

THE SENATE

STANDING COMMITTEE ON MISCELLANEOUS PRIVATE BILLS

EVIDENCE

OTTAWA, Thursday, December 12, 1963.

The Standing Committee on Miscellaneous Private Bills, to which was referred Bill S-32, to amend the Marriage and Divorce Act, met this day at 10 a.m.

Senator Paul H. Bouffard (*Chairman*) in the Chair.

The CHAIRMAN: Mrs. Kirkland Casgrain was invited to come before the committee to testify on the bill and give her opinion on it. Mrs. Casgrain is a minister without portfolio in the Quebec Cabinet. She has written Mr. Armstrong, Chief Clerk of Committees a letter stating that she could not come, and she expressed her thanks for the honour done to her and takes this opportunity to forward her best wishes to the committee.

I wonder if this letter should be published with our report of today's proceedings which will probably be the last report the committee will make to the Senate.

Senator STAMBAUGH: No, just table the letter with the report of the committee.

The CHAIRMAN: The other person we are going to hear this morning is Mr. E. Russell Hopkins, the Law Clerk and Parliamentary Counsel, of the Senate, who is going to give his opinion as to the constitutionality of the bill. Mr. Hopkins has delivered a written opinion. I understand that nearly all members of this committee are also members of the Committee on Aging and they wish to attend the meeting of that committee this morning. What do you feel about this opinion? Do you feel it should be read before the committee, or printed in the record?

Senator POULIOT: Mr. Chairman, I would like to ask a few questions of Mr. Hopkins before he reads his statement.

The CHAIRMAN: Yes, Senator.

Senator POULIOT: Mr. Hopkins, is it your opinion that the civil law and common law in Canada derive from the British North America Act?

MR. E. RUSSELL HOPKINS, *Law Clerk and Parliamentary Counsel*: Yes, Senator.

Senator POULIOT: Do you think that the separation of powers or jurisdiction is definitely set as much as it can be by sections 91 and 92 of the British North America Act of 1867?

Mr. HOPKINS: Senator, the Fathers of Confederation thought that they had devised a formula which would be comparatively easy to interpret, and which would not raise difficulties, but I think their expectations were not fully realized and that a great deal of interpretation still remains as to the exact distribution of powers between the federal Parliament under section 91 and the provincial legislatures under section 92.