

Northwest Territories Act

after I came here in 1953 I made representations in this house asking that provision be made for by-elections to be held to fill vacancies such as the one I had created by my resignation. At that time the well-meaning officials of the Department of Northern Affairs and National Resources contended that it was very difficult to hold by-elections in the Northwest Territories during the winter, but if there was one thing proven by the election of last March it was that elections can be held successfully in the north in the winter time.

Since there are to be some changes in the judicial portion of the act I should like to deal with the section of the act which concerns the set-up of the territorial court of the Northwest Territories. At the present time this court consists of a judge, one magistrate in Yellowknife and justices of the peace resident in various communities of the north. I am not a lawyer and if I am wrong I hope the minister will correct me in what I have now to say. We find in the act sections dealing with the concurrent civil jurisdiction of provincial courts. The interpretation I place upon these sections may be different from the minister's own interpretation, but I should like to read section 29 concerning this concurrent civil jurisdiction:

29(1) Any superior court in the provinces of Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland may, within the province in which its ordinary jurisdiction is exercised, exercise, in civil matters respecting persons and property in the territories east of the 102nd meridian of west longitude—

That is the meridian which follows the provincial boundaries between Saskatchewan and Manitoba to the Arctic. West of that is the MacKenzie district and to the east Keewatin. The section continues:

—and actions, suits or proceedings affecting them, the like jurisdiction that such court has in civil matters respecting persons and property within the territorial limits of its ordinary jurisdiction and actions, suits or proceedings affecting them.

(2) Any court having surrogate powers in a province of Canada may, within the province in which its ordinary jurisdiction is exercised, exercise, respecting the granting or revoking of probate of wills and letters of administration of the property of deceased persons in the territories and all matters arising out of or connected therewith, the like jurisdiction that such court has respecting the granting or revoking or probate and letters of administration of the property of deceased persons within the territorial limits of its ordinary jurisdiction and all matters arising out of or connected therewith.

Section 30 deals with practice and procedure and service outside the jurisdiction.

As I interpret those sections, an action can be proceeded with in any one of the provinces of Canada from Alberta through to Newfoundland with regard to persons or

[Mr. Hardie.]

the assets of persons resident in the Northwest Territories. These courts have jurisdiction over the territorial courts. If I am correct in my interpretation of what might be desirable, I feel that before a court in any one of the provinces of Canada can proceed with an action, the court of the province should make application to the territorial courts. Of course, if the territorial courts have given consent to having the case heard in the province it should proceed in that manner. Under the existing legislation the provincial courts have primary jurisdiction and the territorial courts have no jurisdiction.

With respect to civil jurisdiction I notice that section 31 of the Northwest Territories Act leaves appeals in the hands of the provincial courts. I refer, of course, to appeals from any actions started in a province such as New Brunswick. With respect to the portions of this act that refer to the judiciary I believe the minister should follow up the democratic tendency he has established and increase the jurisdiction of the territorial courts giving them more autonomy and independence.

I also observe that under the act as it presently stands all appeals from the territorial courts are sent to the courts of the provinces extending from Alberta to Newfoundland. I feel that these cases should be dealt with by a court that understands the conditions that exist in the territories. I feel that a provincial court would not be competent to give reasonable treatment to a case appealed to it from the territories and that an appeal court for the northwest territories and the Yukon should be established. The membership of this court could comprise the judge of the Yukon and the judge of the territorial court together with deputy judges who could be chosen from among the magistrates in those areas. If that were not feasible an additional judge could be appointed in both the Yukon and the Northwest Territories. The Yukon Act provides for the appointment of another judge. I do not think my friend the hon. member for the Yukon would disagree with this. I do not expect he would turn down an appointment to this high office. We could have two judges in the Yukon and two in the Northwest Territories who could serve on our appeal court.

Mr. Nielsen: You do not get rid of me that easily.

Mr. Hardie: As my hon. friend knows I am not a lawyer and it is very difficult for me to explain my position clearly.

I wish to return to the subject of what is happening in the territories at this time. We have one magistrate in Yellowknife whose