

Indian Act

Mr. Keith Penner (Cochrane-Superior): Mr. Speaker, if the Hon. Member for Winnipeg North (Mr. Orlikow) were not such an experienced and sensitive Member, I would not take the time to indicate once again why his arguments on this particular issue are as wrong as wrong can possibly be. All he need do is acquaint himself with the Constitution which is now the law of the country. As my hon. friend, the Member for Notre-Dame-de-Grâce-Lachine East (Mr. Allmand) correctly pointed out, Section 25 of the Charter of Rights and Freedoms says that aboriginal rights and freedoms are not affected by the Charter. My hon. friend from Cowichan-Malahat-The Islands wants to make a Constitutional change. The Minister is quite correct in saying that we should reject that. He wants the contents of our Constitution to be applied to Bill C-31. That is absolutely wrong.

Section 25 of the Charter of Rights and Freedoms says:

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

Mr. Orlikow: What are those rights?

Mr. Penner: What are those aboriginal rights? Among them is the basic right to determine the membership of your First Nation. That right does not belong to the Parliament of Canada. It belongs to the Indian people.

Some Hon. Members: Hear, hear!

Mr. Penner: That is what my friend from Notre-Dame-de-Grâce-Lachine East was trying to get across and he did it very well.

Mr. Deputy Speaker: Order, please.

Mr. Orlikow: Could I ask—

Mr. Penner: The Hon. Member failed to listen and came up with the spurious argument that this Charter ought to apply to everybody.

Mr. Deputy Speaker: Order, please.

Mr. Penner: I tell him now that he is wrong and he is wrong—

Mr. Deputy Speaker: Order, please!

Mr. Penner: —and he is wrong and he should understand that he is wrong.

Mr. Orlikow: I wonder if I could ask the—

Mr. Deputy Speaker: The Hon. Member for Winnipeg North (Mr. Orlikow) on a point of order, and he has already spoken on debate.

Mr. Orlikow: I am wondering, Mr. Speaker, if the Hon. Member would permit me to ask him a question.

Some Hon. Members: No.

Mr. Deputy Speaker: There is no provision for questions and comments. The only way in which the Hon. Member for Winnipeg North can speak again is by getting unanimous consent of the House.

Mr. Crombie: Back to C-31, folks.

Mr. Deputy Speaker: The Hon. Member for Thunder Bay-Nipigon (Mr. Epp) on debate.

Mr. Ernie Epp (Thunder Bay-Nipigon): Mr. Speaker, I am grateful not to have to get involved in this particular tempest. The measure that is before us proposes that all by-laws and regulations made under the authority of this Act are subject to the Canadian Charter of Rights and Freedoms. The Minister has spoken carefully in objection to this suggesting that the legislation of the land is subject to the Charter of Rights and that it is both unnecessary and paternalistic to propose the addition of this section to the legislation.

In contention of that position I would suggest, with all due respect to the Minister and the committee that has worked very hard on this Bill and made much progress on it, that the question which faces us here is not so much the legislation itself as lists and by-laws under the Act. There is reason to put this forward. I would take a moment to read from the committee which debated this at length and heard from witnesses. I read specifically from the testimony of Ms. Beth Symes, legal counsel to Indian Rights for Indian Women. On this very question she says:

We have heard, from various opinions, that, in fact, the band membership rules, codes, applications etc., would be subject to the Charter. As that is still an open question and the determination as to how far down the structure the term "government" goes, is still very much an open question—

She offers the opinion that this will be an open question for the next 10 to 25 years in constitutional law in Canada. She concludes:

I think it only prudent to ensure that the rights set out in the Charter be protected. The membership codes and the residency rules should be specifically required to conform to the minimum requirements enunciated in the Charter. Not to do so may prove to be extremely expensive, say, 10 years down the road. I say it should be in and it should be in expressly.

That is a good reason for supporting the motion which my colleague and I have put forward this afternoon.

● (1620)

Mr. Deputy Speaker: Is the House ready for the question?

Some Hon. Members: Question.

Mr. Deputy Speaker: The question is on Motion No. 37. Is it the pleasure of the House to adopt the motion?

Some Hon. Members: Agreed.

Some Hon. Members: No.

Mr. Deputy Speaker: All those in favour please say yea.

Some Hon. Members: Yea.

Mr. Deputy Speaker: All those opposed please say nay.