

answered for me. Perhaps every other senator is aware of the answer.

I should like to know why it is that the age of retirement for county court judges is being reduced to 70. This does not seem to me to be an obvious reform. I confess that I am inclined to think that if we start reducing the age of retirement to 70 for judges, the next thing will be that some people will get ideas about the Senate. I am also inclined to think that we have lost some very good judges in the past because of retirement at the age of 75. The names that come to my mind immediately are those of Mr. Justice Rand and the former Chief Justice John R. Cartwright.

I doubt whether this provision for compulsory retirement of county court judges at 70 is necessarily a good thing. I should like to know what the arguments are for it. I am perfectly well aware that many people by the time they reach the age of 70 are doddering and senile. On the other hand, there are many people aged 70 who are not doddering and senile. Indeed, some people are doddering and senile long before they reach the age of 70.

In any event, I should like some enlightenment on this. I apologize if I have missed through some malfunctioning of the apparatus, or through my own imperfect hearing, any explanation Senator Cook may have given.

Hon. Mr. Prowse: That holds out some hope to those of us who are only 54.

Hon. Jacques Flynn: Both Senator Choquette and Senator Walker have expressed the view that Bill C-243 need not go to committee. However, the comments of Senator Lang and Senator Forsey would suggest that it should go to committee. As there is doubt, I think it should be referred to committee, where I should be interested in having some answers from the Minister of Justice, not so much with the intention of amending the bill as with the intention of clarifying a few questions that the bill raises.

The first point that I wish to make is in connection with the remarks of Senator Forsey who spoke of the retirement of judges at the age of 70. Of course, it is true, if we adopt the principle so far as county judges are concerned, that very soon people will be saying the same thing about the Senate. Senator Forsey was not here when the British North America Act was amended to provide for the forced retirement of judges of the superior courts at 75, but I can tell him that the answer given by senators was that a judge sits alone and if he makes a mistake it is a final mistake, whereas senators are a group and if only one senator makes a mistake it is not a mistake of the Senate. I hope Senator Forsey will understand what I mean by telling him that story.

If retirement means anything, I think we have to follow the trend generally and retire at an age when we can do something other than merely sit in a rocking chair.

My second point concerns the Canadian Judicial Council, and bears some relation to the point raised by Senator Forsey. If we were to deal with the problem of retirement of superior court judges, and remove from

[Hon. Mr. Forsey.]

office incapacitated or disabled judges otherwise than as provided by the British North America Act, we would have to amend that act.

Hon. Mr. Forsey: Of course.

Hon. Mr. Flynn: It is obvious that the Government is not interested in seeking an amendment to the British North America Act at this time. It is discussing the formula by which that act can be amended, and, in fact, is attempting to revise it in its entirety. The next best thing is to proceed as in this bill. In the first place, you provide an incentive for members of the superior courts of Canada to retire at age 70 by saying that they can do so if they have served ten years. In the second place, you provide that where a judge of a superior court has been found by the Canadian Judicial Council to be disabled or incapacitated for the reasons mentioned in clause 33(2), the Council, as explained by Senator Walker, may, after receiving a report, decide to recommend that the judge be removed from office and that he cease to be paid any further salary.

I suggest that there are very stubborn persons in this world and some of them may be found among the judges. If such a decision were made, it would be possible to meet the challenge of a judge who said, "All right, I am going to stay in office and not receive any salary, but at least I will be preventing the Government from appointing a successor." This would put the Chief Justice in a very difficult position. I suggest to honourable senators that eventually the ultimate solution to these problems will be in an amendment to the Constitution.

Finally, honourable senators, I should like to mention pensions. I am in sympathy with the comments made by Senator Beaubien. I know of the case of a widow of a former judge of the Supreme Court who is receiving no pension at all. I realize that this situation has posed a long-standing problem for the department. The same problem exists for members of the public service who retired several years ago, and received a pension based on the salary in effect at the time of their retirement.

Hon. Mr. Benidickson: They have been revised.

Hon. Mr. Flynn: But only on the basis of the increase in the cost of living. This has amounted in some cases to \$50 or \$100 a year, which is a rather insignificant sum. This principle was introduced only last year, and so it does not mean very much in practice. While this is a rule which has been accepted generally, whether it is acceptable today when the cost of living is constantly increasing is quite a different matter. For this reason, I think the remarks of Senator Beaubien should be considered carefully by the Department of Justice.

Honourable senators, I feel that all these matters should be discussed when the bill is sent to committee, and I suggest that the Minister of Justice should tell us what he thinks about these questions at that time.

Hon. G. Percival Burchill: Honourable senators, I realize that it takes some courage for a layman to stand