

Adjournment Debate

whether or not he has been actively engaged in the practice of law for three years.

What must be emphasized, however, is that regulations differ from province to province and, in some cases, the degree of difficulty with respect to transfer requirements pertaining to lawyers with three or more years of active practice is so severe that they are often encouraged to take the lengthy route prescribed for those lawyers with less experience; that is, to re-articulate and take the bar admission course prior to writing the examinations.

I should like to stress, in speaking of the mobility of lawyers from one province to another, that the difficulties I have briefly outlined mainly pertain to the nine provinces which have their legal system based upon common law. The province of Quebec is a special case, given that its legal system is based upon civil law. Therefore, it is quite logical that some special provisions should apply for lawyers who wish to enter or leave the province in order to establish a legal practice.

Speaking especially about the nine provinces practising common law, it seems relevant to view the difficulties encountered by lawyers in Canada who wish to transfer to another province in light of the new Canadian Charter of Rights and Freedoms and, more particularly, Section 6, which deals with mobility rights. The issue to be resolved would appear to be the following: Do some or all provincial bar societies' regulations relating to the transfer of lawyers, with or without the common denominator of three years of active practice, contravene the provisions set out in Section 6 of the Charter of Rights and Freedoms? If it is decided that they do constitute an unreasonable impediment to mobility, then I should like to make the following recommendations: That the Minister of Justice (Mr. Chrétien) intervene and confer with the Federation of Canadian Law Societies with the intent of (a) encouraging the elimination of the onerous requirements now in existence in most provinces for lawyers transferring from one provincial bar to another, regardless of how long they have been engaged in active practice; (b) encouraging the development of a more consistent and reasonable model of transfer requirements which all provincial bars across the country could follow; and (c) encouraging the federation to cast aside traditional barriers and to adopt the principle of mobility rights for lawyers, both

in theory and practice, thereby setting an example for other professions which impose undue restraints on mobility within Canada.

Mr. David Smith (Parliamentary Secretary to President of the Privy Council): Mr. Speaker, as pointed out by the Prime Minister (Mr. Trudeau) in the House on February 19, in the course of constitutional discussions with the provinces the federal government insisted upon the importance of a mobility clause in the Constitution, with a view to permitting Canadians of different occupations in society to have mobility within the Canadian union. In a discussion paper entitled, "Securing the Canadian Economic Union in the Constitution", tabled by the Government of Canada at the July 10, 1980, meeting of the continuing committee of ministers on the Constitution, the Minister of Justice (Mr. Chrétien) specifically raised the following concern:

—under the provincial law, associations for the licensing and regulating of the practitioners in various professions impose requirements that vary considerably from province to province and association to association and sometimes discriminate in favour of provincial residents. For example:

• (2225)

(1) Lawyers seeking to transfer to some provinces must have practised law full time in their own province for a given number of years after the call to the bar in order to be eligible for transfer exams. It is not obvious how this ensures greater familiarity with law in the province to which they relocate.

As to whether any discussions are currently under way, planned among the various bar societies, or at the level of law schools aimed at reciprocity of membership for practising lawyers transferring from one provincial bar to another, I understand that the question of national mobility of lawyers is indeed a matter of such current interest to the profession that it is being examined by the Canadian Bar Association. I believe that association could inform more specifically on the scope and status of the work it is undertaking.

The Acting Speaker (Mr. Ethier): The motion to adjourn the House is now deemed to have been adopted. Accordingly, this House stands adjourned until tomorrow at two o'clock p.m.

At 10.26 p.m. the House adjourned, without question put, pursuant to Standing Order.