



Second Session — Thirty-Second Legislature
of the
Legislative Assembly of Manitoba

STANDING COMMITTEE
on
PRIVILEGES
and
ELECTIONS

31-32 Elizabeth II

Chairman
Ms. M. Phillips
Constituency of Wolseley



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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Second Legislature

Members, Constituencies and Political Affiliation

Name	Constituency	Party
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ANSTETT, Andy	Springfield	NDP
ASHTON, Steve	Thompson	NDP
BANMAN, Robert (Bob)	La Verendrye	PC
BLAKE, David R. (Dave)	Minnedosa	PC
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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON PRIVILEGES AND ELECTIONS

Monday, 21 November, 1983

TIME — 10:00 a.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Ms. M. Phillips, Wolseley

Members of the Committee present:

Hon. Messrs. Anstett, Bucklaschuk, Lecuyer and Penner

Messrs. Brown, Graham, Kovnats, Malinowski, Nordman, Ms. Phillips, Mr. Scott

WRITTEN SUBMISSIONS:

Knight, J.A., Macdonald, Manitoba
Brunka, Ray, Winnipeg, Manitoba
International Brotherhood of Electrical Workers
Roman Catholic Archbishopial Corporation of Winnipeg

MATTERS UNDER DISCUSSION:

Draft Report re Proposed Resolution to amend Section 23 of The Manitoba Act

* * * *

HON. A. ANSTETT: We have a quorum, Committee come to order.

In accordance with established practice, upon appointment to the Executive Council, I have submitted to the Clerk my resignation as Chairman of the Committee and would ask the Clerk to take the Chair to supervise the election of a new Chairman of this Committee.

MS. C. DE PAPE: Are there any nominations for Chairman of the Committee?
Mr. Anstett.

HON. A. ANSTETT: I would like to nominate Myrna Phillips.

MS. C. DE PAPE: Are there any further nominations?
Seeing none, Ms. Phillips, would you please take the Chair.

MS. M. PHILLIPS: I'd like to call the Committee to order and notify the Committee that the Clerk advises me that we've received resignations from Mr. Cowan and Mr. Ashton. I'd like some nominations to replace them, please.
Mr. Anstett.

HON. A. ANSTETT: I'd like to nominate the Hon. Mr. Penner and Mr. Scott.

MS. M. PHILLIPS: Is that agreed? (Agreed) Agreed and so ordered.

HON. A. ANSTETT: Madam Chairperson, the purpose for calling the Committee today was to distribute a draft report following the Committee's deliberations. I'd like to do that now and then I would like to speak briefly to the draft report. There are also copies in French.

MADAM CHAIRPERSON: It is moved by Mr. Anstett that the draft report, as circulated, be adopted as the Report of the Committee.

HON. A. ANSTETT: Yes, Madam Chairperson. Speaking briefly to that I'd like to, first of all, thank the Committee for very extensive work on this subject. I think the Committee's objective was to receive input from Manitobans on the proposed resolution to amend The Manitoba Act, and I think clearly this has been a resolution that's been of great interest and importance to Manitobans, and that was apparent in the number of briefs which were presented to this committee, both written and oral.

Your Committee recognizes that this is an issue that's for many people a matter of national significance, as well as great importance within the province; and appreciates that some Canadians from outside Manitoba travelled to the province to express their views to the committee.

The Committee was very impressed with the quality of a great many of the submissions, it was evident that much time and research and thought went into them. The Committee was also moved by a number of the briefs which clearly were spoken from the heart.

While the government was very pleased with the strength of support articulated for the principles of the proposal, we are also very sensitive to some valid concerns raised in many of the submissions.

Some members who presented submissions to the Committee felt the resolution was too broad in scope and they have fears that it will impose a burden on Manitobans that is unacceptable; many others feel the proposed resolution does not go far enough and is too limiting. Some reservations were expressed regarding the draft amendments tabled at the commencement of the hearings.

The government has the difficult task ahead of responding to concerns in reaching a middle ground between these many conflicting views. The government is, nonetheless, committed to finding a political resolution which will address the concerns and will rectify this province's constitutional difficulties in an honourable way.

It is our intention to do so by proceeding with an amendment to Section 23 of The Manitoba Act. Consideration must, however, be given to amending certain sections of the resolution which will clarify their scope and application while maintaining the spirit of

the original resolution. Section 23(1) must be further studied and consideration given to possible changes.

It was brought to your Committee's attention that certain private and public institutions had concerns with respect to the delay period for the re-enactment of certain private and public acts. Therefore, the Committee recommends in the report that an amendment to Section 23.5 be made to make it uniform with Section 23.4.

As indicated by the government previously the wording of the proposed resolution was chosen so as to specifically exclude municipalities and school boards. Some concerns were expressed by representatives of those organizations regarding the possibility of their inclusion because of the wording. Therefore, as announced in August, it is considered advisable and recommended in the report that a specific exclusion be provided in the resolution.

It is further recommended that Section 23.7 be reviewed, taking into account concerns raised with respect to the extent of services to be provided by the government; and a further recommendation is suggested in the draft report to provide for the inclusion of a section similar to Section 22 of The Constitution Act, 1982 to provide protection for customary rights and privileges with respect to languages other than English and French.

Madam Chairperson, I think it's clear that to date over the last six months there has, to some extent, been more heat than light shed on this whole subject matter and it's our hope, and certainly I hope also a desire that's shared by all members on the Committee, that both the Committee's report and subsequent deliberations in the Legislature will diminish some of the heat and, hopefully, shed more light on what is a very important task for the government, and a very important matter to be resolved in an honourable way for all Manitobans.

So, Madam Chairperson, I move the report on that basis with those remarks.

As suggested at our last meeting, it may be the desire of the opposition, and we would certainly wish to accommodate it, to take this back for further study and their reaction at that time, and members on the government side are certainly willing to do that and meet at a subsequent date at the call of the Chair if that's the desire of members opposite. So, having moved the report, Madam Chairperson, I'd be happy to participate in any further discussion.

MADAM CHAIRPERSON: Mr. Graham.

MR. H. GRAHAM: Madam Chairperson, we will certainly want to look at this, but at the same time there have been several items that have been before the Committee that still have not been dealt with and I would hope that things, such as, the promise of the Attorney-General to give us further definitions of the term "significant demand" and that, as he promised in September, that I would hope that we would get some indication as to whether or not that clarification would be given to the Committee before we make further deliberations.

MADAM CHAIRPERSON: Mr. Lyon.

HON. S. LYON: Madam Chairman, if the Attorney-General wishes to respond to that . . .

MADAM CHAIRPERSON: Mr. Penner, then.

HON. R. PENNER: Just briefly on that last point and to others raised in the introduction of the proposed report by Mr. Anstett. The Grant Report says at the bottom of Page 1: "Your Committee further recommends that Section 23.7, which is the services section of the proposed resolution, be reviewed so as to more explicitly delineate the responsibilities of the Provincial Government with respect to the provision of communications, etc.," so that in fact all of the provisions of 23.7 are being looked at from the point of view by taking into account many of the concerns which were raised, not the least of which was that pertaining to significant demand.

With respect to the reference in the opening remarks and in the report to the delay period, just to clarify that, the members will recall that the resolution, when it deals with the validation of our statutes for a period of time and the requirement of translation, that there was in the drafting a difference between 23.4, which dealt with public general statutes when it talked about the printing and publishing of them by December 31, 1993, and the further Section 23.5 which dealt with private acts and did not use the language printed and published, but used the language re-enacted.

It was brought to the attention of this Committee by Mr. Wehrle, among others, representing a lot of private institutions that they felt that may create problems down the line, and what is being proposed in the draft report is to make the language uniform, as between 23.4 and 23.5, by amending 23.5 to use the same language essentially as 23.4. I can simply say to the Committee, through you, Madam Chairman, that many of the private institutions and their solicitors have expressed satisfaction with that proposed method of dealing with the problem which I'm grateful was brought to the attention of the Committee.

Finally, with respect to the reference in the draft report to Section 22 of The Constitution Act, 1982, that essentially is what is contained in the draft amendment which was tabled with this Committee on September 6th in the proposed new 23.9.

MADAM CHAIRPERSON: Mr. Lyon.

HON. S. LYON: Madam Chairman, a few questions arise out of the statement by the Minister of Municipal Affairs. First of all, as my colleague, the Member for Virden has indicated, we appreciate the understanding that has been arrived at with respect to all members of the committee having the opportunity - after what I presume will be a brief meeting this morning - to take this report and give it further consideration and the Committee then to be recalled at the call of the Chair. That would seem to be a sensible course of action to follow.

While we are availing ourselves of that opportunity, I wonder if we could have information at this stage on a few items. No. 1, are we to understand that the amendments that are referred to in para. 4 of the draft report now in front of us, and appearing as well on Page 2, do they reflect the amendments that were proposed by the Attorney-General on the 6th of September - all of those amendments that are

mentioned - or are there new amendments that are contemplated by that paragraph and, if so, when may we expect to see the specific wording of the amendments to 23.1, 23.5, or do we in effect have them at the present time?

MADAM CHAIRPERSON: Mr. Anstett.

HON. A. ANSTETT: Yes, Madam Chairperson, the amendments referred to in the report are not referred to in the specific language of September 6th, as I said in my remarks, because some strong reservations were expressed about both the wording and the nature of those amendments, and the government has not at this time prepared definitive wording to address those concerns. It was felt that since the Committee had had referred to it the subject matter of the resolution, and not the detailed section-by-section reference to the resolution, that the purpose of committee consideration of a report in this Committee was somewhat different than a committee considering a bill referred by the House after second reading, at which amendments in detail would be considered. I thought it was more appropriate that any amendments to the resolution be tabled in the House which is seized out of the actual detailed resolution, rather than the general subject matter. So for that reason the amendments to be proposed will be moved in the House at the appropriate time when the resolution is under consideration.

HON. S. LYON: Well, that raises a problem I would think, not only of interpretation but of the usefulness of this Committee's work. I can understand the government's conundrum, as I expect is the case if it hasn't reached a consensus within its own ranks on what it wants to do, but there is no reason why this Committee should be left marking time, so to speak, until the government collectively makes up its mind. So would it not be preferable if the government, which is understandable, may require further time in order to make up its mind; that the government take that time, make up its mind and then present the results of its deliberations to the Committee so that the Committee isn't presenting a generalized statement to the House, but is rather dealing with the specifics, because sooner rather than later the House is going to have to deal with the specifics of the amending act? The sooner we get to it the better.

MADAM CHAIRPERSON: Mr. Anstett.

HON. A. ANSTETT: Yes, I agree with Mr. Lyon, Madam Chairperson. The House has to deal with the specifics of the amending act, that's why it's appropriate, and that's why the government has proposed a draft report to the Committee that is general in its description of the amendments required.

However, to suggest that the government hasn't made any decision or has some conundrum is a bit inaccurate. The government clearly, in this draft report, says at the beginning of paragraph 4: "Your Committee recommends the Legislative Assembly proceed with a resolution to amend The Manitoba Act" - the commitment to proceed, which certainly was the subject matter referred to in late August by the Legislature.

We were to review the subject matter; it's the government's position that has been done, some reservations and concerns have been expressed. The Committee report then attempts to address that while, at the same time, suggesting that there should be a commitment - and I said this in my opening remarks - to the principles of the resolution as tabled in the House and a commitment to proceed with that resolution.

I think that's the subject matter that's referred to the committee, the suggestion that detailed amendments should be tabled here I think goes both beyond the Committee's mandate and is something that should be done in the House. That's where the resolution is at the present time.

Had the full resolution been referred to the Committee I would feel a responsibility then to table amendments in the Committee, but I had some concern that members opposite would wish to chastise the government for tabling detailed amendments in the Committee when the Committee is not seized of that matter.

HON. S. LYON: I'm afraid, Madam Chairman, that the Minister's arguing himself into a tighter and tighter circle every time he opens his mouth. The amendments were, indeed, introduced to this Committee by the Attorney-General on the first morning, as I recall, that the Committee met, so we have had that. When I say "amendments," they were couched in terms of being proposed amendments at that time. So the Committee, which is a Committee of the House, need I remind the Minister, is seized of those amendments and it would be next to useless for the Committee to make a generalized resolution or report to the House and say we recommend that the Legislative Assembly proceed with a resolution to amend The Manitoba Act. Well, what's the resolution going to say? Is it going to talk about the issues that were contained in the resolution tabled by the government back in May of 1983, or is it going to talk about the price of eggs in Timbuktu? We don't know because the government, even against its protestations, apparently hasn't made up its mind - and I'm not casting aspersions - it's a difficult matter upon which a government is being asked to move.

In my humble opinion, the government shouldn't have been involved in this whole mess in the first place by way of a silly negotiation on a case, but that's not at issue at this point. The Committee is seized of the resolution. I don't have the referral resolution in front of me, but I was never under any misapprehension as to what the job of the Committee was. The job of the Committee was to hear the people of Manitoba with respect to the specific resolution that had been introduced in the House.

The Attorney-General at the time said not a comma was going to be changed in that resolution. Well, then along comes the amendments of September 6th, or the proposed amendments of September 6th, and now the government is saying: we've heard representations with respect to these amendments, we may want to make some changes in the amendments.

Well, one of the representations, Madam Chairman, that was made with respect to the amendments was a very interesting one by the Manitoba Government Employees Association. I'm sure the government is

giving consideration to it because they said that they wanted, in effect, to disentrench the provisions that deal with the extension of French Language Services in the Civil Service Commission and to make that power available, not to the courts, but rather to an independent group, such as, the Electoral Boundaries Commission; and the effect of their recommendation, if it were agreed upon by this Committee, would be in effect to disentrench the whole operation. If that recommendation is being given serious consideration by the government then I think the Committee is entitled to know because that would fundamentally change and alter the approach that many members of this Committee have been taking with respect to entrenchment. So I merely try to point out how ludicrous it is to attempt to say that the Committee is going to pass some form of watered-down generalized resolution without dealing with specifics.

I cite, by way of another example of the need to deal with specifics, the constant reference that we hear in the Press, and as I believe - although they didn't appear at Committee meetings of this Committee in Winnipeg when I was present - but the Franco-Manitoban Society keeps saying that they will not accept any of the amendments, or some of the amendments, that were proposed by the Attorney-General on the 6th of September. Well, surely the Committee is entitled to know whether or not the amendments that the government is proposing are amendments that will meet the approval of the other parties - I use the word loosely - to the agreement that was entered into by the Attorney-General, the other parties being of course the Franco-Manitoban Society, the Government of Canada, and one presumes the representatives of Mr. Bilodeau.

Well, if the amendments that the government is considering do not meet with the approval of those parties, then why is the Committee making any recommendation to proceed with an amendment to The Manitoba Act if the parties to the agreement are not willing to go along with those amendments? Because, if that is the case, then of course the Bilodeau case will proceed and we will end up in Manitoba having the worst of both possible cases; that is, we will have the court case, and we will have a jack-knife amendment to the Constitution of this province engraved in stone for all time which nobody wants.

So I believe, without arguing the point any further, that the case is clear that the Committee should be favoured by the government, when the government has made up its mind, with the details of the amendments that it is proposing when it says: "Your committee recommends that the Legislative Assembly proceed with a resolution to amend The Manitoba Act." We would look like a collection of idiots if we didn't tell the House and the people of Manitoba what the resolution is going to be. Surely to heaven we haven't laboured in this vineyard all of this time to turn out such weak wine. We're charged with a task, let's get on with the task; and the example that I cite, which I think is the most crucial example of the Franco-Manitoban Society saying to this government - we don't agree with the amendments that you're bringing forward and we're a party to this agreement. Mr. Bilodeau may or may not agree to the amendments, but for heaven's sake, Mr. Bilodeau of the Franco-Manitoban Society and the people of Manitoba have to see what the amendments

are. Why are we holding them back? If there is agreement among the government and the members let them table today what the agreement is; let's see the amendments. I don't see why there's any secret about it, there's no question of prerogatives of the House being offended by the Committee seeing the amendments at all, so I think that the government is putting itself into a Catch-22 situation by not proceeding forthrightly to tell the Committee what the amendments are going to be, if it knows what those amendments are.

If, on the other hand, the government hasn't made up its mind, which I suspect is the case, well then, fine, there's nothing disreputable about governments taking time to make up their minds. God only wishes now, in retrospect, that the government had taken more time to make up its mind before it embarked on this course of divisiveness with the people of Manitoba. So if that is the case, if the government wants more time to make up its mind then, by all means, take the time and we will direct no criticism to the government about that at all, but if the government has made up its mind, then for heaven's sake let's see the amendments now.

The second question, of course, would be if this Committee is to meet at the call of the Chair, and presuming that we're going to be seeing some amendments before we make a report to the House, then of course the question has to be asked, when is the Legislature going to meet? That question, of course, merely corroborates what I was saying before about the necessity of the government making public its proposed amendments, because if there is to be no agreement - and remember the Attorney-General said right off the mark he was entering into this arrangement with Mr. Bilodeau, with the Franco-Manitoban Society, and with the Government of Canada to forestall the Bilodeau case - why then, why don't we, as a Committee, do the honourable thing and recommend that there be no amendment? But we can't make that decision until such time as we have seen the amendments.

MADAM CHAIRPERSON: Mr. Penner.

HON. R. PENNER: I have before me the Votes and Proceedings of Friday, August 12, 1983, which merely repeats the motion made by myself earlier on and clearly speaks about referring to the Committee the subject matter of the resolution.

It seems to me quite clear that when a bill is referred to under the Standing Committees the procedure that is followed is representations are heard and, there and then, at Committee or subsequently depending on the Committee's own arrangements, clause-by-clause treatment of the discussion, amendments, whatever, of the bill are entered into. But when a subject matter is referred to Committee for the specific purpose, as noted by Mr. Lyon, of hearing public representations, then the procedure in Committee is quite different and I think that Mr. Anstett's point that the appropriate place to table amendments is in the House is absolutely correct.

Certainly it can't be suggested, and I didn't think that it was suggested, that they would be presented to anyone other than either the Committee or the House; that would be entirely improper, so that it becomes a

question whether to present it to Committee or present it to the House. It seems to me that my perhaps limited experience and research on the matter that when the subject matter of a resolution or a subject matter is referred to Committee, then the Committee reports in the kind of terms that have been introduced by Mr. Anstett today.

Mr. Lyon is entitled to speculate as much as he will and I don't intend to deal with his speculations. Let him have his amusements for the time being; that's all it amounts to.

With respect to the draft amendments which were tabled by myself on September 6, 1983, Hansard will show that at the time I stated very clearly that the purpose for doing that was so that at that point in time, that level of discussion, the government having looked at some possibilities, we could obtain some public reaction to some possible resolution of some of the points of concern which had been raised. It seemed to us that it would have been unfair to the public who came here in such numbers, and with such interest and, as Mr. Anstett has pointed out, from far away, it would have been almost indecent to have considered some amendments and not advise people who prepared briefs, many of which dealt with those points, of some possibilities so that we could have reactions for and against.

It would have been, and would still be, improper for the government, having listened to reactions both to the resolution, as originally worded, to possible amendments, to have listened to all of those, then to proceed to the House without taking what was said into account. And what the report states, it states very clearly, is that the resolution is being proceeded with, but that there are concerns that have been raised that the government should take into account and indeed will. Beyond that another route that would be possible for the Committee, and was considered, was to attempt a full analysis of all the briefs. But then what you get into really is questions of interpretation, a government's view of what various briefs said as opposed to the opposition's feelings, since a lot of the briefs were on both sides of a lot of questions ambiguously stated, directly stated, it doesn't matter. We would spend an enormous amount of time, or would likely spend an enormous amount of time, trading opinions as to what the briefs said in detail, or toting up.

The report that is being submitted, in the context of what was referred to the Committee, why the Committee met and what remains to be done I think is an excellent report, very much to the point and it would be wrong - indeed I don't know if there's a precedent for it - of a subject matter having been referred to the Committee, that the Committee be the first body to receive the amendments.

MADAM CHAIRPERSON: Mr. Anstett.

HON. A. ANSTETT: As I said earlier, Madam Chairperson, the government has an obligation to table amendments in the House.

I appreciate Mr. Lyon's argument. I would point out to him first that in 1981 the proposed resolution by the Federal Government with respect to The Constitution Act, 1982, as it finally was enacted, was

not before the Committee which considered that matter in this province through two separate series of hearings, and any suggested amendments and concerns about that were not tabled. The report, in effect, made some very general recommendations which mandated the government of this province, at that time headed by Mr. Lyon, to negotiate, enter into discussions with the other parties to that constitutional enactment at that time.

HON. S. LYON: He didn't initiate the amendments.

HON. A. ANSTETT: At that time detailed consideration of proposed amendments was not made in Committee. Furthermore, the rules under which we operate specifically provide that debate is not entered into many times by different mechanisms. The provision for section-by-section debate on a bill is provided for in Committee when you're considering a bill between second and third reading.

Mr. Lyon, who is very much aware of the rules in this regard, knows that a matter cannot be anticipated for discussion. He knows all the rules on anticipation and not allowing debate twice on the same subject matter at the same session. That's why Committee rules are structured the way they are.

To debate section-by-section in Committee would then preclude, as is the practice on third reading on a bill, debate on section-by-section, on debate clause-by-clause on third reading where the principles of the bill are addressed.

We have an anomaly here because we are dealing with a resolution and not with a bill and the anomaly, in a nutshell, is that the Committee is mandated to consider the subject matter, not clause-by-clause, and nothing I say, no matter how much I would like to deal with amendments here, is going to change the fact that that's the subject matter that's referred. So the government has an obligation to table the amendments in the House and the government will do that when the House is recalled. Now, how long this Committee is going to take in its deliberations of the report will certainly be a factor in determining when the House is recalled.

Also, the question of going over the fine legal points with Legal Counsel and translation, which in a document of this importance is of some significance, will take some time as well, that will enter into the question Mr. Lyon asked about when the House is recalled. Obviously, if there is no concurrence by those parties who were parties to the original understanding of last May, then they will choose to proceed with the court action and the government will be faced with that decision and will have the option then of proroguing the House, killing the amendment and allowing those parties to go court. Certainly that is a real possibility, as Mr. Lyon says. If those parties to the court action choose not to welcome any amendments that the government proposes when the House reconvenes then they will go to court. They have that option; they continue to have that option. At any time they could have renounced the amendment and gone to court. That option is available to them now; it'll be available to them if they do not like the amendment.

So Mr. Lyon is quite correct in that, but that's a decision that they will have to make. It's the

government's responsibility to propose the amendments. We accept that responsibility, we will be doing it, but we will not be negotiating with other parties to determine whether or not those proposed amendments are acceptable to them. It is our purpose to bring in amendments that address the concerns of Manitobans as expressed to this Committee.

The other thing I think that is confusing, and I think Mr. Lyon wouldn't want to leave it on the record in the confusing way in which he presented it, is a suggestion that the resolution that the draft report suggests should be considered by the Committee does not deal with making blueberry pie or anything else. Clearly, it's the government's intention, as stated in paragraph 4 of the draft report, that the Legislative Assembly proceed with a resolution to amend The Manitoba Act. If Mr. Lyon thinks it would be clearer I would be willing to entertain the addition of words to the effect that that amendment be in accord with a statement of principles enunciated last May. We're not going to change the whole tenor of the resolution and turn it into a recipe for blueberry pie, clearly the government is committed to the principles of last May.

So I think, Madam Chairperson, that the government's intentions are clear and, as I said in my opening remarks, we will be tabling with the House as soon as it reconvenes the details of amendments. The amendments of September 6th were obviously for discussion purposes, they were not moved in the Committee. The intention of them was to allow individuals who were responding to the call for submissions to have a chance to address some of the options which were available to the government in amending the resolution; they've given us that response. Members on both sides know the reservations that were expressed and obviously it's the government's obligation to consider those and move amendments in the House.

HON. S. LYON: Well, one or two questions arise out of the non-defence that we've heard from the Attorney-General and from the Minister of Municipal Affairs. I think we are now, Madam Chairman, getting at the real reason for the government not wanting to make public its amendments, if indeed it has arrived at any consensus, they're afraid of debate in the Committee. Well, we're still a parliamentary democracy, Madam Chairman, we will have certain rights, even though my honourable friends like to trample on them.

I think it is the duty of the Committee to look at the amendment, to look at the resolution that was proposed in the House, to look at the amendments which the Attorney-General, who wasn't standing in such abject fear on the 6th of September, tabled before the Committee. He wasn't too fearful that we would debate those proposed amendments at that time. The Committee carried on with its work; the public of Manitoba debated them; now we have to come to a resolution. There's a time to talk; there's a time to act. Now is the time to act and what we want to see is what the government, in its collective wisdom, has produced as a result of these . . .

HON. R. PENNER: Why don't you stop talking? We could start acting.

HON. S. LYON: Well, the Attorney-General says, "Why don't I stop talking?" You know, with his political background he doesn't like people to talk. I know that, Madam Chairman, and in the party that he used to belong to he says they used to have a means of stopping that too and we know what that was as well. But, Madam Chairman, he said this morning it would be indecent to consider amendments to the resolution here this morning. Was there anything indecent about what he did last September? I thought that that was a remarkably forthright thing for the government to do. They were on the spot; they were feeling a lot of heat; they knew that they were in trouble up to their eyebrows so they produced some amendments for the consideration of the public and for the consideration of this Committee last September. Why does it now become indecent all of a sudden to say we've synthesized our thinking on this? If, indeed, Socialists can ever synthesize anything, and our consensual opinion on it as a government, if indeed they have a consensual opinion on anything as a government, their consensual opinion is such and such, what's wrong with telling the Committee what the consensual opinion is, if indeed one has been arrived at? So the question has to be, how can this committee make a response to the House, which is charged with certain responsibilities, if, as the Minister of Municipal Affairs acknowledges this morning, the results of the government's deliberations are going to be such as to cause one or more of the parties to withdraw from the agreement? Then, Madam Chairman, this Committee can dissolve immediately, there will be no need for any amendment to the Constitution. But we won't know that until such time as this government screws up its courage and gives the Committee the amendments that it proposes to make.

It's a time to act, the government can't hide any more behind its innumerable caucuses and midnight burnings of the oil and all of the cell meetings that they've had with respect to this matter, the government can't hide behind these devices any longer. They've got to make up their mind; they've got to be forthright with the Franco-Manitoban Society; they've got to be forthright with their colleagues in the Government of Canada; they've got to tell Mr. Bilodeau what their mind-making project has been, because they are now dependent upon these people in order to have the amendment mean anything.

They didn't come as a government, Madam Chairman, to the Legislature and say, may we negotiate an agreement? Not at all. They went ahead on their own and started a negotiation of an agreement. Why are they now so super-sensitive, when they come now finding that they have negotiated a bad agreement, they find that they've got to make amendments to it, why are they so super-sensitive about saying, oh, well, we're not going to give those amendments to this Committee? What are they going to do? Slip them under the door of the Legislature some morning and then run? What are they going to do? Why are they so ashamed of their handiwork? Why don't they show it to us now? Show us; show Mr. Bilodeau; show their partners in crime in Ottawa, show them the results of the deliberations that this great collection of governors have been deliberating upon since October. Come on and show us. What have you got to hide?

And I suggest, Madam Chairman, that until such time as the committee sees what the government intends to do the Committee can't deal with a page-and-a-quarter report which says really nothing because we don't know what their amendments are. So let's stop beating about the bush trying to play games with rules and all such nonsense. This is a fundamentally important matter into which this government has stumbled through ineptitude and gotten this province into a state of divisiveness that it has never been in before in many generations.

Now, having stumbled foolishly into this mess, surely the government has some responsibility to tell us how they're going to extract itself and the people of Manitoba from the mess that they've gotten us into. Get on with your business, start acting like a government instead of a bunch of cowering idiots.

MADAM CHAIRMAN: Mr. Graham.

MR. H. GRAHAM: Thank you, Madam Chairman. Madam Chairman, I haven't been in this Legislature as long as some other members but I have had 14 years in this august Assembly, and I have to say that this is the first time in that 14 years that I have ever seen a proposal to change a Constitution that has been initiated by a Provincial Government. It's a very serious matter and one that I think every Manitoban hopes would be achieved by a general accord on behalf of everyone.

We have the opportunity, when this matter was referred to a committee, it was referred with the hope that the public would have the opportunity to see what could be done to achieve the aims and the objectives of government, because in a committee atmosphere - a committee is structured and has been given the rules of committee that allow it to hear the public - it allows the committee to call before it expert witnesses, should it so desire, and it gives the opportunity for dialogue to occur hoping that we arrive at a general accord.

I find it very difficult for this Committee to do that unless we have before us the aims and the objectives of the government dealing with the specifics. Once we see the specifics that the government has then the Committee has the power, should it so desire, to call constitutional experts, to call the legal advice that the government uses, before the committee so that we can obtain from them their views on the implications of the specifics of the government proposal.

All that, Madam Chairman, will be lost to the Legislature and to the people of Manitoba should we proceed with the report as it is presently before us. The arguments put forward by the Minister responsible saying that we can deal with the specific amendments in the House I think are very weak, to say the least, at this time because we did have specific amendments placed before the Committee, and we are now finding that we're not going to be able to deal with those specific amendments, or the government indicates that they are reluctant to deal with those specific amendments in the Committee. I would say that, if that was the case, why did they put them forward in the first place? Because that certainly gave us the opportunity to hear the public's opinion on those specific amendments, and

I would hope that we would have some indication from the government what their intentions are because we, in the Committee, have an opportunity to recall witnesses, to recall expert advice, to have the benefit of that, and that will be lost if we leave the Committee and take this matter into the House.

The only way that it can be handled then in the House is by Committee of the Whole and, to my knowledge, the general public has never been called before a Committee of the Whole, or specific members in society have never been called before a Committee of the Whole, to my knowledge, in the 14 years I've been in this Assembly. So I would hope that the government, as they have indicated they're willing to have another meeting in this Committee, and I would offer to the government either one week, two weeks, three weeks, but in no case later than the end of this year, to bring back to the Committee their specific proposals so we can deal with them in a Committee way, which is much less structured and gives a much greater opportunity for a general consensus to be arrived at than what would occur if you're in the structured debate of the Legislative Assembly.

I would think that the government would be interested more so in arriving at a solution that would be generally acceptable to all people of Manitoba than trying to put forward their own ideological bent on a matter so important as a constitutional amendment.

MADAM CHAIRPERSON: Mr. Anstett.

HON. A. ANSTETT: Madam Chairperson, very briefly, because I know members would like to review the report and meet subsequently, but I think some concerns expressed on the other side should be addressed.

The Committee receives direction from the House. Regardless of any suggestion by the Leader of the Opposition that the Committee, on considering detailed amendments could then decide to abort the whole process by deciding, since certain parties to the original proposal were no longer amenable to those amendments that the Committee could then abort the whole process, is a denial of something Mr. Lyon knows. Mr. Lyon knows that the Committee does not have that power.

The Committee's specific mandate was to report back to the House on the subject matter, and Mr. Lyon may want to abort the process, but that is certainly not the direction in which this government wants to go and Mr. Lyon knows that the Legislature itself is supreme. In fact, he's been the one who's been telling this Committee, the people of this province, and several years ago the people of this country, that the Legislature was supreme, and yet he talks about games being played with the rules.

Madam Chairperson, he's the one who's suggesting that games should be played, that the Committee should abort, should receive amendments and then, if the other parties don't agree the whole thing can end right there and we don't even have to recall the House. The Committee is obliged to report to the House; that's its mandate, so I'm a little concerned here about where Mr. Lyon is coming from, Madam Chairperson. He talks about legislative supremacy but wants the Committee to abort the process and offend the whole concept of

Legislative supremacy; he talks about cells in this building. I'm a little concerned that maybe some of the padding has come loose on his when he starts talking about that and denying something that he's talked about believing in for the 20-odd years he's been in politics in this province, so I have some concerns about that.

Mr. Graham was concerned that we have reservations. I have no reservations, I think the statement of principles of last May was an excellent statement of principles, and no one on the government side has any reservations about that statement of principles. Our concern now is to address the concerns and reservations that were made by the public in their briefs. Mr. Graham wants our aims and objectives clearly stated. We've said we want to proceed with a resolution to amend The Manitoba Act that's in accord with the principles stated last May; that's our intent.

Mr. Graham wants to renew the hearings, call further witnesses; after 400 briefs Mr. Graham wants to start that all over again. If Mr. Graham has someone he hasn't heard who he thinks should be heard I'm certain that members on both sides would be interested to know who that is, but we've heard over 400 briefs.

The amendments of September 6th were never moved in the Committee. Mr. Graham says, what were they for? And then he went on to answer the question - of course, they were for discussion purposes only. We wanted to hear how the public responded to some possible ways of addressing concerns that were raised by people like himself in the House during the summer, that was the purpose of the hearings, the purpose of the amendments. We've gone through that process; it's been an excellent process.

The government commends the people who made those presentations. We're very pleased with the way that process went and the level and the analytical contribution that came from those briefs. Now we have a job to report to the House whether or not the Committee thinks that the statement of principles of last May is the basis on which a resolution should proceed. That was the subject matter; that's what the report recommends that we recommend to the House.

MADAM CHAIRPERSON: Mr. Lyon.

HON. S. LYON: Madam Chairman, just to get one matter clarified. I'm asking the question to either the Attorney-General or the Minister of Municipal Affairs. If the amendments that they are proposing in this draft report which we haven't seen, if those amendments are not agreed upon by the original parties to this agreement, the Franco-Manitoban Society, Mr. Bilodeau, the Government of Canada, would it be the intention of the Government of Manitoba to proceed with the amendment to The Constitution Act, notwithstanding the fact that the agreement had fallen apart and the Bilodeau case was going to go ahead?

MADAM CHAIRMAN: Mr. Penner.

HON. R. PENNER: Mr. Bilodeau, of course, is the person who ultimately decides what his own course of action will be. He has been free at all times to phone up, through counsel, the Registrar of the Supreme Court of Canada and ask that his case be put back on the

list for argument. He was free to do that in August; he was free to do that in September; he's free to do that now. Whether or not he will do that will be for him to decide on the basis of his own discussions with counsel. Beyond that I don't think anyone can decide how that case will be heard, when that case will be heard, if that case will be heard by the Supreme Court.

HON. S. LYON: Well, are we not in the position, going back to the genesis of this matter - no disrespect to that word - are we not in the position of a potential situation whereby one of the parties to this agreement, one or more of the parties to this agreement, will object to the amendments? Indeed, they have said publicly that they do object. The Franco-Manitoban Society object to the amendments and will not proceed with the agreement. The agreement is not to be proceeded with; the Bilodeau case is to go on to be heard. Then why would the government then proceed with an amendment to the Constitution which satisfies nobody?

HON. R. PENNER: The only parties to the case before the Supreme Court are Mr. Bilodeau and the Attorney-General of Manitoba. The interveners cannot decide, of course, when a case will be heard, or if a case will be heard, it's only the parties who may do that, so my previous answer with respect to that stands.

Now whether or not anybody else, whether it's the Government of Canada or Franco-Manitobans or an organization of Franco-Manitobans, agrees with the amendments to The Manitoba Act proposed by the Government of Manitoba, is in fact, immaterial as to whether or not the case before the Supreme Court will proceed. It may be that any one of them, or the other interveners, may not particularly like, or indeed may even oppose, amendments introduced by the Government of Manitoba, but that will not decide whether or not the Bilodeau case proceeds, it will be Mr. Bilodeau alone.

The only agreement that there was was an agreement stated in open court before the Chief Justice of the Supreme Court, and that was that the case would be adjourned sine die, that is, without a fixed date being set. So there it stands on the list. There was no other agreement than that and the reason why Mr. Bilodeau agreed to that course of action, through his counsel, was the assurance given that time was needed in order to see whether a political resolution of this could be reached. It may be that you arrive at that situation in which what is proposed by the Government of Manitoba is not satisfactory at all, or not satisfactory in the main - let's say the Société franco-manitobaine group, one of the interveners - but if Mr. Bilodeau decides that he will not put the case back on the list and if the Attorney-General of Manitoba decides that it will not put the case back on the list for arguing it doesn't get back on the list.

HON. S. LYON: Then two matters, Madam Chairman, that arise out of that comment - and I thank the Attorney-General for his frankness. Assuming that Mr. Bilodeau doesn't put the case back on the list, of course, there's nothing, as he would admit, to preclude any other citizen of Manitoba from putting the selfsame case on the list, with or without an amendment, is there?

HON. R. PENNER: It sounds like one of the arguments that we've been making before this political resolution.

HON. S. LYON: And there never will be, that's No. 1. And No. 2, by implication, the Attorney-General is saying - and if I'm incorrect he'll correct me - that he has no control over Mr. Bilodeau or over his counsel. If Mr. Bilodeau proceeds to put the case, go on with the case, or if another case of this nature arises, as is entirely possible, that the Government of Manitoba I take it would not proceed with this amendment. Am I right in that assumption?

HON. R. PENNER: From the point of view from the Government of Manitoba, and this has been one of our strong arguments, the only real defence that we have to being led back into court again and again and again, with respect to every one of our provincially enacted statutes enacted in one language only, is an amending resolution of the kind that we proposed when this was introduced in the House by me in July of this year, or whatever the exact date of the tabling of the resolution was. Now, that's the reason why it was introduced. If it's passed and subsequently passed by the House of Commons and the Senate, then we have the task - but by then not a formidable task - of translating 400 or 500 statutes and we have until 1993 to do that, and in that period of time it will not be possible for a case to succeed on the basis that the statute in question is invalid, having been passed in one language only.

HON. S. LYON: On that point, getting into all of the nuances of the legal arguments, it would always be possible, would it not, as stated by Mr. Twaddle in his opinion of April of 1982, for any person at any time to question the validity of the Legislature of Manitoba to even pass the resolution, because that basic validity still remains in question, if one wants to cut too fine a point on it? Now, that being the case, have we had any indication, or has the Attorney-General had any indication, from the Government of Canada that the amendments that he proposed on September 6th to the original resolution are acceptable to them? Because, while they are not a party to the action of Bilodeau, while they are only an intervener in the Supreme Court case, they are of course the other requisite party to the passage of any amendment under Section 43. The Legislature of Manitoba could go through the process, as this government appears to be indicating, of passing an amendment to The Manitoba Act which would not find favour with the Parliament of Canada, and the Parliament of Canada would not pass it or, worse still, would amend it to conform with Parliament's views of matters in Manitoba which would create an even greater constitutional conundrum than the one that we presently face.

HON. R. PENNER: I don't think I have very much to add to the statements I've already made about the legal position. Of course, it's quite right that there can be no amendment under Section 43 unless a resolution passed by the Legislature of the Province of Manitoba is also passed by the House of Commons and the Senate, but the initiative must be with the Province of Manitoba and the Premier of this Province, Premier

Pawley. At the time when a resolution was being proposed for the House of Commons dealing with the same subject matter made it very clear and very forceful that it would be up to the Legislature of Manitoba to pass the resolution it saw necessary to meet the needs of the people of Manitoba, and that is the position that we continue to take. The Federal Government will have to react one way or another to what we do.

MADAM CHAIRPERSON: Any further discussion?
Mr. Brown.

MR. A. BROWN: Madam Chairperson, I have a little bit of problem on just exactly how we are supposed to submit what we have before us for discussion for our caucus.

What I understand at the present time is that we are absolutely supposed to disregard the amendments made of September 6th and really consider the original resolution as it was presented only; that really the only amendments that we are going to be looking at is going to be an amendment to Section 23 or 23.5 so that it is going to conform with 23.4; that we are supposed to disregard all briefs and presentations that have been made before this Committee and address ourselves to that particular situation only.

Madam Chairperson, then one must begin to wonder what this Committee was all about in the first place, whether it has served any purpose whatsoever. We have spent two months; we're heard many many presentations. Many people have gone to a lot of trouble to come and made excellent presentations and I would just like some clarification on this. Are we supposed to, when we proceed back to caucus, address ourselves only to the original resolution?

HON. A. ANSTETT: Madam Chairperson, clearly the Member for Rhineland is being at least a little bit facetious. I cannot believe that he is asking me to advise him as to how he should present this to his caucus or how they should discuss the subject matter. They are free to discuss it in any way they see fit.

Clearly the government's consideration, in its caucus, was to consider the original resolution, the statement of principles last May, all of the submissions presented to the Committee and weigh those, consider the reaction to the amendments suggested for discussion purposes on September 6th, and the government has done that. We have concluded that we should proceed with an amendment in accordance with the principles of last May, that some of the specific details which are listed should be addressed when the government brings in amendments in the House. We have concluded that, we have recommended that the Committee come to the same conclusion and then recommend the resolution to the House and then the House deal with whatever amendments are proposed.

How the Member for Rhineland wishes to discuss that in his caucus I would hope, for the benefit of this caucus, that consideration of everything that has happened since last May will go into the mill in that discussion. But, Madam Chairperson, I would be the last to suggest how the opposition caucus should deal with this matter. If they have a conundrum, Madam Chairperson, I would suggest it is theirs to deal with. I would be the last to try and give them advice.

HON. S. LYON: I hate to interrupt, Madam Chairman, the new Minister in his Grade 11 debating tactics which really are a bit immature and puerile for this table, but there are two questions that are fundamental that I ask and I would like an answer to. No. 1, can this Committee, on or before its next sitting, whenever that may be, at the call of the Chair, can we have the undertaking from the government that it will make available to this Committee of the House the amendments that it has arrived at - it says it has arrived at - so that this Committee will be able to see those amendments before it makes its report; and even more importantly, parties to the first agreement, negotiated by the Attorney-General, will be in a position to indicate to the government whether or not they support those amendments? Can we have an answer to those questions?

HON. A. ANSTETT: Madam Chairperson, I believe both questions were already answered. It is the intention of the government to table its amendments in the House when the House reconvenes. It is the intention of the government to do so in response to this Committee process and not in response to the anticipated reaction of parties to, or interveners in, the Bilodeau court case.

HON. S. LYON: Do we understand that the government has a firm, fixed position today with respect to amendments to the resolution that it brought into the House in May?

HON. A. ANSTETT: Madam Chairperson, I said in my opening remarks and in response to questions from Mr. Lyon earlier that there were details to be hammered out, legal counsel, translation, matters of that sort, and that all those details have not been finalized, and when they are the House will be recalled and the amendments will be tabled.

HON. S. LYON: More importantly, can we, if the opposition - as I'm sure we would agree - were to give the government time to get its act together so that it can finalize these matters, will the government not then agree that it would be appropriate for the Committee to see those amendments and for the public to see those amendments before the Committee makes its report? What's the government got to fear?

HON. A. ANSTETT: I've already answered the question, Madam Chairperson.

MADAM CHAIRPERSON: Committee rise. The next meeting at the call of the Chair? (Agreed)

WRITTEN SUBMISSIONS PRESENTED BUT NOT READ

Submission by Mr. J. A. Knight, Macdonald, Manitoba

Mr. Chairman:

Thank you for the opportunity to present my views on this important issue.

As the District Director of the Central District of the Union of Manitoba Municipalities representing 17 rural

and urban municipalities in central Manitoba I have the duty to report to your committee that at our June district meeting this issue was raised and the group felt that this was not the way to go.

As one former Reeve put it, "We wonder what carrot the Federal Government held out to the Province."

In listening to all the debate the last few weeks I still think that if we went back to 1870 the two languages be used in the Legislature and courts and leave the rest alone we would be all better off. The arguments that our laws are invalid by not being passed in two languages has got to be ridiculous. Surely no judge or court would make that decision.

The Government of Manitoba and others seem to be telling the people that if the minority does not have their language entrenched in the Constitution other groups will suffer.

I disagree. We have all lived in a free country and province and each group has the right to their own culture and religion and language. This is as it should be.

If this is entrenched in the Constitution then it cannot be changed. That does not seem to be right in a free country.

I just hope and pray that the courts, the Federal Government and the province have a good look at what this issue is doing to our province and country.

Leave it as an option to the various cultures. Let the people decide.

Thank you.

Submission of Mr. Ray Brunka, Winnipeg, Manitoba

To: The Standing Committee on Privileges and Elections.

I am Ray Brunka and I reside at 769 Beach Avenue in Winnipeg. I'm making my feelings known because I don't want this decision being made without all points of view being taken into consideration.

I'm of Polish descent on both sides of my family. I speak for them when I say the ethnic population in Manitoba will resent the proposed legislation for many years to come.

Entrenchment of French rights is like Moses going to the mountain and returning with The Ten Commandments. Mr. Pawley does not make a very good Moses, nor does Mr. Trudeau or Mr. Forest.

Extend French rights, give the Francophones what they need to exist in their mother tongue, but do not preclude the rights of all other ethnic groups in Manitoba. After all bilingualism is not the 11th Commandment.

We are all partners in Confederation, so why are there a chosen few who must be bilingual? It must be all or nothing; equal parts, not pieces. The agreement should not be made by biased parties.

As a Manitoban of Polish descent I did not require government approval to learn the language and to speak it.

There were ethnic leaders who would not reveal who they represented and how large a membership they had, who financed them and who gave them the right to speak on behalf of large numbers? This is deceiving. They do not speak for the Polish, Ukrainian and German people.

History is being made and I hope that it will be one page Manitoba will be proud of - not ashamed.

I'm totally against entrenchment of language rights, but I'm in favour of extension of language rights for ALL MANITOBIANS.

President Kennedy once asked the American people not to be blind to our own indifferences, I'm asking Manitoba's Francophones the same thing. Let's maintain peace, brotherhood and understanding with an open mind so that tomorrow will be brighter.

LET'S NOT DO TODAY WHAT CANNOT BE UNDONE TOMORROW.

ENTRENCHMENT AND RESENTMENT CANNOT BE EASILY UNDONE.

Respectfully submitted.

**Submission by the International Brotherhood of
Electrical Workers
Local Union No. 2034**

This brief is submitted by the International Brotherhood of Electrical Workers, Local Union 2034. Our Local Union represents approximately 2,100 members who are employed by Manitoba Hydro in the crafts and trades.

We are an interested party in these proceedings because Manitoba Hydro is a Crown Corporation. This Local Union supports the concept of limited bilingualism services being entrenched in the Constitution.

Having stated that we are somewhat concerned about the effect the proposed amendments will have on our membership and the workplace, in particular, the proposed Section 23:7:2 as it refers to significant demand and nature of service.

We have difficulty in defining these terms and, therefore, cannot support the present wording of this particular portion of the amendment. We note that the Government states that they will be introducing amendments at a later date to define "significant demand" more precisely.

There appears two avenues to deal with "significant demand" and "nature of office". One method is to have a precise and clear meaning of "significant demand" and "nature of office" so that the courts will have exact language to guide them in their decisions.

Alternately Section 23:7:2 could be changed in concept so that the Legislature would retain jurisdiction and power to determine what significant demand and nature of office means.

Respectfully submitted.

**Submission by the Roman Catholic Archiepiscopal
Corporation of Winnipeg
His Grace Archbishop A. Exner and Reverend
M.L. Moore**

Secretary, Committee of the Legislature with respect to the Proposed Amendments to Section 23 of The Manitoba Act.

We are the solicitors for the Roman Catholic Archiepiscopal Corporation of Winnipeg, which is a statutory corporation created by a special act of the Manitoba Legislature (see LM. 1917, ch. 109 and referred to at p. 29 of the Proposed Resolution Constitutional Amendment).

Section 23.5(1) of the Proposed Resolution effectively repeals the act of incorporation of our client "if it is not re-enacted in both official languages" on or before December 31, 1993.

We have been instructed to advise that the Roman Catholic Archiepiscopal Corporation of Winnipeg objects to the inclusion of Section 23.5(1) in the Resolution as it is unnecessary and causes hardship. It places the onus on the corporation to petition for a re-enactment in French, as well as in English, failing which the corporation will be legislated out of existence.

Our client has no objection to the Act of Incorporation being translated into French. However, the responsibility for this initiative and its attendant cost ought to be borne by the Government or Manitoba.

Our client has read the submission made to the Committee on behalf of the St. Boniface Hospital and concurs with the views expressed therein.

We would appreciate your acknowledging receipt of this letter and advising whether it is necessary to state our position orally before the Committee.

Thank you.