

Indian Act

take it that, given the procedural change, we are now dealing with Motion Nos. 14A, 15, 16, 17, 18, 20, 21, 24, and 32A. As opposed to the grouping, we are not dealing with Motions Nos. 13 or 14 in order to accommodate a procedural necessity.

Mr. Deputy Speaker: That is right.

Mr. Crombie: Thank you very much. I have some comments specifically with respect to all or most of these motions. I would first like to indicate that, as the Member for Cochrane-Superior (Mr. Penner) indicated, there are many aspects that are central to this Bill, and this is one of them. The voting rights regarding band membership rules and eligibility on the assumption of band membership control is very important because it goes a long way toward the principle of band control of band membership.

All of these motions before us are an attempt, from various perspectives, to try to fix up the situation. The situation is interesting because in many ways the current situation has evolved according to certain specific needs. Under the current provisions of the Bill, eligibility to vote varies from band to band. Some bands use the principle of the definition of "ordinarily resident" in the Indian Act. Others use a customary system and allow any band member to vote whether or not he or she resides on the reserve.

The short point I would like to make is to recognize that there is a variety which has arisen across the country over many years in response to the peculiarities and particularities of the particular band. My amendment seeks to ensure that that principle remains. There are motions with which I will deal in a moment that attempt to make it uniform across the country. While such uniformity may provide more clarity and understanding, I suggest that it is not the proper way to proceed. It would offend the requirement for a varied eligibility requirement for voting which the Indian communities have already evolved themselves.

● (1250)

Other motions which have been grouped for debate attempt to impose certain rules on certain bands. It is an attempt to improve the eligibility of those who may not be within the ambit of an Indian community. The Government rejects that as well.

The essence of the Government motion is to put into law and theory the practice which already exists. That is why Motion No. 14A would make it easier for band councils, through passage of a bylaw, to extend voting rights to all people over 18 if they felt it was appropriate for their particular situation. Nothing requires it; it simply states that a band has a right to move in that direction if it wishes to do so. If it does not wish to move in that direction, it need not do so.

That is why Motion No. 14A, standing as the Royal Recommendation, leaves the matter to be decided by the bands. That is where it should be, in the Government's view.

I will comment on Motions No. 13 and 14 later. With respect to Motion No. 15, in the name of the Hon. Member for

Athabasca (Mr. Shields), it was well argued by the Hon. Member at committee. However, this motion would remove protection of acquired rights from the Bill. That is a principle which has not received much debate in the House, but it was central to the Government's argument.

Since it was not challenged significantly, we did not deal with it to a large extent in the committee. Certainly, if we accepted Motion 15 it would, as I indicated, remove from the Bill the protection of acquired rights. Band membership rules would not be constrained to respect the rights of people as they existed immediately prior to a band's rules being established.

It is the Government's view that protection of acquired rights is absolutely essential to ensure that membership rules are applied fairly. I think it is fair for me to say that the matter of protection of acquired rights is a matter of common justice. Without this provision, it would be possible for bands to deny membership as a result of action or events that took place years before the rules were established. For example, a band could make rules that all band members who married non-Indians could no longer be band members. This would clearly be unfair, as people had no knowledge of the rules when they decided to marry.

Also, without this provision, bands could conceivably frustrate the principle of restoration simply by saying that any person who had previously lost status as a result of Section 12(1)(b) was not eligible for band membership. Again, in the Government's view, that would be unfair. Therefore, I am urging Members of the House not to support Motion No. 15.

With respect to Motion No. 16, again moved by the Hon. Member for Athabasca (Mr. Shields), this would establish an unnecessary and cumbersome procedure for dealing with possible disputes between the Minister and the bands regarding the acceptance of band membership rules. This is especially true because the Minister does not have the power to reject memberships rules due to their content. The only grounds for rejection would be improper consent from the band or the community, inappropriate notice before the band vote, or lack of protection of acquired rights. Those are the only three ways in which the Minister could intervene.

It is difficult to see why disputes on these points would need to be resolved in the courts. During the first two years after passage of Bill C-31, it is essentially meaningless to freeze the band list during a dispute since Subsection 11(1) states that the only groups that can be added are: first, people already on the list; second, members of new bands established by the Governor in Council; third, persons restored to band membership under Bill C-31, even if that band takes over its own membership; finally, children born after April 17, both of whose parents are members of the same band.

There is no point, in our view, in excluding these people from band lists since, presumably, they would be entitled under any band rules.

The standing committee already dealt with the problem of Subsection 11(2) coming into effect inadvertently during a dispute over acceptance of a band's membership rules.