

*The Constitution*

ordinary legislation. That means that when a treaty comes into conflict with an ordinary provincial or federal law, the constitutional provision and what is contained in the treaty will prevail. That is extremely important because our Indian people have gone to court time and time again in the past when their treaties came into conflict with provincial hunting and fishing laws, mining laws, oil and gas laws as well as federal laws, and the judges have always ruled that the law in question takes precedence over the treaty. This was, by the way, contrary to the experience in the United States. With rights under treaties recognized and guaranteed in the Constitution, they will now take precedence over ordinary legislation.

While Sections 25, 33 and 35 in this proposal represent a great achievement, in my opinion, for the aboriginal peoples of this country, they are not all that is required. In my own private member's bill, Bill C-212, I have presented several proposals for constitutional protection of Inuit, Indian and aboriginal rights.

One matter that is still left undone—this is not included but I think it should be—is an amending provision whereby we cannot remove these rights we are now putting in without the agreement of our Inuit, Indian and native people. That is very important. We are taking a big step. All political parties on the committee were in agreement with entrenching these rights, and it would be a sad day if, five or ten years from now, with a different composition in this House and with a different composition in provincial legislatures—although they are somewhat similar in provincial legislatures right now—the federal government got together with six provinces and removed those rights without the agreement of our aboriginal peoples.

I understand the national aboriginal associations are now formulating an amendment which would require that these rights could not be affected or removed without the agreement of the aboriginal peoples of Canada. I hope all parties, including the government, will be able to accept that amendment.

Next I want to deal with the language rights provisions in the Constitution. As an anglophone Quebecer, these are of special concern to me and my constituents. Section 133 of the BNA Act provides only minimal protection for language rights. It provides that Canadians can use English or French in the Parliament or courts of Canada, and in the legislature and courts of Quebec. That is all. Many of us believe that Section 93, which specifically protects minority religious education, implicitly protects minority language rights, but that has not yet been decided by the courts and remains unclear. I might say there is a case now before the courts in Quebec brought by the Quebec home and school association against the provisions of Bill 101 on that very issue, but it is not yet decided.

● (1540)

Consequently, with minimal protection for language rights in our present Constitution there is a strong need for the much broader protection the charter gives us. In addition to retaining Sections 133 and 93 of the BNA Act of 1867 and the provisions of the Manitoba Act of 1870, the charter also

entrenches the main provisions of the federal Official Languages Act and all the provisions of the New Brunswick Official Languages Act.

Some people may say that since we have a federal Official Languages Act and one in New Brunswick, why bother to entrench these rights. Well, Mr. Speaker, I repeat we must entrench them because we do not know what government will come along in four, five or ten years and what the composition of this Parliament might be. We might get a group of people who are hostile to language rights and who could easily amend the Official Languages Act, or New Brunswick could easily amend theirs. However, by entrenching this provision no majority of this House could take away those rights, and that is why it is important.

The charter also provides for minority language education in all provinces, and some of our citizens do not realize that. That provision, section 23, applies to all provinces, including Ontario, and provides that where the number of children is sufficient to warrant such schools, then minority language education shall be given to all citizens whose mother tongue is English or French. Those whose mother tongue is not English or French but were educated in English or French schools can have their children educated in the minority language school in their province. In other words, a person in Quebec whose mother tongue is English can have his children educated in an English school; if his mother tongue is Italian but he went to an English school, he can have his child educated in an English school; if his mother tongue was German and he never had a chance to go to a school in Quebec but he has an older child who went to an English school in Quebec, he can have all his children educated in that English school.

Now, this guarantee in section 23 is a minimum guarantee. It does not prevent the province from giving additional language rights in education to their citizens or landed immigrants. They can if they wish go beyond this minimum guarantee. I also want to point out that while this is a good provision, it does not provide full freedom of choice. For example, it does not guarantee the right of the French-speaking majority in Quebec to attend English schools.

The reason for that, while we are all sympathetic to that proposition, is that we feel that the French-speaking people of Quebec have the majority in the legislature, and if they wish to give themselves the right to attend English schools, they have the political power to do so. This charter guarantees rights to minority groups, not necessarily to majorities.

Some people of my province have asked whether this charter will invalidate parts of Bill 101. Yes, Mr. Speaker, I am pleased to say it will, and a panel of lawyers advising the Quebec government said just last week that this charter will invalidate sections in over 100 Quebec bills. Let us make clear, however, that this charter will also invalidate many discriminatory sections of provincial and federal laws across this country. In addition, its provisions, while they might knock down some sections of Bill 101, will guarantee rights to the French-speaking minority groups in the other provinces.