

It being 6 p.m., the House will now proceed to the consideration of Private Members' Business as listed on today's Order Paper.

PRIVATE MEMBERS' BUSINESS

[English]

CONSTITUTION ACT, 1982

Hon. Warren Allmand (Notre-Dame-de-Grâce) moved:

That, in the opinion of this House, the government should initiate an amendment to the Constitution Act, 1982 to delete section 33 (the notwithstanding clause).

He said: Mr. Speaker, I would appreciate if we could get a little order in the House as it is difficult to speak over the noise.

The Deputy Speaker: Colleagues, your colleague wants to have some order and the Chair on his behalf would request order so that he might present his motion.

Mr. Allmand: Mr. Speaker, the motion which I have presented asks that the government initiate an amendment to the Constitution Act of 1982 to delete section 33, the notwithstanding clause.

What are we talking about? In 1982 the Parliament of Canada and all the parliaments of the provinces passed the Constitution Act of 1982 which included for the first time in our history an entrenched Charter of Rights and Freedoms. These were such rights as the fundamental freedoms; the freedom of conscience and religion, the freedom of thought, the freedom of belief, opinion and expression, freedom of the press, freedom of peaceful assembly, freedom of association, our democratic rights—that is, the right to take part in elections, the right to run for office, mobility rights, legal rights, very important equality rights. That section said that all Canadians were equal irrespective of their sex, their age, their colour, their religion, their race, their national origin.

In 1982 we entrenched those rights, which meant that those rights could not be taken away by ordinary legislation. Furthermore, those rights prevailed over all other legislation since they were in the Constitution.

If a conflict arose between any other law in Canada and what was in the Charter of Rights and Freedoms, then the Charter of Rights and Freedoms prevailed. The only way those rights could be taken away is by an amendment to the Constitution, which is a very complex thing, as we all know as a result of the Charlottetown accord experience.

We took steps to give Canadians these entrenched rights and then at the same time we put in the very same act article 33, the notwithstanding clause, which allowed Parliament and all the legislatures of Canada to take away those very rights by the use of what is called a notwithstanding clause. This means that if a

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government introduced a bill which said: "Notwithstanding the charter of rights, we legislate as follows", then it would legislate away the right of freedom of the press or freedom of religion or freedom of equality, and so on.

• (1805)

When Prime Minister Trudeau first introduced the Charter of Rights and Freedoms in 1981, the notwithstanding clause was not in it. At that point the Constitution of 1982 was clear, pure, simple and direct without any shenanigans or skulduggery whatsoever.

However, in the negotiations with the provinces, between early 1981 and passage in late 1981, pressure was brought to bear and the notwithstanding clause was accepted.

I always opposed the notwithstanding clause. As a matter of fact I voted for the Constitution Act of 1981 when it was first presented on the first round by Mr. Trudeau as a member of his party and supported it strongly. However, at the end of the process, when we voted again at the end of the year, I was obliged to oppose the package, not because I did not support many things in it but I could not accept the notwithstanding clause and there were a few other clauses that were added that I could not accept.

Why am I so opposed to the notwithstanding clause? I just referred to these rights. These are not marginal rights that we are talking about. These are not supplementary rights. We are talking about basic, universal rights, rights that are recognized around the world. We are talking about rights that are recognized in the Universal Declaration of Human Rights of the United Nations. We are not talking about rights to own property or to build a house on a certain street. We are talking about things like freedom of religion, freedom of conscience, equality between races, equality between people of different religious backgrounds and so on. We are talking about things that are very basic.

As far as I am concerned, rights are rights and they should not be subject to legislative suspension for any reason, not these kinds of rights. They cannot be legislated away.

Some people would argue that no rights are unlimited. That is correct. For example, let us take freedom of speech. The principle of freedom of speech is, without a doubt, unchallengeable, but we cannot abuse it. We have accepted for a long time the crimes of libel and slander which are an abuse of the freedom of speech. We have now in our criminal law provisions against hate literature by which one cannot attack another ethnic or religious group in a demeaning way. It can add up to hate literature. That is an abuse of the freedom of speech.

The Constitution Act of 1982 and the Charter of Rights and Freedoms provide for that in section 1. The notwithstanding clause is not necessary. Section 1 of the charter states: "that the Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits