

The CHAIRMAN: As a matter of fact, I did telephone to the deputy minister of justice, and that was followed up with a letter from the secretary of this committee to Mr. E. A. Driedger, deputy minister of the Department of Justice. Would you like me to read that letter?

Mr. WINCH: No, I just wanted to know if you followed it up.

The CHAIRMAN: We have received a reply suggesting that he could not attend nor assist the committee if he were called upon, and he has replied. Mr. Secretary, do you have the original letter? Shall I read this letter?

Mr. WINCH: Yes, let us hear it.

The CHAIRMAN:

Ottawa 4, January 25, 1963.

Dear Mr. Boivin:

I acknowledge your letter of January 24 in which you express the hope that I will be able to attend the meeting of the committee on public accounts of the House of Commons to be held on January 29 next, for the purpose, as explained to me by the chairman of the committee, in my telephone conversation with him yesterday, of expressing to the committee my opinions on the interpretation of a number of statutes in relation to certain incidents described in the report of the Auditor General to the House of Commons for the fiscal year ended March 31, 1962.

Constitutionally and historically, as well as under the express terms of the Department of Justice Act, the Minister of Justice and Attorney General of Canada is the official legal adviser of the crown, rather than of parliament, and he is also charged with the responsibility of advising the heads of the several departments of the government upon all matters of law connected with such departments. Consequently, it is not his duty or function, and therefore not the duty or function of his deputy, to give legal advice to either of the houses of parliament or any committee thereof.

The foregoing principles are, I believe, well recognized and firmly established, and have on various occasions been stated by every one of my predecessors during the present century.

The situation is, of course, different where the Attorney General of Canada through his deputy makes a legal explanation of a government measure, and I appreciate also that there have been occasions where the deputy attorney general has, with the approval of the Attorney General, endeavoured to assist a parliamentary committee in the legal considerations involved in a study undertaken by a parliamentary committee. Where, however, as in the present case, the matters upon which my opinion is being sought are ones upon which I would be under a duty to advise departments of Government, you will I am sure, appreciate that there would be an impossible conflict of duty if I were required, at the same time, to advise other persons, even though they be the members of a committee of the House of Commons, in respect of the same matter.

In the circumstances, therefore, I do not feel that it would be proper or prudent for me to transgress the strict bounds of my constitutional responsibilities.

Yours truly,

E. A. Driedger,
Deputy Attorney General.