

*Privilege—Mr. Lawrence*

was very concerned about the legality of certain operations in which his department was involved, directed to his cabinet colleague who was responsible to the agents of government that were involved in that particular seeking of information from confidential files. That is far different in terms of the rights and privileges of members of this House from a letter from the then solicitor general to a member of this House, in which the Speaker has ruled there was a deliberate attempt to obstruct the hon. member in the performance of his duties and, consequently, a deliberate attempt to obstruct the House itself. The Speaker went on to say yesterday, as reported at page 1857:

—I cannot conceive that there is any one of us who would accept the argument that this House of Commons has no recourse in the face of such an attempt to obstruct—

What is the recourse? The government is saying the recourse is the McDonald commission. What is the McDonald commission? I regret I have to give a lecture in government to the Parliamentary Secretary to the President of Privy Council (Mr. Pinard). In order to determine what the McDonald commission is, the parliamentary secretary need look no further than the very clear statement of Mr. Justice McDonald contained on pages 6 and 7 of his statement of November 13, and I quote:

The governor in council, in creating such a commission as this, asks this newly and specially created unit of the executive branch of government to examine some particular aspect of the government, that is the executive. The executive branch, through its chosen executive instrument, is examining itself. This must not be forgotten by those who expect the commission to do as they wish and as it wishes.

Mr. Justice McDonald went on to indicate that he was part of the instrument created by the executive to examine itself. He pointed out that this was a very difficult and delicate position in which to be. Therefore, certain things must attach to it. It must not only appear that the commission is operating with some independence, but in fact it must so operate without interference.

Mr. Justice McDonald went on to say that it could not be directed by a minister. With all of this, I agree. If the executive creates an instrument to examine itself, and if it is to be anything more than pure sham, certain very special conditions must attach its operations. Still, however, as Mr. Justice McDonald pointed out, the commission remains an instrument of self-criticism.

The McDonald commission is not an instrument of the House of Commons. It was not created by the House of Commons. Its terms of reference were not approved by the House of Commons. None of its rules, practices or procedures are influenced in any way whatsoever by the House of Commons. It does not report to the House of Commons. The commission's terms of reference can be amended, not by the House of Commons but by order in council, the executive, the cabinet. Its very existence can only be maintained or terminated, either directly or indirectly, by the cabinet.

Mr. Nuss was originally counsel for the solicitor general of the day. Subsequently, and this is not at all clear, even to the McDonald commission, because Mr. Justice McDonald

[Mr. Jarvis.]

specifically said so, that counsel enlarged his clientele to include all ministers of the Crown. That means the Privy Council, with one possible exception, the Minister of Justice (Mr. Lalonde) in his capacity as Attorney General. It is very uncertain whether Mr. Nuss is counsel for the Attorney General of Canada, but it appears now that he is counsel for the government and not just the Solicitor General.

Mr. Nuss's arguments some-weeks ago were to this effect. Once the Privy Council decides that such a document or such and such evidence is not to be produced in public, that decision should be binding upon the McDonald commission. Fortunately that was rejected out of hand by the commission in its statement. If that argument were to prevail, and thinking how the government can terminate indirectly the existence of the commission, it could put the commissioners in such a position that in order to maintain any vestige of integrity they would be forced to resign.

If I recall correctly, Mr. Justice McDonald said that even if the government changes the terms of reference, the commission would be forced to re-examine its position. I agree. However, it is certainly within the power of the cabinet to terminate indirectly the very existence of the McDonald commission, a power that this House would not even presume to think it had in these circumstances.

I do not think we need go any further in terms of the relationship between the cabinet and a commission than to look to the Mackenzie commission. Hon. members will recall that the Mackenzie commission reported to cabinet, not to the House of Commons. Subsequent to the Mackenzie commission report, there appeared, and I believe it was tabled, an abridged report of the Mackenzie commission's findings. I do not know what was deleted. I doubt that any member now or then sitting, unless he was a member of the cabinet, has any idea in the world what was deleted from the MacKenzie commission report. Therefore, it is absolutely clear that commissions such as the McDonald commission, which according to the President of Privy Council (Mr. MacEachen) is the answer to this question of privilege, bear no relationship whatsoever to the House of Commons or its individual members. The only relationship which exists is that between the commission and the cabinet.

● (1732)

Hon. members will recall that very early in the hearings of the McDonald commission submissions were made arguing that counsel should be permitted to appear on behalf of other groups in Canada. One of those groups happened to be the party I support. Those requests, not only by our party but by other groups, were rejected upon the basis of vigorous opposition by government counsel.

Compare that situation, the situation of the McDonald commission, which is simply the executive examining itself, with the position of the House of Commons. From my earliest days as a student I understood that parliament was the watchdog of the executive. It is interesting to note there has been some dialogue during this debate with respect to the role of the