

*Indian Act*

list Indians. We have Indian children of reinstated Indians. We have treaty Indians and reserve Indians and off-reserve Indians. And so it goes.

Finally, on the matter of not everyone being 100 per cent satisfied, we know that the Bill will give only partial control to the Indian First Nations over their own memberships. It is partly recognized and partly affirmed. Of course, it is true that the Minister has said that this is only a beginning and there is a future to which we must look, and no one here can have any disagreement with that.

Let me remind the House once again of the assertion of the Indian First Nations, an assertion that was solidly supported by the all-Party unanimous report of the Special Committee on Indian Self-Government. The assertion was that it is the rightful jurisdiction of each Indian First Nation to determine its membership according to its own particular criteria. All Hon. Members in this House may not agree with that assertion. I say to them that it is, in my view—and I think those who served on the Special Committee on Indian Self-Government would agree—an aboriginal right, and when we tinker, meddle or interfere in matters related to membership within an Indian First Nation, we are clearly outside of our jurisdiction, we are into someone else's jurisdiction. That right by Indian First Nations was never surrendered to any Parliament of Canada. It was assumed by us in our Constitution of 1867 and by the passage of the Indian Act that we have some prerogatives in dealing with Indian band membership and citizenship.

What we did was to usurp that right. It was never surrendered to us. It was never given to us. We simply took it. Never was it relinquished at any time by Indian First Nations. Therefore, it follows logically that, when Indian leaders and Indian Governments say to us they reject fully and completely any federal interference in such matters. They say we are simply and clearly out of our element. It is beyond our authority. But we do it every time we decide who is and who is not an Indian, and what are the different kinds of Indians, those categories to which I referred a moment ago. To engage in this exercise is presumptuous beyond reason. It is presumptuous when we do it now, just as it was presumptuous of those parliamentarians who preceded us and did it in a fashion that left us with this awkward, embarrassing situation that we have to try to resolve. We cannot do it satisfactorily. We could not do it satisfactorily through the Bill presented by the previous Government and we cannot do it satisfactorily through this Bill, try as we will.

I think the difficulty is that we have forgotten from history what should never have been ignored but has been ignored until very recently when we amended and added to the Canadian Constitution. There was something we forgot that could have pointed the way and avoided for us so much of the difficulty in which we have enmeshed ourselves over a long period of time. I am referring to the Royal Proclamation of 1763. It is not my intention to make too much of that document. I know it is a colonialist document. It is not a Magna Carta for Indian people by any means. But it did

provide for us, and it could have provided for previous generations, at least a *modus operandi*, a way to proceed, that would have avoided so much of the difficulty and so many of the problems that now entangle us hand and foot.

If only we had only followed the prescription which was clearly laid down and proceeded on the basis of nation to nation, government to government, Crown to Indian First Nations. That was the way to proceed. If we had proceeded that way, what would the result have been? Instead of usurping authority that did not belong to us and instead of assuming unto ourselves the power to legislate for these people, these first citizens of Canada, we would have proceeded by way of negotiation leading to agreement. That is the way it was done with the treaties. That is why most Indian people in this country who have treaties, even though they recognize they are far from perfect documents and that a much more powerful Government took advantage of them, regard them as sacred, not so much for every substance in a treaty itself, every item and clause in a treaty, but because of the way in which the treaties were reached through negotiation leading toward agreement.

● (1550)

When we followed that approach in modern times, we were able to avoid, to a significant extent but not entirely, many of the problems foisted upon us by the Indian Act. For example, the James Bay and Northern Quebec Agreement was negotiated and agreed upon. Members of Parliament, in the House and in committee, indicated that they did not like certain aspects of that agreement. They had to be reminded that their job was not to renegotiate that agreement but simply to ratify it and that, if they did not like certain parts of the agreement, it would have to be returned to the signatories for renegotiation. That approach is one which must always be followed and never abandoned. Although the approach to the James Bay and Northern Quebec Agreement was correct, we have to say that once again the Government of Canada failed in its implementation. Thank goodness an all-Party committee decided to take the Government to task and make it live up to its obligations. We grabbed government Members by their shirt collars and gave them a good shaking, and they responded with some protest by saying that they had lived up to the legal obligations but may have betrayed the spirit of it a little. They betrayed the spirit more than a little. In any event, it demonstrates why there is so much suspicion and hesitancy to engage with parliamentarians and with Governments in these kinds of agreements.

If there is difficulty in that respect, how much more is there when it is done unilaterally, or when we pretend that there has been some kind of consultative process when something has already been put in place and we just allow briefs to be presented and viewpoints to be expressed and call it consultation?

Another example of the approach which I am advocating is the Cree-Naskapi Act. That Act was not unilaterally devised by the Government with the help of private Members of the