

*Judges Act*

minutes about the salaries and pensions. Mr. Speaker, I will certainly be dealing with those. I am sorry to hear that the federal justice minister, unlike his three immediate predecessors, said not a word about the important role of the judiciary in this country. We on this side of the House recognize that role and respect it.

I was talking about section 26. Since we recognize the importance and competence of our judiciary, I am urging the government to give very serious consideration to permitting a discretion in our judiciary to exclude evidence which has been obtained in a way that would bring the administration of justice into disrepute. Surely, if we are to have confidence in our courts and confidence in the federal judiciary, it is not good enough to say to them they must accept evidence no matter how it is obtained, whether illegally, through the use of force or duress or, the use of illegal search and seizure. It is incumbent upon the government to say, "We trust you. We trust the judiciary to exercise its discretion wisely." Indeed, they should have that discretion. We hope the government will recognize that in dealing with the charter of rights.

We recognize the fundamental and important role of an independent judiciary. There are some 657 federally-appointed judges at all levels in this country. Their job is not an easy one. I would like to quote from some comments made by Judge Learned Hand, the eminent American judge who, in answering the question: What makes a good judge? was quoted as saying that, in interpreting a constitutional document, a judge should:

—have at least a bowing acquaintance with Acton and Mainland, with Thucydides, Gibbon and Carlyle, with Homer, Dante, Shakespeare and Milton, with Machiavelli, Montaigne and Rabelais, with Plato, Bacon, Hume and Kant . . . For in such matters everything turns upon the spirit in which he approaches the questions before him.

● (2030)

The role of the federal judiciary is indeed a difficult one. The independence of the judiciary is surely the cornerstone of the Canadian justice system. We must not for a moment tolerate any threat or any incursion into that independence. I am glad to see that the days of telephoning judges by certain members of the cabinet opposite appear to have gone by. The appearance of justice is very, very important, and it is not good enough to suggest that because a certain individual has a position in society or is a cabinet member in a government he or she can pick up a telephone and talk to a judge. We reject that concept.

We say that there must be one law right across the land for all citizens and that no person, no matter how powerful, should ever have special access to judges as was outlined in the case known as the "Judges Affair", the sorry incidents of telephoning judges in our fairly recent past. We say that the independence of the judiciary and the rule of law are cornerstones of our Canadian justice system.

We await with interest the government's response to the question of the rule of law and how it will apply when there have been violations of that law by members of those who are pledged to enforce that law. We wait with interest the outcome of the McDonald commission and with even greater interest

the response of this government to the recommendations of that commission.

With regard to the importance of the judiciary, we do not deny there are certain areas which can be updated. In some respects the powers which are given to the judiciary are obsolete. For example, one of the powers of the judiciary which is surely obsolete is its power to cite contempt for what is known as "scandalizing the court". That power is obsolete. Indeed, it had not been used in Canadian society until recently when it was revived in the case of the hon. member for Papineau (Mr. Ouellet)—I hope that he will make some contribution to this debate and give us his thoughts on the independence of the judiciary, perhaps with a particular comment on the role of the Quebec judiciary. We know that this power was used in the case of the editor of a New Brunswick newspaper.

The concept of contempt by scandalizing the court was described at the turn of the century by the British House of Commons as "giving an arbitrary, complete and sweeping power to the judiciary". Indeed, it was dealt with by the judicial committee of the Privy Council which said "contempt of court convictions for scandalizing the court have become obsolete" and "the courts could leave to public opinion, attacks or comments derogatory or scandalous to them". Surely, that power should be removed from the hands of our judiciary, and I am sure the judiciary itself would overwhelmingly welcome that suggestion.

There are other suggestions with respect to updating the role of the federal judiciary. It has been suggested that the descriptions "my Lord" and "my Lady", are outdated and that with equal respect members of the judiciary could be addressed as "Your Honour". There are those who suggest, and I think properly, that the scheduling of our legal calendar leaves something to be desired—that perhaps the summer recess in July and August should be looked at with the idea in mind of rotating vacations, thereby serving Canadians better in the administration of justice.

There are other areas—

**Mr. Baker (Nepean-Carleton):** How about air conditioning in the courts?

**Mr. Robinson (Burnaby):** The hon. member for Nepean-Carleton (Mr. Baker) has quite properly pointed out that Ontario courts in many cases are not air conditioned. Naturally, the administration of justice is the responsibility of the Conservative provincial government, and I will be pleased to make representations to that government on behalf of the hon. member. We must also look at the areas of discipline and of continuing education for our federal judiciary. We welcome the establishment of the Canadian Judicial Council in 1971. However, it is argued that there should be some public involvement in the discipline and the continuing education process of our federal judiciary. It is not good enough to have a system whereby judges judge other judges, though that indeed is the system as it now stands.