

[Translation]

Whether the application of the Official Languages Act should be clarified, or whether or not this Act should be amended or revised, is a question for the House to address and not for the Speaker to dictate.

I thank the Hon. Member for Charlevoix for raising this extremely important issue and I also wish to thank all those who participated, for their useful commentary.

[English]

[Later]

Mr. Doug Lewis (Parliamentary Secretary to Deputy Prime Minister and President of the Privy Council): Mr. Speaker, I want to briefly comment on something which flowed from the argument that was made very ably by my colleague, the Hon. Member for Charlevoix (Mr. Hamelin), and which I decided to study. I thought it would be more appropriate to raise this matter when you brought down your judgment. You quite properly outlined the role of the Speaker in such a case and suggested that it was a question of legal interpretation and not one of procedure.

I ask your direction, Mr. Speaker, with respect to the role of the Law Clerk and Parliamentary Counsel in the future. During the course of his argument on the question of privilege, the Hon. Member for Charlevoix quoted from a legal opinion given to the committee by the Law Clerk and Parliamentary Counsel. I refer to page 3617 of *Hansard*. I read the Standing Orders to determine exactly what was the duty of the Law Clerk of the House of Commons. Standing Order 126 states:

It is the duty of the Joint Law Clerks of the House to assist Members of the House and deputy heads in drafting legislation; to prepare bills for the Senate after they have been passed by the House; to supervise the printing and arrangement and extending of the Statutes year by year as they are issued at the close of each Parliamentary session; to revise, print and put marginal notes upon all bills; to revise before the third reading all amendments made by select committees, or in Committees of the Whole; and to report to the several Chairman of the various select committees, when requested so to do, any provisions in private bills which are at variance with general Acts on the subjects to which such bills relate or with the usual provisions of private Acts on similar subjects, and any provisions deserving of special attention.

Citation 144 of *Beauchesne* states:

The Law Clerk and Parliamentary Counsel is appointed by Letters Patent under the Great Seal. He has the principal duty of advising the Speaker and officers of the House on all legal matters which do not fall within the sphere of procedure.

Naturally, I have no objection to any Member of the House seeking the best legal counsel available. However, I suggest that the Law Clerk and Parliamentary Counsel may find himself and his office in a position of conflict of interest if he or members of his office give advice to a Member of Parliament outside the Standing Orders, which is then used in the House of Commons to support an argument upon which the Chair is called to rule. I suggest that the prime client of the Law Clerk and Parliamentary Counsel is the Chair and the House of Commons.

I suggest that in future the Law Clerk and Parliamentary Counsel might be well advised to seek leave from the Chair to

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advise on matters outside the Standing Orders since the Chair and the House are the prime clients. If there is a possibility that the Law Clerk and Parliamentary Counsel will be called upon by the Chair for advice, it is incumbent upon the Law Clerk and Parliamentary Counsel to decline to act for the Member or the committee, and the Member or committee can then, under the budget of the House of Commons, seek counsel elsewhere.

I suggest again that the prime client of the Law Clerk and Parliamentary Counsel is the Speaker and the House of Commons. There is a definite risk of conflict of interest if the Law Clerk and Parliamentary Counsel gives advice which is then brought into the House and used in argument upon which the Chair, the prime client, must rule. I wanted to raise that problem for future reference.

[Translation]

Mr. Jean-Robert Gauthier (Ottawa—Vanier): Mr. Speaker, I should like to make a few comments because I question . . .

Mr. Hamelin: Me too!

Mr. Gauthier: . . . this argument made by the Parliamentary Secretary. I have been working in this House for perhaps 14 years now, and from time to time I have had to consult the Law Clerk about the draft of a legal text I wanted to present to the House. I think this text dates back to a number of years but it is still topical. Its purpose was to make the Official Languages Act clearly and specifically applicable to the House of Commons, the Senate and the Library of Parliament.

At that time, when the text was being drafted, of course we had discussions with the Joint Law Clerks and the Law Clerk of the House. I remember very well having many discussions with Mr. Beaupré, for example, who was Joint Law Clerk. Naturally these discussions related to the application of the proposed legislation, its drafting, the objectives its sponsor wants to propose to colleagues in the House. It also had to do with this very important question, namely whether the Official Languages Act, in its normal interpretation, applies to this institution, the Canadian Parliament. I must confess that in 1976-77, when I began to be interested directly in the very specific question of whether the act applied to the House, the Senate and the Library of Parliament, I learned from a reliable source that it was debatable, that the arguments for and against were probably just as strong, and that the Law Clerks of the Senate and of the House and a number of other legal experts had different views about it. I admit that the decision made by the Chair this afternoon is one which I would qualify as being weighted and very enlightened because, in fact, the Speaker of the House did not rule on this question but said clearly that he is the servant of the House and that all legislation must apply to it.

But I should like to get back to the point raised by the Parliamentary Secretary. In these discussions, in these drafting