

*Adjournment Debate*

**Mr. Lalonde:** Listening to you is something like that. So far as the question of fuel costs is concerned, most provinces are paying the actual cost of whatever the increases may be. They are being covered completely by the Canada Assistance Plan. The hon. member has no reason to cry in his phony way over the fate of some of the people in need in this country.

## IMMIGRATION—INDIANS—REJECTION OF JAY TREATY BY GOVERNMENT

**Mr. Thomas S. Barnett (Comox-Alberni):** Mr. Speaker, the high-handed action of the Minister of Manpower and Immigration (Mr. Andras) in unilaterally exercising his power as minister of that department in respect of the members of the Iroquois confederacy was first brought to the attention of this House on October 29 by my colleague the hon. member for Brant (Mr. Blackburn). You will recall, Mr. Speaker, that the matter has been dealt with already on one occasion in this hour by my colleague from Brant.

I am rising at this time because on that occasion I addressed a supplementary question to the Prime Minister (Mr. Trudeau). Unfortunately, the Minister of National Health and Welfare (Mr. Lalonde) is leaving the House and it becomes obvious that only the Parliamentary Secretary to the Minister of Manpower and Immigration (Mr. MacGuigan) is here to reply. I say at once that if he intends to rise in that capacity and give me a repeat answer to the one he gave the hon. member for Brant, it will be completely unsatisfactory. This is in no way a personal reflection on his ability to reply. However, if he is here in some capacity representing the Prime Minister (Mr. Trudeau) I shall await with interest what he may have to add to this discussion.

I addressed my supplementary to the Prime Minister on that occasion because it was evident to me that one department of government had unilaterally taken action in respect of something which had been accepted in other departments of government in relation to the Indians in Canada and the United States—in North America—over a long period of years. As the Minister of Manpower and Immigration indicated on October 29, it was something which went beyond the ambit of his department in the perspective in which it was raised, because he did say that he thought perhaps the question might more properly be addressed to the Minister of Indian Affairs and Northern Development (Mr. Chrétien). Obviously, my question requires a response from the Prime Minister inasmuch as by the admission of the Minister of Manpower and Immigration himself the ramifications of this action go beyond a single department.

It is all very well for the government through its spokesman, the Parliamentary Secretary to the Minister of Manpower and Immigration, to outline all the niceties of the history of what is commonly referred to as the Jay treaty, and to suggest to us that it is not in effect because of certain action taken by the Supreme Court and because of lack of action on the part of the government of Canada, parallel in the legislative field to that taken in 1928 by the United States. Be that as it may, the fact remains that not only in respect of the Iroquois people in the area

[Mr. Paproski.]

represented by the hon. member for Brant, but across Canada from one boundary to another in relation to crossing into and out of the United States, the government of Canada has tacitly accepted a procedure which in effect recognized the existence of the Jay treaty.

I know that this has been applied in relation to the boundary between the province of British Columbia and the state of Washington since before the days of confederation wherever the Indian people, many of whom belong to the same language and blood groups, moved across that boundary. I know that it has been recognized in great measure in respect of the people of the St. Regis community, for example, where the community is divided three ways, some of it in the United States, some in the province of Ontario and some in the province of Quebec.

For the Minister of Manpower and Immigration, without notice, without discussion or debate in the House, to suddenly, out of the blue sky, cancel an arrangement which had been in existence since before confederation, and then to hide behind the fact that the government has not taken legislative action to initiate the Jay treaty, makes a mockery of the whole professed interest at the present time on the part of the government in the question of aboriginal rights. It flies in the face of some of the statements made by the Minister of Indian Affairs and Northern Development, and indeed of some of the reluctant admissions by the Prime Minister that the Indians had in fact more rights than he had realized until recently.

So this is a much broader issue than the one which was responded to by the parliamentary secretary to the minister when he replied to the hon. member for Brant on November 20 in the "late show". I would suggest that not only is this a question of aboriginal rights and the reality involved therein, but there is the whole question of what I think is the constitutional mockery that the government makes of this whole matter of the application of treaties. The Crown has asserted that it has not handed to parliament the treaty-making prerogative. We have heard that expressed in the House many times. It has also been recognized that, constitutionally, Canada inherited the treaties that were made on our behalf by the United Kingdom government prior to the Statute of Westminster in 1931.

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So to suggest that the Jay treaty no longer has a valid application in Canada, if tested constitutionally, would be bound to be as incorrect as the assertion made until recently about the royal proclamation of 1763 on aboriginal rights. The government cannot have it both ways. If that treaty is not applicable because of lack of initiative in the past to introduce legislation, in effect the government is saying that the question of whether treaties have valid application should be in the hands of parliament. I suggest the best way the government could do this is to refer appropriate legislation to this parliament, so that we would have companion legislation to that which the United States in its wisdom saw fit to place on its statute books dealing with aboriginal rights.

**Mr. Mark MacGuigan (Parliamentary Secretary to Minister of Manpower and Immigration):** Mr. Speaker, a repeat question deserves a repeat answer. The fact is that