

Mr. Justice Somers, in speaking of the Children's Aid worker, said:

Ms V...in my view displays a mean spiritedness... In my view she demonstrated a contempt for the father which was apparent to him. This can be contrasted with her treatment of the mother...

Honourable senators, in Canada today every single family is touched by matrimonial and custody disputes. They affect the grandparents, aunts, uncles, the siblings, the children and the full range of familial and social relationships. The anguish and suffering from these disputes is unspeakable. The expense is enormous. Legal fees are extravagant. Reverend B., for example, spent \$300,000. His sister and her husband mortgaged their home to finance his legal nightmare. This tale of human woe and misery lasted nine years, from 1985 to 1994, and the psychological wreckage is immeasurable.

Honourable senators, no Canadian who is traduced, who faces falsehood and malice, who believes his cause is just, can afford to turn to the courts for relief in a civil dispute without risking financial ruin. We must therefore conclude that justice is unattainable, both financially and procedurally, because of the systemic abuses and the excesses of lawyers. This is a terrible state of affairs.

Honourable senators, barristers take a solemn oath to maintain the basic principles of justice. The oath reads, in part:

You shall not pervert the law to favour or prejudice any one, but in all things shall conduct yourself truly and with integrity.

This oath represents the assertion that barristers, being at the same time officers of the court, are endowed with responsibilities and obligations to uphold truth. However, we were told that falsehood and prevarication in judicial proceedings is common.

Honourable senators, despite the mention of the excesses of lawyers, the Civil Justice Review report's recommendations are silent on remedies for correction in the legal profession. The report advances no recommendations that speak to this problem; a fundamental problem of professional morality. I eagerly anticipate the review's final report, and I am expectant of its recommendations and remedies. These recommendations should be directed at the profession at all levels, including the Law Society of Upper Canada and the bar association. I note that the newly-elected treasurer of the Law Society of Upper Canada, Susan Elliott, on June 23, 1995, stated her approach for, in her words, "dealing with the legal profession's numerous problems".

Honourable senators, the journey of these false sworn statements through the courts holds continuing interest. I am told that judges are intolerant of perjury in criminal justice proceedings, but not necessarily so in civil justice, particularly family law proceedings. Perjury occurs on the stand at trial, and also in the swearing of false affidavits. The Civil Justice Review report indicates that most family law proceedings never reach trial; never reach adjudication by a trial judge under Themis's sword. Since the deponents of false affidavits never take the

stand, the ground for manipulation and civil molestation is fertile.

Honourable senators, legal practitioners rely on absolute judicial privilege to shield these affidavit materials. They are misguided and mistaken. Absolute judicial privilege does not shield against perjury and related offences as, similarly, absolute parliamentary privilege does not shield members of Parliament against perjury in parliamentary proceedings.

The Hon. the Speaker: Honourable senator, I am sorry, however your time limit has been reached.

Senator Cools: I have only a few more pages, honourable senators. May I finish?

The Hon. the Speaker: Is it agreed that the honourable senator be allowed to finish?

Hon. Senators: Agreed.

Senator Cools: The singular statutory exception to all privilege is perjury. All privilege, including solicitor-client, is lost with perjury or counselling perjury. Her Majesty has spoken through the Criminal Code as to how her privileges are subject to truth. The Criminal Code of Canada ousts absolute privilege absolutely in the commission of perjury. From the highest to the lowest in the land, all are subject to the law. Privilege protects truth, and abhors perjury and lawlessness.

Honourable senators, the issue is truth. The issue is the obligation owed by barristers, as officers of the court, to truth and to justice itself. Certainly barristers know that perjury and prevarication are questions of crime. The Oxford dictionary defines truth as the:

Disposition to speak or act truly or without deceit; ...true statement or account; that which is in accordance with the fact...

Honourable senators, without truth the judicial process cannot function. The swearing of false statements, knowing them to be false with an intent to mislead justice, to obtain a result and advantage in a court judgment is a crime. The issue of crime is a federal matter and a matter for examination by this Parliament.

• (1220)

Our Constitution places Parliament as a controlling power over the courts of law. It invests Parliament with a guardianship of the bench, and the administration of justice. Our Constitution has conferred upon us the superintendence over the proceedings of the courts. Further, the Criminal Code of Canada, the Divorce Act and the Canada Evidence Act are statutes of this Parliament.

Honourable senators, the case of Reverend B. jolts every sensibility. It offends every principle. This case of countless dishonesties, perjury, disceptions, illegalities, legal irregularities, professional carelessness and bureaucratic negligence is a diabolical creation by a wife. The Children's Aid Society and its resources, using the Child Welfare Act, supported this wife in the pursuit of a father. It actively supported a mother who exposed her children to untold abuse and suffering.