and that the new rule in Ontario and the purpose of this bill will become uniform throughout Canada.

The reason for concern on this subject is very forcefully set out in a report of a committee of the Law Society of Upper Canada adopted as far back as June 16, 1905, from which I read:

A barrister upon his elevation to the bench is withdrawn from the arena of practice and all that is incident to the position of counsel and the profession. The public look upon the office with esteem and regard its occupants with feelings of respect, and nothing should be permitted whereby a retired judge could have the opportunity to be engaged in professional business, the mere fact tending to lower the dignity of the high office formerly held and so react upon the bench at the time existing —the resumption of practice has a tendency to impair and lower the dignity which should be upheld, as well off, as on the bench.

Again, it appears to the committee, that a retired judge resuming practice is an act of injustice to the members of the profession—especially is it so in the case of judges of the county court where it may readily be supposed that the prestige, experience, influence and social position the judge has acquired in his county will have weight with the public to his own advantage and to the corresponding disadvantage of other and younger members of the profession.

I emphasize that this has been the rule of ethical conduct in Ontario since 1905. The old cliché that not only must justice be done, but it must appear to be done, is highly relevant. What does a litigant think when he goes into court and finds that a retired justice of the highest court in the land is counsel on the other side. It is useless to assure such a litigant of judicial objectivity. What do you suppose happens when a litigant loses a case in which the opposing counsel was formerly a judge? Does he not have misgivings about the impartiality of the judgment? He is sure that he has been "done in the eye". Then, sir, the acute embarrassment to a present judge of having a former colleague or former jurist of a superior court appearing before him has been described most vividly to me by many of the present judges at all levels.

The situation in England, whence we derive our judicial standards, is very clear. I should like to quote from a note very kindly prepared on April 26, 1966 by the Lord Chancellor's office at the request of the Commonwealth relations office in response to a request made by me. This is what is contained in the note:

It is not the practice in England for judges at the time of their appointment to give any undertaking not subsequently to return to practice at the bar.

I had been told by a leading counsel that this was the practice in England. Here it is indicated that my information was erroneous. But the note continues:

It is, however, so well recognized that senior judges should not return to practise, that it amounts almost to a constitutional convention, and it must be assumed that judges accept appointment on this understanding.

There is no record of a judge of the High Court having returned to the bar since the reign of Charles II, when a number of them did so after being dismissed from office. County court judges, whose office was created by statute in 1846, are precluded by section 6 of the present act, the County Courts Act 1959, from practising at the bar while holding office. This implies that they may do so after retirement, but again there is no record of any having done so. The opinion of the bar itself would be so strongly opposed to such a course that it would be virtually impossible.

Although no precise line can be drawn, the convention against returning to the bar applies with more or less force according to the seniority and permanence of the judicial appointment. No Lord Chancellor could return to the bar, even though his office is not permanent.

I interject to say that some Lord Chancellors have served only for a brief period of months and thereby have been deprived of the opportunity to return to the bar. The note continues:

It is worth noting that in 1952 a circular dispatch was issued by the colonial office recommending that every colonial judge should be required, on appointment, to undertake not to practise before the courts of any territory in which he had sat on the bench, without the consent of the governor or the secretary of state. Where a judge had sat in a court of appeal for more than one territory, the principle was to apply in respect of all of them. This dispatch was intended to confirm what had for long been regarded as desirable among colonial judges.

I am most grateful to the Lord Chancellor's office for this clear expression of principle. My inquiries in other commonwealth countries indicate that the general rule is that retired judges do not return to practice, although there is a notable exception to this rule in Australia, where the late Dr. H. V. Evatt retired from the bench to enter politics and subsequently appeared both as attorney general and private practitioner before the High Court of which he had once been a member. But this appears to be virtually a unique case in the commonwealth outside of Canada, although my attention has been drawn to two cases in New Zealand, those of Mr. Justice Spratt and Mr. Justice Stanton.

The problem was considered in a most interesting case in Ireland, that of Re: