

Parole Act

hoc basis of appointing board members because it will cause much trouble and bring about frustrations in the community. Let us have regional boards, made up of skilled men. Let there be proper screening. Let us try to rehabilitate those who warrant rehabilitating, and give them an opportunity.

Above all, let us revise our way of appointing judges. Surely, in 1973, we should not appoint men who have done nothing but draw up mortgages, who have been bagmen for some political party, who have drawn up leases or who are defeated candidates who have practised law. The time has come to put men on the bench with brains and an understanding of humanity of the kind I have tried to describe. Only then will we get better judges.

Above all, it is time we examined the rules of appeal in Canada. Once a trial judge has found the facts, you cannot upset them. If then witnesses say it was snowing and one says it was not, and the judge finds that it was not snowing, the facts that the court of appeal will accept are those found by the trial judge. If the trial judge finds a fact, the court of appeal cannot change it because the rule is, as Your Honour being a lawyer knows, that the demeanour of a witness is taken into account by the judge and he analyses the situation. That rule can become pretty dangerous.

Let me tell hon. members a little story on this point. I recall a trial in which I was defending a rather ugly truck driver. The lady on the other side was very well built, and beautiful. As she stood in the witness-box beside the judge and spoke, with her flowing hair and beautiful figure, I knew that no matter what the truck driver, my client, might say, justice was ended then and there so far as my client was concerned.

That sounds humorous, yet in criminal proceedings the atmosphere in the court is very important.

I have never liked the system in the criminal courts of my province. Let me say that I started in Saskatchewan but went on to practice in Alberta. That is the only province in Canada in which the jury in certain cases can be dispensed with and where indictable offences in certain circumstances can be tried by one magistrate. Mr. Speaker, you can be tried for murder by one judge. The whole principle of jurisprudence is that you shall be tried by your peers. These peers are various people who understand human behaviour and who judge a case according to their own experience. That, to my mind, is how a court ought to be made up. Any other system is not fair.

The Supreme Court of Canada says that when you are tried by a judge alone, the judge is deemed to have instructed himself as to the law. In other words, the judge is presumed to have instructed himself correctly. However, when he must deliver the charge to the jury you can smoke-out his knowledge. That is why 13 men whom I had defended for murder were granted a new trial. They were all under 21 years of age. One of the accused did not even get out of the car and did not know where the others were going when the offence occurred. He, too, was found guilty of conspiring to murder.

In that case the judge instructed the jury improperly in my opinion and the court of appeal held that there should be a new trial. Eventually, five of the accused were acquitted.

[Mr. Woolliams.]

ted. I say to the minister, who I know is interested in this area, let us strengthen the parole board, let us get rid of temporary releases, and let us not stretch the law to cover bad cases.

Mr. Reid: Mr. Speaker, would the hon. member permit a question?

Mr. Deputy Speaker: Order, please. The hon. member's time has expired. However, with unanimous consent the parliamentary secretary may ask a question. Is this agreed?

Some hon. Members: Agreed.

● (2130)

Mr. Reid: Mr. Speaker, the hon. member made some statements about the way in which judges are appointed. Does he believe that any person who has been in politics at any level should be barred from sitting as a judge? Is that what I am to understand from the tenor of his remarks?

Mr. Woolliams: Mr. Speaker, the fact that he was a member of this House should not affect whether he is made a judge or not. The late Mr. Justice McNiven was one of the finest legal minds. I was not here at the time, but I assume he was one of the greatest members of parliament. He was a man with a sense of dignity and justice. That was a wonderful appointment. Don't ask me about the bad ones.

Mr. Arnold Peters (Timiskaming): Mr. Speaker, it is always very interesting to listen to the hon. member for Calgary North (Mr. Woolliams). He has the great facility of being able to combine his parliamentary responsibilities with what I consider to be a courtroom presentation. He is one of the few who can refile a case and do it well. He made an interesting comment about our peers. I wondered about this when he talked about juries. How would this work if a person applying for parole had his peers in the penitentiary as a parole board? As my colleague pointed out, no one would ever get out under those circumstances. It is the reverse of what happens in court with one's peers.

When we look at the parole board we are really looking at society. Society must look at the number of inmates in our penitentiaries and decide whether we are properly meeting the changes in today's world. If they believe we are, they are not considering the fact that our penitentiary population is rapidly increasing. This does not hinge entirely on the parole board or the method of parole: to some extent it hinges on society.

As lawmakers it may be that we are not taking into consideration the crimes of today. Obviously, many people are being imprisoned for offences that in 10 or 12 years will no longer be considered offences. This is true of offences regarding marijuana. Only a very rash judge would send a young person to penitentiary for such an offence. Only four or five years ago, young people were being sentenced to five, six or seven years in penitentiary for smoking marijuana. Today, society does not find that as offensive as many other offences. The courts have now tempered their approach to the marijuana question, and this is all well and good.