

Judges Act

second reason why male judges may lack impartiality in sex equality cases.

As we all know, a person is conditioned to conform to the social role expected of his or her sex. The process starts at birth with the question: is it a boy or a girl? It sometimes seems as if the nine months before birth—I am continuing with the report prepared by the council—is the only period in which it is really acceptable to ignore the dictates of social sex roles in favour of at least a female-male duality kind of personhood, if not a common status of personhood.

The conditioning process for one sex role is tantamount to rejection of the other sex role for any one person. If the impartiality expected of judges includes empathizing with both parties, then in sex equality cases judges would be required to fight their own sex role conditioning in order to empathize with female complainants. When the issue concerns not the secondary sex role differences of equal pay and equal opportunity, but the inherent sex differences of the sexual activity of marriage as in the Lavell case, or of pregnancy as in the Bliss case, then the barriers, the study concluded, to male judicial empathy may be insurmountable.

The second study referred to is a British study called "Sexism and the Law", and it goes even further. It adopted the approach that "judicial pronouncements about females masked specific and discoverable material interests", and that such hidden material interests provided a better explanation of the survival of the values of masculine supremacy "than the mere cultural inertia suggested by socialization theory". The specific material interest which caused men to resist equality between the sexes, this study found, was an "interest in keeping women as head servants at home and keeping them out of the ranks of competitors at work". The implication of this conflict of material interest explanation for the judiciary is that changing the situation would require more than re-educating the male judges. It would require the appointment of women to the bench, and in our case above all to the Supreme Court of Canada as the court of final appeal, in such numbers that they would be representative of the number of women in Canada.

In short, these studies have provided very solid explanations for why the judiciary in Canada has not yet been able, despite the words "equality before the law", and partly because of those words, to see women as genuinely equal with men. If the process of adding women to the courts, proceeding at the rate of the 1970s where the number of female federally appointed judges only went up from 3 per cent to 4.3 per cent, continues, then it will be decades and decades, well into the next century, before women can be assured that there will be on the judiciary at all levels judges who are themselves also women.

In view of what I said earlier about the outstanding pool of lawyers which is now available, I do not have the exact figures, but I would estimate that in 1980, for Canada as a whole, the number of women lawyers who have been practising actively for ten years would constitute close to 15 per cent of the total number of lawyers—and in 1980, given the numbers in the law schools and recently emerging from the law schools, that

might well go to one-third of the total eligible applicants for the federal judiciary—right today there are many more than the minister or the government seem to be aware of.

I would therefore suggest that when this bill goes to committee, very serious consideration be given to an amendment which would provide for the appointment of women initially in the 20 positions which are being added in this bill. Even if all 20 new positions were filled by women judges, the percentage of women to men in the judiciary would rise only from 3 per cent to 6 per cent. I want to impress upon hon. members that it is not good enough to say, "Well, perhaps one or two". I am afraid we will never make progress if that attitude is taken.

● (1550)

Some hon. Members: Hear, hear!

Mr. Howard Crosby (Halifax West): Mr. Speaker, I am glad of the opportunity to make some remarks on Bill C-34 to amend the Judges Act. Let me review very briefly the purpose of this bill as described by the Minister of Justice (Mr. Chrétien) when he introduced it.

In brief summary the bill has five main objectives. First, it provides an immediate increase in the salaries of judges of an amount, designated for a two-year period in 1979-80 and 1980-81, of \$13,000 for superior court judges and \$15,000 for district or county court judges. This would be in addition to the salaries they are receiving at present which were fixed, as I understand it, in 1975. The result of the immediate increase proposed by the bill is that with respect to superior court judges across Canada, excluding the chief justice of the superior court and the chief justices and judges of the Supreme Court of Canada and the Federal Court of Canada, the basic salary would be \$67,000 for superior court judges and \$52,000 for district or county court judges.

The second purpose of the bill is to provide a system for automatic increases in the salaries of judges on an indexing basis. This would commence April 1, 1981. I understand the indexing would probably provide for an increase in the range of 7 per cent.

The third purpose of the bill is to vary the pension benefits now provided for judges. I want to speak more carefully about that aspect of the bill later, but for the moment, the pension benefits will be varied in some cases to provide for contributions by the judges. There still remains very much a part of the pension plan for judges in Canada a non-contributory aspect which is of great concern to many people.

The fourth purpose of the bill is to increase allowances for judges in relation to representation and other matters.

Finally the bill provides for an increase in the number of judges which the federal government can appoint to the various courts in Canada. I understand that increase amounts to approximately 20 judges.

Let us look at some of the more general facts which are relevant to the five proposed changes in Bill C-34. As I understand it, there are approximately 650 judges in Canada.