

QUESTION PERIOD

[Translation]

THE HONOURABLE HAZEN ARGUE, P.C.

CHRISTMAS GREETINGS TO SASKATCHEWAN LIBERALS—
REQUEST FOR LIST OF RECIPIENTS

Hon. Martial Asselin: Honourable senators, my question is directed to Senator Argue, but not in his capacity of Minister of State responsible for the Canadian Wheat Board.

Recently, I happened to see some Christmas greetings he sent to several people in his province, on Senate stationery. They were addressed to "Dear Fellow Liberal". I would like to know whether there were many of these greetings and whether Senator Argue could produce a list of his Liberal friends and indicate where they are from.

● (1420)

[English]

Hon. Hazen Argue (Minister of State for the Canadian Wheat Board): Honourable senators, I realize it is quite a restricted list. Not being a person who sends out greetings in the same quantities as others it is probably a fairly restricted list.

Hon. Orville H. Phillips: Honourable senators, I have a supplementary question to that asked by Senator Asselin. Did you have to pay extra postage on it?

Senator Argue: I think I would have paid the same postage as Conservative members of this place and other places pay when they send greetings to other Conservatives, of which there is still a large number in this country.

JUSTICE

ALLEGED URANIUM CARTEL—STATUS OF PROSECUTION

Hon. Jack Austin (Minister of State for Social Development): Honourable senators, I would like to reply to questions addressed to me by Senator Roblin on December 19 with respect to items under the responsibility of the Minister of Justice relating to proceedings in respect of certain uranium companies and a decision of December 15 last by the Supreme Court of Canada.

Senator Roblin put certain questions to me, which I will try to answer seriatim. The first question he put was with respect to whether or not the government intends to proceed with the case against the other four companies involved in this matter. I am quoting from page 45 of *Debates of the Senate* for Monday, December 19, 1983, where Senator Roblin said:

—it seems to me invidious that the government is contemplating proceedings against four companies but is excluding two companies simply because they are crown corporations.

Here is his question:

So I ask my honourable friend whether he will undertake to suggest to his colleague, the Minister of Justice, that the government waive crown immunity in respect of these two companies, thereby allowing the matter to be dealt

[Senator Barrow.]

with without discrimination between private companies and public companies.

I must say that I did not understand whether Senator Roblin was taking a position to the effect that we should no longer prosecute the private companies because it was invidious and unfair to discontinue against two crown corporations and still continue against the private corporations. In any event, the Minister of Justice has taken the decision, on the advice of the special prosecutors, to discontinue the proceedings against the private uranium companies in the belief that to proceed against them would be unfair and inequitable in the circumstances.

The Minister of Justice advises me as well that there is no question of discretion with respect to whether or not the two crown corporations could plead crown immunity. The Supreme Court of Canada has found that the doctrine of crown immunity applies to them by statute, and therefore, there is no legal basis on which crown immunity can be waived.

I would like to quote a portion of the decision of the majority, which was a five-to-two decision by the Supreme Court of Canada:

The maxim that the Queen can do no wrong is a legal fiction which, at common law, serves the purpose of preventing the Queen from being impleaded in her own courts. There is, however, no comparable maxim that an agent of the Queen can do no wrong.

The conclusion that a Crown agent is personally responsible for an unlawful act still leaves the question whether the act is unlawful. Where the unlawfulness or the wrongfulness of the act arises without any recourse to a statute, the Crown's immunity from statute, as expressed in s. 16 of the Interpretation Act, is irrelevant. If, for example, the agent commits a tortious act, it is the common law which characterizes it as unlawful. There is no immunity that the agent can claim.

Where the only source of the unlawfulness is a statute, however, the analysis is entirely different. Reference to a statute is necessary for criminal responsibility in Canada, apart from contempt of court, because s. 8 of the Criminal Code precludes any conviction for an offence at common law. If a person commits an act prohibited by statute, and the Attorney General seeks to prosecute for violation of that statute, the preliminary question that must be asked is whether that person is bound by the statute. If not, the person simply does not commit a violation of the statute. The situation is not that the person is immune from prosecution even though there has been an unlawful act; rather, that there has been no unlawful act under the statute. I have already said that the Combines Investigation Act does not bind the Crown. If Uranium Canada and Eldorado share the Crown's immunity, they can have committed no offence under the Act.

I believe I have answered Senator Roblin's question on whether a waiver of crown immunity is possible and also his