. Not to do so, I think, is to put off . . .

MR. MERCIER: Mr. Forest, are you aware that a number of documents totalling some 85,000 words have already been translated through the services of free-lance translators under contract?

MR. FOREST: Those are details, as I mentioned to you, if the caretakers use Bane Dust Remover or any kind of dust oil for the work they have to do, I'm not concerned, providing the work is being done. I think this is just a procedural process that you are going through in the translation. I'm not that much concerned. But what I'd like to see is what's being done for today and tomorrow?

MR. MERCIER: Mr. Forest, are you aware that the government has announced that we will be providing translation service for all court documents where necessary without cost to the litigants and that we will fund all interpretative services required to permit witnesses or counsel to speak in either official language, and have also indicated we are prepared to establish a simultaneous translation service in the Court of Appeal, and in addition consider and investigate the possibility of establishing one trial court where there would be a simultaneous translation service available.

MR. FOREST: If that is official policy, I welcome it, because if there is going to be simultaneous translation in the Superior Court of Manitoba being the Court of Appeal, I think you are setting a precedent for having that same service in the Legislature. Not that a precedent need be set, because I think it's a matter of common sense. Fortunately, my education was mainly in English and I think I can understand the English word, but should we have to split hairs and say, well, it can mean this or it can mean that. Either the French language is an official language in Manitoba and the Legislature, or it isn't. You can not say one is more official than the other. You can not say that one is more equal than the other. I may be a little banal or maybe too common in my examples, but this is the best that I can provide you at this moment.

I say to you, Mr. Mercier, through Mr. Chairman, that whatever is being done is great but is it preparing that type of climate which will require lawyers to start their studies in the University of Manitoba possibly in 1985 in both official languages? I would say that we can not deny the right to anyone in Manitoba in school, to be available in the Faculty of Law, which means that by 1985 students now in Grade 7, should be taking intensive courses in Immersion to be ready to enter the university. Was it not some 10 or 15 years ago that French was a prerequisite subject to enter university? It's been wiped out.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Jenkins.

MR. WILLIAM JENKINS (Logan): Thank you, Mr. Chairman. Mr. Forest, is it your opinion that this bill is unnecessary since you have stated that the government could introduce all that you are requiring, by showing a willingness to implement Section 23 of the original Manitoba Act? In other words, the government of the day, regardless of what political party may be in power, if they follow the original Section 23 of The Manitoba Act, as you say on page 14, that either English or the French language may be used by any person in debates of the Legislature. The Act further states that both languages shall be used, not maybe but shall be used, as the respective records and journals of the House — and that would include Hansard — and the right to be understood I think, is implicit within the original section. In other words, if what was abolished out of the Act in 1890, has now been reinstated by the Supreme Court of Canada as being the legal interpretation of The Manitoba Act, then is it necessary for the Act that we see before us today?

MR. FOREST: No, this is what I'm saying. Mr. Chairman, this Act seems to limit the application of Section 23 and particularly limiting it in the interpretation portion of that. I don't see the need for it. Maybe I'm wrong and I am often wrong, but my understanding of Section 23 is that it is law. It is a constitutional situation for legislation in Manitoba and in their court system and if there is question as to how to interpret it, one need not pass a law to do it. One just has to possibly consult. There are authorities. I had the most pleasing opportunity of meeting on the 19th of February last, the great Frank

Scott, who had written on Manitoba's Official Languages Act in 1949. He's 80 years of age now. Also another Scott, whom I met at the University of McGill, Stephen Scott, who was quoted by Jules Deschenes, on his constitutional opinion. Mr. Stephen Scott just told me a few weeks ago when I was in Quebec, that he is preparing an opinion on the validity of the laws in Manitoba. I have already received this one here from the Manitoba Law Journal, from the Professor of the University of Ottawa, but there are minds in Canada that are prepared to contribute to the proper interpretation of this Section 23.

MR. JENKINS: Then I have just one further question, Mr. Chairman, through you to Mr. Forest. In your opinion, and I'm asking for your opinion not the legal opinion but your opinion, that the present Act is a restriction of Section 23 of the original Act. It doesn't go as far.

MR. FOREST: I would say, Mr. Chairman, that it is.

MR. JENKINS: Thank you.

MR. CHAIRMAN: Any further questions? Mr. Brown.

MR. ARNOLD BROWN (Rhineland): We have different communities in Manitoba, some of them are German-speaking communities, who are teaching two languages in their school system at the present time but they are English and German. We have the same situation with the Ukrainian community. Mr. Forest is recommending that French be compulsory or that it be a course subject. This could pose quite a bit of difficulty for these areas who already are teaching two languages. I wonder if Mr. Forest has given that particular problem any thought and what his comments are on that.

MR. FOREST: I am, and of course perhaps my looking at it is too cavaliere or too easy, but I very readily go back to the thinking and the writings of Dr. Wilder Penfield, Canada's most prominent neurologist, who in his study of the mind indicated that by and large 99.99 percent of all students could learn five languages. He then goes on to quote his own family experience with his five children and he said, when the children spoke with us in the house they spoke English. When they spoke with the governess, they spoke German and in school they spoke French. They weren't learning languages. They were communicating and that, I think, is an important aspect. I tie that thought with the one that I have now penned, of being able to speak with a person's language, you are looking with his eyes, listening with his ears, and feeling with his heart. I can more readily express that truth when I suggest that anyone who wants to sell something, if I were to have a prominent membership or clientele in my insurance office of people — if I were, let's say, in Ste. Anne's or Steinbach — no doubt that I would have to have someone in my office that speaks German and I myself, like my good friend Alphonse Fournier, could speak German like a Dutch uncle.

MR. CHAIRMAN: Mr. Brown? Any further questions? Thank you for your presentation, Mr. Forest.

MR. FOREST: Thank you. Merci, Larry.

MR. CHAIRMAN: Mr. Hlady, were you intending to speak on this bill? Your name is next.

MR. HLADY: No, not on this bill.

MR. CHAIRMAN: Thank you. I call Mrs. Gilberte Proteau.

MRS. GILBERTE PROTEAU: Mr. Chairman, gentlemen. The ladies are all gone? After the lengthy presentation of Mr. Forest and Mr. Kear and the historical background, ours will be short and to the point. You have copies, I think, of the English brief. I shall read it in French and I shall comment in English while I'm reading in French.

MR. CHAIRMAN: Proceed.

MME PROTEAU: Lorsque la Cour suprême du Canada rendait public son jugement le 13 décembre dernier, il va sans dire que beaucoup de Franco-Manitobains étaient trés heureux de voir rétablir leurs droits. Le gouvernement manitobain s'était empressé par la suite à mettre sur pied le strict nécessaire pour respecter une clause de la section 23 de l'Acte du Manitoba, soit la traduction des lois. La S.F.M. avait à ce moment-là, c'était le 24 janvier 1980, déclaré qu'elle était heureuse des premiéres dispositions du gouvernement, mais qu'elle espérait en voir d'autres. Nous devons dire que nous sommes beaucoup moins heureux aujourd'hui.

Que contient ce Bill 2 devant nous? Les dispositions de ce Bill sont évidemment requises pour assurer l'ordre dans le domaine juridique. Nous le reconnaissons, et comme citoyens de cette province, nous sommes les premiers à vouloir voir respecter tant l'esprit que la lettre des lois, ayant souffert 90 ans d'injustices dû à un manque de respect de la section 23 de 1970. La Confédération n'a pris que 20 ans pour démontrer qu'on voulait limiter le fait français au Québec seulement. It was in 1890 that the Bill was passed in Manitoba restricting the use of French in Manitoba and effectively limited it to Quebec. Only 20 years after Confederation, 23 years after Confederation and 20 years after the Act of Manitoba that already our rights were infringed upon. Vous, ayant le pouvoir de législation, pouvez maintenant rendre justice, mais il faudra certainement amender radicalement le Bill 2.

We recognized that perhaps Bill 2 is necessary to put order in the house, it's a sort of kitchen type of thing. However, we are in disagreement with particularly section 2, paragraphe (a), qui assure que le français sera presque toujours le cousin pauvre par rapport à l'autre langue officielle. Nous demandons alors à ce comité de considérer le modéle fédéral pour assurer que la langue française soit reconnue en principe et en fait au même point d'égalité que la langue anglaise. La section (8) du chapitre 0-2 des Langues Officielles est inclue en annexe. Une telle disposition assurerait que dans

l'interprétation d'un texte législatif, les versions des deux langues officielles feraient pareillement autorité. Nous demandons en plus au gouvernement d'au moins utiliser ses ressources pour faire en sorte que les deux versions de loi soient présentées en même temps, et ce le plus souvent possible.

Si le Bill 2, qui s'intitule, Loi sur l'application de l'article 23 de l'Acte du Manitoba aux textes législatifs, demeure la seule disposition en terme des lois que prendra le gouvernment actuel pour appliquer le Jugement de la Cour suprême, à ce moment-là, il serait préférable de ne rien faire, car alors les injustices que nos grand-parents ont connues en l890 et encore en 1916, les préjugés qu'ont dû subir nos parents, les luttes que nous avons menées depuis 20 ans pour nos écoles françaises, le trajet pénible de M. Forest lui-même pour amener son cas en Cour suprême, alors, dis-je tous ces efforts furent pour rien. Effectivement, si ce Bill est le seul développé suite au Jugement du 13 décembre dernier, nous indiquons immédiatement au gouvernment qu'il n'est pas sérieux lorsqu'il parle d'unité canadienne, et qu'il est intellectuellement malhonnête vis-à-vis sa collectivité francophone.

We have very serious fears with this bill, not that we don't see the necessity of it if you think legally it's a necessary step. However, we are worried that it might be, if it is the last Act that's going to pass through the Legislature, it's certainly going to be a very sad thing indeed. We have lived under these types of things for 90 years. We would like to get out of it without trouble now. I feel very tired emotionally; 90 years of fatigue that I carry on in my heart and in my soul because my forefathers, since 1890, have had to be battling this and here we are again this morning battling again. It is something that you do not know, I am sure, as persons. You do not know that feeling.

The original meaning of Section 23 of The Manitoba Act of 1870, seems to have been diluted, if not lost over the years. The Franco-Manitoban community alone is in a position to remember this original meaning because we are the only ones to fully realize what we have lost over the years, due to the illegal abolition of this section. We therefore wish to use this occasion to indicate to the government that the SFM, in collaboration with other Francophone organizations, is willing to co-operate with the government to develop a content for an Official Languages Act of Manitoba. This Act should be adapted to our realities of today as well as to the realities of the province as a whole. We would see in this Act measures which, while assuring the services requested and needed by the Franco-Manitoban collectivity, we would also ensure to the non-Francophone population of Manitoba who so desires, the means required to become bilingual or at least to increase its knowledge of French. Would that not be a positive gesture towards a real Canadian union?

We end by indicating to the government our great disappointment due to the fact that it refused to consider any of our requests in relation to The Schools Act, which was presented to the Legislative Assembly a few days ago. How much longer must we wait before the spirit of Lord Durham be finally buried?

MR. CHAIRMAN: Merci. Any questions? Mr. Doern.

MR. DOERN: Mr. Chairman, to Madame Proteau. I wonder if she could just briefly indicate — she expresses disappointment to suggestions made to amend The Public Schools Act — I just wonder if she could indicate briefly what those recommendations were since that bill is now before the Legislature.

MRS. PROTEAU: One of the recommendations was a definition of l'école française. There were others as well. But the important thing is since we are not here to discuss the Schools Act, the important thing to remember here is that the SFM and a lot of other organizations, in collaboration with the SFM, including the Manitoba Teachers Society, which represents all of the teachers in Manitoba, have for something like two years, prepared for a long time and at length and in great detail, the type of changes that would have been necessary in the Schools Act to favour the development of French education in Manitoba and not one single thing of any of our recommendations is included in the Act presently before Parliament. It is rather distressing to us to find that and so we come here this morning to tell you of a couple of changes we would like to see in this Bill, that would make both French and English official from top to bottom and we wonder if it will receive the same forgetfulness that the other recommendations of the School Act received a few months back. We are worried about that sort of thing.

MR. CHAIRMAN: Mr. Doern, I hope you will stay with Bill No. 2. We'll be dealing with the Education Act later on in this committee but today we are to try and confine our remarks to Bill No. 2, if you would please.

MR. DOERN: Mr. Chairman, I point out that this is mentioned in the brief. That's the only reason I raised it. It's the last paragraph.

I want to ask a more general question, namely, whether it is not true that the Society lost ground in the Franco-Manitoban community and in Manitoba at large by its position on supporting a 'yes' vote in the Quebec Referendum. I wonder whether the speaker feels that any ground has been lost, or whether this really did not harm the Society?

MR. DESJARDINS: Mr. Chairman, I would like to speak on a point of order.

MR. CHAIRMAN: The Honourable Member for St. Boniface.

MR. DESJARDINS: Mr. Chairman, this question is not related to the presentation or the Bill in front of us. I have mixed feeling in bringing this point up. I think that as long as we don't start a precedent, the question asked at this time should be on clarification of what has been presented to us. I would like to see the explanation but if you do, I think that Mrs. Proteau should be given ample time to explain the position of the Société Franco-Manitobaine.

MR. CHAIRMAN: To the honourable member and the members of the committee, I'm at the mercy of

the committee and I'm prepared to consider anything that the committee wishes to deal with.

MR. DESJARDINS: As long as its not a precedent and as long as its understood that Mrs. Proteau will get all the chance to explain her position if that position is asked, because the Société is not on trial here today.

MR. CHAIRMAN: The Honourable Attorney-General, on a point of order.

MR. MERCIER: Mr. Chairman, on the same point of order. While the response would no doubt be very interesting and something we might like to hear, I think we sometimes vary in this committee very widely and I would suggest that we try to stay as close as possible to the Bill before us and I would agree, for the Member of St. Boniface, that the question is really out of order.

MR. CHAIRMAN: Mr. Doern, proceed.

MR. DOERN: Perhaps I could rephrase it, Mr. Chairman, and ask Madame Proteau whether she feels that her organization's stand on the Quebec referendum will help further the position of the Franco-Manitobans in Manitoba, and I might ask her in that regard why she took what appears to have been a detrimental stand, whether she felt that was the only way that she could convey her dissatisfaction with the government's actions in Manitoba or with their introduction of Bill No. 2.

MR. CHAIRMAN: I'll have to rule the question out of order, Mr. Doern.

Mrs. Westbury.

MRS. WESTBURY: Thank you, Mr. Chairperson, through you to Madame Proteau. On Page 2 in the third paragraph you say, if Bill 2 is to be the only enactment by the government to apply the Supreme Court's judgement then it would be preferable to do nothing. Was this a statement for the sake of emphasis or would you seriously wish that this Bill would be defeated or withdrawn.

MRS. PROTEAU: No. I'm not a lawyer and I don't know exactly, I'm not a legal expert. We have consulted and we've been told that bills like this are usually necessary to put things in order in a House, to clarify some things that might, if they are left unsaid, sometimes in the future they lead to misconceptions and to — well they have to be dealt with one way or the other. So that's why I said it seems to be sort of a kitchen cleaning type of Bill and so the Bill in itself is not necessarily a bad thing and we not think that we don't want to see the Bill only we're worried about the paragraph 2. Okay, two things here, we're worried about that paragraph 2 and the other thing that we're worried about is that if this Bill is going to be the only one that ever deals with the constitutionality and the type of things that we would require for French Manitoba, then that really worries us. The paragraph 2 says Interpretation where conflict that whole Section 2 there. The provision in the official language in which the Bill for the Act was printed when copies thereof were first distributed to the members of the assembly prevails over the corresponding provision in the other official language and so if we presume that many of the bills would be presented in English only then in case of conflict it is only the English bill that stands. If you understand what I mean. Whereas we are proposing something in the way of what is here covered by the Official Languages Act in Section 8 (?) both of the versions in official languages are equally authentic so that in the case of conflict (?) conflict because in most cases I suppose, at least at the federal level the bill is represented in both languages but in the Section 8 here it doesn't have to be taken as is but it is clear that both versions in both languages are equally authentic all the time and this is not the case here with Bill No. 2, paragraph 2. Is that clear enough?

MRS. WESTBURY: Yes, I understand. Thank you.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Madame Proteau, if I could just — first dealing with the final paragraph on page 1 of your brief SFM objects particularly to chapter 2, paragraph A which guarantees the French language shall almost always remain a poor cousin in relation to the other official language. I'd just like to read to you an amendment that we are considering presenting to the committee to obtain your reaction to it. That Section 2 of Bill No. 2, the one that you made reference to be struck out and the following section be substituted therefor. Where the meaning of a provision of an Act in one official language conflicts with, is repugnant to or is inconsistent with the meaning of the corresponding provision of the Act in the other official language, the provision in the English language prevails over the corresponding provision in the French language unless the Act provides that provisions of the Act in the French language prevail over the corresponding provision in the English language. Do you see the similar type of problem in respect to the amendment as to the section that you have raised objection to?

MRS. PROTEAU: You used so many words there.

MR. PAWLEY: It may be unfair for me to just throw this at you.

MRS. PROTEAU: Yes, I would have to see the text and we have to think about it a bit, I don't know if it really resolves the problem. However, we'd certainly be willing to work with you and with lawyers in order to be able to make a good amendment to this Act.

MR. PAWLEY: First in regard to the — do you share the opinion that was presented by Mr. Forest that in striking down the old 1890 Act and now bringing in this legislation that indeed we are restricting, it is restrictive legislation rather than providing legislation within the spirit of the 1870 legislation.

MRS. PROTEAU: Well Bill No. 2 is certainly very narrow and although as I said I'm not the legal expert here, we'd have to think about that. But Bill No. 2 is certainly very narrow and it certainly does

not expand the law, if anything it does restrict it and this is one of our fears. If we had the assurance that Bill No. 2 would be followed by another Bill, of another nature, which would expand on the law and touch more on the spirit of it, talking about services, talking about schools for example, if only in the present School Act at this point there was something there that would tell us that the government is moving in the way of protecting, legally, our rights within the schools, then we probably wouldn't have those fears. But as it is now, this is the only thing we see and we just want to make it very clear to you that to us this is restrictive and to us this if fearful.

MR. PAWLEY: One final question Madame Proteau. In regard to public services and I believe reference was made in your brief to that. Public services within the civil service in Manitoba, what areas do you feel are most deficient presently, that are not dealt with within the provisions of the Bill before us?

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

MR. PAWLEY: The povisions in the public service, such as agricultural reps. etc. what particular services do you find are most deficient at the present time, insofar as the francophone community is concerned in obtaining services from the provincial government.

MRS. PROTEAU: Well, they are all deficient because there's no French service anywhere. But the areas where we would like to see services implemented more quickly than elsewhere would be the areas of health and welfare and recreation because recreation touches our young population and that's where it's important and health and welfare of course touches the people who are sick, who are unable to cope, who are poor and who are older and amongst the older generation there are many of them, it is surprising, who have a hard time coping in English.

MR. CHAIRMAN: Are there any further questions? Thank you Madame, merci.

MRS. PROTEAU: Thank you very much, merci beaucoup.

MR. CHAIRMAN: I call Mr. Hlady. Are there anymore presentations for Bill No. 2? I therefore call Mr. Hlady, Bill No. 3, The Powers of the Attorney Act.

MR. HLADY: Dr. Sybil Shack will give the presentation.

MR. CHAIRMAN: Dr. Shack.

MR. DESJARDINS: Excuse me, Mr. Chairman, I see Mr. Arnold and you have him on Bill No. 2, is that a mistake.

MR. CHAIRMAN: There's been, for the benefit of the members of the committee, several changes, Mr. Arnold apparently can't be here and Mr. Hlady is taking his place on some of these presentations.

MR. DESJARDINS: Well there are doubles there in the back, Mr. Arnold's double is in the back there.

MR. CHAIRMAN: Well these are the instructions that I got earlier.

DR. SYBIL SHACK: Mr. Chairman and members of the committee, we support in principle this Act, providing for a continuing power of attorney but we have some reservations and we feel that the Act is not complete in the sense that it doesn't provide adequate protection for those people who are supposed to be the beneficiaries of it. First we support the principle because of the need for continuing power of attorney as we age and Mr. Forest, to the contrary notwithstanding, no matter how much we use our brains during the course of our lifetime, we can't prevent hardening of the arteries or strokes or various other things that render some of us either senile or incompetent in other ways, as we age. More people are living on, more people are elderly in our society. Second reason, of course, for supporting the principle is protection for the donor of the power of attorney against exploitation if he or she should lose competence. Usually power of attorney is given to somebody who is trusted, very often a member of the family and that power really becomes valuable when the person who gives it, when the donor loses his own competence to make certain personal and financial decisions. A third reason for supporting the principle of the Bill is that in fact it legalizes the situation that often now exists. In many cases, people who are mentally incompetent gave powers of attorney to close members of the family and these continue in spite of the law that says that they lapse with the incompetence of the donor. We do believe, however, that the Act should go further in order first, to protect the donor against exploitation by the attorney. It would be very easy for an attorney whose only interest may conflict with the interests of the donor as the donor reaches the stage of incompetence, to exploit that power. At the moment, in the Act there is nothing to say, there is nothing to protect the donor against that kind of exploitation.

Secondly, to protect the attorney against pressure from rapacious relatives or other people who might have an interest in the estate of the donor after his death and, therefore, may act against or speak against the attorney and unduly influence the donor.

Third, to protect people who have a rightful claim on the future estate of the donor, against the power of the attorney. Therefore, we believe that certain restrictions and certain provisions should be built into the Act that would protect both the donor and the donee in the matter of a continuing power of attorney.

Our recommendations follow rather closely the recommendations of the Law Reform Commission and its report. Those appear on Pages 10 following in the report on Special Enduring Powers of Attorney of the Manitoba Law Reform Commission. I'm very briefly going to outline the recommendations that our association has to make.

First, we recommend that the continuing power of attorney be filed with the Registrar of the Surrogate Court or somewhere else where it is accessible, where people who are affected by the continuing

power of the attorney know about it and have access to it.

Secondly, we recommend that there be an annual accounting by the person who holds the power of attorney, particularly if the donor wishes to have such an accounting. We suggest that the donor have the right or have the responsibility to include in the continuing power of attorney, the requirement of an annual accounting on the part of the attorney or the person holding the power.

A third recommendation is, that once the continuing power of attorney has been given, there be no waiver by the donor of provisions such as filing or accounting. It would be very easy, again, for an attorney who doesn't wish to file or who does not wish to account, to influence a donor who trusts him or her and therefore we recommend strongly that that waiver not be permitted.

On the other hand, there should also be provisions for the removal of power of a power of attorney if there seems to be abuse of that power. We suggest that the attorney himself should have the right to go to a court or to the Public Trustee and ask for a hearing which would allow for the abdication of his power and the power, of course, should also lapse with the death of the attorney. Other interested parties, members of the family, people who might benefit from the estate or again, the Public Trustee, if there is any indication of abuse of the powers on the part of the attorney, should also have the right to apply for removal of the power to the court or through the Public Trustee. The Public Trustee having access to the annual accounting, should also have the power to make application to the court for the revocation of a continuing power of attorney. I think that sums up pretty well the stand of the Manitoba Association for Rights and Liberties on this proposed Act.

As you've noticed, Mr. Chairman, the purpose of our presentation is to make sure that the rights are protected, both of the donor and of the donee, of a continuing sustaining powers of attorney, i.e., one that continues after the donor has lost his mental competence to handle his own affairs.

MR. CHAIRMAN: We thank you, Doctor. By the way, may I remind you and Mr. Arnold that the copies of your letter have now been circulated to the committees, so we understand which bills that you would present.

DR. SHACK: Sorry.

MR. CHAIRMAN: Are there any questions for Dr. Shack? Thank you kindly for your presentation.

DR. SHACK: Thank you.

BILL NO. 14 — THE LAW SOCIETY ACT

MR. CHAIRMAN: I call Bill No. 14. Mr. Olson. Then, is it Mr. Hlady? Do you want to speak on Bill 14? —(Interjection)— No, apparently not. Mr. Duncan. Do you have a brief or a copy of your brief, Mr. Duncan?

MR. JACK DUNCAN: No, I don't, Mr. Chairman.

MR. CHAIRMAN: Carry on. Tell us who you represent, sir?

MR. DUNCAN: My name is Jack Duncan. I practise law in Morden and I am president of the Law Society of Manitoba and have been president of the Law Society of Manitoba for the last four days.

MR. CHAIRMAN: Congratulations.

MR. DUNCAN: Thank you, Mr. Chairman. It was anticipated that Mr. Schulman, the past president of the society would make this presentation to you, but I am here today in his stead as he was called to court and was required to be in court this morning. With me this morning is Mr. Farwell, who is the deputy secretary of the Law Society and I had earlier past presidents of the society and other officers of the society who were summoned away and could not remain with me.

With your permission, Mr. Chairman, I would like to make a brief opening statement on the bill which is before the committee, Bill No. 14. In doing so, I will try not to cover ground that is already well known to the committee except to the degree necessary for background purposes. There are three points to which I would like to draw your attention.

Firstly, this bill is the culminiation of a study of a large representative special committee of the Law Society of Manitoba which was under the chairmanship of the Honourable Mr. Justice Matas of the Manitoba Court of Appeal. I was privileged to be a member of that committee. The committee comprised members of the legal profession from a broad spectrum of practice, young, middle-aged and older members, barristers and solicitors, from city practice and from country practice. The report was discussed and debated within the society in the benchers' meetings and in meetings well advertised at which the general membership of the society had an opportunity to participate and, in fact, did participate.

Secondly, the objective of the bill is to promote and maintain reasonable standards of practice. It is educational, not disciplinary in nature. I use the word standards because, of course, although there are fused opinions in that all lawyers are called as barristers and admitted as solicitors, the realities of the work of office and the different types of work make it different. This is reflected in the composition of the committee, its members and those who worked on the bill. This composition, Mr. Chairman, represents lawyers from various aspects of practice, lay benchers and persons who are not elected benchers.

Thirdly, there is a need for the concept, wherein this bill can come into law, so that the Law Society can deal with the problem of competence. I'm not too sure that I agree with Mr. Forest when he says, lawyers, because they exercise their brains, do not become senile. That is perhaps one of the problems that this bill could deal with. Mr. Chairman, it is the very carefully considered opinion of the Law Society that there is a need for such a committee and a need for this bill. There is a very great majority of lawyers who agree to this need, and as I have said, that is why I am here.

The Law Society has drafted rules to implement the provisions of the bill, rules to establish procedure. The Law Society has established a proposed committee, a standards committee, to deal with the legislation when the legislation comes in and it is proposed that this committee will be of help to lawyers who are in country points, who may have had a restricted practice, who may becoming older, and it will provide for legal educational courses. There are complaints against them. The committee will be composed of laymen, as well as lawyers. Now, if there are any questions that I might answer, I will try to do so.

MR. CHAIRMAN: Any questions to Mr. Duncan? Mr. Hanuschak.

MR. BEN HANUSCHAK (Burrows): As I recall the debate on second reading of the bill, I think one of the concerns expressed by some of the members of the House was the matter of establishing standards or criteria for competence which becomes a very subjective type of thing. It's not quite as simple as criteria for the construction of a suitable piece of furniture or the building of a house or whatever. Have you any comment to offer on that, Mr. Duncan? How will you establish criteria for competence of a lawyer on the basis of which you would make a decision as to whether or not he is entitled to practise law or continue to practise in law?

MR. DUNCAN: In answer to that, Mr. Chairman, I would say that it certainly is a subjective decision as almost any decision entails a certain amount of subjectivity. I would say that we are trying to do our best to get around that by having the committee composed of lawyers from big city practices who may specialize in a certain type of work; lawyers from country practice who may not be so specialized and lay people to lay benchers who will, I hope, bring some balance to perhaps the subjectivity of the lawyers. The bill does not provide for a definition of competency. It's very difficult to establish a definition for competency but it is, I suppose, a test by which other lawyers would look at a lawyer and determine whether or not he is capable or is performing the service to which lawyers in general would think that he should.

MR. HANUSCHAK: Is it likely that the competence of the benchers will be used as a sort of a standard?

MR. DUNCAN: I would think that could be a danger, if I put it that way. But the fact is that the benchers are comprised of lawyers from all walks of life and all types of practice. For instance, there are 30 elected benchers in Manitoba, 20 of whom come from the central judicial district, that's mainly the city of Winnipeg, and 10 who come from the rest of the province. So that I think that we will get a balance of subjectivity in the standards' committee.

MR. HANUSCHAK: I am somewhat relieve to hear that because I was afraid that if the competence of the benchers would be used as a standard, then there might be a tendency on the part of the members, if you are a society, to elect the least competent as benchers just to be on the safe side.

MR. DUNCAN: That would be a good reason for a competency committee.

MR. CHAIRMAN: Mr. Hanuschak. Mr. Pawley.

MR. PAWLEY: Mr. Duncan, you are probably aware of the debate which took place on second reading pertaining to innocent third parties that have suffered as a result of the incompetence of a member of the Society, and then discovering that the Society, based upon I suggest, technical reasons — some members of the Society might disagree with that but I suggest technical reasons — refusing compensation. Has the Law Society, in the passage of any bill such as this, any plans to ensure that no client, the victim of incompetence of a member of the Society, will go without reimbursement because of not issues based upon merit but simply technical defenses of delay in reporting, will be protected? Has the Law Society presently any plans if this bill is passed?

MR. DUNCAN: Presently, the Law Society has a policy of insurance which is a liability policy of insurance. It's a liability policy and that disctinction must be made clear from a no-fault policy. I can say to Mr. Pawley that there is presently considerable discussion as to the type of coverage that the Law Society should look at, rather than strict liability policy, perhaps some type of no-fault policy for the public.

MR. PAWLEY: Mr. Duncan, in this particular case, there is the Law Society liability policy covering the lawyer in question. The defence raised is not one that would be cured by the issuance of a no-fault policy or some other form of liability policy. The defence is one that is raised due to a delay in reporting by the lawyer, and yet the Society licensed the lawyer, permitted him to continue practice, and now the most innocent third party is denied any compensation based upon a technical defence that has been erected both by the liability insurance company and by the Society.

MR. DUNCAN: I appreciate the problem and we may be thinking of the same case, Mr. Chairman, the case which arose when the Law Society's policy was transferred from one carrier to another and a lawyer did not notify the insurance company of a claim. That's the problem. That's something that I think every honest lawyer in the province would like to see rectified and I am sure that in the years ahead we will try and do that. I have just come back from a meeting of the Law Society of Saskatchewan wherein the same problem has arisen in Saskatchewan. I have discussed this with the present Law Society of Alberta. I think that, as responsible members of the public and of a profession, that we will do our best in the future to look into the type of problem that did occur. And I can only say to you that, as an incoming president, that is one of my major concerns.

MR. PAWLEY: Another item I would like to raise, and I feel it's relevant to the bill, is some expression

of concern that we receive, as legislators, from time to time from constituents about their filing of complaints to the Law Society involving incompetence of a member of the Society and little action being undertaken, outside of a letter being written to the lawyer complained about and a response being forwarded then to the complaining client.

Do you see a board being set up that will ensure that there will be much more than that done with the passage of the amendments? I want to give you an example, if I could, which only came to my attention last week, of a breach of a trust condition, the complaint being lodged with the Law Society involving considerable sums of money by way of damages and a defence being raised by the other lawyer, which seemed rather frivolous to me just looking at the correspondence, and the Law Society simply abdicating any responsibility for the complaint on the basis it was now going to be a matter before the courts. Would the Law Society be taking a much tougher position pertaining to boards dealing with the incompetence, dealing with these complaints in the future, insofar as members of the public are concerned?

MR. DUNCAN: Yes, Mr. Chairman, in answer to that I would say that is one of the very reasons for this bill and the establishment of a competence committee, so that a panel of lawyers from all spectrums of the profession can look at these problems and deal with the problems in a more effective way than they have been dealt with in the past. I say to you, as a member of the Discipline Committee for the last six years, that there are many many more complaints than there used to be. I think people are more conscious of their rights and are more inquiring, and I think that is good. I can say to you also, as a member of the Discipline Committee, that the Discipline Committee looks into many more items and with more depth than they used to. I think that we're trying to by . . . Many of the complaints may not be disciplinary complaints but they may be complaints that arise as a result of incompetence, unknowing what to do. I think that the competence committee can be an educational committee which will tend to decrease the problems which have arisen in the past.

MR. PAWLEY: Mr. Duncan, presently, if there are repeated complaints lodged pertaining to the competence of an individual solicitor, does the Law Society not have the right to presently discipline that lawyer, suspend, or to disbar him, based upon constant and repeated complaints that might take place that would give rise to action by your Discipline Committee?

MR. DUNCAN: Under a present . . .

MR. CHAIRMAN: Order please. We have a problem. We were supposed to rise at 12:30.

MR. PAWLEY: I only need two or three minutes, unless there are other questions.

MR. CHAIRMAN: Okay, proceed then.

MR. DUNCAN: In answer to the question, Mr. Chairman, under the present legislation, the Discipline Committee, and through it, the Judicial Committee, can only deal with matters which amount to professional misconduct or conduct unbecoming. There is no machinery whereby we can deal with a lawyer who has an alcoholic problem, who has a problem because of old age, because those don't amount to conduct unbecoming, in most cases, or unprofessional misconduct. But with this procedure we could have a further in-depth look and a further control over the total services offered by a lawyer in the province of Manitoba.

MR. PAWLEY: Just one more question. I wish we could go on much longer but apparently we're in trouble timewise, Mr. Duncan, I don't want to have you come back. But a lawyer in the prime of his life that's not alcoholic, not aged, and yet has a heavy file of complaints dealing with his incompetence, do you mean to say to me that the Law Society has been unable to deal with that up to the present time when it's not a question of mental incapacity or alcoholism, etc., etc., it's simply been a question of behaviour unbecoming because he's not practicing in the manner that would be assumed to be reasonable by members of the public of a lawyer in the province of Manitoba?

MR. CHAIRMAN: Before we proceed, the committee will meet again on Thursday and the first person I'll call on Thursday morning at 10:00 o'clock will be Mr. Olson, then Mr. Lipsett, if they are here. The rest of the people can go home if you wish, and proceed, Mr. Duncan.

MR. DUNCAN: Certainly the Discipline Committee of the Law Society can deal with a complaint against a lawyer. A perfect example would be a lawyer who refuses to respond to correspondence. That, as are holdings of the Judicial Committee, would indicate that can amount to conduct unbecoming, and certainly the Judicial Committee can deal with those matters.

MR. CHAIRMAN: Mrs. Westbury.

MRS. WESTBURY: My question to Mr. Duncan is, who do you anticipate will be nominating the two lay members of this committee?

MR. DUNCAN: As I understand the procedure, the lay members to the Law Society of Manitoba, and I stand to be corrected, are appointed by the Attorney-General on the recommendation of the Law Society, and I may be wrong. Maybe Mr. Mercier can help me with that.

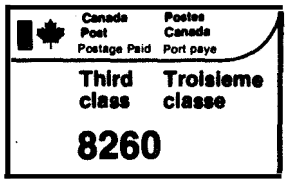
MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, just to clarify that, the legislation provides that there shall be a committee composed of Chief Justice Freedman, the Attorney-General, the President of the Union of Manitoba Municipalities, and the President of the Association of Urban Municipalities, who . . . we actually meet and we make appointments of four persons as lay benchers to the Law Society.

MR. DUNCAN: I point out, Mr. Chairman, that one of the purposes of this bill, too, is to increase the number of lay members. There will be an addition that the bill provides for the election of an additional faculty member, Faculty of the Law School of Manitoba, to the benches.

MR. CHAIRMAN: Thank you, Mr. Duncan. This committee will sit again at 10:00 a.m. on Thursday morning. We will be starting with Bill 14.

Committee rise.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