

The second important reason for having an entrenched bill of rights is that an entrenched bill of rights cannot be amended by the ordinary legislative process as other bills of rights can. In other words, it takes more than an ordinary bill with three readings in the House of Commons and the Senate or provincial legislatures to change rights that are entrenched. In order to remove these rights which will be entrenched in the Constitution we would require an amendment to the Constitution in accordance with the amending formula, which means we would need the agreement of the federal Parliament plus six of the provincial legislatures, including Quebec, Ontario, two western provinces and two Atlantic provinces.

● (1530)

Finally, we need an entrenched bill of rights because, despite our good record in Canada, there have been many bad examples of violation of human rights by individuals, by groups and even by governments. I cite again the example of the Japanese Canadians and their internment during the Second World War; the removal of French-language education rights in Ontario and Manitoba earlier in this century; the recent removal by Bills 101 and 22 of English-speaking rights in Quebec; the attempt by the Alberta government during the 1930s to control the press; and attempts by Premier Duplessis in Quebec to control Jehovah's Witnesses and minority political parties. These are examples of which we are not proud but which could never have happened had we had the entrenched bill of rights to which I referred.

Second, I want to deal with the aboriginal rights sections in the constitutional proposal and the significance of those sections. They are Sections 25, 33, 35 and parts of the schedule. Of all these sections, Section 33 is the most important. The provisions of Section 33 represent the first time in Canadian history that any government has fully recognized and affirmed aboriginal rights. This recognition and affirmation is not being made in a mere policy statement, or in an ordinary piece of legislation; it is being made in the Constitution where, according to Section 58 which I just read, these rights will prevail over all other legislation, federal and provincial. This recognition and affirmation of aboriginal rights will prevail over the Indian Act, over mining acts, over hunting and fishing acts, over expropriation acts, over the Migratory Birds Convention Act and over the Northwest Territories Act. As it says in the section, any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force and effect.

Some people have asked what are aboriginal rights. Most of the 19 or 20 aboriginal groups which appeared before the Constitution committee did not want a detailed definition of aboriginal rights in the Constitution, although they wanted them protected, because they felt a detailed definition might limit and restrict them further down the road. They did not know what might happen further down the road.

I can tell the House that in a general way aboriginal rights are all those rights which our aboriginal peoples held prior to the arrival of the Europeans and which they never willingly

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gave up. These are the rights to those social structures which they had before the arrival of the Europeans; their laws, their customs, their forms of government, their economies, their languages, their lands and their waters, not just their rights to hunt, fish and gather. While those are important, aboriginal rights are not restricted to those things, and not just surface rights to certain lands. Again, that is important; aboriginal rights are not restricted to those things.

With the inclusion of Section 33 in the Constitution, governments will now have to negotiate with the various Indian bands and Inuit communities regarding the specific content of their aboriginal rights in different parts of the country. The Nishga will have the right to force the British Columbia government and the Canadian government to sit down and consider their claims. The Inuit in the northeast and eastern Arctic, the Micmacs in New Brunswick in respect of their fishing rights in the rivers and off the coast, and the Dene in the Northwest Territories will have that right.

In my opinion, if a provincial or federal government refuses to sit down and discuss these matters with an aboriginal group, or refuses to negotiate, that group could go to court and force them to negotiate under this section in the Constitution. If they did negotiate and there was no agreement reached between the aboriginal group and the governments concerned, again the aboriginal group would have the right to go to court, present their evidence and, by virtue of this Section 33, get recognition of their aboriginal rights in specific places throughout the country.

Some of our Indian groups in this country have doubted this process because of their experience with our courts in the past. They have pointed to the many judgments of courts to which they went in good faith but lost their cases when the courts turned them down. Consequently they have some doubts about a constitutional provision whereby they may have to go to court to have their rights decided by judges, even though they be judges of the Supreme Court of Canada.

Let me say to them that there will be a significant difference now. In the past many of the precedents the judges had to use in deciding cases were precedents decided in the earlier part of this century between provincial or federal governments and companies and in which the Indians and Inuit themselves were not at all involved. They did not have the chance to argue their cases and the courts, of course, must decide in accordance with the law and cannot make judgments on the basis of what they perceive to be justice.

With this section in the Constitution I assure our Indian and Inuit people that things will no longer be the same. Every court will have to take notice of that Section 33 and could never render the types of judgments rendered in the past. In judging every case they will have to take recognition of the fact that the Constitution recognizes and affirms the aboriginal and treaty rights of the aboriginal peoples of Canada.

I have referred so far in this section only to aboriginal rights. It also states that the treaty rights of our aboriginal peoples are recognized and affirmed. This is also important because it puts the matters in those treaties over and above all