

[Chairman: Mr. Schumacher]

[8:33 a.m.]

MR. CHAIRMAN: Well, ladies and gentlemen, good morning. I see a quorum. With your permission, notwithstanding the temporary absence of Parliamentary Counsel, I think we'll proceed, and we can receive his report with regard to Bill Pr. 4 at a later stage of our proceedings.

So with that, I'd like to welcome Mr. Warren S. Forest, the subject and proponent of Bill Pr. 4. This Bill is, I believe, very similar to ones we've considered in the last two sessions, but not wanting to prejudge it, I'll ask our secretary to administer the oath to Mr. Forest in order that we may proceed with his submission.

[Mr. Forest was sworn in]

MR. CHAIRMAN: Mr. Forest, it is quite in order to remain seated, if you wish. Some people like to stand; they feel that can't make a presentation without it. But I would say that most people do remain seated. If that's more comfortable for you, please do so.

Mr. Clegg, we have made some preliminary beginnings on Pr. 4, but you've just arrived in time to give us a report on that legislation before Mr. Forest begins his presentation.

MR. M. CLEGG: Thank you, Mr. Chairman. I would just explain to the committee that I've been trying to contact Mr. Kornichuk from Canada Immigration, who was going to speak to the committee later on. There's been a misunderstanding between me and him about whether his appearance today was proposed or final, and it may well be my fault. I have been unable to find him. Apparently he doesn't have anything marked in his diary for being here today, so we may well not see him, which is unfortunate. I would apologize to the committee to the extent that it's my fault.

MR. CHAIRMAN: No problem, Mr. Clegg.

MR. M. CLEGG: Okay.

With respect to this Bill, Mr. Chairman, the purpose of this Bill is to permit the applicant to be admitted to the Alberta Bar, notwithstanding that he is not yet a Canadian citizen, on the basis that he would qualify on all the other required grounds under the Legal Profession Act. Thank you.

MR. CHAIRMAN: Thank you, Mr. Clegg.

Mr. Forest has been sworn. So now, Mr. Forest, I'll invite you to explain to the committee the need for this legislation and why you feel the committee should give favourable consideration to your request.

MR. FOREST: Thank you, Mr. Chairman. Committee members, I thought I'd start off by telling you a little bit about myself. I am an American. My educational background is that I have a bachelor of science degree from California Polytechnic State University in San Luis Obispo, California. I went to law school in Salt Lake City at the University of Utah. During my last year of law school, during a spring break, on a ski trip at one of the ski hills around Salt Lake, I met my wife, who was on a chair lift. As it turns out, after graduating I moved up to Calgary and have lived there ever since, approximately just over two years. I have done my articles and am still at the law firm of Pearce, Smyth & Wiebe in Calgary. As of May of 1987 I

completed the Bar admission course and passed the Alberta Bar examinations.

As you're probably well aware, under the Legal Profession Act it's necessary for graduates of a foreign law school to have their school records reviewed by the Universities Co-ordinating Council. In my circumstance they assessed me three special examinations, of which I have completed and passed two. The last remaining one I'm scheduled to take this August.

The remaining requirement for me to get admitted to the Bar is that I become a Canadian citizen. I understand that you can make application for citizenship once you have been in Canada for three years after being granted landed immigrant status. There is some processing time, there's an examination required, and you make arrangements to be sworn a citizen. In my case I figure it would be somewhere around a year from now that I would be able to become a citizen.

The reason why I'm here today is to see if I can have the citizenship requirement exempted in my circumstance. Currently you may be aware of a case in British Columbia of an American who, in a similar circumstance, challenged a similar statute in British Columbia requiring citizenship. It's Andrews versus the Law Society of British Columbia. It's gone through the B.C. courts, and my understanding is that the current status in B.C. is that this citizenship requirement has been held to be unconstitutional under the Charter. Now, it's being appealed to the Supreme Court of Canada, and I'm not sure exactly when it's going to come to argument and decision. But one consideration I thought you might consider is that you might give me the benefit of the doubt in this circumstance, that the Supreme Court would uphold the B.C. decision. Instead of restricting a potential right that I may have to practise law in this jurisdiction, you can enable me to practise law and give me that opportunity. Moreover, I would add that should the Supreme Court overturn this decision and hold that the requirement of citizenship is not unconstitutional, by that time I would have probably already become a citizen. So that might be taken care of there.

Secondly, I have requested and received approval from the Law Society of Alberta to have this requirement waived in my circumstance. There was a letter prepared and sent, I believe, saying that the Law Society has no objection to having this private Bill passed.

Finally, I am under somewhat of a disability employmentwise, not being able to practise as an admitted barrister and solicitor. I would go so far as to say that passage of this Bill is critical to my career, so much so that I probably wouldn't be here today if it weren't that way.

I would entertain any questions that any of the committee members may have.

MR. CHAIRMAN: Do committee members have any questions? Mr. Downey.

MR. DOWNEY: Thank you, Mr. Chairman. Just a couple of questions. In your opening comments, Mr. Forest, you asked to have the citizenship requirement waived. Now, in reading the Bill, that's temporarily, until you acquire citizenship, you think sometime within the next year.

MR. FOREST: Certainly. I intend to become a citizen, yes, as soon as that's possible for me.

MR. DOWNEY: The other thing: just when you were closing there, you said that it's critical to your employment. Perhaps

you could elaborate on that a little bit. If you were delayed for a year, why is it critical that this be passed now?

MR. FOREST: Okay. Generally you're so limited in the type of work you can perform when you're not properly licensed. Besides the formal restrictions you have in practise before the courts of this province, you also have a number of silent types of things in dealing with clients. You just don't have the minimum credentials necessary to call yourself a lawyer, and for me to continue and go along in my chosen career path, it's really going to set me back a long way. This is a critical point in my career, I believe. Having finished the articles and everything, people expect you to be able to take the next step. For me, not being able to is a pretty fair disability.

MR. WRIGHT: Are you in articles?

MR. FOREST: Yes. My official thing is that I am still in articles.

MR. WRIGHT: Yes, and when would they normally terminate?

MR. FOREST: Well, most people normally only have to serve a period of one year, but in my case I would be in articles until I became a citizen.

MR. WRIGHT: By ordinarily I mean were you a citizen.

MR. CHAIRMAN: Mr. Wright is saying that if you were citizen now, your articling period would be completed.

MR. FOREST: Yes, sir.

MR. WRIGHT: I see.

MR. FOREST: Yes. You need to serve a one-year period of articles, and that one year would have been completed as of July 1 last year.

MR. WRIGHT: You should have said that.

DR. ELLIOTT: Mr. Forest, you said something about having three, I would say, special exams. You've completed two of them; you have one remaining. When would you complete that examination, and what's the significance of the exam relative to your request here today?

MR. FOREST: Well, first of all, the first part of your question, I plan on taking the exam this August. The significance is that it's one of the requirements I need to complete, in addition to the citizenship requirement, before being admitted.

MR. CHAIRMAN: So the situation is that you require this Bill plus completing that exam before you can be called to the Bar.

MR. FOREST: That's correct.

MR. CHAIRMAN: Mr. Brassard.

MR. BRASSARD: Yes, Mr. Chairman, I have a question of our legal counsel, if I may. I don't want to appear negative, but could you tell me the ramifications of passage of this Bill with a subsequent change of heart of this gentleman becoming a

citizen?

MR. M. CLEGG: Mr. Chairman, we have had applications of this nature before the committee before, and what this committee has done is to ask the applicants to give a signed undertaking to pursue a citizenship application as soon as they may do. That signed undertaking has been taken. My office is following up on those undertakings as they become due to make certain that the person has not had a change of heart and has not given up pursuing citizenship, because I have believed that it has been the intention of this committee that the permission given in those other prior unusual circumstances was only to cover that time when the person was awaiting the qualifying period and was not really intended to cover a person who didn't wish to become a citizen.

Should we find that a person who has signed an undertaking to pursue citizenship is either refused citizenship or fails to pursue the application, then we would draw this to the attention of this committee. The committee would then be able, if it wished, to repeal the legislation, which would in fact remove the ability of the person to practise law until he qualified under the Legal Profession Act. That is a kind of defence process which we can undertake to prevent circumstances unfolding contrary to what we had been led to believe.

MR. BRASSARD: One further comment. What are the ramifications, very briefly, of practising law in this country without being a citizen of this country?

MR. M. CLEGG: Mr. Chairman, it is contrary to the Legal Profession Act to practise law in Alberta unless one is a member of the Alberta Bar. It is not possible to practise law anywhere in Canada unless you are a member of the Bar of the jurisdiction where you are located. There are one or two exceptions. For example, a person who is a member of, say, the Ontario Bar can get permission to do limited things in Alberta; for example, if he was taking a case to appeal for a client he'd represented for a long time. But these are very unusual circumstances.

Essentially a person who was in Mr. Forest's position would have to remain as a student at law, which, as he has pointed out, gives him limited powers. He is still able to be employed by a law firm as a student at law. He is able to undertake supervised assignments and work on files. He is able to appear before a master in chambers, where a lot of the court work is done, but these are interlocutor proceedings rather than trials. The emoluments of a student at law are extremely limited, as I well remember myself. He could not work by himself; he could not establish his own firm.

It is possible for a person who is not a member of the Bar to be employed by a corporation as an internal legal advisor, but it is unusual. It is a matter of some concern to the Law Society when that happens, because then the lawyer concerned is not properly subject to the jurisdiction of the Law Society. There are one or two cases where this is happening, but they're generally lawyers who are members of a foreign Bar. By "foreign" I mean maybe another province or maybe the U.S.A. But he would be very much impaired, and he wouldn't really be free to operate as a house counsel.

MR. CHAIRMAN: Dr. West.

DR. WEST: Yes. Mr. Forest, can you still maintain dual citizenship, in the United States and Canada?

MR. FOREST: It's my understanding that that's kind of a policy type of thing with the United States. The last time I checked, they said that so long as you're informing them at the time you take out a Canadian citizenship that you intend to keep your American citizenship as well, they will allow that. I understand that that's something that may change from time to time, but currently that's the state of affairs as I understand it.

DR. WEST: If that wasn't the case or isn't the case, would that influence your decision in the future to take out Canadian citizenship?

MR. FOREST: I say it would, although at the present time I have no intentions of returning to the United States on a permanent basis. My wife has taken a position with a group of physicians in Calgary, and I have a lot of business contacts and friends in Calgary, and I enjoy living here. We really don't have any plans in the foreseeable future to leave. So it would be a consideration, sure, but I think I would have to feel like I wanted to return before it would really influence me at all.

DR. WEST: Mr. Chairman, could we perhaps have clarified the status of dual citizenship right now?

MR. CHAIRMAN: I think we'll have the opportunity when we get the person from Canada Immigration here for that other matter. He was supposed to be here this morning but is not going to be. But we will be hearing that, so we will have the opportunity of doing that.

Mr. Clegg.

MR. M. CLEGG: Mr. Chairman, I would just like to confirm for the record that the law and policy in Canada is that Canada permits dual nationality in a bilateral sense. In other words, it does not object to a Canadian citizen taking another nationality, nor does it object to a person holding another nationality applying for Canadian citizenship. I am not aware of the current American policy that Mr. Forest has mentioned. Generally speaking, the U.S.A. has not recognized dual citizenship on a confirmed basis. If they have a present policy whereby they would, as it were, not take any active steps to cancel his passport if they learned he was taking a Canadian citizenship, that may be a move towards dual citizenship recognition in the U.S.A., but of course it may just be a temporary policy.

MR. MUSGROVE: Mr. Chairman, following up on what Steve was saying here about having dual citizenship, considering that you must be a member of the Law Society of the jurisdiction where you live, would that allow Mr. Forest to practise law in both Canada and the United States?

MR. CHAIRMAN: I believe it would. He'd have to also qualify in the state Bar in which he wanted to practise, though. There would be that consideration.

MR. MUSGROVE: Would that situation be kind of unique?

MR. CHAIRMAN: I don't think so.

MR. M. CLEGG: Mr. Chairman, I would add that I am entitled to practise law in the United Kingdom and in Canada in a couple of provinces. So is the hon. Member for Edmonton-Strathcona.

MR. CHAIRMAN: Mr. Wright.

MR. WRIGHT: I was just going to say that I thought there had in fact been a change in policy, to the extent that it's relevant, that the United States did now allow dual citizenship providing the reason given for taking the other citizenship was job related, which would apply here. I think it's an excellent thing if you do have more than one citizenship.

MR. CHAIRMAN: Mr. Clegg.

MR. M. CLEGG: Mr. Chairman, I just had a couple of questions to fill in some details on the file. What was the commencement date of your landed immigrant status?

MR. FOREST: The exact date I'm not sure, but it was in November of '85, I believe.

MR. M. CLEGG: That would mean, then, that as from November of 1988 you could commence an application for Canadian citizenship, and you were saying that your anticipation would be that that might take a few months to be processed.

MR. FOREST: Well, in my latest discussion with the people who handle the citizenship matters, I understand that every day you are outside of the country is subtracted from that time. I have taken most of my holiday time to visit with my parents, so I'm sure that that time added on with the processing time is how I come up with the one year from approximately this date.

MR. M. CLEGG: Yes, I understand.

Mr. Chairman, I'd just also like to ask if he would be staying with his present firm if he is admitted to the bar?

MR. FOREST: I would like to. I hope they do keep me.

MR. CHAIRMAN: You hope they feel the same.

MR. FOREST: That's right.

MR. M. CLEGG: If Mr. Forest is not admitted to the Bar, would he remain with the present firm as a student at law in the interim?

MR. FOREST: I would hope so. They haven't necessarily given me any indication that they would not, but I'm sure that it would certainly help my circumstances to be admitted.

MR. M. CLEGG: Thank you.

Mr. Chairman, I'd just like to ask for the record — I presume that the subjects he was asked to write would be something like land titles and constitutional law and perhaps a third. What was the third one?

MR. FOREST: Land titles and constitutional law I've already passed. Administrative law is the final exam.

MR. M. CLEGG: I'd would like to read into the record for the committee the text of the letter from the Law Society because it's slightly different from a letter which we received on a similar application. The similar application we received some time ago merely said that they'd have no objection to the application. This one is slightly less neutral, and I think it would be useful if

I read it to the committee. It's addressed to Mr. Nelson, who is the sponsor of the Bill, re Warren Forest.

Mr. Warren S. Forest is currently a Student-at-Law with the law firm of Pearce, Smythe & Wiebe in Calgary. Since Mr. Forest is not yet a Canadian Citizen he will not be eligible for admission to the Bar once he completes his last remaining examination as assessed by the Universities Co-ordinating Counsel.

To overcome this inability to practice law Mr. Forest has submitted a Petition for a Private Bill to waive the Citizenship requirement for Bar Admission. The Law Society of Alberta has no objection to the Petition given the fact that Mr. Forest is a permanent resident of Canada and gives his undertaking that he will obtain Canadian Citizenship as soon as it is possible for him to do so.

Signed by Mr. W.B. Kelly, Secretary of the Law Society.

MR. CHAIRMAN: Mr. Forest, have you given that undertaking yet?

MR. FOREST: No, I have not.

MR. CHAIRMAN: But you have no objection to giving such an undertaking?

MR. FOREST: Certainly not.

MR. CHAIRMAN: I guess for the benefit of the committee, I believe that if he breaches that undertaking, the Law Society would take a dim view of that and would see that he is unable to practise for a significant period of time.

Any further questions? Any summing up?

MR. FOREST: No, sir.

MR. CHAIRMAN: I was just going to ask: Mr. Forest, does your wife have some family connection with Canada, or did you come to Calgary as a result of her employment there?

MR. FOREST: All of her family — her parents, her brothers and sisters — are all here in Canada. Unfortunately, my side of the family is all over there. But, yes, she's from Canada. She's never lived in the U.S.

MR. CHAIRMAN: Well then, as I mentioned earlier, we will take this matter under advisement, and in the course of time you will be advised as to the position of the committee with regard to a recommendation to the Assembly.

MR. FOREST: Thank you very much.

MR. CHAIRMAN: Members of the committee, I was wondering if I could receive a motion regarding a waiver of the rules with respect to Bills Pr. 16, Pr. 17, Pr. 18, Pr. 19, and Pr. 20. These are all Bills where the petitions came in late, and the advertising was not done by the required time. I'm advised that in every other respect they're in order, and I'm just wondering if I could have such a motion so that I could make the proper recommendation to the Assembly.

Mr. Brassard.

AN HON. MEMBER: About what?

MR. CHAIRMAN: The waiving of the rules with regard to advertising in regard to those Bills — they were ones that came in

late, Dr. West — so that we can proceed.

MR. WRIGHT: Sure.

MR. CHAIRMAN: Okay? We've got the motion. All those in favour?

MR. DOWNEY: Mr. Chairman.

MR. CHAIRMAN: Sorry. Mr. Downey.

MR. DOWNEY: We're running pretty late in the session here again, and I would hope that if we do waive the rules, the petitioners have been fully informed that they may not be successful in this session.

MR. CHAIRMAN: Oh, I think they all understand that if something happens to the session, we have no obligation to them. They weren't in at the beginning, and they're taking it as we find it. It doesn't mean we have to work overtime, Mr. Downey.

MR. DOWNEY: It would be useful, Mr. Chairman, to perhaps just very quickly outline what those five Bills are.

MR. CHAIRMAN: Pr. 16 is the Leslie Roy Peck Adoption Act. That's an adult adoption matter. Is Mr. Pengelly the sponsor?

MR. M. CLEGG: I think Mr. Brassard.

MR. CHAIRMAN: Mr. Brassard is sponsoring that Bill.

Then Mr. Nelson has the St. Vladimir's Ukrainian Orthodox Congregation at Calgary Tax Exemption Act. That subject's familiar to us. Then there's the Donald Roy Deen Compensation Act, which is Mr. Ewasiuk's Bill. Then Mrs. Mirosh has the Calgary Municipal Heritage Properties Authority Amendment Act, 1988, and Mr. Halvar Jonson has the Maskwachees Cultural College Act.

Mr. Day.

MR. DAY: Just as a suggestion and comment, Mr. Chairman. As far as the rules for advertising, we seem each session to waive them for different groups. Maybe we should entertain not even having those rules. I don't know why we have the rules if they're waived in lieu of the advertising.

MR. CHAIRMAN: We're sort of stuck with the rules, and we can't unilaterally repeal the rules; they're part of Standing Orders. The reason for it in this case is that the formal announcement of the session was a little bit late in coming, and it was practically impossible for a lot of people to get it done in time according to the rules, in this particular instance, as I am informed.

MR. M. CLEGG: Mr. Chairman, if I may speak and offer comments which come from observation of the committee's wishes over the past few years with respect to advertising, many years ago there was no deadline, but there was an additional fee assessed for Bills that came in late. The main purpose, of course, of the deadline is to enable the committee to assemble its business and to operate in an organized fashion so that members are not disadvantaged by having items added to the agenda late in the session.

If we were to remove the deadline, it is my somewhat cynical view that a very high proportion of them would be late, because when there's no deadline, people don't get around to doing things. At least at the moment we have about two-thirds of the Bills which come in on time, and we deal with those Bills that come in later because we manage to deal with the other ones sooner. I'm sure the committee doesn't wish ever to deny access of the public to the committee if it can conveniently deal with the matters, but I feel that we would get a very difficult situation with a number of the applications coming in late if we were to remove the deadline.

The application of a fine or burden for coming in late has not appeared to previous committees to be an attractive alternate. I think that the applicants coming in late realize that they will be dealt with at a low priority and may have their applications put over to fall or may, in fact, not be dealt with at all. I think that in itself is an incentive.

I could offer the suggestion that I would communicate with the Law Society in some way as to remind the profession, ask them to include in their newsletter a reminder to the profession, that they do not have to wait until the session is announced before they commence their advertising, that pursuant to Standing Orders they are free to start work on the applications and are free to commence advertising as from November 1 in the year preceding the application. That would solve some of the problems. There have been a number of cases where solicitors have waited until they have seen the commencement date of the session, and by then they have not had time to complete their advertising. The Law Society, I'm sure, would be glad to put a notice in their newsletter to that end.

DR. ELLIOTT: Mr. Chairman, what is the greatest single negative impact on us as a committee if we waive that deadline in this instance?

MR. CHAIRMAN: We don't waive the deadline, we . . .

DR. ELLIOTT: I mean if we accept the . . .

MR. CHAIRMAN: If we accept the motion, that means we can deal with these things. If we don't, we won't consider them.

DR. ELLIOTT: That wasn't my question, sir. My question was: what's the greatest single negative impact on us? What's the negative consequence of passing this motion?

MR. CHAIRMAN: I don't understand that, Dr. Elliott. I don't know what the negative . . . I guess the negative is that we'll have people upset that we won't deal with their business. I don't understand what the negative could be by passing the motion and agreeing to deal with the business. I don't know what . . .

DR. ELLIOTT: There's no negative impact, then. There's no consequence; there's no . . .

MR. CHAIRMAN: It means we might have to have a meeting or two as a committee.

DR. ELLIOTT: Would we set a precedent of some kind that's going to come back to haunt us?

MR. CHAIRMAN: No.

DR. ELLIOTT: Thank you.

MR. DAY: Mr. Chairman, just please explain the advertising feature here. As the advertising deadline may not have been met, what's the status of the advertising in the *Alberta Gazette*, which I don't know if anybody reads anyway?

MR. CHAIRMAN: Well, they've all been completed now.

MR. DAY: The advertising is all in?

MR. CHAIRMAN: Yes, but it just wasn't done by April 15, as it was supposed to have been done.

Mr. Musgrove.

MR. MUSGROVE: Okay. Now, I misunderstood that. It was my understanding that some of the advertising hasn't been finished at this time.

MR. CHAIRMAN: It's all finished now. It just hadn't been done by April 15, which was the deadline for doing the advertising.

MR. MUSGROVE: Okay. Then my question is . . .

MR. WRIGHT: Mr. Chairman, I think this is a useful discussion on the rules and whether we should recommend they be fixed up in any way. We've got a little time. I think we should have the rules for the reason Parliamentary Counsel has stated: to encourage petitioners to be timely. But equally, of course, we should have the right to waive those rules in part or as we please. I think it's a good thing not to provide for a fine for late filing, because that is a tacit invitation to file late providing you're willing to pay the extra.

But I think some consideration should be given to waiving the requirement in some way that gives a definite date before the session as the deadline, because my belief is that that arose when it was uncommon or practically unknown to have a fall sitting. So when we do have a fall sitting, we have to waive the deadlines for all of them that haven't been in in time for the spring sittings. Because you know in December last year we were dealing with some Bills, and under the rules they should have been in before whatever date it was, April 15 or whatever it was. Perhaps Parliamentary Counsel could work on a formula that would solve that one.

MR. CHAIRMAN: Dr. Wright. Or Dr. West.

DR. WEST: Yes, please. I'd never want that connotation.

I would just like to speak against this motion that's before the floor. We do set a lot of deadlines in government for reasons, whether it be for different programs in agriculture or otherwise, and we have to uphold those deadlines. I think the reason to have these rules is to prevent chaos, to prevent subjective chaos decisions. Although we may have a sensitivity here today to these four Bills and to compromise so that we can be seen as to be fair, I still believe we should uphold the April 15 deadline as we make many, many, many Albertans uphold our rules and regulations out there. I don't want to hear about lawyers and trying to make something to facilitate their position with their clients. I've dealt with lawyers and waited six months to a year while they told me they were addressing deadlines or rules within other systems in our society. So I beg of you to

consider not passing this motion.

MR. CHAIRMAN: Well, Dr. West, I guess that's just like not extending the deadlines for the natural gas tax rebate thing that was done several times by the government. I think there'd be lots of cases where they've . . .

SOME HON. MEMBERS: Question.

MR. CHAIRMAN: All those in favour of the motion? Opposed? Carried.

Now, scheduling for our upcoming business. We're going to be dealing with the Lumley Bill next week, and that'll be the only subject matter because it tends to be rather complex and is

opposed by certain interests. But the following week we would propose Bills Pr. 17, Pr. 19, and Pr. 20. Then we will also be making arrangements for Canada Immigration to come to help us with these two Bills now in any way they can.

Is there any other business for the committee? Then I'll ask for a motion to adjourn. Mr. Downey.

All those in favour?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: Opposed? Carried.

[The committee adjourned at 9:11 a.m.]