In supporting her case, Senator Robertson referred to Beauchesne's Sixth Edition, citation 557(1) at page 172 which states that:

> A motion which contains two or more distinct propositions may be divided so that the sense of the House may be taken on each separately. The Speaker has a discretionary power to decide whether a motion should be divided.

I note, however, that Beauchesne goes on to say in citation 557(2) that:

> It is only in exceptional circumstances, and when there is little doubt, that the Speaker may intervene and, of his or her own initiative, amend the motion proposed by a member.

And according to Erskine May, Twenty-first Edition at page 336:

> A complicated question, however, can only be divided if each part is capable of standing on its won.

In Canadian parliamentary history, such dividable motions have been very rare.

[*English*]

In the Chair's opinion, while Senator Cools' motion does involve more than one idea, the propositions contained therein are all related. Given the way the motion is worded, I cannot see how it could be divided since the parts are not capable of standing on their own. Even if the motion were divisable, it would not render the motion out of order.

• (2210)

The second part of Senator Robertson's point of order, that the motion offends the established parliamentary practice that prohibits, or at least restricts, references to judges in the form of any personal attack or censure, is the more difficult for me to determine.

In order to be very clear on what might possibly be at issue in this aspect of point of order, I examined closely the arguments that were presented in May, and I have reviewed the authorities on the relationship between Parliament and the courts, particularly with respect to the censure of judges and their possible removal from the bench. Among the works that have been consulted are Alpheus Todd's *On Parliamentary Government in England*, *Halsbury's Law of England* and most important, perhaps, a treatise by Shimon Shetreet entitled *Judges on Trial: A Study of the Appointment and Accountability of the English Judiciary* published in 1976. I have also reviewed some of relevant Canadian and British precedents as well as a 1994 decision of the Federal Court, Trial Division, in the case of *Gratton v. Canadian Judicial Council*. I have felt it my obligation to undertake this review in order to provide some guidance to this house on a matter of importance and consequence.

In explaining her second objection, Senator Robertson quoted a passage from Erskine May, at page 380, which states, in part, that:

> ...reflections on a judge's character or motives cannot be made except on a motion, nor can any charge of a personal nature be made except on a motion. ... Any suggestion that a judge should be dismissed can only be made on a motion.

This practice has been sustained in recent years by various statements or comments by the Speaker of the British House of Commons. For example, on December 4, 1973, the British Speaker observed that:

> No charge of a personal nature can be raised except on a motion. Any suggestion that a judge should be dismissed can be made only on a motion.

Again, on July 2, 1987, the Speaker stated that:

> It is not in order to criticize a judge. That must be done by motion.

Although the *Rules of the Senate* are not explicit on this point, I do not believe that any senator would doubt the need to support such a practice either to maintain order and decorum in our debates or out of respect for the independence of the courts.

While recognizing the importance of maintaining the independence of the courts, it is still clear that Parliament does have the authority, and indeed the responsibility, to act when required. Senator Robertson referred to the Constitution Act, 1867, section 99(1), which states that:

> ...the Judges of the Superior Courts shall hold office during good behaviour, but shall be removable by the Governor General on Address of the Senate and the House of Commons.

[*Translation*]

Our parliamentary history presents only a few instances when Parliament even considered availing itself of this constitutional right.

The most recent case, and the only one in which the Senate participated in such action, was in 1966 when the Senate agreed to join with the House of Commons to enquire into and report on the expedience of presenting an address to His Excellency praying for the removal of Mr. Justice Léo Landreville from the Supreme Court of Ontario.