

*Indian Act***GOVERNMENT ORDERS**

[English]

INDIAN ACT

MEASURE TO AMEND

The House resumed consideration of Bill C-123, an Act to amend the Indian Act (minors' funds and surviving spouse's preferential share), as reported (with amendments) from a legislative committee; and on the amendment of Mr. Penner (p. 18559).

Hon. Keith Penner (Cochrane—Superior): Mr. Speaker, when we moved to Question Period I was in the midst of explaining to the House why an amendment which I have proposed to Bill C-123 should merit the consideration of the House and inclusion into this statute.

I want to explain to the Minister that this particular amendment, which has behind it the consent, authority, and wishes of the Indian Association of Alberta, was not introduced before the legislative committee at the appropriate time simply because there had been a communications gap; that is to say, legal counsel for the Indian Association of Alberta, Mr. Mandamin, had indicated in his appearance before the committee that he had such an amendment and felt that it was an amendment that was in keeping with the intent of the statute but would deal with one flaw that they regarded as being serious.

On the day the amendment was to be received, the committee delayed its proceedings, hoping to receive it by fax, but as a result of a misunderstanding about when the committee was to sit that particular day, we never did receive the amendment. However, I made a commitment to Mr. Mandamin that I would introduce this amendment at report stage.

Therefore, I want the House to know that this is not a matter that has been dealt with at the committee stage. It was part of the brief presented by the Vice-Chief of the Assembly of First Nations who represents the Province of Alberta.

The purpose of the amendment is to exclude any right of provincial authorities to the trust moneys that are now going to be under the authority of the band or of the parents or guardians, up to the limit of \$3,000 or more if that is agreed to by Order in Council.

The Indian Association of Alberta takes the position that the authority of the province into matters of First Nations is an unwarranted authority. I believe that when they make that assertion they are on very sound constitutional ground.

I believe the Government of Canada would probably lean in the direction of that kind of interpretation. I do not need to quote to the House Section 91(24), the first part of our Constitution under the British North America Act. Certainly that federal authority was reasserted again in Section 35 of the most recent changes to the Canadian Constitution.

There is clearly a federal authority and clearly a relationship between the Government of Canada and the First Nations. In other words, the relationship that was described in treaties is a relationship between the First Nations and the Crown. The interpretation is that the Crown is resident in the Government of Canada and has not been distributed widely across the country, so there are Crown rights giving authority to provinces or territorial Governments over Indian people.

That is exactly the rationale for establishing what we call Indian child welfare agencies. This has been done in the Province of Manitoba. Quite properly, the Indian leaders in Manitoba recognized at the outset that in establishing child welfare agencies it was very advisable to receive as much expertise as they could from the provincial authorities because child welfare as such is not an area that belongs to the federal Government. Therefore, we do not have the depository of expertise.

In the Province of Manitoba, a tripartite agreement was the first step toward establishing a child welfare agency. That was done more than five years ago by an agreement that was negotiated between Canada, Manitoba, and the Indian leaders in that province.

During the five to six year period that has intervened up to the present, a body of expertise has developed in Manitoba for child welfare agencies. They are now seeking a new bilateral agreement, with the transfer of funds, so that they can entirely take over this responsibility.

There has been a problem. This new agreement has not been reached. The Government of Canada is delaying. There are a number of difficulties. I will leave it to the Minister who is present in the House today to explain exactly why that is happening. However, I do not want to make that the point of my argument.

The point of my argument is that we are moving in the direction of establishing child welfare agencies for Indian people. The reason for that is that Indian leaders find it abhorrent that provincial agencies, using provincial Child Care Acts, should move in under the provisions of those Acts, take children out of Indian homes, and place them in non-Indian foster homes. In some cases they were adopted by non-Indian people. These youngsters, therefore, lost their culture, tradition, background, and heritage. In fact, there were a great many cases where these children were not only adopted into non-Indian homes but were adopted right out of the country altogether. They were adopted into American homes and only discovered many years later, in some cases, that in fact they came from Canada and that their heritage and ancestry was Indian. This caused enormous distress, psychological, spiritual, and personal. That is why we are moving away from that kind of situation. The Government is sympathetic and accepts that premise, but we are just moving much too slowly.