

This action followed the presentation to Parliament of a report commissioned by the government to examine allegations of impropriety that predated Mr. Justice Landreville's appointment to the provincial Supreme Court. This document written by the Honourable Ivan C. Rand determined that there was sufficient cause to seek the removal of the judge.

The report also provided examples of British precedents where the conduct of judges had been reviewed by Parliament. There are, therefore, both constitutional provision and parliamentary precedent for such action by Parliament.

[English]

In order to further clarify the situation, I believe it would be useful to quote more extensively from the remarks made by the British Speaker referred to earlier. On December 4, 1973, when the House was about to begin debate on a supply motion, the Speaker made the following statement:

Before I call the right honourable Member ... to move the motion, I want to say this to the House. Certain inquiries and representations have been made to me about the scope of this debate. I do not in general believe in ruling upon hypothetical situations, but on this occasion however it might be helpful if I try to give some guidance.

Any Act of Parliament which the courts have to operate can be criticised as strongly as honourable or right honourable Members desire. It can be argued that a judge has made a mistake, that he was wrong, and the reasons for those contentions can be given, within certain limits.

I wonder whether I might read to the House what Lord Atkin, one of the great judges of this century, said some years ago on this subject. He said:

But whether the authority and position of an individual judge, or the due administration of justice is concerned, no wrong is committed by any member of the public who exercises the ordinary right to criticising, in good faith, in private or public, the public act done in the seat of justice. The path of criticism is a public way, the wrong headed are permitted to err therein; provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue;

she must be allowed to suffer the scrutiny and respectful, even though outspoken comments, of ordinary men.

In assessing Lord Atkin's position, the British Speaker continued and said:

That is very much the attitude of mind with which the Chair will approach this debate. Reflections on the judge's character or motives cannot be made except on a motion. No charge of a personal nature can be raised except on a motion.

For my part, it would seem that while reflections on a judge's character are not permitted as a general rule of debate since the people occupying these positions are described, according to Beauchesne in citation 493, as "protected persons" and to do so is unparliamentary, precedent shows that it is permissible to make such reflections if it is done by way of a substantive motion. Senator Cools has given appropriate notice and made such a motion. Although the motion does not specifically call for the removal of a judge of a superior court, the rules do not indicate this is necessary at this point. Parliament has the constitutional right to request the dismissal of a judge, and I would hesitate to interfere with this right in any way.

In adopting this position, I am guided by a precedent that happened in our own House of Commons in 1883. On that occasion, a member moved a motion to inquire into the actions of a county court judge who had refused to authorize a re-count of ballots in his electoral district. During the course of debate on the motion, one member went so far as to suggest that the motion was possibly out of order, but did not actually seek a ruling from the Speaker to confirm his suspicion. Instead, the House itself came to a decision on the motion after a fairly short and vigorous debate. I believe that the Senate would be better served if it were provided with a similar opportunity to decide the fate of this motion.

Let me make clear again that the Chair is not in any way acknowledging the merits of the substance of the motion or the allegations made therein but commenting strictly on its form. This is what Senator Robertson's point of order requested that I do. The role of the Chair is not to determine whether a motion is wise or not — that is for honourable senators to decide. The role of the Chair is to determine if a motion is in order according to rules and precedents. It will be up to the Senate to determine if it wishes this special committee to be established. My ruling is that I cannot accept the point of order. The debate on the motion may continue.

Order stands.