

Judges Act and Financial Act

Mr. Eldon M. Woolliams (Calgary North): Mr. Speaker, with regard to the motion moved by the hon. member for Timiskaming (Mr. Peters) I think we have to ask ourselves two questions at the outset. Does this bill attempt to exercise some control and discipline over the judiciary and, if so, how does it do that? Under the British North America Act, as all hon. members know—indeed, Mr. Speaker, there was a motion recently before Your Honour on this point, though I say so sadly—it is necessary to get a resolution passed by the two Houses of parliament, the House of Commons and the other place, in order to impeach a judge. That is the term that is used but it refers to the removal of a judge from the bench.

Clause 32 of this bill is designed to give guidance, I assume to the Minister of Justice and the cabinet, when a matter like this comes before the government. This motion seeks to amend proposed section 31 which would establish a Canadian judicial council. This council is to consist of the Chief Justice of Canada, the chief justices of each superior court of the provinces, who will be 10 in number, and judges may be substituted by appointment in the case of illness or vacancy.

This amendment seeks to appoint five laymen to the council and has nothing to do with the appointment of judges. The council will have some control and discipline over the judiciary in line with the terms and conditions of our constitution. What the honourable and distinguished member wants to do is to add five laymen to that body as a whole. At the outset—

Mr. Speaker: Order, please. I have to interrupt the hon. member at this point and bring to the attention of hon. members that normally at this time we would be going on with private members' business. I wonder whether there is disposition on the part of hon. members for the Chair not to see the clock for the time being?

Mr. Turner (Ottawa-Carleton): On a point of order, Mr. Speaker, I think there is a feeling in the House that we should dispense with private members' hour, the debate to proceed no longer than five o'clock, or earlier if the matter is dealt with.

Mr. Howard (Skeena): And the House then adjourn?

Mr. Turner (Ottawa-Carleton): Yes.

Some hon. Members: Agreed.

Mr. Knowles (Winnipeg North Centre): Yes, Mr. Speaker, we agree.

Mr. Speaker: It is agreed.

Mr. Woolliams: I am glad we have agreed to do that, Mr. Speaker, because it is one way of cleaning up this legislation this afternoon. What the hon. member for Timiskaming is doing is asking that laymen be added to this council. What is the function of the council? I would briefly refer to the relevant clause of the bill because I think it must be read to understand the functions of the council and what the hon. member is trying to do. I refer to clause 33(2) which provides in part:

• (4:00 p.m.)

Where, in the opinion of the council, the judge in respect of whom an inquiry or an investigation has been made—

[Mr. Peters.]

In other words, where there has been a complaint about the judge. The hon. member referred to a criticism in respect of a judge's action regarding a driver's licence. I do not know the facts of that case, but if the charge was one of impaired driving under the Code, or one of a number under the highway traffic acts of the provinces, the judge has no alternative but to take the licence. He has no discretion at all. If he did not take the licence, the court of appeal or somebody else would correct the situation. A judge making that kind of error would be corrected by the court of appeal or by the Supreme Court of Canada, if the case went that far. That type of thing is not something, as I see it, which would be considered by the council. The function of the council is set out in the clause which provides:

Where, in the opinion of the council, the judge...has become incapacitated or disabled from the due execution of his office by reason of

(a) age or infirmity—

We know there is an age limit in respect of judges, being 70 years of age in some jurisdictions and 75 years of age in others. We all know that a person could have a stroke here in the House or in any vocation and could no longer perform his duties because of infirmity. As the law exists we would have to bring forward a resolution, unless the judge voluntarily resigned. I presume the Minister of Justice is asking for some direction in this regard. Paragraph (b) states:

having been guilty of misconduct—

This would not be judicial misconduct such as a mistake in interpreting the law or even a mistake in a finding of fact. Such errors are judicial and are corrected in our judicial system by our appeal courts or by the Supreme Court of Canada. This would refer to flagrant misconduct of another type. I could refer to some of the things that would fall within this category but I do not think one has to go beyond what I suggest the words mean. The next paragraph states:

having failed in the due execution of his office—

In other words, perhaps a judge refuses to write any judgments. Having heard the case, he may reserve his judgment and refuses to write such judgment. That is the kind of thing which would be reported to this council made up of the Chief Justice of Canada and the superior judges of the provinces. They would be chief judges. They would then call the judge in and suggest that he get back on the job and write these judgments. We have had judges like that. If a judge did not follow the suggestion, the matter would be reported to the minister who would then take the matter to the cabinet. The cabinet would then bring in a resolution to be considered by the two Houses of Parliament. The law has not been changed in that regard.

The next paragraph states:

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

He may have done something that was not judicious. In our system we have separate democratic institutions, one is Parliament, one is the judiciary and the other is the executive. Each plays a different part. Judges are supposed to be above politics. During the lunch hour I was reading "Law Courts, Lawyers and Litigants," by Frede-