

Private Members' Business

v. Oakes, 1986, because the disqualification is not proportional to any intended objective”.

I could quote also in support of my opposition to this bill a page from the decision of the Federal Court of Appeal in the Queen v. Belczowski at page 15. I quote from the decision of Mr. Justice Hugessen who said:

Depriving prisoners of the vote is not a ringing and unambiguous public declaration of principle. On the contrary it is an almost invisible infringement of the rights of a group of persons who, as long as they remain inside the walls are, to our national disgrace, almost universally unseen and unthought of.

If, as I think, therefore, the alleged symbolic objective is one whose symbolism is lost on the great majority of citizens, it is impossible to characterize that objective as pressing or substantial.

He continued on page 17 of the judgment:

Alternatively, and far less commendably, it would appear to me that the true objective of paragraph 51(e) of the Canada Elections Act may be to satisfy a widely held stereotype of the prisoner as a no-good, almost sub-human form of life to which all rights should be indiscriminately denied. That, it need hardly be said, is not an objective which would satisfy section 1 of the charter.

He goes on:

The fact of being in prison is not, by any means, a sure or rational indication that the prisoner is not a decent and responsible citizen.

The prisoner may have made a mistake. The penalty that the law may have imposed or may impose on a person who has committed an offence may result in a prison term for one, a fine for another, probation for another.

The fact is that the proposal put forward in the hon. member's bill and the proposal in the current law violate our charter by these decisions because they propose that the test not be the offence, the degree of culpability, the character or anything about the accused person, but that it be whether or not that person is in prison at the time the election is held.

An hon. member: An indictable offence.

Mr. Milliken: The hon. member says: “An indictable offence”. The hon. member must know that no one will be in penitentiary unless that person has been convicted of an indictable offence. I say to the hon. member one cannot get to a penitentiary unless one commits an indictable offence. Summary conviction offences do not get sentences of longer than two years so one cannot get to a penitentiary on anything but an indictable offence.

The hon. member has drawn a distinction without a difference. I suggest this distinction is insufficient in law to justify a change from the decisions of the senior courts that we are faced with.

We have to try to get a law in Canada that will work in terms of the Charter of Rights and Freedoms. That is what the committee is struggling with and will continue to struggle with. This bill fails to meet that test, I suggest to the hon. member, that with regret I must decline to support it.

Mr. Rod Murphy (Churchill): Madam Speaker, I would also like to echo some of the thoughts and concerns of the last speaker.

It is certainly not our intent or my intent as a representative of the New Democratic Party to say that there is no occasion when someone should be denied the vote. In other words, there are probably occasions when people should be denied the vote but they should be explicitly explained in law.

One of the problems that we have had in the royal commission report and one of the problems that I have with the private member's Bill C-340 in front of us at the present time is that the depriving of the right to vote is only for those people who are imprisoned, while they are imprisoned. It is not related to the offence itself. In other words, if a judge lets somebody off or if the judge decides to levy a fine or if the judge decides to send someone to a provincial jail as opposed to a federal penitentiary, that person does not lose the right to vote.

Mr. Redway: Do you think they should be deprived of that right?

Mr. Murphy: Madam Speaker, I am being heckled by the member who presented the bill and whom I did not heckle during his speech.

In terms of fairness there is a problem with this bill. We have had a royal commission, as was pointed out earlier, which spent in excess of \$16 million looking at the charter, looking at the whole electoral system in this country, and it made a recommendation.

We have had for almost the last six months a committee of this House looking at who should have the right to vote and the regulations pertaining to that. As part of that process members from all three parties have been grappling with when someone convicted of an offence