

Adjournment Debate

I just regard this as the judiciary getting mixed into politics and I hope the judges will do something about it.

And the Prime Minister said:

I wonder why he didn't support the bill when it was there and when it gave Quebec the vote and gave the Indians aboriginal rights. He didn't support us then.

That is transparently false, of course, because Mr. Justice Berger did support the resolution when it contained those elements.

Following the urgings of the Prime Minister, and following Judge Addy's complaints, the Canadian Judicial Council embarked upon what I have described as a judicial witch hunt, a witch hunt which unfortunately was supported, at least by their silence, by the Conservative Party.

I would note that recently, Mr. Speaker, the Conservative Party, through their critic, the member for Saskatoon West (Mr. Hnatyshyn) has fully supported the actions of the judicial council and indeed the remarks of the Minister of Justice I have noted in the past the irony of a situation in which the judicial council criticizes Judge Berger on the one hand, but on the other hand some of those same members of the bench were actively lobbying, albeit quietly and behind the scenes, their friends in the Senate and elsewhere, during the time that the Judges Act was before Parliament. They were seeking to ensure that their lucrative pension plan would be made even more lucrative.

When the Minister of Justice received the report of the Canadian Judicial Council, he made the report public, which certainly I welcome and in fact had urged upon him. But then the Minister of Justice completely misrepresented the position of the Canadian Judicial Council. Mr. Speaker, the Minister of Justice stated and I quote:

The Canadian Judicial Council has accepted the report.

That is certainly not the case. Far from accepting the report of their investigating committee, the Canadian Judicial Council in a three paragraph resolution explicitly rejected the fundamental conclusion of that report. For, Mr. Speaker, the investigation committee found that the complaint filed by Mr. Justice Addy—the complaint of *non se bene gesserit*, a latin expression meaning, in other words, the complaint that Judge Berger had failed to uphold the good name and the condition of good behaviour—was well founded. They did say he should not be removed from the bench, but they certainly stated that his actions constituted grounds for removal. The Canadian Judicial Council entirely ignored the report of its investigative committee and found only that Judge Berger's remarks were indiscreet. The council went on to say that they constitute no basis for a recommendation that he be removed from the bench.

● (2225)

We see therefore that the Minister of Justice, in suggesting that the Canadian Judicial Council had accepted the report of its investigative committee, was completely misrepresenting the truth. In fact, that report—that appalling document—of the

investigative committee was rejected, as it should have been, by the Canadian Judicial Council.

Mr. Justice Berger, in his reply to the report of the investigative committee, indicated that in his view if the judicial council was relying upon conventional wisdom, conventional wisdom had not always proved to be accurate in the past. He said:

The council should remember what Hamlet said: "Our indiscretion sometimes serves us well, when our deep plots do pall".

He went on to say of the council:

Theirs is, I suppose, the conventional wisdom, but how often has conventional wisdom been right about anything that truly matters?

The Minister of Justice has deliberately misrepresented the position of the judicial council, and I call upon him to set the record straight.

Mr. Jim Peterson (Parliamentary Secretary to Minister of Justice and Minister of State for Social Development): Mr. Speaker, I will not dignify with a response some of the aspersions cast on Canada's judges or Canada's judicial system. Rather, I would like to respond to the particular issue at hand.

On March 8, 1982, the Canadian Judicial Council, acting pursuant to the Judges Act, appointed from among its members an inquiry committee for the purpose of conducting an investigation into a complaint made in respect of Mr. Justice Thomas Berger of the Supreme Court of British Columbia. The council designated as the inquiry committee the Hon. B. J. Mackinnon, the Associate Chief Justice of Ontario; the Hon. W. R. Sinclair, the Chief Justice of the Court of Queen's Bench of Alberta; and the hon. James Hugessen, the Associate Chief Justice of the Superior Court of Quebec. That committee conducted an investigation into the complaint made in respect of Mr. Justice Berger and duly presented a report of its investigation to the judicial council. The council deliberated upon this report on May 31, 1982 and presented its conclusions to the Minister of Justice (Mr. Chrétien) on June 1, 1982.

In studying both the council and committee reports it is fair to conclude that neither report recommended the dismissal of Mr. Justice Berger. Regardless of the controversy as to whether or not the actions criticized by both the council and committee constitute grounds for dismissal, the Minister of Justice feels it is important to ensure that the legislative and judicial branches in Canada remain separate and independent of one another. In addition, he is concerned that a most important issue not be sloughed aside, namely, the rights of Canada's native peoples, an issue which is important to Mr. Justice Berger.

This issue is most important to the Minister of Justice, who, for more than six years, served as the minister of Indian Affairs and Northern Development. During that period he worked closely with Canada's native peoples in all parts of Canada. That is why he fought before the constitutional committee, before this dispute arose, for inclusion of their rights in our new Constitution. That is why the minister does not welcome any controversy such as the present one which