

the case of the Senate, I would fully support giving senators, under proper conditions, the optional right to retire at, say, age 70. My personal feeling, however, is that in the case of judges, as the younger people would say, I do not "dig" retirement at age 65.

I have now dealt with all the provisions of the bill which are designed to make a "judge's lot a happy one."

There is, however, another side to the coin. Clause 11 of the bill creates the Canadian Judicial Council. In my opinion, this is an excellent reform. Judges already have security of tenure of office. By this bill provision is made for reasonable compensation, but the bill goes a step further and makes provisions to deal with a judge who for any reason ceases duly and properly to perform the duties of a judge.

As we all know, the only way a judge may be removed from office now is by a joint address of both Houses of Parliament pursuant to section 91(1) of the British North America Act. Section 91(1) is not affected by this bill and remains in full force and effect. It is also well known that section 91(1) by itself is today hardly a satisfactory way to deal with an unsatisfactory judge. It is too slow and too cumbersome.

The new section 33 of the Judges Act, which clause 11 of the bill will enact, therefore empowers the Governor in Council to stop paying the salary of a judge upon the recommendation of the Canadian Judicial Council, and in due course the judge may be then removed from office.

The provisions of the bill setting up the Canadian Judicial Council are so important I think they are worthy of explanation in more detail.

The new section 31(1) establishes the council and states that the members are the Chief Justice of Canada, who is chairman and the Chief Justice and Associate Chief Justice of each superior court.

Subsection (2), which I will now read to you, outlines the objects of the council:

(2) The objects of the council 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

(a) the establishing from time to time of a conference of chief justices;

(b) establishing from time to time of seminars for the continuing education of judges; and

(c) subject to section 32, the making of the inquiries and the investigating of any complaint or allegation described in that section.

The bill contains all the necessary provisions to enable the council to make by-laws and to function, and gives it all necessary powers to carry out the inquiries mentioned in the new section 31(2)(c).

New section 33(1) reads:

After an inquiry or investigation under section 32 has been completed, the council shall report its con-

clusions and submit the record of the inquiry or investigation to the Minister of Justice of Canada.

(2) Where, in the opinion of the council, the judge in respect of whom an inquiry or investigation has been made, has become incapacitated or disabled from the due execution of his office by reason of

(a) age or infirmity,

(b) having been guilty of misconduct,

(c) having failed in the due execution of his office, or

(d) having been placed, by his conduct or otherwise, in a position incompatible with the due execution of his office,

the council, in its report to the Minister of Justice of Canada under subsection (1), may recommend that the judge be removed from office and that he cease to be paid any further salary.

(3) A judge who is found by the Governor in Council, upon report made to the Minister of Justice of Canada by the council to have become incapacitated or disabled from the due execution of his office shall, notwithstanding anything in this act, cease to be paid or to receive or to be entitled to receive any further salary if the council so recommends.

In certain cases leave of absence with salary may be granted to judges who are incapacitated, and an annuity may be granted to a judge who is incapacitated and resigns. The Governor in Council may also remove a judge of a county court from office, in which case any such order must be tabled in Parliament within 15 days.

The council may make an investigation on its own and must make an inquiry at the request of the Minister of Justice of Canada or the attorney general of a province. It is difficult to think it possible that a man honoured by an appointment as a judge, and receiving a salary of around \$38,000 to \$40,000, would neglect the performance of his sworn duties as a judge. If and when any such instance arises in the future it will be the responsibility of the Canadian Judicial Council to act firmly, and without delay, to protect the interests of all Canadians, and the good name of the judiciary.

I am sure that honourable senators will be interested to hear that my own Province of Newfoundland passed an amendment to our Judicature Act last June which seems to touch on this point. It provides, among other things, that if a judge, on hearing a case, reserves judgment and has not given judgment within twelve months from the time of reserving it, any two other judges may order that the cause, issue, motion or matter be retried by either one of them or by another judge.

This to me is an extraordinary provision. Honourable senators, justice delayed is justice denied. If—and I repeat if—there is any undue delay in the courts of justice in Newfoundland or anywhere else in Canada, then the responsibility is now entrusted to the Canadian Judicial Council to bring it to an end at once. If any undue delay persists, then the Judicial Council should act firmly and