

Marriage Law Exceptions

Mr. Speaker: Before too many hon. members leave the Chamber, if there is any difficulty about the use of time now, perhaps we can settle the procedure problem at this point rather than waiting until eight o'clock. Perhaps it is worthwhile to wait a moment or two for the "blues".

Mr. Knowles (Winnipeg North Centre): Your Honour will discover that Bill S-5 and Bill S-6 will not take very long, perhaps a minute or two each. My suggestion is that we deal with those bills while waiting for the "blues".

Mr. Speaker: If the House is in agreement with the calling of Bill S-5 and Bill S-6, then we will proceed.

MARRIAGE LAW EXCEPTION—JAMES RICHARD BORDEN AND
JUDY ANN BORDEN

Mr. Les Benjamin (Regina-Lake Centre) moved that Bill S-5, to provide an exception from the public general law relating to marriage in the case of James Richard Borden and Judy Ann Borden, be read the second time and referred to the Standing Committee on Miscellaneous Private Bills and Standing Orders.

He said: Mr. Speaker, this bill has been in the works for almost two years. It was dealt with in the other place, received third reading, and as a result has come to this place. As is stated in the title of the bill, it is an act to provide an exception from the public general law relating to marriage in the case of James Richard Borden and Judy Ann Borden.

This matter has been gone into thoroughly by myself, as well as by many other hon. members. This legislation is required on the advice of the Minister of Justice (Mr. Basford), which is outlined in his letter dated June 26, 1975. In part the letter reads:

The only possibility for you to obtain authority to marry your niece under Canadian law would be for you to communicate with a private Member of Parliament in order to see whether the member would be willing to petition on your behalf for a private bill to provide an exception from the general law in force in Canada.

They proceeded to do that very thing. We are half way through the process. The couple have paid the costs incumbent upon them for private legislation. I hope the House rapidly accepts this bill on second reading so that it can be considered in more detail in committee.

Motion agreed to, bill read the second time and referred to the Standing Committee on Miscellaneous Private Bills and Standing Orders.

● (1702)

MARRIAGE LAW EXCEPTION—EUGÈNE WADDELL AND
MARGUERITE BENOIT

Mr. John Campbell (LaSalle-Émard-Côte Saint-Paul) moved that Bill S-6, to provide an exception from the public general law relating to marriage in the case of François Eugène Arthur Waddell and Marie Anne Marguerite Benoit, be read the second time and referred to the Standing Committee on Miscellaneous Private Bills and Standing Orders.

He said: Mr. Speaker, the bill seeks an exception from the general law regarding the degrees of affinity within which two people may marry. The petitioner, Eugène Waddell, wishes to marry his niece, Marguerite Benoit.

The preamble to the bill, which will be proven in committee, sets out the pertinent facts showing the necessity for bringing the bill before parliament.

Prior to the framing of the British North America Act in 1867, the civil code of the province of Quebec of 1866 was in effect, and it contains the provisions saying that a man may not marry his niece. The next year the British North America Act gave legislative jurisdiction to the Parliament of Canada in the field of marriage and, to the provinces, legislative jurisdiction in the field of solemnization of marriage. However, the degrees of consanguinity are part of the law of marriage rather than part of the law of solemnization of marriage, and therefore only the Parliament of Canada may properly legislate in this regard. The prohibition against marriage between uncle and niece contained in the code is therefore a matter of federal legislative jurisdiction. Because that prohibition was in the civil code of 1866, Section 129 of the British North America Act keeps it in force until it is "repealed, abolished or altered" by the Parliament of Canada.

Since the Parliament of Canada has exclusive jurisdiction in respect of marriage and since, under Section 129 of the BNA Act, it has the power to "repeal or amend" the law that was in force in Quebec at the time of Confederation, I submit that it has the power to pass a private bill permitting the petitioners to marry each other, notwithstanding the prohibition that would otherwise make it impossible for them to marry.

I do not propose to go into any detail save to note that the petitioner, Eugène Waddell, is 84 years of age, and Miss Benoit is 66.

At this time I would like to express my appreciation on their behalf of the co-operation of the House leaders. I am sure all members would like to wish them much love and happiness in the years ahead.

Some hon. Members: Hear, hear!

Mr. Deputy Speaker: Is the House ready for the question?

Some hon. Members: Agreed.

Motion agreed to, bill read the second time and referred to the Standing Committee on Miscellaneous Private Bills and Standing Orders.

Mr. Deputy Speaker: There being no more private bills to be dealt with, and private bills being the first order of business today, is it the wish of the House that we proceed to notices of motions (paper), or private members' public bills?

Mr. MacEachen: Mr. Speaker, I understand that His Honour is to return to the House to determine the ruling on the pipeline. If we can have a ruling, perhaps we could spend from now until six o'clock on that bill.