

In 1981 the Human Rights Committee of the United Nations deemed Canada to be in breach of Article XXVII of the covenant.

The minister then went on to discuss how this question looks from an Indian point of view. He said:

Indian people have consistently objected to the federal government intruding into the governing of their communities and nations. What greater intrusion can there be than the arrogance of assuming the right to tell another people of another culture and tradition who is and who is not a member of their community and who can and cannot live on their own lands?

The resolution to the two historic wrongs, referred to by the minister, is based on three principles which form the very heart of this bill: one, removal of discrimination; two, band control of membership; and three, as a result of those two the third point, restoration of rights.

Dealing with the first point, the bill eliminates all forms of sexual discrimination in the act. No longer will a woman's or a child's entitlement to be registered as an Indian be determined by the status of their husband or their father. All persons will be treated equally. Implementation of this principle will bring the Indian Act into accord with section 15 of the Charter of Rights and Freedoms which recently came into effect.

The second principle, band control of membership, ensures that for the first time since Confederation Indian First Nations will be recognized by the federal government as being able to assume meaningful control over the determination of their band membership.

● (2030)

The third basic principle incorporated in the bill is restoration of rights. This bill ensures that all persons who lost rights directly as a result of sexual discrimination in the Indian Act will be entitled to have their rights restored.

To those uninitiated in the intricacies of Indian life in Canada, these three principles may seem simple and easy to implement. Let me assure you, this is not the case. Most observers will readily agree that all three principles are valid and, taken by themselves, appear to be quite reasonable, but there is, unfortunately, the potential for deep-rooted and serious conflict among these principles.

Is it possible to eliminate discrimination and restore rights, yet still respect the right of bands to control membership? If membership is returned as a matter of right to a large number of people, has the power of the band to control membership been diluted? On the other hand, is it reasonable to give bands membership powers which might prevent some people from regaining rights lost as a result of discrimination?

These were the kinds of issues faced by the minister in drafting the bill. In my view, the solution he has devised constitutes a careful and a fair balance among the three basic principles I have outlined. For one of the basic principles to be predominant could only be done at the expense of the others. This bill avoids such extremes.

Having said that, no one gets 100 per cent of what they sought, but each group gets something important. There is no other fair path, I suggest, that we can follow.

I should like to take a moment to underline the key elements of this bill. First, the bill removes sexual discrimination from the Indian Act for the future. Under the present Indian Act, Indian status and band membership generally depends on one's husband or father. The most notorious form of discrimination is found in section 12(1)(b), to which I referred, which provides that an Indian woman marrying a non-Indian loses all her rights; conversely, her brother loses nothing by marrying a non-Indian, indeed, her sister-in-law becomes an Indian, as do all her brother's children. Bill C-31 abolishes this blatant inequity. In the future Indian men and women will have exactly the same rights. No one will gain or lose their rights as Indians through marriage. Children of mixed Indian/non-Indian marriages will inherit Indian status in the same way, whether their Indian parent is their mother or their father.

Other provisions relating to inheritance, desertion and the definition of a child will eliminate unequal treatment based on sex or whether a person was born in or out of wedlock. For the future, the Indian Act will be stripped of what has been termed "sexist orientation."

Second, I shall describe how bands may assume, once again, control of their own membership. Before the Europeans came to this continent and long afterwards, Indians themselves defined who their people were. Most Indians assert that they never gave up this central aspect of nationhood. The fact remains, however, that over 100 years ago, in 1876, the Government of Canada passed an Indian Act which made the definition of "bands" a matter of federal law. That regime has persisted with little change to this very day. Bill C-31 will change all this. For the first time in over a century the federal government will recognize the right of bands to determine who are their members.

The transfer involves meeting only three criteria: (a) the majority of band electors must consent to assuming control and to specific membership rules; (b) appropriate notice must be given before band electors are asked to make these decisions; and (c) the acquired rights of existing band members and those to be restored to band membership must be respected.

If these conditions are met, the minister will be required to shift control of the band list to the band itself.

Third, there will be a program to restore rights lost unfairly through sexual discrimination or otherwise. Most importantly in this regard, the 16,000 women who lost their rights as a result of marrying a non-Indian, will regain both Indian status and band membership.

Three other groups totalling about 2,000 people will also regain status and band membership. Included in this group of 2,000 there are: children who had band membership and lost it when their mothers married non-Indians; illegitimate children of female Indians who lost band membership when non-Indian paternity was determined; and children whose mothers and