

Oral Questions

Territories, and in view of the widespread resentment among the people of my constituency, may I ask the Minister of Justice whether he will now consider withdrawing the application for prohibition so that the claim of the Northwest Territories Indian Brotherhood will remain with the Supreme Court of the Northwest Territories?

Hon. Otto E. Lang (Minister of Justice): Mr. Speaker, the matter which was and still is before the courts involves questions relating to a caveat, and it has been our position that this is quite clearly a matter to be determined in the first instance by the judge designated for the purpose in the appropriate statute. The question of any claim, or its validity, against the Crown in the right of Canada is, by the law of parliament, to be determined in the Federal Court, and it is because of that law we are pursuing the course of action we are following in relation to prohibition.

Mr. David Lewis (York South): Mr. Speaker, without entering into the legal explanation the minister has given, and without agreeing with it either, in view of the fact it is quite normal to have matters in a court of first instance go to appeal, even on the question of jurisdiction, in view of the fact either side to the case has the right of appeal, and bearing in mind the resentment of Mr. Justice Morrow and others at the action taken by the government, I should like to ask the minister whether he will not now see the value of withdrawing the application for prohibition instead of raising a storm that any sensitive person ought to try to avoid?

Mr. Lang: Mr. Speaker, the particular reason for proceeding by way of prohibition was to determine as quickly as possible the question of jurisdiction rather than going through elaborate processes and procedures when we were of the view that jurisdiction in relation to these processes and procedures did not exist. That does seem to me today to be the proper and appropriate way. Any storm that is being caused is certainly not being caused by us. We have constantly reaffirmed, as the hon. member for Northwest Territories would like us to do, the complete competence and jurisdiction of the Supreme Court of the Northwest Territories, fully equivalent to that of a similar court elsewhere. I might add that I do not think the question of the reaction of Mr. Justice Morrow is relevant in this particular situation.

Mr. Lewis: In view of the fact the Minister of Justice, who was a professor of law before he came here, is well aware that the question of jurisdiction can be and has been raised in many cases in a court of first instance, why is it impossible in this case for the question of jurisdiction to be argued before the Supreme Court of the Northwest Territories, subject to the right of appeal which is there?

Mr. Lang: Mr. Speaker, that is precisely the course of action which was followed. The question of jurisdiction was argued and at that point it became apparent that the court proposed to deal with the substantive matter before dealing with the question of jurisdiction. It was at that point it seemed obvious to us that the question of jurisdiction should be finally settled before proceeding with the whole case.

[Mr. Firth.]

Right Hon. J. G. Diefenbaker (Prince Albert): Mr. Speaker, I would not bring this up but for the fact the hon. member for York South referred to the fact that the minister had been a law professor.

An hon. Member: A very good one.

Some hon. Members: Hear, hear!

An hon. Member: That's the trouble.

Mr. Diefenbaker: I would ask him whether, when he was in that position, he advised his student body that prerogative writs of prohibition ought not to be used where there was any other means of determining the situation?

Some hon. Members: Hear, hear!

Mr. Lang: No, Mr. Speaker, I did not give them that advice.

Mr. Fairweather: It's a great pity you didn't.

Mr. Lang: I certainly did make clear to them that prerogative writs do not ordinarily lie in relation to matters before superior courts because jurisdiction there, by virtue of the nature of the court, is settled, but that they do lie in relation to persons acting as *persona designata*.

Mr. Speaker: Order, please. The Chair will recognize the right hon. member for Prince Albert on a supplementary and then I think we should recognize the hon. member for Témiscamingue.

Mr. Diefenbaker: Mr. Speaker, the minister has all but admitted the facts I placed before him. I now ask him: Having regard to the serious interpretation that is being given by Indian and aboriginal peoples to this, unusual, if not the only, case in Canadian history in which a government has interfered to prevent the consideration of a case by applying for a writ of prohibition, does he not feel that, in the interest of national well-being, and in particular the reliance of the Indian peoples on the law of the Queen, this is one time he might back down from his position and thereby restore responsibility to the government and also fairness to the Indians?

Mr. Lang: Mr. Speaker, I have made it completely clear that in our view there is no suggestion of any comment upon the competence and full capability of the Supreme Court of the Northwest Territories. I would indeed, on the other hand, ask that hon. members join in making sure that is understood instead of trying to take a narrow political advantage by spreading a different point of view.

Mr. Diefenbaker: Raising the question of political advantage is always the resort of those who are in trouble.

Mr. Speaker: Order, please. Perhaps the moment has arrived when we might call on the hon. member for Témiscamingue. If hon. members wish to pursue this matter later we can have further supplementaries. Is the hon. member rising on a point of order?

Mr. Lewis: I do, Mr. Speaker. I am sorry to take the time, but I think the minister's sanctimonious attitude cannot