

Judges Act Amendment

am not saying that the hon. member for Carleton is not sincere, but I am giving you the impressions of a lawyer who practiced law for a good number of years, civil as well as criminal law, and who does not see why he should be particularly influenced by being a judge or by occupying any important position assigned to him.

I had the opportunity of being crown attorney in the province of Quebec, and I am grateful for that experience. Still, believe me, Mr. Speaker, that did not change me or my relationship, as a lawyer, with the bar, the crown or other judges, and I consider myself perfectly free to think whatever I wish about jurisprudence, about the possibility of pleading a case before judges whom I know and respect, or about the rulings made in the past.

• (5:50 p.m.)

[*English*]

Mr. S. Perry Ryan (Spadina): Mr. Speaker, I find myself more in accord with the hon. member for Carleton (Mr. Bell) on the principle of this subject than I do with the hon. member for Lafontaine (Mr. Lachance). I appreciate the good motive and the excellent drafting of Bill C-20 by the hon. member for Carleton. I think its concise form is a credit to him.

I am entirely in sympathy with the reform he seeks, and I compliment him upon his explanatory notes. I think his notes are so good, so terse and to the point that he could almost have read them into the record and dispensed with his speech. However we over here are always warmed by the sound of his hearty voice and the sight of his emphatic gestures, and we are glad he has been kind enough to employ his time to the advantage of all hon. members. I am only sorry that I cannot go full measure in supporting his bill.

I have only one reason for not backing the hon. member, but I submit it is a really good one. The hon. member is on the right road but he has taken the wrong turn. He should have been making his point at Queen's Park or Osgoode Hall last year instead of in this chamber now, because this parliament has not the legislative authority to deal with it in the blanket form in which it is drafted and presented.

The hon. member seeks to amend the Judges Act to provide in effect that a retired judge who engages in practice before the courts shall lose his pension. By definition in the Judges Act, section 2 (b), a judge includes a chief justice, president, senior judge, chief

judge and junior judge, and of course the act pertains to all the judges of dominion and provincial courts.

Mr. Speaker, the only legislative jurisdiction that parliament has in regard to judges of provincial courts is to fix and provide the salaries, allowances and pensions of the judges.

Mr. Bell (Carleton): And to take them away.

Mr. Ryan: Here we are getting into another area entirely. We are in the area of penalty, in what we are now discussing. A measure such as this that would impose a penalty on a judge who returns to practice, by depriving him of his pension, is not bona fide legislation in relation to pensions. It is rather a colourable attempt to legislate with respect to matters within the exclusive jurisdiction of the provinces, namely the provincial courts and persons entitled to practise before them.

It is true that from time to time a retired judge goes back into practice and appears before the courts, including the same court of which he was a member. I know of several members of the judiciary at both the federal and provincial levels who have done so. Some have retired because of ill health, and possibly some because of the boredom of the long hours of sitting. In many such cases experience has shown that it is usually not too long after retirement and after restoration to health that an active practice before the courts is resumed. This has brought a good deal of criticism from the bench and the bar, particularly in the province of Ontario, and I feel certain that many complaints have been made to the law societies of the provinces and to the federal and provincial law officers of the crown.

As I have indicated, I do not think it is a good thing that a retired judge should practice before the courts; but I do not believe this is a matter that calls for any action or legislation by the federal government. The provinces have exclusive legislative jurisdiction over the administration of justice and the constitution, organization and maintenance of provincial courts, both of civil and criminal jurisdiction and including procedure in civil matters in those courts. I refer hon. members to section 92, clause 14 of the British North America Act.

The provinces also have exclusive legislative jurisdiction to determine who is or who is not eligible to practice law and to appear