

Official Languages Act

The issue of primacy for the Act is one that has come to the attention of this House on a number of occasions, either directly in the debates on this Bill and very similar ones tabled over the years by the Member for Ottawa—Vanier (Mr. Gauthier), or indirectly through the recommendations of the Commissioner of Official Languages in his reports to Parliament and through the testimony before, and the recommendations of the Special Joint Committee on Official Languages and its permanent successor. All of these deliberations have led me to reflect on the advisability of adopting at the present time the particular instrument by which the Hon. Member for Ottawa—Vanier proposes to achieve primacy for official languages rights and duties.

Let me state immediately that I am the first to recognize the fundamental nature of our language guarantees. As has been stated many times in these and other debates, Sections 16 to 20 of the Canadian Charter of Rights and Freedoms protect our basic rights and values as they relate to the status and use of the English and French languages in the institutions of the Parliament and Government of Canada. By virtue of Section 52 of the Constitution Act, 1982, any law that is inconsistent with those sections is, to the extent of the inconsistency, of no force or effect. In other words, these official languages provisions prevail in the face of conflict.

The Supreme Court of Canada put it eloquently last June in its opinion on the Manitoba Language Rights Reference. The Court stated:

The importance of language rights is grounded in the essential role that language plays in human existence, development and dignity. It is through language that we are able to form concepts; to structure and order the world around us. Language bridges the gap between isolation and community, allowing humans to delineate the rights and duties they hold in respect of one another, and thus to live in society.

The Constitution of a country is a statement of the will of the people to be governed in accordance with certain principles held as fundamental and certain prescriptions restrictive of the powers of the legislature and government. It is, as s. 52 of the Constitution Act, 1982 declares, the "supreme law" of the nation, unalterable by the normal legislative process and unsuffering of laws inconsistent with it.

There is another essential aspect to the constitutional protection accorded to our language guarantees. The official languages provisions of the Charter are not subject to the "override" provisions of Section 33. By that I mean that Parliament cannot derogate from the application of these guarantees by expressly declaring in an Act that the Act or a provision thereof shall operate "notwithstanding" a provision included in Sections 16 to 20 of the Charter.

In so far as the Official Languages Act is, or should be, a reflection of the Charter guarantees, it would appear to me that Parliament cannot simply invoke a "notwithstanding" clause to overcome the official languages obligation on federal institutions that are set out in that Act. However, the Member for Ottawa—Vanier has proposed exactly that formula in Bill C-203. His primacy clause is worded as follows:

11.1(1) Every law of Canada, unless it is expressly declared by an Act of Parliament to operate notwithstanding the Official Languages Act, shall be so

construed and applied as not to abrogate, abridge or infringe the rule set forth in Section 2.

Section 2 is, of course, practically identical in terms to Section 16 of the Charter, which guarantees that:

English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and Government of Canada.

The primacy clause in Bill C-203 would allow for the overriding of this guarantee. This is because that primacy clause was drafted along the lines of a similar clause in the Canadian Bill of Rights of 1960, and its wording has appeared unchanged in every Bill that the Hon. Member for Ottawa—Vanier has presented on the primacy issue since 1979.

But what may have been an eminently reasonable means of attempting to ensure primacy in 1960 or in 1979 may not be appropriate in 1986. If primacy may be accorded to the substantive provisions of the Official Languages Act, it may be, I would be inclined to believe, because the substantive obligations described therein should stand on the same footing as the Charter rights from which those obligations flow.

In any event, the Official Languages Act is soon to be the subject of amendments that will be proposed to ensure its conformity with the Constitution and, as the Prime Minister (Mr. Mulroney) put it very recently, to strengthen and enhance "that vital piece of legislation". Thus, it would seem to me that we would be putting the cart before the horse in according primacy to the Act of 1969. I say with great respect to the Hon. Member who has proposed this legislation that the Bill before us today does very little to correct the deficiencies that have been noted in the Act as it stands. Instead it proposes to deal with a complex issue on a piecemeal basis, outside a comprehensive framework, using an outmoded and perhaps unconstitutional legislative formula. In view of this fact alone, I believe it would be unwise for us to proceed with this Bill or the amendments. However, Bill C-203 also contains consequential amendments to the Railway Act—

[Translation]

Mr. Deputy Speaker: Order! The Hon. Member for Montréal—Sainte-Marie (Mr. Malépart) on a point of order.

Mr. Malépart: Mr. Speaker, I rise on a point of order. There is one thing I would like to find out and it would be useful for every Hon. Member to know, because what we are discussing now is indeed a very important matter. Is it true that if the Hon. Member keeps on talking it will result in his talking out the bill, which means that he is opposed to the status of the French language being improved, and that hypocrisy prevails among Tory members?

Mr. Deputy Speaker: Order! I am sure the Hon. Member for Montreal—Sainte-Marie (Mr. Malépart) knows what Standing Order 42(1) says about that.

[English]

Mr. Horner: Bill C-203 also contains consequential amendments to the Railway Act, the Winding Up Act and the