

Judges Act

My colleague just mentioned that the exact number was 657. Also, as I understand it, there are approximately \$35 million in salaries paid to superior court judges who are appointed by the federal government and this increase in their salaries will amount to approximately \$4.5 million. This is exclusive of the other increases and benefits to pensions and changes in the allowances provided for judges which are also a part of this bill.

I have given those round figures so that the House will know the basic dollar value with which we are dealing in the bill. As I said, the increases amount to something approximating \$4.5 million, and we are talking about a total expenditure on the salaries of judges at present of \$35 million. These figures taken alone are very impressive. They involve great and vast amounts of money, but if we think of some of the other expenditures of the Government of Canada, they pale by comparison. Just to throw one figure out for the record, we were informed in the House the other day that Mirabel airport lost \$192 million over less than a five-year period. When we are talking about the current amounts of judges' salaries and the amount they will receive if the bill receives passage, we are talking about a relatively small amount in relation to the kinds of expenditures carried out by the Government of Canada. I do not mean that in any way to minimize the matter, but simply to put it in the perspective of all government expenditures. We all know that at present the government spends approximately \$61 billion on various government services. In that sense and in that context, we are dealing with a relatively small amount of money.

I should like to look very briefly at the background of the Judges Act, and why we are dealing with this matter. I want to point out to those members who are not already aware of it, although it has been pointed out in the debate, that the British North America Act, our constitution which is receiving so much attention as a result of the resolution introduced in the House, makes very specific provisions for judges. Section 96 of the act requires the Governor General, acting on the advice of the federal cabinet, to appoint all the superior, district and county court judges in each province. That provision was put there very purposely. It was to ensure that the appointment power in respect of superior, district and county court judges across Canada remained in federal hands, even though the work carried out by these judges is basically done in the provinces of Canada. The provision was designed and intended to ensure an independent element in the judiciary. I believe it is very important to our system that the independence of the judiciary be preserved. I want to look at the bill in that context, the independence of the judiciary in Canada.

I should like to add to my remarks with respect to the British North America Act. Section 100 provides that the salaries, allowances and pensions of judges of the superior, district and county courts must be provided by the Parliament of Canada. Under section 100 of the British North America Act, the Parliament of Canada has the obligation to fix and provide the salaries, allowances and pensions of the judges of Canada. I want to deal with that aspect of the matter a little more carefully when I talk about pensions, but I say for the moment—and I want it recorded and underlined—that this

provision was passed by the Parliament of the United Kingdom in 1867. In 1867 the Parliament of the United Kingdom said that the Parliament of Canada must provide pensions for the federally-appointed judges of Canada.

At that time I do not believe there was in force in the Public Service of Canada a pension scheme such as the one of today, nor in private industry, nor in other provincial governments. When the Parliament of the United Kingdom enacted, with the consent and concurrence of the Fathers of Confederation, that the Parliament of Canada must provide salaries and pensions for the judges of Canada, we must consider the context in which that provision was made. It was not in the context of current pension plans.

I believe this was a benefit and a consideration made in respect of the judges of Canada to ensure independence of the judiciary. I want to return to that point and underline it, because I think it is a very important consideration and one that, in all fairness to the judiciary of Canada, should be brought not only to the attention of the House but to the attention of every Canadian citizen. We are dealing with more than just a matter of money. We are dealing with a very important constitutional principle. The independence of the judiciary of Canada is very much a part of our governmental system in this democratic nation.

Mr. Baker (Nepean-Carleton): That is precisely the case.

Mr. Crosby: Let me look at the background in another context and explain the judicial system of Canada very briefly, so that we can consider this bill in that context. We have in Canada a system of judges which involves federally and provincially-appointed judges. To use the term which is generally applied, we have superior courts in Canada and inferior courts. The manpower of the superior courts are the judges appointed by the Government of Canada pursuant to the provisions of the British North America Act, and they are superior court judges. On the other hand we have in each province provincially-constituted courts and provincially-appointed judges, who are generally called inferior court judges. That name in no way implies a lesser level of judicial service. It is just a distinction, a term which is used to distinguish between superior courts on the one hand, the judges of which are federally appointed, and inferior courts or provincial courts on the other hand, the judges of which are provincially appointed.

● (1600)

This immediately has an important reference in relation to salary, because at the present time the salary of a superior court judge, federally appointed, is \$54,000, and in the province of Ontario, as a result of statutory revisions involving indexing, I understand that this year, and at this very moment, provincially-appointed judges are receiving approximately \$57,200. So we have a paradox here before us wherein the provincially-appointed judges in Ontario, and I believe also in Quebec and possibly other parts of Canada are, in fact, receiving a greater salary than the federally-appointed superior court judges. That alone makes the case for Canadian judges.