

Senator Doody: Honourable senators, the honourable gentleman has far more experience of things disappearing into the system than I have, and I will, therefore, profit from his advice in this matter.

INDIAN ACT

BILL TO AMEND—SECOND READING

Hon. Nathan Nurgitz moved the second reading of Bill C-31, to amend the Indian Act.

He said: Honourable senators, at third reading of this bill in the other place the Minister of Indian Affairs and Northern Development said that the passage of the bill was an historic moment, and I must say that I fully agree with him. Consideration of this bill marks the first time since 1951 that Parliament has made substantial revisions to the Indian Act.

● (2020)

In our work on the Standing Senate Committee on Legal and Constitutional Affairs, and certainly in my own work on the Joint Committee on Regulations and other Statutory Instruments, I have had some exposure to the workings of the act. Particularly those of us who took part in a pre-study of this bill in the Standing Senate Committee on Legal and Constitutional Affairs have had some graphic evidence of the effects on Indian people and their communities. It takes no great insight into the situation of Indian people in Canada to state that these proposed changes are long overdue.

The Standing Senate Committee on Legal and Constitutional Affairs, during its pre-study hearings on the subject, heard from many witnesses representing what, I suggest, would be pretty well every point of view that there could be on the bill. One thing that struck me above all is the complexity of issues dealt with in and affected by this legislative proposal.

I think the minister is to be commended for piloting this bill over terrain which many previous ministers have feared to tread. I have watched closely the progress of the bill in the other place and its committee, and I believe that it constitutes a fair and reasonable approach to an extremely difficult set of issues.

The bill does not solve all of the problems of the Indian Act. It is not intended to. Much remains to be done. As I was taught during my five years' experience in this chamber by the then Deputy Leader of the Government, Senator Frith, who used always to say that one should be happy with half a loaf, for many this will, indeed, be half a loaf. There are many people who advocate further change or more extensive change, but I am suggesting to honourable senators that at this point in time, having regard to what I think are reasonably complex issues, this is a compromise worth accepting, and that it will serve the needs of Indian people.

The bill deals with two specific problems, and I suggest that it does so in a commendable way. The minister, in presenting the bill for second reading in the other place, said that the purpose of the bill was to correct two historic wrongs in

[Senator Olson.]

Canada's legislation governing Indian people. He described these wrongs as, first, discriminatory treatment based on sex, and second, the control by the government of membership in Indian communities. He went on to describe these two issues in their historic context, and I should like to quote briefly from his comments because they illustrate eloquently the nature of the problem that this bill, hopefully, resolves.

Senator Frith: That is a good use of the word "hopefully."

Senator Nurgitz: He said:

In the early days of Confederation Canada consisted only of the Maritime Provinces, parts of Ontario and parts of Quebec. The balance of the great land was the territory of the aboriginal peoples. At that time the Parliament of Canada took upon itself to define through the Indian Act who it would recognize as having Indian status. As Canada took over those Indian lands, hundreds of thousands of people and their descendants fell unknowingly into a category of people whose lives would become dominated almost totally by the federal Government.

The legal definition of who was an Indian reflected the nature of Canadian society at the time. A woman followed her husband's status. He alone had civil and political rights and he alone could pass them to his children. This 19th century view was reflected throughout the Indian Act. An Indian woman would, parliamentarians of the day reasoned, be taken care of by her white man and therefore would no longer need to be an Indian. She was enfranchised to use the terminology of the act.

I will come back to that question because some of you may wonder where the term "enfranchised" comes into play. To continue the quotation:

For her, the price of marriage was her status as an Indian.

It is sad to say that these legal definitions continue to the present day. The result is a lengthy list of hotly debated issues. These include questions like who is an Indian, who determines who belongs to a band, who should be registered as having Indian status, what should be done with people who lost status unfairly and with their children, and what is enfranchisement and why do we still have it? All of these issues mean little to most Canadians but they are critical, urgent and important questions to Indian people. That is why federal governments have been under pressure from many fronts for many years, both in and out of Parliament to remove sexual discrimination from the Indian Act.

When one speaks of the kinds of pressures that we undergo just on that point alone, I am sure honourable senators will recall the Sandra Lovelace case which was the case of an Indian girl who made an application to the Human Rights Committee of the United Nations alleging that the operation of section 12(1)(b)—and that is a section in the existing act that says that if an Indian female marries a non-Indian she loses her status—was in breach of Article XXVII of the International Covenant of Civil and Political Rights of which our country is a signatory.