

Indian Act

may be relevant here. An amendment proposed in Bill C-18 may make this provision inoperative, that is, an amendment to the seizure provisions in Section 443 of the Criminal Code. I want to note specifically the concerns with respect to this proposed Section 103 in a number of respects, and I am relying upon the Supreme Court of Canada's decision in *Hunter and Southam* that established the standards which were then used to amend other federal legislation in the search and seizure area.

First, there is no requirement whatever in this provision to obtain a warrant. As it stands now, as long as there are reasonable grounds, a police officer can go on the property of the individual in question and seize goods without any warrant at all. Under the provisions of the Charter, such a search and seizure would, in my view, be clearly struck down as being unreasonable. There is no warrant requirement at all. The only circumstances in which a warrant may not be required are circumstances in which there might be a danger to human life, society or loss or destruction of evidence. In those special circumstances, a warrant can be dispensed with. This particular provision allows for a seizure in all circumstances whenever there is a suspicion of an offence.

What is a typical amendment made to other legislation? First, let us take one example from Bill C-27, the amendment of the seizure provisions of the Customs Act. That amendment provides that there must be a warrant issued where there are reasonable grounds. The only circumstances in which a warrant can be dispensed with are clearly set out. Those are the circumstances to which I referred earlier.

Second, the section requires that the warrant be executed at a reasonable time. There is no provision whatever in Section 103 as to when the warrant might be executed. Once again, that provision is unreasonable in that respect.

I would urge the Minister to reconsider this section. Certainly I think all sides of the House agree that there has to be a response, and a speedy response, to the Manitoba court decision which could lead to very serious problems were this Parliament not to move forward quickly. I ask that the Minister consider standing this provision in order that perhaps there might be an amendment brought forward similar to the amendments brought forward to other legislation dealing with search and seizure provisions to deal with those two basic concerns. First, there should be a warrant requirement for a seizure, unless the circumstances are such that a warrant is not appropriate, and that is again contained in the terms set out in Bill C-27. Second, the warrant should be executed at a reasonable time, not at any time.

I would appeal to the Minister to stand this particular clause in order to review the provisions that have been brought in with respect to other search and seizure provisions in other legislation flowing from the decision of the Supreme Court of Canada in *Hunter and Southam*. If that is not done, then we may be responding, ironically enough, to one Charter challenge by including a provision that is wide open to challenge as well, and the Minister may just have to come back before the House to make the amendments which, I submit, we should be

making now to ensure that Section 8 of the Charter is respected in this Bill.

Mr. Girve Fretz (Parliamentary Secretary to Minister of Indian Affairs and Northern Development): Mr. Speaker, the Hon. Member raises an important issue. However, the cases mentioned relate to search. Section 103(4) already requires a warrant to conduct such a search. I will read Section 103(4):

(4) A justice who is satisfied by information upon oath that there is reasonable ground to believe that there are upon a reserve or in any building, receptacle or place any goods or chattels by means of or in relation to which an offence against any of the sections mentioned in subsection (1) has been, is being or is about to be committed, may at any time issue a warrant under his hand authorizing a person named therein or a peace officer at any time to search the reserve, building, receptacle or place for any such goods or chattels.

Therefore, there is no need to deal with this matter in Motion 33A. There will be no problem under the Charter.

Mr. Deputy Speaker: Is there unanimous consent to allow the Minister to speak again?

Some Hon. Members: Agreed.

Mr. Crombie: Mr. Speaker, I knew that my friend, the Hon. Member for Erie (Mr. Fretz) was going to speak to the matter. I simply wanted to assure those who have raised the concern, and I appreciate their raising it, that I checked the matter to make sure it was consistent with our understanding of any challenge under the Charter, as I have with other parts of the legislation. I was assured that we had no difficulty with respect to the Charter in so far as our wisdom could take us in determining it.

Second, I understand the general argument which the Hon. Member has made, not only concerning this Bill but in other forms and on other occasions and other Bills. I did not want to have to move in the whole freight of that argument to deal with what is a decision that needs to be made now. That is why I took the route of saying, "This is what we need to do. Will it offend the Charter?" The answer was no.

I appreciate the Hon. Member's bringing the matter forward. I think the Hon. Member for Erie has supported the legal view that we have. In my own view, I think it is necessary not only that we not stand the item but that we proceed with it as fast as we can, given the fact that, according to the best wisdom possible, we are consistent with our obligations concerning the Charter.

Mr. Jim Manly (Cowichan-Malahat-The Islands): Mr. Speaker, I just want to make a few comments on this entire section. First, I welcome Motion No. 33 in the name of the Hon. Member for Athabasca (Mr. Shields). This recognizes more power on the part of band councils to enforce by-laws. I think any of us who have dealt with Indian bands are aware of the great frustrations that bands feel in having to make by-laws and then finding they have virtually no power to enforce them. This gives band councils the right to seek some kind of court action and provide for stiffer fines.

Again, I think we will all recognize that this is a partial measure. What we really need is for a broad recognition of the