privilege as it relates to the relationship between members and the press; second, that the judgment is a clear and present source of intimidation to press gallery members which would prevent them from fairly and accurately reporting House proceedings; third, that the judgment usurps from the House the responsibility of determining itself when its proceedings are to be secretive and in camera; and fourth, that the judgment makes an addition to the body of legal precedent on the question of privilege which the House must challenge as soon as possible because it violates the right of the House to determine the extent of its own privilege.

I am asked, in other words, to find a matter of privilege in the judgment on the ground that it has in some way formulated an addition to the law on privilege which has lessened the definition which we have followed in this House, which has always been that it is the sum of peculiar rights enjoyed by each House collectively as a constituent part of the high court of parliament, and by members of each House individually, without which they could not discharge their functions, and which exceeds those possessed by other bodies and individuals. This has come to be refined in our own practices in the more positive definition of requiring, before a breach of privilege can be founded, actual interference with or prevention of a member's functioning in his capacity as an elected member of parliament.

In order to determine the validity of the points which have been raised, I think we have to examine the judgment which was put forward by the learned Chief Justice. First of all, we must realize that the nature of the application required the learned Chief Justice to examine the areas that he did. Here I refer to page 3 of the judgment which sets out the terms of the application that was made to the court. At page 2, being part of paragraph 4, the court was asked for, among other things, "a declaration that if the said regulations do prohibit the release or disclosure referred to in the"—three paragraphs above—"the said regulations are ultra vires the governor general in council and therefore of no force and effect because"; and then two or three reasons are set out, the most important of which for the purposes of this discussion appears at the top of page 3, subparagraph (iii):

> The regulations abrogate, abridge and infringe the privileges, immunities and power of the applicants and other members of the official opposition as members of the House of Commons.

In other words, the court was asked for a declaration that this order in council was in fact invalid because it infringed or continues to infringe the rights and privileges of members of the House of Commons. Therefore, obviously the Chief Justice had to come to some understanding or appreciation of our privilege. But before doing so, I think it is significant that even in that exercise the Chief Justice said this, and I refer to pages 15 and 16 of the printed version of his judgment which I have before me. At the middle of page 15, the learned Chief Justice warned of the dangers of attempting to proceed on academic grounds. He says:

> There is one aspect of this application which does concern me. In their alternative submissions, they seek a declaration that a member of parliament cannot be prevented from using the information in parliament. Moreover, they

[Mr. Speaker.]

> seek a declaration that the regulations do not abridge the solicitor-client privilege. In this respect they are seeking "absolution before sinning". In my view, they should advance these two arguments as a defence if they are charged. Practically speaking, they may not be charged, in which case this part of the application is simply an academic exercise.

Then, again, at the middle of page 16 he says:

> Counsel for the applicants argued that the applicants could not obtain meaningful legal advice due to the refusal of counsel to receive information which might contravene the regulations. If the applicants are willing to release the information but counsel refuse to receive it, it is counsel not the applicants who are seeking the exoneration of the court in order to justify the receipt of the information. Once again, I am concerned that these proceedings are inappropriate.

Therefore, after warning us of the dangers in the academic exercise, the Chief Justice goes on to deal in the pages leading up to page 30 with the dualism that exists between the courts and the House of Commons with respect to a matter of privilege, where each has tended over a long period of time to interpret "privilege" in its own way. As far as I am concerned, the dualism that exists in this case was adequately referred to and quoted by all participants in the debate. My attitude to it remains as I stated on the day the argument was raised, to be found at page 939 of *Hansard*. At the conclusion of the first round of arguments I said this:

> There is one thing that is very clear. There is no doubt in my mind that the privileges, rights and immunities of members of this House are in the first place to be decided by this House and not by any other body.

I have no reason to change that opinion.

> The second is that there is, as I indicated in previous discussion on this order in council as it might affect members of the House of Commons, a very real danger in anybody, including this House, attempting to deal with matters of privilege in the abstract or in theory.

I have no reason to change that opinion, either. The learned Chief Justice, after going through an explanation of the dual roles of interpretation of the courts and the House of Commons, then proceeded from page 30 to page 37 of his judgment to find the following: first, that all of our definitions in regard to privilege of a member of parliament related to "proceedings in parliament". I think that is a very important term. His first finding is that all of those definitions and precedents that we have followed are accurate, correct and intact, and in that finding, of course, I can find no question of privilege.

Second, the learned Chief Justice finds that nothing in the order in council diminishes the right of a member of parliament to deal with the uranium cartel during—again—"proceedings in parliament". With that finding, of course, I can make no quarrel with respect to our privilege here.

Third, the Chief Justice finds that the regulations do not prohibit the applicants, or in fact any member of the House of Commons, from releasing or disclosing any such documents in the course of parliamentary debate to the press. Again, I can find no quarrel with the Chief Justice's finding. I find no infringement upon our privilege in any of those conclusions.

The problem seems to arise when we reach page 38 of the judgment, concluding at page 42, to which I will now refer. This is the language which seems to be causing the difficulty. At page 38 the Chief Justice said this: