

**Some Hon. Members:** Nay.

**Mr. Deputy Speaker:** In my opinion the nays have it. Pursuant to Standing Order 79(11), the recorded division on the proposed motion stands deferred. Motions Nos. 40 and 41 will be grouped for debate.

**Mr. John Parry (Kenora-Rainy River)** moved:

Motion No. 40

That Bill C-31, be amended by adding immediately after line 35 at page 19 the following:

"21. For greater certainty, nothing in this Act shall be construed as abrogating or derogating from the aboriginal and treaty rights of the aboriginal peoples of Canada."

**Hon. David Crombie (Minister of Indian Affairs and Northern Development)** moved:

Motion No. 41

That Bill C-31, be amended

(a) by adding immediately after line 35 at page 19 the following:

"21. Nothing in this Act shall be construed so as to abrogate or derogate from any existing aboriginal or treaty rights of the aboriginal peoples of Canada."

(b) and by renumbering the subsequent Clauses accordingly.

**Mr. John Parry (Kenora-Rainy River):** Mr. Speaker, in rising to address Motion No. 40 which stands in my name, I would like to forewarn all Members of the House that it is my intention to withdraw Motion No. 40. Following consultation with the Minister of Indian Affairs and Northern Development (Mr. Crombie) and with the three principal native organizations which, as the Hon. Member for Notre-Dame-de-Grâce-Lachine East (Mr. Allmand) pointed out, have the largest stake in Bill C-31, we have reached the belief that no really valid useful purpose would be accomplished by the inclusion of the text of Motion No. 40 in this Bill. Bearing in mind that the Constitution in Paragraph 35(1) provides a very similar clause as to the non-derogation and non-abrogation of the very important and fundamental aboriginal and treaty rights of the aboriginal people of Canada, it is my intention, therefore, to withdraw Motion No. 40. With your permission, Sir, I would seek unanimous consent of this honourable House so to do.

**Mr. Keith Penner (Cochrane-Superior):** Mr. Speaker, of course I will not withhold unanimous consent. I want to say that I do so with some regret. I think that although the arguments of the Hon. Member for Kenora-Rainy River (Mr. Parry) are valid, that it is a bit redundant to have Motion No. 40 included in the Bill because we already have in our Constitution a section which says that nothing can abrogate or derogate from recognized aboriginal and treaty rights. Nevertheless, I found a certain amount of appeal of actually having this motion in the Bill because there is such a threat that aboriginal rights in some way can be transgressed by Bill C-31.

I regret the Hon. Member for Winnipeg North (Mr. Orlikow) is not here at the moment because it would be clearer now what a contradiction there is between the motion we have just defeated put by the Hon. Member for Cowichan-Malahat-

### *Indian Act*

The Islands (Mr. Manly) who wanted to put the effect of the Charter upon the membership codes of the bands and the motion of my hon. friend from Kenora-Rainy River, with whom I agree fully. I want the Hon. Member for Winnipeg North to hear this now that he is here. I am not making peace. I am saying on the basis of substance and validity that these two motions are in direct contradiction with each other and the motion of the Hon. Member for Kenora-Rainy River, had it not been withdrawn, would have been given my full support.

Let me draw to the attention of Hon. Members Section 35 of the Constitution. It states that the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed. Meetings have been going on among first Ministers as well as preparatory meetings with the Ministers of Justice and Attorneys General trying to define precisely what those rights are. I would argue it is axiomatic, it is a basic principle, it is a foundation of aboriginal rights that among those rights are the right of self-government. If you accept that there is the right of self-government, then you have the right to determine your own membership codes.

We cannot say that we have developed a magnificent Charter. We know in this House of Commons that when we were debating the Constitution we knew that there was give and take and wheeling and dealing on the Charter. We know it is not something that has come from Mount Sinai. It is the product of the men and women who worked on it. It was the best we could do at the time, but it is not perfect. It is not such an absolute perfect document that we now have to say that if we cannot impose this on other people then somehow what they do will be inadequate.

I go back to what the Hon. Member for Notre-Dame-de-Grâce-Lachine East (Mr. Allmand) said so well. "Can we not trust other people, the aboriginal peoples of this country, the Indian people of this country to develop a Charter that may be in terms of their membership code and in terms of their nationhood far, far superior to anything we have developed in this House up to the present time?" In fact, have we made enough inquiries to know that such may not already exist? I would suggest if we were a little more aware of the principles that govern Indian nations, we may discover to our amazement and surprise in centuries upon centuries and thousands upon thousands of years of governing themselves that they have acquired certain principles we could very well adapt for ourselves which would be far superior to what we have done with our Constitution and our Charter of Rights and Freedoms.

I regretfully say to the Hon. Member for Kenora-Rainy River that I will agree to his request. I understand his argument. We already have the Constitution, but I would have been very happy to see that clause included for greater certainty.

**Mr. David Orlikow (Winnipeg North):** Mr. Speaker, the Hon. Member for Cochrane-Superior (Mr. Penner) says that the Indian bands have the absolute right to determine membership. I say to him if they have that right then I can see some band deciding that a child born of a mixed marriage where the father is an Indian and the mother is not will be a