

will take the stricture of the Hon. Member and make sure that I will be able to report a process over the next two years which will ensure that the high impact bands are not adversely affected by this Bill.

Mr. Deputy Speaker: Does the Chair have the unanimous consent of the House to allow the Minister to withdraw Motion 35A?

Some Hon. Members: Agreed.

Motion No. 35A withdrawn.

Mr. Deputy Speaker: We will now resume debate on Motion No. 37A. Does the Minister wish to speak on the motion?

Mr. Crombie: Mr. Speaker, perhaps I should make a remark on Motion 37A. I thought I had mentioned it earlier in my comment with respect to 35A. Much of this, of course, came after considerable work by the Hon. Member for Athabasca (Mr. Shields) who is representing the interests of those bands in Alberta which have been so concerned about the impact of the Bill on their future fortunes and I would like to thank the Hon. Member for his hard work on behalf of those people and on behalf of all of us for making this a better Bill.

Mr. Deputy Speaker: Is the House ready for the question?

Some Hon. Members: Question.

Mr. Speaker: Is it the pleasure of the House to adopt the motion?

Some Hon. Members: Agreed.

Motion No. 37A agreed to.

Mr. Jim Manly (Cowichan-Malahat-The Islands) moved:

Motion No. 37

That Bill C-31, be amended by deleting Clause 19 and substituting the following therefor:

"19. For greater certainty, membership rules established pursuant to Section 10 and all by-laws and regulations made under the authority of this Act, are subject to the Canadian Charter of Rights and Freedoms."

He said: Mr. Speaker, we have already deleted Clause 19 with Motion No. 37A. I would simply like to make a few comments about the necessity for including a greater certainty clause ensuring that the Charter of Rights and Freedoms will apply to all membership rules, by-laws and regulations made under the authority of the Act. The argument is made, and I am sure will be made, that in passing the Constitution and the Charter of Rights and Freedoms, it applies to all legislation which is passed by the Canadian Government or indeed by any legislature in Canada. However, we know that the question of aboriginal rights is detailed in the Constitution outside of the Charter of Rights and Freedoms. This has raised some questions with regard to the whole concept of the equality clauses.

The argument will be made, for example, with Motions Nos. 40 and 41 that perhaps by moving that kind of a motion we are in effect weakening the constitutional guarantees of aboriginal rights. I believe Motion No. 37 is somewhat different. All

Indian Act

Hon. Members who are interested in this subject, dealing with Bill C-31, should be aware of the history of Jeanette Lavell. When she brought a case before the courts to try to have her rights restored under the old Bill of Rights, she found that the Indian Act took precedence.

We are very concerned that this House declare with every bit of conviction it can that there shall be nothing which will take away the rights of people who are re-established by Bill C-31. On that basis, I urge all Hon. Members to support Motion No. 37, which would establish Clause 19 to read, "For greater certainty, membership rules established pursuant to Section 10 and all by-laws and regulations made under the authority of this Act, are subject to the Canadian Charter of Rights and Freedoms". I urge all Members to support this motion.

Hon. David Crombie (Minister of Indian Affairs and Northern Development): Mr. Speaker, I would like to respond to Motion No. 37 standing in the name of the Hon. Member for Cowichan-Malahat-The Islands (Mr. Manly). Simply put, it is the government's view that the amendment proposed in Motion No. 37 is, with great respect, not necessary. Section 32(1) of the Canadian Charter of Rights and Freedoms provides that, "This charter applies (a) to the Parliament and Government of Canada in respect of all matters within the authority of Parliament". There is no need, in the government's view, for "greater certainty" as is proposed in Motion No. 37. Membership rules and by-laws are subject to the Charter. They are pieces of legislation subordinate to the Indian Act, which is a federal statute and, therefore, the Charter applies. No further clarification is required.

I would add one other consideration. I know the Hon. Member does not intend this, but I think that putting the clause in the Bill as contemplated in Motion No. 37 has the feel of paternalism about it. We do not include it in any other Bill with respect to the federal legislation touched by the Charter.

I think that some people could reasonably argue why we would do it in a Bill affecting Indians through the Indian Act. My view, and the view of the Government, is that it is not only unnecessary but unnecessarily paternalistic so that we would reject, and ask the House to reject, Motion No. 37.

• (1600)

Hon. Warren Allmand (Notre-Dame-de-Grâce-Lachine East): Mr. Speaker, I hesitate to oppose or support any amendment to Bill C-31 because in my opinion the Bill, in its present form, is so bad, so flawed, that no one amendment can improve it. What is particularly distasteful to me is the whole process by which we are dealing with this Bill and passing these amendments. Here we are a group of non-Indians—there is one Inuit and one or two Métis in the House but no status Indians—still passing laws in 1985 which will impact on the lives of thousands of Indian people. I find that process distasteful.