

Judges Act and Financial Act

judicial council is not to superimpose itself on the regular court procedures or decisions of the courts. There is a regular appeal procedure to the Supreme Court. The objects of the council are set forth in clause 31(2). They are:

—to promote efficiency and uniformity, and to improve the quality of judicial service, in the superior, district and county courts, including, without limiting the generality of the foregoing

the establishing from time to time of a conference of chief justices—

That conference has been in effect for the last two or three years. In fact, the chief justices of all the provinces and of all trial superior courts will be meeting in Regina this coming Sunday, Monday and Tuesday, so the Canadian judicial council would merely be an umbrella over an existing practice. I continue reading the clause:

—the establishing from time to time of seminars for the continuing education of judges—

We now have a Canadian judicial conference that has been meeting every year for the past few years, funded by the federal Department of Justice with money supplied on the authority of Parliament. This seminar lasts ten days. It is going to be extended, so that I hope every judge of every high court will in effect go back to school at least once every five years and perhaps more frequently. I have also arranged that the judges of the Northwest Territories and of the Yukon alternate, because they need a more general association with the bench than their brethren in the south who are in daily association with other judges. There is nothing new in this. In that continuing education process we have set up a faculty. It consists of judges and laymen. In fact its first dean was Allan Leal, chairman of the Ontario Law Reform Commission.

Mr. Knowles (Winnipeg North Centre): Beware of law deans!

Mr. Turner (Ottawa-Carleton): There are many people who contribute to those seminars, and I recognize the fact that some seminars should be conducted by people off the bench. The part of the clause to which I direct my attention is 31(2)(c), which provides:

—subject to section 32—

Which is the section under which the Minister of Justice may set up an inquiry and have eventual recourse to both Houses of Parliament for the removal of a judge.

—the making of the inquiries and the investigating of any complaint or allegation described in that section.

I have been searching for some time for a way in which allegations and complaints against the bench can be dealt with in such a manner that one will not bring the bench unduly into ridicule and contempt and yet will not deprive the judiciary of that independence which under the British parliamentary system it is entitled to and which, I believe, has been one of the strongest points of the British, Canadian and Commonwealth judicial systems.

I discussed the terms of the bill, not as a bill but as terms of reference, with all the ten Attorneys General of the provinces in Halifax on July 13, 14 and 15, 1970, a year or so ago. They agreed with me that the best way of obtaining discipline within the judiciary, of ensuring that judges were pulling their weight, of analysing whether judges had become handicapped by age, infirmity or con-

flict of interest was to leave it with the judiciary, and that it was not up to the legislature to have daily supervision over the judiciary and it not was up to the executive and the Attorneys General to impose their will on the judiciary.

Because of the principles so eloquently expounded by the hon. member for Calgary North—the absolute independence of the judiciary free from any threat of public opinion or outside influence—I have to reject the amendment of the hon. member for Timiskaming. These terms of reference bear the approval of all ten provincial Attorneys General. They bear the approval of the conference of chief justices. They have also been discussed by the Canadian Bar Association. I want to say further that under clause 32(4) the Canadian judicial council has the power of a court of record. I felt that a court of record was something that should be limited to members of the bench.

Where is the ultimate control? If the commission, on referral of an allegation by the Minister of Justice, by a provincial Attorney General or by an ordinary citizen, feel that as a result of their inquiry a report should be made to the Minister of Justice, they do that. Then the matter is in the hands of the Attorney General of Canada, subject to his responsibility to Parliament. If the Canadian judicial council were to fail to act, if the situation were of such gravity that Parliament was concerned, then the power of inquiry under the Inquiries Act and the Judges Act would still be retained. The Attorney General still has the duty and the power to refer that matter to an inquiry conducted by a judge or members of the bar, and the ultimate responsibility in serious cases still remains with him for report to Parliament and to the people.

Primarily for the reason of the independence of a system whereby the judiciary is immune from pressure, either from public opinion, short-term public opinion—although I have argued that it should respond to the movement of society and I have spoken openly, even before the Supreme Court, of a creative judiciary responding to social direction—free from the pressures of Attorneys General, free from the pressures of a legislature, in fact free from every type of public pressure, I decided to achieve the type of discipline I wanted by entrusting it to the Canadian judicial council made up of the chief justices of the country, of course subject always to the overriding authority of Parliament.

Mr. Howard (Skeena): Mr. Speaker, apropos the minister's final remarks about conducting inquiries under the Judges Act and the Inquiries Act, may I ask what action was taken with respect to Bernie Isman, a judge in Vancouver who was guilty of gross misconduct? What did his department do about that case?

Mr. Turner (Ottawa-Carleton): I did not have jurisdiction. That is a provincial judge.

Mr. Howard (Skeena): But you knew about it, and you might know about it with federal judges too.

Mr. Deputy Speaker: Is it the pleasure of the House to adopt the said motion? All those in favour of the motion will please say yea.

Some hon. Members: Yea.