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Monday, October 30, 2006

—
Chair

Mr. Art Hanger

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• (1605)

[English]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I'll call the meeting of the Standing Committee on Justice and Human Rights to order, pursuant to the order of reference of Tuesday, June 20, 2006, Bill C-17, an act to amend the Judges Act and certain other acts in relation to courts.

I have a point of order from Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): I've spoken to the parliamentary secretary about this, and what I'd like to suggest is that we spend a few minutes before we go into the formal part of clause-by-clause on some discussion—informally. I have a couple of proposals I would like to make.

The Chair: Is this in reference to the amendments you submitted?

Mr. Joe Comartin: Yes, and not only mine, but also the amendments of the Bloc.

The Chair: I suspected that there would be a little bit of a discussion. I'm going to address the amendments. Then before I give any ruling, there will be some discussion. Is that fair enough?

Mr. Joe Comartin: Before you do that, I think we should share the information we have on the position of the government in terms of whether they're in order.

The Chair: I see. You're talking about that particular aspect.

All right, Mr. Comartin, go ahead.

Mr. Joe Comartin: In effect, what we have—and I'm addressing this to the whole committee—are two sets of amendments: mine, which would have the effect of reinstating the commission report, and the Bloc amendments, which would have the effect of linking, and I guess reinstating, it to MPs' salaries.

I'm going to suggest to you, Mr. Chair, that the position the minister took when he was here with regard to the issue of royal prerogative—because obviously my amendments would require a royal prerogative, there's no factual issue over that—was indeterminate as to what they would do, but he also indicated a willingness to consider recommendations from this committee to change the numbers, the dollar figures, if I can put it that way.

I've spoken to the parliamentary secretary, and he's indicated that the government is open to listening to that at report stage and making a determination at that point.

In that light, and not knowing entirely what certain members are going to do and whether they're going to support my position, I think

at the very least we should have a discussion about them and an indication.

Then, Mr. Chair, and I think this is true of the Bloc ones, if we get over the procedural problem of whether or not they are in order—and I'm arguing that they should be allowed to go if they pass this committee—there should be no ruling by the chair until we see the outcome. And your ruling should be, if my amendments pass, to allow it to go to report stage and to let the government determine at that point whether they're going to accept the recommendation from the committee or reject it. Obviously, if they're going to reject it, they'll do it on the basis of saying that it is out of order, that royal prerogative is necessary, and that they're not giving the royal prerogative.

Mr. Chair, the other point I want to make, and I would invite some discussion on this if people are feeling uncomfortable about it, is that the amendments are basically all the same.

Point by point—and that's necessary because of the procedural aspect of the bill—we're just putting the numbers back in, what the commission had originally recommended. I believe that's true of the Bloc's amendments as well. In that light, rather than having to have a discussion, a debate, on every single point, let's have the vote apply to all of them after we have the initial discussion. That will save a tremendous amount of time, certainly in terms of the number of votes we would have to have if there was debate on each point. I think that would be applicable to all the amendments, the two sets we have.

I would like to suggest that, and I'm hoping the committee would entertain that we do it that way.

• (1610)

The Chair: I'm just going to have a discussion here, briefly, on the side.

Mr. Ménard.

[Translation]

Mr. Réal Ménard (Hochelaga, BQ): Mr. Chairman, personally, I agree with the arguments put forward by our colleague, Mr. Comartin. We agree with the idea of grouping amendments together for voting purposes.

All of the Bloc's amendments, from 1 through 56, can be grouped together and a single vote taken, because they all have to do adjusting the Prime Minister's salary and the remuneration of judges. However, we will be calling for a separate vote on BQ-57, which defines the scale. Therefore, there might be two votes, in so far as the Bloc's amendments are concerned.

Summing up, we agree with grouping like amendments together for voting purposes. However, we want a separate vote on amendment BQ-57, because it comprises a separate category.

[*English*]

The Chair: If I understand what you've asked, it's that these amendments move forward with the bill out of this committee to the House and that the House address them. Is that correct?

Mr. Joe Comartin: No, that we would have votes here, Mr. Chair—

The Chair: We would vote on them here, and basically with the set-up here, they would move on to the House. Is that my...?

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Amendments here can't be proposed in the House.

The Chair: No, but if they are against the.... If it's a money issue, they will be stripped from the bill.

Mr. Derek Lee: If they're not adopted by committee—

The Chair: If they are submitted along with the committee's report, they will be stripped from the bill when they reach the House.

Mr. Derek Lee: Who's going to strip?

The Chair: The Speaker, because they require a royal recommendation.

•(1615)

Mr. Derek Lee: And if the royal recommendation doesn't come, he'll inquire whether it's...and you're assuming there will be no royal recommendation. Yes, okay.

Hon. Sue Barnes (London West, Lib.): Mr. Hanger, I think what my two friends were proposing isn't the heart of what happens on that. It was the fact that instead of going from 1, 2, 3, all the way up to 57, they just do one vote, because if you approve one, you—

The Chair: Yes, I understand that. That's a secondary issue here—

Hon. Sue Barnes: But the other one is about your ruling, and my understanding is that royal recommendations can be given by the government right up to third report stage, but at committee they'd be out of order.

Mr. Derek Lee: Let's just do our job now.

The Chair: That's true for a private member's bill, but not in this case.

Hon. Sue Barnes: Then you should make your rulings.

The Chair: Exactly.

Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, could we get some indication from you as to what is happening? For instance, does the government intend to back the proposals of our NDP colleagues?

We could find ourselves in the following situation. The Liberals will back the NDP amendments, but what is the government planning to do? I know it won't be voting in favour of the Bloc's amendments, barring a pleasant surprise that we would be prepared to welcome. Is the government planning on voting in favour of the NDP's amendments? Probably not. Therefore, the question is how

the members of the Official Opposition and NDP will be voting, compared with the government's position.

[*English*]

Mr. Joe Comartin: I'm sorry, Mr. Chair, there's a point of order here.

There's a lady at the back of the room taking pictures. This is an in camera session.

The Chair: It's Monsieur Petit's assistant.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): She's my assistant.

[*English*]

Mr. Joe Comartin: I know, but you're not going to take pictures in an in camera session.

Mr. Réal Ménard: If you want a picture, you'll have to pay.

[*Translation*]

Mr. Daniel Petit: We can remove them.

[*English*]

The Chair: This is not an in camera session.

No, that's fine.

[*Translation*]

Mr. Daniel Petit: It was merely to show that we are working.

[*English*]

The Chair: Now, Mr. Comartin, I don't know if there's any further discussion required on these points. I'm going to begin the clause-by-clause, and of course this will be an issue that will come on the first clause. Barring further discussion, I will make a ruling.

Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): I guess that was the point I was going to make. Even if we adopt this method, that would be assuming that the amendments are in order, I would think. If the amendments are not in order, then we would not be voting on the amendments, correct?

The Chair: My understanding is that matters like this have gone before the House before, where there were inadmissible amendments that went with the bill and were stripped from the bill at the House level. But we're not going to proceed in that fashion.

Mr. Rob Moore: So that might shed some light on our discussion, if we knew what was—

The Chair: Exactly.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, will the amendments be grouped together for voting purposes, as Mr. Comartin requested, or will we be voting on each amendment separately?

[*English*]

The Chair: No, we will be going through clause-by-clause at this point, and these amendments will be addressed accordingly as we reach them.

Mr. Derek Lee: The question here is whether we can do an express block adoption and get some rulings. What may occur, Mr. Chair, is that the first amendment that arrives before us, which you may make a decision on as to whether or not it's in order.... Not only may we have an opportunity to move a whole bunch of amendments bunched up together, but you may also have an opportunity to rule on all of them together. I don't want to prejudge what your ruling might be, but that might occur.

The Chair: That's a possibility, depending on the—

Mr. Derek Lee: That will save us a whole ton of time and you a whole lot of words.

Thank you.

The Chair: Mr. Moore.

Mr. Rob Moore: Thank you, Mr. Chair.

Just to be clear on what the position is on this—and we haven't had the benefit of your ruling on the admissibility—if the committee wants to propose something different from what is ultimately passed at the end of the day.... I don't know whether these amendments will be in order or not and how things will go, but if they're not in order, then the committee can bring forward a motion stating what it would like to see adopted. The minister has said he would consider that and bring that forward, but because there is no royal recommendation, we're not in any position to adopt anything at this point or have any sign-off. So we would have to bring that forward by way of a motion or a report.

• (1620)

Mr. Derek Lee: A second report.

The Chair: Or the amendments could be submitted at report stage and dealt with at that point.

Hon. Sue Barnes: We're not allowed to.

The Chair: Why?

Hon. Sue Barnes: Because you have to have been able to bring them here. You can't submit in the House what you couldn't bring here.

The Chair: Well, you still need a royal recommendation, regardless.

Hon. Sue Barnes: Well, why don't we just proceed, then?

The Chair: Let's move ahead.

All right. We're on the Bloc motion.

Mr. Ménard.

[Translation]

Mr. Réal Ménard: Mr. Chairman, as we have been discussing throughout the course of our work, we would like the Prime Minister's salary to be defined, since clause two purports to establish the chief justices' salary on the basis of the Prime Minister's salary.

Therefore, we're providing a definition of the Prime Minister's salary.

[English]

The Chair: Is there any discussion on the admissibility before I rule?

Seeing there is no discussion, I will read my ruling:

Bill C-17 deals in part with salaries of federally-appointed judges, and sets out dollar values for these salaries. This amendment, and others which are consequential to it, proposes a scheme to replace the dollar values with a formula based on the Prime Minister's salary and sessional allowance.

The bill was referred to committee before second reading, which means that there is more latitude in the amending process. The requirement that amendments must fall within the scope of the bill does not apply to bills referred to before second reading. However, other rules of admissibility continue to apply.

For example, amendments must be relative to the subject-matter of the bill, and I find that the amendment before us is relevant.

The rule against defending the financial initiative of the Crown also continues to apply; and here I note that the bill is accompanied by a Royal Recommendation, which provides for the appropriation of public revenue "under the circumstances, in the manner and for the purposes"

—which is actually the royal recommendation in the bill—

set out in the bill.

This means that in assessing admissibility I must consider not just whether the amendment would exceed the level of expenditure provided for in the bill. I must also consider whether the amendment changes the circumstances, the manner or the purposes under which public funds would be expended.

This is expressed in Marleau & Montpetit on page 655: "An amendment is therefore inadmissible if it imposes a charge on the Public Treasury, or if it extends the objects or purposes or relaxes the conditions and qualifications as expressed in the Royal Recommendation."

I find that the amendment infringes on the terms and conditions of the Royal Recommendation and on that basis I must rule it inadmissible. This ruling applies to all the amendments in the series—that is, BQ-1 to BQ-56.

Now we'll deal with the NDP motion.

Mr. Comartin, would you move that?

Mr. Joe Comartin: Yes, I'll move NDP-1, Mr. Chair. It is one in a series. They're all consequential. The effect of this amendment would be to start that process of reinstating the report that we have from the commission.

I want to make two points. One is that the position the government has taken in the bill before us is one that is obviously inconsistent with the commission's recommendations. That's obvious on the face of it, but it's also inconsistent, I believe, with the law as to how Parliament is to deal with the commission's recommendations when it appears before it.

I won't go back through the legal arguments. We saw those I think particularly in the brief we got from the Canadian Bar Association, but we certainly got similar indications from the commission itself when it was here.

Mr. Chair, I have to put on the record that the effect, if my amendments don't go through and the government's proposal does, is to seriously undermine, if not destroy, the system we have established as the best way of dealing with judicial compensation in this country for appointments by the federal government to our judiciary. The consequences of that are quite serious. The methodology that was established I think is quite clear. If the government is not going to accept the recommendations of the commission, it has to meet certain criteria. The criteria it has posited, on the face of it, seem to be below the standard that the courts have ruled in a number of other cases. So it hasn't met the criteria. This committee has a responsibility, I believe, to reinstate the commission's recommendations and, hopefully, have that adopted by Parliament.

That's our role here. We can get into all of the arguments over how much judges should be paid. I don't think that's our role. Our role here is to either accept the commissioner's recommendations or understand why, and accept why we're going to reject them. The material that's been put before us by the government does not give us any reasonable basis, based on the facts, for us to reject the commission's report. Therefore, we should accept it.

Thank you, Mr. Chair.

• (1625)

The Chair: Thank you, Mr. Comartin. I know your arguments came forward when the witnesses were here, although Parliament does have the final say in these matters. I know you're aware of that.

I will now pass on my ruling on the NDP amendments.

Mr. Derek Lee: If you're going to make a ruling on whether or not these amendments are out of order, I'd like to speak to it, because I do want to get on record a position that I have.

The Chair: Certainly, we can have that discussion, Mr. Lee. Go ahead.

Mr. Derek Lee: If your ruling is to be based on the matter of relevance, that's one thing, and we'll wait to hear what that is. I think these amendments are quite relevant, and based on the invitation of the Minister of Justice when he was before us, they're quite consistent with his invitation.

But the issue I want to address is a bit more meaty than the cordiality of submissions from the justice minister here. I want to argue that the precise matter we're dealing with of setting remuneration for another branch of government, for the courts, is conspicuously an exception to parliamentary practice, procedure, and constitutional law, as you have already outlined. I don't quarrel with your outline of that law on the issue of royal recommendation.

The basis of my position is absolutely not the invitation of the Minister of Justice, but a provision of our Constitution. If I'm not mistaken, section 100 of the Constitution Act states very clearly, explicitly, and without condition that Parliament shall set the remuneration and other amenities of the courts. It says very clearly, and I repeat, "without condition".

Other established practices in Parliament, and the mother of Parliament's requirement that there be royal recommendation from a government or the Crown, exist outside of what is provided for in section 100. I say to you and this committee—and I may end up saying it to the House and the Speaker—that if our Constitution says that Parliament shall set, and I'm using those words advisedly, then no person and no government can put an obstacle in the way of that constitutional provision. No attorney general or government may steal that authority given by the Constitution, nor may it obstruct that authority given by the Constitution.

If this House decides that remuneration will be x plus y , then that shall be the remuneration of the courts. No government—and here I'm talking about a cabinet and government—has the constitutional power or ability to interfere with that, impair it, obstruct it, or prevent Parliament from fulfilling its constitutional responsibility and obligation.

So when the Minister of Justice was here and invited us to do something on this, whether he knew it or not, he was simply articulating what the Constitution not only empowers us to do but obliges Parliament to do. By saying that the twenty or so members of the cabinet have the ability to obstruct our House and the Senate by purporting to refuse to extend the royal recommendation, they are operating contrary to the Constitution that governs us. I am saying right here and now that section 100 is a higher law than any parliamentary convention, cabinet order or recommendation, statutory instrument, or law. It's bigger than all of us because it says it right there in black and white.

I want to make the point really clear that legally, politically, mechanically, technically, intrinsically, and morally, your ruling that this may be out of order simply has to be wrong. I could say the reason why we're in this situation. We're really at the pointy edge of the sword here, and were it not for all of the lovely conventions and all the polite judges down the street and all across Canada...we have ourselves an issue.

• (1630)

We do have ourselves an issue. The judges might or might not be unhappy with what's going on here. But I do want to say that the Supreme Court of Canada, on matters litigious that were brought to the court by judges...and I can say that they had every right and obligation in the world to attempt to construct a mechanism that would set judicial salaries in an appropriate and fair way. When they did that, I suppose they found they were not in a position to consult with either the cabinet or the Parliament, House or Senate.

As a result, in the absence of what I think should have been an appropriate consultation at the time, in constructing the mechanism of these reports, the absence of consultation has led to this difficult circumstance where the court has essentially laid down what the law is. And that's its function—or maybe it isn't; some around here will argue that it isn't its function to lay down the law, especially when it's their own compensation.

But as a result of that absence in collaboration at the time, we have a mechanism that is running into trouble. It ran into so much trouble and was so problematic that, having linked the salaries of the Prime Minister and members of Parliament to the judicial salaries, we had to delink a couple of years later. We had to delink because it looked so bad. Yet this is the mechanism the judges have chosen.

I say all this respectfully in the hope that... Well, one, I think this may come up in the House on the main issue of whether or not this is in order and whether or not Parliament has the absolute constitutional authority and right to set these matters without obstruction from the cabinet. I hope my remarks will also signal to the courts and to government that maybe this has to be reworked a little bit. This is just one battle, with potentially a few more. If we end up with another court case on this—if we do—will there or will there not be a collaboration in settling on a new or revised mechanism?

I'll stop there, Mr. Chairman. I'm essentially challenging the chair in your decision here and whether this stuff is in order or not. But I won't move that, because I realize this issue is probably better dealt with on the floor of the House.

•(1635)

The Chair: On your latter point, I would agree; it is better dealt with on the floor of the House.

The other point that I don't think has really been addressed, and not only from the witnesses who appeared on the judges' salaries, is that none of these recommendations, from what I can see, are binding. Where were they binding on the government? Where were they binding on Parliament? I think these were recommendations by a commission, but from what I can understand, unless somebody can correct me on that point, there is no indication that the recommendations were binding on the government.

If you have that situation, then you're right, that's where it's all going to be decided, on the floor of the House.

I'm sorry, Ms. Barnes, I have a list here.

Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): I'd like to support the argument—much more briefly than Mr. Lee—that to rule Mr. Comartin's amendments out of order through royal recommendation is not appropriate, for two reasons, both constitutional.

The first reason, the one Mr. Lee gave, is the provision in section 100 that Parliament should decide. The second one is the fundamental base of the Canadian parliamentary system, the independence of the courts and the judiciary and Parliament. It's a fundamental tenet of the way we operate in Canada that those two are independent. As one of the witnesses said, that is protected and mentioned in several areas of our Constitution. You have another constitutional reference that there should be independence.

So for those two reasons, I think the lesser technicality of royal recommendation should not overrule these two main constitutional tenets of our system.

The Chair: Thank you, Mr. Bagnell.

Ms. Barnes.

Hon. Sue Barnes: Thank you, Mr. Chair. Since I may not get a chance to comment on Mr. Comartin's amendments should you rule them out of order here for lack of royal recommendation, I just want to say that our party would have been in favour of the recommendations.

I did want to say to you that the Constitution does not require that the commission's report be binding, but the government must give a rational or a legitimate set of reasons to depart from the commission's findings. Those reasons must have a factual and evidentiary basis, all part of the protection of the independence of the judiciary. My colleague said this the other day.

At this point, I think we should listen to your ruling, Mr. Chair, and then proceed from that point.

The Chair: Thank you, Ms. Barnes.

I know the matter is not going to be settled here. This committee is not obstructing, nor is this government, any points in dealing with this matter of remuneration, nor is it in violation, from what I can see, of section 100 of the Constitution Act. Are we not acting a bit prematurely, given the fact that the matter hasn't even finished being

debated on the floor of the House? All these arguments will be presented at that time too, I would assume.

But I'll pass on my ruling on the NDP motions, from NDP-1 to NDP-29.

Bill C-17 deals, in part, with salaries of federally appointed judges and sets out dollar values for these salaries. This amendment is one of several that proposed to increase those amounts. I refer to Marleau and Montpetit on page 655. It says:

An amendment is therefore inadmissible if it imposes a charge on the Public Treasury, or if it extends the objects or purposes or relaxes the conditions and qualifications as expressed in the Royal Recommendation.

Since the Judges Act was adopted by Parliament, it is subject to parliamentary rule and practice. The chair deals with questions of procedure, not constitutional matters. It is clear that in proposing to increase the salary amounts provided in the bill, the amendment is increasing the charge on the public treasury. Therefore, I find that the amendment infringes on the financial initiative of the Crown, and on that basis I must rule it inadmissible.

•(1640)

Mr. Joe Comartin: I'd like to challenge the chair's ruling on the basis of the constitutional argument that you heard from Mr. Lee. I'm not going to repeat it; he put it forward in some detail, and I think very accurately so.

In addition to that—I want to make a second argument—we have a very unique set of circumstances here where you had a minister appear before you, and in effect, invite you, that is, the committee, to make alternative proposals, and those would be considered by the government. It has to be interpreted as a clear signal from the government that they may in fact use the royal prerogative and grant these amendments with the authority to proceed.

I think on those two bases, your ruling is not in keeping either with the Constitution or with the material that's before you by way of the government's position.

So I am challenging the chair, and I'd like it put to a vote.

The Chair: The question of the ruling before the committee is this. Shall the ruling of the chair be sustained?

Hon. Sue Barnes: We'll have a roll call vote on that, please.

The Chair: A recorded vote.

(Ruling of the chair sustained: yeas 6; nays 5)

The Chair: The ruling is sustained, six to five.

We've now covered all of the listed amendments. The next point will be the clauses.

The question is on clause 1. Shall clause 1 carry?

(Clause 1 agreed to on division)

•(1645)

The Chair: Mr. Moore, you have a point of order.

Mr. Rob Moore: We have not discussed government amendments yet.

The Chair: We're not there yet. When we come to it, we will do that very thing.

Mr. Rob Moore: Great.

The Chair: Shall clause 2 carry?

(Clause 2 agreed to on division)

The Chair: Shall clause 3 and clause 4 carry?

(Clauses 3 and 4 agreed to on division)

The Chair: BQ-57, Mr. Ménard.

It's page 86 of your handout.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, we are very hopeful about this amendment, which we obviously hope will have the support of all of our NDP, government and Liberal colleagues, for the sake of coherence. This goes to the very heart of democratic legitimacy.

As you know, the Bloc Québécois has always maintained that increases in MPs' salaries must be tied to increases in judges' salaries. We've always been extremely concerned that if the bill was adopted, we would find ourselves in the dubious situation where the Prime Minister, who has been democratically elected to office, could be receiving a lower salary than the Chief Justice of the Supreme Court.

I seem to recall the Prime Minister expressing concern about that possibility when he was the spokesperson for a coalition monitoring the actions of elected officials.

If we no longer have any respect for the position we hold, then I think there's a problem in terms of democratic legitimacy.

MPs received a salary increase of 2.4% in 2006. If this amendment is adopted, then members of the judiciary would receive the exact same salary increase.

Quite apart from that, this doesn't mean that we disapprove of the idea of setting up an independent commission. We're looking for options. We understand full well that Parliament cannot set salary conditions and standards for judges. However, I can't understand how one can discount the argument that in a democratic system, it's impossible for the judiciary, however qualified members may be...

We adhere to three rules. Judges must be well paid, because they must give their full attention to their duties. Judges are appointed during good behaviour and are above all political interference. Just because we disagree with a ruling handed down, we cannot remove that judge from office. Finally, judges must, quite obviously, be totally independent, and as such, parliamentarians do not have any contact with them.

Let me reiterate very clearly that the system worked very well between 1999 and 2003. Unfortunately, for the purposes of historical accuracy, I must also point out that in 2003, further to a recommendation by an independent commission that salaries be increased, the Liberals... I don't like to bad mouth the Liberals in the government's presence, because I know they disapprove of that, but Paul Martin was the first to break this rule. He stated that from a political standpoint, the increase proposed by the third Judicial Benefits and Salaries Commission would not be well received by the public.

Therefore, if we don't believe in the work we do...I'm prepared to publicly defend the salary that I earn. When I go to bed at night, I sleep well knowing that I gave my all and represented my constituents well.

Again, what possible explanation can there be for the fact that the Prime Minister, someone who represents 35 million people, has a minority mandate and, if it were up to us, would continue to lead a minority government, could ultimately end up with a salary that is lower than that of the Chief Justice of the Supreme Court?

The Liberals were the ones who got away from this practice which was well established from 1999 to 2003. MPs' salaries were set by legislation and were adjusted based on the salaries paid to judges. MPs earned 75% of the salary of Supreme Court justices. The Prime Minister was paid the same salary as the Chief Justice of the Supreme Court. For political reasons, the Liberals did away with this practice.

Therefore, we believe this proposal is justified. Apart from salary considerations, we support the bill. We have no objections to judges in the Far North being appointed chief justices; we do not oppose the credit-splitting provisions or the proposed changes for judges in Canada's North. Rather, we welcome a certain number of technical provisions. However, with respect to salaries, we feel the bill runs counter to democratic legitimacy.

I hope that all of my colleagues will agree with the proposed amendment. This is an opportunity for the Liberals—and I say this with no animosity whatsoever—to correct the historical mistake made by Paul Martin. Our amendment seeks to restore some balance and some respect for our institutions.

Again, respect for the job of MP is a key element of the Bloc's amendment. I am confident that it will receive the government's endorsement as it would surely help to make this a better piece of legislation.

● (1650)

Mr. Chairman, I know that some demagogues—and I have to believe that none is seated here at this table—might be tempted to say that Bloc Québécois members are merely interested in a salary increase, when in reality, nothing could be further from the truth. The Bloc caucus is quite capable of rising above such matters and of not attaching a lot of importance to worldly possessions. To prove my point, I can tell you that former members of the clergy will soon be joining our ranks. We advocate the principle of democratic legitimacy. In a democracy, true legitimacy rests with parliamentarians and the institution of Parliament.

I want to make myself very clear. I appreciate that a judge's job is an important one. Nine individuals in Canada have a responsibility to see that the law evolves. Supreme Court justices have a duty to champion important values.

And that's why—and I'm certain Mr. Comartin will agree with me—the Law Commission of Canada has a role to play. It provides advice, summarizes a number of debates involving values and helps Parliament to gauge public opinion.

Certain people within government—and they will remain nameless—have regularly criticized what they perceive to be judicial activism. For example, when a provision was added to the Canadian Human Rights Act prohibiting discrimination on the grounds of sexual orientation, some people blamed judicial activism.

I have to say, Mr. Chairman, that I was extremely surprised. As you know, I do have some experience. I may not have reached the same venerable age as you, but I do have many years of experience as a member of the House, having first been elected in 1993. I was extremely surprised when the Prime Minister rose in the House to say that the Court Challenges Program was being abolished because it served no purpose, since his government had no intention of ever introducing legislation that was unconstitutional. That's not an argument. There's a direct connection with judges' salaries. When the Supreme Court considers a question, it doesn't just look at whether legislation is constitutional or not. It also looks at how rights must evolve. In some cases, rights were not recognized. I'm thinking here about aboriginal and women's rights, and about sentencing.

I'd like to switch gears briefly, Mr. Chairman, before I wrap up. Consider for a moment the importance of the 2000 ruling in *Regina vs. Proulx*. I don't know if some of you have had an opportunity to read this decision. In 1995, former Minister Allan Rock had tabled Bill C-41 on sentencing. The proposed legislation had led to some confusion at the appeal court level over interpretation. The constitutionality of the bill was not being called into question and no one was claiming that Bill C-41 sponsored by the Minister was unconstitutional. However, questions were being raised about the scope of the bill. In *Regina vs. Proulx*, the Supreme Court clarified the meaning of the four criteria set out in section 742 of the Criminal Code. As you may recall, these four criteria are as follows: the offence must not be punishable by a minimum term of imprisonment, the offender must not represent a danger to the public, the term of imprisonment imposed must be less than two years, and the sentence must be consistent with section 718 of the Criminal Code, a provision that my colleague Marc Lemay greatly appreciates. So, the Supreme Court may be asked at times to clarify the meaning of the law and in the process, help the law to evolve.

I'll never forget being in the House when the ruling in *Egan v. Canada* was handed down. The case involved two homosexuals who, as all of us here can appreciate, had lived together for more than 40 years. Mr. Chairman, if I were to ask the members seated here at this table how many of them had been with their spouse for 40 years, I'm fairly certain that the numbers would be quite low.

I've heard that you have a rather robust nature, Mr. Petit.

•(1655)

So, faced with a case involving over 40 years of co-habitation, the Supreme Court of Canada was not willing to rule on the marriage issue. However, it called upon lawmakers to add grounds for discrimination under section 15 of the Charter which concerns equality rights.

In passing, I would also like to say how very important the Court Challenges Program is for equality rights. Just think of how rights have evolved, Mr. Chairman, not only minority language rights, aboriginal rights and rights for homosexuals. Imagine where they would be without the Court Challenges Program.

Basically, I think it shows a lack of respect and consideration for human rights to decide to abolish in one fell swoop the Court Challenges Program. Let me repeat, the Supreme Court does not only rule on constitutionality issues.

Therefore, elected officials embody democratic legitimacy. As I said before, Mr. Chairman, it would truly be one of the great paradoxes of our time as parliamentarians if the bill were adopted. The Chief Justice of the Supreme Court—and the parliamentary secretary can correct me if I'm wrong—will be earning \$298,500 a year, whereas the Prime Minister will be earning \$295,400. Obviously, I'm not arguing that either person will be earning the minimum wage or experiencing financial hardship, but how are we supposed to explain this to our constituents...?

[English]

The Chair: Mr. Ménard, please go to your amendment.

[Translation]

Mr. Réal Ménard: There is a connection to my amendment, Mr. Chairman.

You can't say that it's irrelevant. I'm talking about salaries, and that's precisely the focus of my amendment. Let me explain why there is a connection between the two. Please don't brush me off.

I'm trying to say that if the people seated at this table espouse certain principles, they will have no choice but to vote in favour of this amendment. I can't imagine that government members, or my NDP friends with whom I've waged so many battles, will oppose it. I recall the heated debates over same-sex marriage, sentencing and hate crimes, not to mention all of the social programs, as well as the addition of social condition as an illegal grounds for discrimination under the Canadian Human Rights Act. We still haven't managed to have that included in the legislation.

As parliamentarians, we have a responsibility. When we run for office, we know that we have some democratic legitimacy, something that judges do not have. Of course they do wield a certain amount of authority and the public does hold them in some esteem. Their mission is to help the law evolve. However, they do not have the same democratic legitimacy as we do.

The temptation is great, Mr. Chairman, to bring up the Gomery Report, which as you know, prompted us to clean up our institutions. I will refrain from doing so, in order not to be ruled out of order. Moreover, I wouldn't want to dredge up any bad memories for the Liberals. However, the fact remains that democratic legitimacy...

Hon. Dominic LeBlanc (Beauséjour, Lib.): But you lost some seats in that election.

Mr. Réal Ménard: There's nothing more important than democratic legitimacy, Mr. Chairman.

Summing up, I'd like to issue a solemn appeal unlike any other I've made in the House, and call upon the parliamentary secretary to support my amendment and upon government members to do likewise. We must heal the rift that Paul Martin unfortunately caused by breaking the existing connection for, I have to say, purely partisan reasons. There is a time for courage, Mr. Chairman, the same kind of courage that parliamentarians have shown in the past.

A colleague of mine, Martin Cauchon, was once a very good Justice Minister in many respects, leaving aside the Young Offenders Act which is one of the minister's less noteworthy accomplishments. Aside from that, he was a pretty good Justice Minister. Martin Cauchon pointed out to me that all governments that proceeded to slash budgets were re-elected, including the government of the amazing Lucien Bouchard that governed under difficult conditions. All of these governments were re-elected, with one exception, namely that of former Nova Scotia Premier Savage. The latter's son is now a member of the Liberal caucus. All of these premiers governed with a certain vision in mind, they cut budgets and still managed to get re-elected, with the exception of the former premier of Nova Scotia.

I'll stop there, Mr. Chairman, unless of course you want me to continue. But I think people have understood the gist of my amendment.

• (1700)

[*English*]

The Chair: Thank you, Mr. Ménard. Somewhere in that dissertation there was relevance, I know.

Mr. Bagnell is next.

Hon. Larry Bagnell: In that I've fought this whole issue on the independence of the judiciary and the integrity of the commission's report, I couldn't vote for this alteration of the commission's report.

Thank you.

The Chair: Thank you.

Is there further discussion?

Shall the amendment carry?

[*Translation*]

Mr. Réal Ménard: Yes, the amendment is agreed to. I request a recorded division.

[*English*]

The Chair: We'll have a recorded vote.

(Amendment negatived: nays 9; yeas 2)

The Chair: There are no amendments on clauses 5 to 8.

(Clauses 5 to 8 agreed to on division)

(On clause 9)

The Chair: On page 87, government motion number one, Mr. Moore.

Mr. Rob Moore: Thanks, Mr. Chair.

There are nine, or six, government amendments. They're all of a very technical nature, and we have an expert here to speak to each one of them.

The Chair: Mr. Moore, we'll take them one at a time, as they appear on the schedule.

Mr. Rob Moore: Sure. For G-1, Karen Cuddy will speak to it.

Ms. Karen Cuddy (Counsel, Judicial Affairs Unit, Department of Justice): Good afternoon. The first three sets of motions pertain to clause 9, which is the removal allowance. There's an existing entitlement for the judiciary to have assistance relocating to another part of Canada. In particular, territorial Supreme Court judges and the Federal Court, Tax Court, and Supreme Court of Canada judges have this assistance.

The purpose of the clause is to extend their entitlement to allow them to relocate within the two years prior to retirement. The technical amendment being made in the first motion is to clarify the wording. At present, it suggests the removal allowance is paid to a judge during the two-year period when instead it was intended to be to a judge who moves during the two-year period. That's the first amendment.

The second part of this motion is to remove some duplication that appears in the wording of paragraph 40(1)(e), and both of these motions would also ensure consistency between the English and French versions.

The third part of this motion would remove subclause 9(3). This is the regulation-making authority. Looking at it more carefully, we've been advised there is sufficient regulation-making authority currently and there's no need for this amendment. So this subclause would be removed.

The Chair: Discussion? Shall the amendment carry?

(Amendment agreed to on division)

(Clause 9 as amended agreed to on division)

• (1705)

The Chair: There are no amendments on clauses 10 to 14.

(Clauses 10 to 14 inclusive agreed to on division)

(On clause 15)

The Chair: Government motion number two is on page 89 of your handout.

Mr. Moore.

Mr. Joe Comartin: Mr. Chair, a point of order.

In discussions with members of the opposition parties, none of us has any objections to these amendments. As indicated, they're all of a technical nature. It's not necessary to have an explanation of each one. I assume the government will accept this position, and we'll accept each one of them on division.

The Chair: Is the committee in agreement that clauses...?

Mr. Lee.

Mr. Derek Lee: No, on principle, we are amending a bill that's been sent to us from the House, and I would appreciate a simple, succinct explanation for the record when there's an amendment proposed. Otherwise, the thing gets lost in time and nobody understands why the amendment was made or not made. So at least that.

I'm not proposing we debate everything fully, but an explanation of the amendment would be most helpful to the public record.

The Chair: Okay, let's do that very thing.

Government amendment number two. Mr. Moore, would you move...?

Mr. Petit on a point of order.

[*Translation*]

Mr. Daniel Petit: Excuse me. Am I to understand that this will be a general explanation?

[*English*]

The Chair: Yes.

Mr. Rob Moore: We'll try to have a quick explanation of each one, and on each one Karen will be explaining them.

Do I have to move each and every one?

The Chair: Yes, move them each individually.

Mr. Rob Moore: I move government amendments two through five.

Ms. Karen Cuddy: The first amendment deals with the definition of annuity benefit. The purpose of redefining annuity benefit is to ensure that a spouse will receive a share of interest payable on a return of contributions in circumstances where the spouse is not eligible for a share of the annuity. When in fact there's simply a return of contributions, the spouse can take a share in that.

We'll also be making the English and the French more consistent with one another.

The Chair: Shall G-2 carry?

(Amendment agreed to on division [*See Minutes of Proceedings*])

The Chair: Government amendment number three.

Mr. Moore, do you so move?

Mr. Rob Moore: Yes.

Ms. Karen Cuddy: The purpose of this set of amendments is to clarify the determination of a spouse's share when the judge is in receipt of an annuity by reason of infirmity or disability.

The Chair: Before we go to the vote, is there a line conflict with the next amendment?

Ms. Karen Cuddy: In doing these series of amendments, we did not want to presume that the committee would pass every amendment. In the event that this amendment is passed, then there is no need to go on to the next amendment. That one is actually taken up within this amendment.

The Chair: Okay. Shall amendment G-3 carry?

(Amendment agreed to on division [*See Minutes of Proceedings*])

The Chair: We won't be doing amendment number four.

Mr. Rob Moore: We'll be withdrawing government amendment number four.

The Chair: On to government amendment five, Mr. Moore.

Mr. Rob Moore: I move government amendment number five.

Ms. Karen Cuddy: The purpose of this motion is to propose a number of amendments to proposed section 52.22 of the bill, which provides the regulation-making authority in relation to the division mechanism. Again, because there are some additional amendments being made, it's going to change how some of the regulations will be drafted in support of the provision, and it was deemed an abundance of caution to make sure that the regulation-making authority would then nicely tie up with the new provision as amended in the bill.

● (1710)

The Chair: Shall the amendment carry?

Mr. Derek Lee: Before that, Mr. Chair, may I ask a question?

These regulations governing judicial salaries are made by whom?

Ms. Karen Cuddy: They are actually regulations in support of the division mechanism.

Mr. Derek Lee: Yes, but who makes the regulations?

Ms. Karen Cuddy: They'll be made by the Governor in Council.

Mr. Derek Lee: And is it your view that that would be constitutional, for the Governor in Council to make regulations setting the remuneration of judges when the Constitution seems to be so clear that Parliament does it?

Ms. Karen Cuddy: The regulations are really of a very technical nature. They're in support of carrying out the authority that's going to provide it in the Judges Act.

Mr. Derek Lee: I only wanted to make my point, Mr. Chairman. Thank you.

The Chair: Thank you, Mr. Lee.

Shall the amendment carry?

(Amendment agreed to on division [*See Minutes of Proceedings*])

(Clause 15 as amended agreed to on division [*See Minutes of Proceedings*])

The Chair: On clauses 16 to 34 there are no amendments. Can we deal with them all at once?

Some hon. members: Agreed.

(Clauses 16 to 34 inclusive agreed to on division [*See Minutes of Proceedings*])

The Chair: Government amendment number six, Mr. Moore.

Mr. Rob Moore: Moved.

Ms. Karen Cuddy: I think we're dealing with clause 35, the coming into force provision. Again, this is a minor technical amendment as a result of removing subclause 9(3) from the bill. We would now be renumbering the provisions.

We also have the spousal employment assistance provision that we originally thought we would have to delay the coming into force of, but it has now been determined that there is no need to delay it. So we're only referring now to subclauses 9(1) and 9(2), which would be delayed pending the coming into force of the regulations.

The Chair: Is there any discussion?

(Amendment agreed to on division [See *Minutes of Proceedings*])

(Clause 35 as amended agreed to on division)

(Clause 36 agreed to on division)

The Chair: Shall the title carry?

Some hon. members: Agreed.

Some hon. members: On division.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

Some hon. members: On division.

The Chair: Shall I report the bill as amended to the House?

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill?

Some hon. members: Agreed.

The Chair: That concludes the clause-by-clause on Bill C-17.

The meeting is adjourned.

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