

attorney general of another province to determine otherwise under like circumstances? Criminal law being what it is, it should be uniformly enforced in all parts of the dominion without regard to the wishes of individual attorneys general. In this section there is a marked departure from the uniformity which should be aimed at. This section means that for the first time in the history of our criminal law there will be a departure from uniformity of application in all parts of the dominion. The application of this section of the criminal law is to be left in the hands of the provincial attorneys general.

Hon. members will see what will happen. There may be an attorney general who is of my mind. If I were in the position of an attorney general I would be opposed to allowing proceedings to be taken against a man as a habitual criminal unless the opportunity had first been given for reformation. I would look at the matter from the point of view of one who had for years been somewhat concerned with defence rather than prosecution. On the other hand, there may be an attorney general who for years had been a crown prosecutor or crown attorney, and his attitude of mind would necessarily be different from mine. The result would be that a person convicted of three crimes in one province could commit a fourth crime, and because of the attitude of the attorney general in the province in which he had committed that crime he could be prosecuted as a habitual criminal, or not prosecuted.

I urge upon the minister that this introduces into our criminal law a lack of uniformity, in that the person in one province may be prosecuted as a habitual criminal, whereas if the same person committed a crime in another province he would not be subject to prosecution.

Mr. MacNAUGHT: What about *nolle prosequi*?

Mr. DIEFENBAKER: The principle of *nolle prosequi* is that the attorney general of a province may determine that there is no evidence upon which a conviction can be registered, or he may conclude that a man has already been sufficiently punished for the offence committed. For instance, it arises quite frequently that a man is charged with three different thefts. He is sentenced on those thefts and, later on, a fourth theft arises. Instead of having that person again go through the mill of a trial the attorney general may direct the crown prosecutor or the crown attorney to return a *nolle prosequi*:

[Mr. Diefenbaker.]

Under those circumstances the prosecution would not be proceeded with. In that principle there is no lack of uniformity. That principle dates back to the time of habeas corpus when, for the first time, the crown vested in its servants the right to direct that in the interests of justice prosecution ought not to take place. But this is a departure which I view with considerable alarm. It places the human factor foremost in the determination of whether or not a person shall be proceeded against.

Mr. LESAGE: In certain provinces they will not prosecute in connection with slot machines.

Mr. DIEFENBAKER: That matter rests with the province because property and civil rights are involved. That point was raised in connection with confiscation, I believe in a case in Windsor, and it was argued that the property and civil rights of the province were being interfered with. For that reason, matters having to do with slot machines rest with the provincial attorney general.

Mr. LESAGE: What about bingo games?

Mr. DIEFENBAKER: My hon. friend may know something about bingo. That is not a case where the attorney general of the province would determine whether prosecution shall take place.

Mr. LESAGE: Oh, yes.

Mr. DIEFENBAKER: In one city in my province you may operate a bingo game while in another you may not. That is because of the different attitude adopted by the officers in charge of prosecution. There is not one law in one part of the province and another law in another part.

Mr. LESAGE: That is not what is happening here; the law will not be different.

Mr. DIEFENBAKER: I am not advancing this argument in any contentious way.

Mr. LESAGE: I know that.

Mr. DIEFENBAKER: I am trying to point out the situation which, I think, will arise. I tried to put myself in the position of the attorney general of Saskatchewan. As one who is used to defence, I naturally would object without opportunities for reformation to penalizing a person because he is a habitual criminal. On the other hand, my hon. friend the Postmaster General, who had a most distinguished career as a prosecutor, would, if he were in that position, naturally and instinctively and subconsciously look at the case from the point of view of the prosecutor.