

be effectively lifted, several years could elapse. The result could be devastating for certain Indian communities.

Motion 33A would enable band councils, subject to the approval of band electors at a special meeting, to prohibit the sale, barter, supply or manufacture of intoxicants on reserves; the state of intoxication on reserves; or the possession of intoxicants on reserves. The by-laws could also provide for exceptions to the prohibitions on intoxication or possession of intoxicants. These exceptions could deal with such cases as medicinal use of alcohol, transportation of unopened bottles across reserves, intoxication in a private house, or consumption on special holidays.

This new provision would replace Sections 94 to 100 of the current Act. These sections established prohibition on reserves unless a band explicitly decided by referendum to go "wet" under provincial law. At present, only about half of the bands have decided to go "wet". By putting this new by-law power outside of Section 81 of the Indian Act, any by-laws adopted by bands would not be subject to disallowance. Bands would be required to forward a copy to the Minister, but this is only intended to facilitate registration under the Statutory Instruments Act, a condition which must be met if prosecutions are to be valid.

Clause 16 requires that such by-laws have the consent of the majority of electors voting at a special meeting. This preserves the concept of community approval in the present Indian Act whereby switches from "dry" to "wet" require band consent, although now consent will be needed to shift in the other direction, from "wet" to "dry". This reversal arises since, with the repeal of Sections 94 to 100, it is assumed that provincial laws, normally "wet", will apply unless by-laws are enacted.

Subsection (4) establishes penalties to replace those eliminated by repealing Sections 94 to 100. A distinction is made in the severity of the minimum penalties between offences against the prohibition on access where the person providing the intoxicant deserves a strong penalty and likely can afford to pay, and offences against the prohibitions on possession or intoxication where the person charged is likely to be poor and unable to pay. The actual amounts, \$1,000 and \$100 maximums, are based on the fines in the present Act of \$300 and \$50, adjusted to take account of inflation. The summary conviction method of prosecution is retained to facilitate expeditious handling of cases.

Clause 18 amends Section 103 to clarify that intoxicants or other property related to offences against by-laws passed under Section 85.1 can be seized. Warrants will still be required under Subsection 103(9)(4) to conduct searches related to the offences.

The by-law power of new Clause 16 would come into force with the rest of Bill C-31. Motion 42 would delay the repeal or amendment of the existing Indian Act provisions for a period of six months. This will allow time for bands to develop band by-laws to replace the provisions of the Indian Act which are to be repealed. In Manitoba, interested band by-laws could be implemented shortly after Bill C-31 passes. Many bands, especially those in Manitoba which are directly affected, as

well as the Attorney General of Manitoba, have urged prompt federal action on this problem. I am pleased that we can take advantage of the present deliberations on Bill C-31 to plug this very large hole which now exists in the Indian Act.

That is the technical aspect which I wanted to emphasize with respect to Motion No. 33A. The bands, chiefs, and council members who have been in touch with me are very concerned. I hope that we will have no difficulty in getting this part of Bill C-31 passed. It is important that it be passed as soon as possible.

**Mr. Svend J. Robinson (Burnaby):** Mr. Speaker, I am pleased to rise to debate the amendment to Motion No. 33A proposed by the Minister and to commend the Minister for responding to a very serious concern arising as a result of the decision of the Manitoba court.

I would like to raise a matter about the terms in which the Minister is proposing to respond to the Manitoba decision, which I hope he will take into consideration before moving forward. My concern is with respect to the proposed power of the Act under Section 103 as set out in paragraph 18 of Motion No. 33A. That would permit a peace officer, a superintendent, or a person authorized by the Minister to seize goods and chattels with respect to this particular offence.

Section 103 of the existing Act provides a power with respect to Section 97, the relevant section in the current Indian Act, in virtually identical terms. It allows for seizure under a number of sections in the proposed Act. I want to draw to the Minister's attention that, while this particular amendment seeks to respond to a decision of the Manitoba court on the Charter of Rights, I believe the proposal in Section 103 itself is in breach of the provisions of the Charter of Rights. I ask that the Minister consider very seriously the concern in this regard.

● (1240)

As it stands now, the Charter of Rights requires that search and seizure provisions be reasonable, and I refer Members to Section 8 of the Charter of Rights. This provision was recently interpreted by the Supreme Court of Canada in *Hunter and Southam*. As a result of that interpretation, the Minister's colleague, the Minister of Justice (Mr. Crosbie), brought before the House Bill C-27. This Bill, among other things proposed a series of amendments to search and seizure provisions in a number of federal statutes. This provision, Section 103, was not touched by the Minister of Justice's proposed amendments in Bill C-27, presumably because it was felt that it was more appropriately addressed in the context of Bill C-31.

I want to draw to the Minister's attention the fact that, as a result of the decision of the Supreme Court of Canada in *Hunter and Southam*, a provision such as this, which allows for a seizure to take place without any warrant whatever, at any time whatever, falls far short of the standards which are set out in the Charter of Rights and Freedoms. I would also note, Mr. Speaker, that the provisions of the Criminal Code