

Crown Liability

statement of facts could be properly looked after from the standpoint of the crown.

Under this new provision we are making the crown directly liable for actions which may be started in provincial courts all over Canada, from Newfoundland on the east to Vancouver island on the west. It will be a difficult task for the Department of Justice to keep track of a mass of claims and a mass of litigation which can be taken in the provincial courts. The business of getting proper instructions for the carrying on of defence is much more complicated and difficult than that which would be experienced by my hon. friend from Gloucester, with his numerous clients who are right at hand, and whom he can reach conveniently in order to get his instructions.

We have put in this provision as an experimental protection in a Canadian statute which will not be administered in some compact country like Great Britain but in a vast extent of territory and in the courts of ten different provincial jurisdictions, now that we have opened up the provincial courts to these claims against the federal crown. I am quite prepared to say that if we find on experience that we can relax this present provision, we will be glad to do so. We have in the first instance drafted the bill in this way only because we cannot foretell just how long it will take to run these cases down in order to find out what the facts are and put ourselves in the position where we can adequately defend them. Getting a statement of facts from a federal surveyor in northern British Columbia is a much more complicated business than for my hon. friend to get instructions from his client.

Mr. Robichaud: I thank the Minister of Justice for making a comparison between my clientele and that of the Department of Justice, but I think it is rather farfetched because in my little office I have not the numerous legal officers available that I assume the Attorney General of Canada has.

I realize that the jurisdiction under this act is quite extensive, but it must be borne in mind that there is a 90-day notice preliminary to the institution of the proceedings. It seems to me that in 90 days, with the men available in the Department of Justice, there should be ample opportunity to check on every detail of the claim. If a writ of summons is issued immediately after the 90 days have expired there is another 10-day leeway in which to put in a defence, in which to file an appearance; and then under our procedure the statement of claim would have to be filed, which provides for another leeway in filing the defence. I think the

time element is fully covered, and there should be no excuse there.

I am just a newcomer to Ottawa and I have not set my foot inside the offices of the Attorney General of Canada, but I assume there is quite a staff there. I assume that every means must be at his disposal in order to make the necessary investigations within the 90 days, to which would be added another 10 days. There is a total of 100 days in which to investigate a claim, so I cannot see any justifiable reason why there should be this section which debars the litigant from obtaining a judgment by default where no appearance has been filed. Can the Minister of Justice point to a similar provision in the British practice?

Mr. Garson: I do not know whether there is a similar provision in the British practice, and I would be surprised if there were. As the hon. member for Lake Centre pointed out this afternoon, they have had legislation similar to this since 1947, and during that time they have no doubt built up a procedure which enables them to deal with these matters more expeditiously than we can at the beginning. Then, of course, if my hon. friend stops to consider that you can take the whole of the British Isles and drop them into a corner of even our second smallest province whereas we have to cover the whole width of the continent of North America, he will see that it is hardly fair to draw a parallel between the United Kingdom and Canada. If he will examine the Ontario statute which parallels this one in setting up crown liability, he will see that the period of time is much the same.

This arises from the fact that, in this matter, the federal Department of Justice does conduct the litigation not with a large staff of law officers but with a staff of about 20 who, along with a great mass of other work, run about 1,000 cases on the current docket. As some cases come on, others go off, but that is the current load that is carried. In these matters we have to contact the heads of other departments, they have to get a statement of the facts from some employee who is often away down the line, and then it has to come back to the higher-ups in the other department, and thence to us. We have settled upon this time, as the province of Ontario has done, realizing that if we could do it in a shorter period of time we would be glad to do so.

Mr. Robichaud: Has the province of Ontario a similar provision as to no judgment by default without leave?

Mr. Garson: Yes, they have.