

*The Constitution*

There is another way of approaching this, and other countries have used it. We even used this method at the time Newfoundland came into confederation. I refer to the constituent convention or the constituent assembly. There are various ways of doing this. Some countries elect their constituent assemblies and some appoint them. Surely that is the way to bring the Constitution into being in a unified manner.

I used Newfoundland as one example. Let me give some others. Many of us do not realize that the United States has used the constituent assembly. India, Norway, New Zealand and Australia are all mentioned in this document put out so professionally by our library. All of those countries used that process.

There is another process which is used in separate states of the United States called the town hall meeting process. This involves putting an issue before the people of the state. We could do the same here in Canada. We could put the issue of patriation or the charter of rights before the communities of our country. They could discuss the issues and the areas with which they want to deal and what they would like printed in the Constitution. Each community or each town hall would elect two or three people to attend a provincial town hall conference where all these suggestions could be brought forward and hashed out in committees until they came to an agreement on what they wanted to present to a national assembly. Each provincial assembly would elect two or three people to attend that national assembly. In this way the people of this nation would feel they had a part in amending our Constitution or bringing it home. They would feel they had some input and this would be a unifying process. Perhaps they would even be able to accept some things that under this process today may not be acceptable to some regions.

**Some hon. Members:** Hear, hear!

**Mr. Schellenberger:** During those conventions minority groups could present their opinions. At the same time the provinces through their first ministers could be discussing the issues. We could meld the two results and come up with an acceptable process, an acceptable amending formula, and an acceptable charter of rights for this country of Canada.

**Some hon. Members:** Hear, hear!

**Mr. Schellenberger:** I do not have much time left, but I want to spend some of it talking about our aboriginal people.

● (2010)

We had before us a process which, I believe, caught a group of people unawares and not knowing exactly how they wanted to entrench their important rights in this Constitution. Upon taking a second look and upon seeing the amendment put forward by the New Democratic Party, which was supposed to solve all their problems, native groups feel they have been deceived by the process.

I would like to take members of Parliament through a little history of how aboriginal people have come today to the point where they feel that their rights have to be entrenched in the

Constitution for protection. Up until the 1960s they did not even have the right to vote. When this Prime Minister was elected, he said there were no such things as aboriginal rights, and the minister at the time, the present Minister of Justice (Mr. Chrétien), brought forward a white paper which said that the aboriginal people, or native people of this land, should be assimilated. Of course, they objected to that. The strength of that objection came in a court case, the Nishga court case. The judges ruled three for and three against, but the fact was that there was a ruling recognizing the term "aboriginal claim".

So the government had to accept that there was such a thing as an aboriginal interest. What did the government do? It decided to fund the Indians through political organizations in order to deal with the term "aboriginal interest".

Then there was the first modern land claim. When the government of Quebec wanted to build a power dam, aboriginal interests had to be dealt with. The matter went to the court, and the court ruled in favour of proceeding with the power dam. The first modern proceedings on a land claim extinguished aboriginal rights, and anyone who has sat in this House in the last number of weeks realizes just how far that land claim went because it has not been recognized by this government. It is no wonder that the native people feel they have to have their rights entrenched in the Constitution.

The process continued. Amendments had to be made in the committee to deal with aboriginal interests. I believe hon. members and native groups of this country sat down and made an honest attempt to put into the Constitution words which would protect aboriginal interests, but because of the time limits and the legal language in which these amendments had to be written into this Constitution in the couple of hours available, I would like to tell hon. members exactly what is in them and what are some of the concerns I have which I know are shared by the native people of this land.

The first concern is with respect to why clause 25 is written in the negative. Clause 27 dealing with multicultural heritage is worded positively as follows:

This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage—

The wording with respect to aboriginal people is in the negative. Its provision reads in part:

The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty—

Subclause (a) says that this includes the Royal Proclamation. I want hon. members to know what the Royal Proclamation says. The Royal Proclamation dates back to 1763. It set up the colonial governments of Quebec, East and West Florida and the Islands of Grenada, St. Vincent and Tobago. However, the important statement in the Royal Proclamation is the following:

—possession of such parts of our Dominion and territories as, not having been ceded to or purchased by us, are reserved to them or any of them as their hunting grounds—

We all realize that we do not have to have a deed to land to hunt on it. If I were an aboriginal person wanting ownership of land, I would be very concerned about my rights as written in