

*Judges Act and Financial Act*

rick Payler. This is what one distinguished judge said as quoted at page 92:

I thank God I am in a position which puts me above politics.

Those were the words of the Earl of Clonmel, an Irish chief justice, nearly a century and a half ago. The judiciary must always be above politics or you will not have an independent judiciary. With the greatest respect, that is why I take a position of opposition to the appointment of laymen, whatever a layman is. Perhaps it means people other than those trained in the law. But I would be concerned if the Minister of Justice appointed five laymen to this council. Any one or all five of those laymen might be members of a political party. As long as I am here as a member, I will oppose that idea. I feel that the judiciary at any level must always be free from the infiltration of politicians.

We will never have puritanism of human behaviour, but I believe we in Canada have one of the finest judiciaries in the world. I have practised in the criminal courts probably to a greater extent than the minister. I am a member of the bar and have practised in two provinces. I now belong to the bar of a third province. I am convinced that our judiciary is as good as any in the world.

I always remember something the right hon. member for Prince Albert (Mr. Diefenbaker) once said when I was associated with him in a lawsuit. The judge had been a Member of Parliament associated with a different party. The right hon. member said, wasn't it wonderful that the judge had the position, when only a short time ago he and the judge were adversaries on different platforms? He said that under our system the judge had been appointed as an individual, independent of the people who appointed him. He said he was now in the judiciary and would make the kind of decisions the citizens of Canada wanted. That is the kind of experience I have had before the bar. I have always found that when individuals leave this institution or any political party to sit on the bench, they exercise their functions in a judicious and independent manner.

I should like to support the hon. member's motion because I feel he has put it forward in an effort to assist the courts to do a better job, but I must oppose it because it involves the possibility of five laymen being appointed to the council all of whom may belong to the same political party and may not be independent.

Let me say something in reference to the legislation we are amending. As the opposition critic in respect of justice I felt it was my duty to talk with various chief justices to ascertain their feelings about this action. Some are not as keen about it as others, and some view it with a sense of anxiety. They have some doubts about any form of discipline in respect of judges. It is not everyone who can make a decision. Some men appear to have all the characteristics required to make a good judge but still cannot make decisions. One cannot always expect perfection. In my experience, we have a good judiciary but things go wrong once in a while.

In the event of flagrant misconduct on the part of a judge, a complaint can be made to this council which in turn will make a recommendation to the minister. I am concerned about any kind of control over the judiciary, even among the judges themselves. This could be a very

dangerous thing. We seem to be entering an era of little or no discretion. Sometimes mistakes are made. But most of our judges are well acquainted with the common law; they interpret it in such a way that generally proper findings are made. If they make mistakes, the courts of appeal will correct them.

I suggest that judges should be left with some discretion. We should not legislate in respect of everything. We need a little flexibility in our society. Under the principle of *stare decisis* the rule is apparent, and if a mistake is made it can be corrected. The previous speaker referred to a great trial lawyer in this country. We all hold him in great respect. He is one of very many who in all parts of the country are speaking on behalf of the citizens.

• (4:10 p.m.)

If the courts have made a mistake or if the trial judge makes a mistake, it will probably be corrected by the court of appeal. I come to one last note in reference to the Supreme Court of Canada. I raised this matter in the committee and the Minister of Justice was very sympathetic to it because in his position he is well aware of it. The judges of the Supreme Court of Canada are very overworked. However, they bend over backwards, in my experience, to grant leave to appeal where there has been a miscarriage of justice. I saw this demonstrated recently in a case which went to the Court of Appeal of Alberta. Thirteen persons, mostly under age 21, were tried for murder and were convicted. The court of appeal granted a new trial to 11, acquitted one and refused one. Leave was granted to appeal one case to the Supreme Court of Canada.

The Minister of Justice said we are to have supernumerary judges. These, I suppose, would be judges who would have retired perhaps four or five years earlier and who would be available to help clear up the large backlog of cases. Why should we not have the same system for the Supreme Court of Canada? The answer to this question is like the answer of the hon. member for Fundy-Royal (Mr. Fairweather) who found that you cannot break through the bureaucracy. The constitution says you can have nine judges, but there is nothing in the constitution which says that you could not have nine judges sitting full time and three who had retired prior to age 70 taking two-thirds of their salary by way of pension and hearing chamber applications.

If we had three supernumerary judges they could relieve the other nine judges who would be free to clear the backlog of cases. I think this is a reasonable suggestion. I know the suggestion has been made indirectly to the Department of Justice by the Supreme Court of Canada. What is wrong with it? Either it was not thought about or it was not accepted by the group. I suppose every minister becomes imprisoned by his own department because of the size of the job, but I am sure the minister would find the legal people in his department very helpful. Over the years they have been most helpful to Members of Parliament. We have had the finest men in the department of Justice. They are always ready to give answers to Members of Parliament. If a member asks about a rule of law they will take the trouble to refer him to an authority. They do an excellent job. I ask the minister to call them in.