

Federal Court

there is at least one functional argument, it seems to me, and that is the concept that advantages can be gained for the populace, for the people through having a court which is specialized in its functions, and this, of course, has been one of the arguments in favour of the Exchequer Court—

Then, he goes on to say this, and he is right:

The federal government here appoints judges to the Superior Courts of the provinces—

The federal government appoints our judges in the other courts and they are familiar with the rules that govern a writ of certiorari, mandamus, prohibition and references to boards. They know whether they can quash a matter and whether it is a judicial or administrative matter. Therefore, unless this bill provides, and I ask that this be supported, not only an increase in the number of judges but permanent resident judges of the federal court in the big cities of Canada, it will mean justice out of the reach of Canadians. Professor Watson goes on to state:

Well, of course, there are certain costs that we paid for having such a bifurcated system—

He then points out the extra costs, and I have dealt with that. I want to deal with this point as it relates to judges. He states:

Looking at the new areas into which the federal court bill would take us with regard to jurisdiction of the court, who is to be the grateful beneficiary of the investiture of the new Federal Court with concurrent jurisdiction over negotiable instruments? Is it finance companies or is it to be debtors who are going to thank the federal government for having given them another forum to which to take their disputes? Or will it be either one of them who first finds himself involved in a battle, a jurisdictional battle in the court for which he will pay to litigate to find out the answer as to whether or not the court also has jurisdiction over the surrounding matters—

Here again, one of the fights we are having today, as in other countries, involves a sufficient supply of competent judges to make certain that justice is not failed. Failed justice is no justice. It is only when it is expedited you get justice. I oppose the bill and I will have something to say about it on third reading. As bad as it is, I am really shocked that the Minister of Justice (Mr. Turner), with his knowledge and the knowledge of his department, would require that judges must live in Ottawa or within 20 miles of Ottawa, even though they may move around. Professor Watson said:

I simply raise this question: Is the only answer to give this jurisdiction to a federal court? In other words, would it not be possible to draft, if there are problems—and I gather there are problems with regard to, for instance, the location of an action against a federal tribunal, the problem of the plaintiff moving from one province to another suing a federal administrative tribunal—

Some of these people are going to have something to say about this.

This is what the Canadian Labour Congress had to say:

Bill C-192 establishes a Federal Court of Canada to replace the Exchequer Court, and to include in the new Court a division to be known as the Court of Appeal.

The jurisdiction of the Court of Appeal is to be found in Section 28(1) which empowers the Court to "set aside a decision or order... made by or in the course of proceedings before a federal board, commission or other tribunal, upon the ground that the board, commission or tribunal

(a) failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) erred in law in making its decision or order, whether or not the error appears on the face of the record; or

(c) based its decision or order on an erroneous finding of facts that it made in a perverse or capricious manner or without due regard for the material before it."

We are particularly concerned about (1)(c) above because of its wide implications and the very real possibility that the Court of Appeal may be substituted for the relevant board of commission as the final decision making body.

Where will the Court of Appeal sit? Will it be sitting in western Canada? Will it be sitting in eastern Canada? Will it sit, say, in Calgary, Edmonton, Winnipeg or Vancouver?

Mr. Turner (Ottawa-Carleton): Why not?

Mr. Woolliams: Well, it does not say so and I can see why the Canadian Labour Congress was concerned about this. The statement continues:

It is characteristic of both these Boards that they are representative of the parties of interest which appear before them, that they engage in a specialized function and that their value lies in the expertise which their members possess or acquire as a *sine qua non* of their functions. A further feature of these Boards whose importance should not be overlooked is the expectation that they will hear applications and make decisions expeditiously.

• (3:40 p.m.)

How can decisions be made expeditiously when sittings may be held once or twice a year in the large industrial centres, not only in western Canada but in eastern Canada and the Maritimes. Certainly, the judges should be stationed permanently in various places. That is why our trial courts are set up as they are. There are judges in Calgary and Edmonton, and there are county court judges in the towns and villages. Yet, under this legislation everything is to be centralized. The excuse is that a judge would be sent out here and sent out there. Then, there is the matter of the registry offices. Apparently there is to be one in Vancouver. Will there be one in all these cities, with one judge to do all the work in respect of these boards. There are over 25 different boards which I could name. I shall not take the time to do so now. I will leave that to another amendment.

On this particular amendment, I do not need, to take any more time. I ask the Minister of Justice first to consider, if he intends to force this through the House of Commons with his majority, the desirability of having more judges to take over the work of the provincial courts. Second, I would ask that those judges be stationed in all the major centres of Canada. Even then, the people in the towns and villages will suffer because it will be necessary for them to go to the various large centres in order to receive justice. Third, I would ask the Minister of Justice to look at the evidence given time and time again before the committee. Even the most favourable witnesses—lawyers—said that this is a specialized field. Very few lawyers will know how to litigate in this federal court. So, there will be specialized lawyers and specialized experts who will deny 90 per cent of the Canadians the kind of justice they already have.

[Mr. Woolliams.]