

APPENDIX "B"

DEPARTMENT OF JUSTICE

OTTAWA, December 4, 1963.

MEMORANDUM FOR: MR. R. BEDARD

FROM: DEPUTY MINISTER

You have asked me whether it would be in order for you to appear before the Senate Committee on Miscellaneous Private Bills and advise on the constitutionality of Bill S-32, "An Act to amend the Marriage and Divorce Act".

Officers of the Department of Justice frequently appear before Parliamentary Committees. Indeed, over the years I have myself appeared before Parliamentary Committees on many occasions, and particularly Senate Committees, to give such assistance as I could to the Committee. There are, however, limits beyond which it would not be proper to go.

The position is, I believe, quite clear that the Minister of Justice and Attorney General cannot be required to give legal advice to either House of Parliament or to any committee thereof. The reason for this rule is that constitutionally and historically, as well as under the express terms of the Department of Justice Act, he is the official legal adviser of the Government and the Departments thereof. Consequently, it is not his function or duty, and therefore not the function or duty of his Deputy or any other of his officers, to give legal advice to Parliament or to a Parliamentary Committee. Moreover they would find themselves in an impossible conflict of duty if they were called upon to advise a Parliamentary Committee with respect to a matter on which they have advised or may be asked to advise the Government. There is the further circumstance that legal advice given by officers of the Department of Justice or even the Attorney General of Canada would not be binding upon Parliament or any Committee of Parliament and would not in any sense be conclusive.

As I have indicated, however, there are situations where it would be quite proper and perhaps even desirable for officers of the Department of Justice to advise Parliamentary Committees. These are as follows:

1. Where a government bill is before a Committee, officers may appear to give such legal explanations of the bill or any of its provisions, as may be necessary, although it would not be proper to disclose to the Committee any advice that may have been given to the Government or a Department except with the approval of the appropriate Minister.

2. Where a legal opinion has been given to a Minister or Department and that opinion has been disclosed to a Parliamentary Committee by that Minister or Department, officers of the Department of Justice may appear to give such explanations of the opinion as may be required. It would, however, be a violation of confidence for an officer of the Department of Justice to disclose the fact that an opinion was given or the nature of that opinion.

3. Where a Parliamentary Committee has undertaken a legal study of a general nature—as for example capital punishment or the gaming laws—and has invited views, officers of the Department of Justice may appear and state views, if the Minister of Justice approves and the officer concerned is able to undertake such a task without interfering unduly with his official duties.