

THE SWORD AND THE MACE

In a democratic regime, the citizens are ever wary, and justifiably so, of any intrusion by political power, particularly that wielded by the Executive branch, into the areas reserved for the Judicial branch. Political power need only put one toe in the door: that toe is immediately threatened with amputation.

In Quebec City recently a variation was played on this theme when the Legislative branch was called upon to protect its domain when on one occasion the Sword of Justice was poised to cleave the Mace.

Appearing before the Labour Court, a major company challenged a certain labour relations statute; the company pleaded that this law was unconstitutional by reason of errors made when it was passed by the Assemblée nationale. Following a motion by the plaintiff, the judge served a writ of subpoena duces tecum on René Blondin, Secretary-General of the Assemblée nationale, enjoining him to appear before the court and to file there the originals and the photocopies of the statute concerned, both in bill form and as assented to, and all the reports of the Parliamentary Committee concerning it.

The Secretary supported by the President, Clément Richard, invoked his position of custodian of the Archives of the Assemblée, and refused to comply with the writ. Nothing daunted, the Sword flashed again; other writs also were ignored.

Increasing its pressure, the Court next raised the spectre of contempt of court proceedings should the Secretary not appear at the next hearing. In the face of such insistence the Mace struck - and struck hard. A few days before the appointed date, President Richard read to the House a letter he had written to the judge. In it, he discussed separation of powers and the tradition of parliamentary immunity even before the courts. Quoting Erskine May, Mr. Richard held that no officer of the House with respect to proceeding inside the House, without the express consent of the House itself. Moreover, he emphasized that if an officer of the House were to comply with the requirements of a writ of subpoena of this kind, without prior formal authorization from the Assembly in accordance with the procedure laid down in the Standing Orders, that officer could be accused of violating the privileges of Parliament, and be tried and sentenced accordingly; the same would apply to any other person who attempted to compel Parliament to disobey its own rules. Not wishing to obstruct justice, President Richard explained that the Secretary-General could be authorized to testify and to file certain documents if one of the parties concerned made a request to that effect to the Assemblée nationale.

The Sword returned to its sheath and the Mace to the Table-without even a scratch.