

HANSARD BLUES

THIRD READING DEBATE

C-11, WESTBANK BILL

April 22, 2004

Mr. John Cummins (Delta—South Richmond, CPC): Mr. Speaker, before I begin my address there are a couple of comments that I would like to make in a preface to what I want to say. The first is that there is much in this agreement that I like. In fact I could quite easily have voted for the bill if the amendment that I had proposed, which unfortunately was not accepted by the Chair, had been accepted. That amendment simply would have removed the reference to inherent right from the agreement and any other impediments to application of the charter and the Canadian Human Rights Act. If that had been accomplished I would not have had difficulty in supporting the bill.

The second point that I would like to make very quickly is that this agreement is the first agreement under the government's policy of recognizing the inherent right to self-government. It is a policy that the government has maintained for probably close to 20 years. Certainly in 1993 it was part of its policy provisions. Yet that whole notion and the implications of it have never been debated in the House. That is the essence of what I would like to say today.

We all believe that aboriginal Canadians like other Canadians must be able to manage their own local government. This is a remarkable piece of legislation that is now before us. It is the result of a well intentioned effort to enlarge the capacity of Westbank First Nation to govern its own affairs.

However it has gone far beyond the usual model. It incorporates a concept which was turned down by Canadians in the referendum of Charlottetown Accord, that is the inherent right of self-government creating a third order of government.

The federal government describes the bill as the model for aboriginal self-government agreements across Canada. What it really creates is a quasi-federal enclave beyond the reaches of the charter of rights and Parliament.

A few weeks ago the Minister of Indian Affairs and Northern Development admitted a growing problem of protecting the rights of aboriginals living on reserves across the country. He noted that the protections given to aboriginal rights in section 25 of the charter were being used to shield abuse from challenge under

the Canadian Charter of Rights and Freedoms. His solution and apparently the government's solution was to look the other way.

The minister stated:

We may want to consider self-government instead. Some would argue that this is something for the community to resolve.

Senator Beaudoin, a learned scholar and expert on the Constitution and human rights disagreed. Senator Beaudoin's response to the minister got to the nub of the problem. He stated:

You say that it is up to the aboriginals to do this. I do not agree. It is our duty to do that. There are two orders of government in this country, the federal and the provincial. The aboriginal people have collective rights but the power to improve the situation is within the Parliament of Canada and I do not think that we should wait for the existence of a third order of government because the power is with the Senate and the House of Commons.

That is my starting point. This legislation will alter the Canadian Constitution and extinguish charter rights for about 8,000 Canadian citizens living at Westbank which includes about 500 aboriginals and 7,500 non-aboriginals.

Under Canada's Constitution there are two orders of government, the federal and the provincial. Any laws we enact must be compatible with the scheme established in the Constitution that all powers are divided between the federal and provincial legislatures. Secondly, aboriginal government must be clearly subject to the Charter of Rights and Freedoms and no impediment should be put in the way of a citizen's access to the charter whether they be aboriginal or non-aboriginal.

Do we really make things better by creating aboriginal governments as charter free zones where hundreds of thousands of aboriginal Canadians will have their access to their charter rights placed in doubt? Let me turn to the issue of the third order of government for a moment.

Part IV of the Canadian Constitution is entitled Distribution of Legislative Powers. It divides all legislative authority between the federal and provincial legislatures. Section 91 enumerates the federal powers in 28 sections. Section 24 is legislative powers and responsibilities with regard to Indians and lands reserved for Indians.

In addition to the 28 classes of federal power enumerated, it provides that the federal Parliament shall “make laws for the Peace, Order and Good Government of Canada”. This has been taken to mean that Parliament may legislate in regard to additional matters that have a national or interprovincial dimension.

The powers of legislatures of the provinces are enumerated in section 92. There are some 16 classes of provincial powers enumerated. It is stated, both in the concluding part of section 91 on federal powers and in section 92, that the province may legislate “generally in all matters of a merely local or private nature”.

Thus the list of legislative powers are exhausted between the federal and provincial legislatures.

That is not merely my position, but the position of justices of the Supreme Court of Canada such as Willard Estey and William McIntyre, former British Columbia judge, Michael Goldie, Senator Beaudoin, and even Alex Macdonald, the former NDP attorney-general of British Columbia.

There is a way to establish enhanced self-government that is compatible with our Constitution for those aboriginals who desire it. That is the model pioneered at Sechelt. Odd as it may seem, I believe my old nemesis, the Conservative government in 1986, got the Sechelt local government legislation right. It was right to refuse to base local government upon what the Liberal Party then and now call the “inherent right of self-government”.

Indeed, the PC Party position of last fall prior to the merger was right on the issue of Westbank. The PC position was that the Charter of Rights and Freedoms must apply to any local government, that it must be a delegated form of local government, as all local government is in Canada. And in keeping with our division of powers between the federal and provincial governments that no third order of government be created.

The Tories got it right and believe it or not, I am happy to acknowledge it. We must never lose sight of the constitutional framework bequeathed by the fathers of Confederation. We must also respect the actual nature of aboriginal communities and their needs. Are we merely empowering a few at the expense of many with this agreement and agreements such as this?

Aboriginal communities are seldom more than a few hundred people and all are almost always made up of a number of extended families as might be expected. The individuals in these communities are struggling. More than \$10 billion is

being spent on them by the federal government but these struggling individuals seldom, if ever, get the helping hand they need.

The dirty little secret that we all know but hesitate to say, is that much of the \$10 billion is eaten up by the chiefs and the councils and their hangers-on, lawyers and consultants. That the chief of a band of a few hundred souls should receive more money than the Prime Minister of Canada is reprehensible and particularly so when their community is wanting. More often than not the chief and his family control the council and its spending. This bill may well make that situation worse.

What individual Indians want and I believe need are the tools that the rest of us take for granted. This Parliament cannot guarantee good local government but we can and should give individual Indians the tools to hold their local government accountable. The Indians have spoken to me in the past weeks, and many have been Indian women, who believe that they have no way to challenge and hold their chief to account.

They believe the bill will make matters worse for them. These concerned individuals who have called me are no more interested in collective ownership than medieval peasants were before land reform in Europe a few short centuries ago. They cry out for a government that is transparent and accountable to them. Instead, we here in the House seem intent on throwing them to the wolves. As members of Parliament we are obliged to deal with three fundamental problems in the bill.

First, Westbank residents, both aboriginal and non-aboriginal will lose the protection of the Charter of Rights and Freedoms and the Canadian Human Rights Act. Second, the bill recognizes and establishes a third order of government based on the inherent right that is incompatible with Canada's constitutional framework. Third, the bill eliminates any accountability for the millions of federal tax dollars that the bill requires to be paid to the Westbank government annually.

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In addition, the bill does not establish mechanisms to ensure fairness, equity, openness and transparency at the local level, tools that are necessary to empower local residents.

Lastly, the bill will prohibit the 7,500 non-aboriginal Westbank residents from voting or otherwise participating in those aspects of Westbank government that will affect them.

The results of the recent referendum at Westbank suggests that many residents have concerns. I believe those Westbank members want a measure of self-government, but self-government that is subject to federal and provincial law. The alternative scares them, being subject to the rule of local band leaders implementing their own laws before their own tribunals. Opponents of the Westbank agreement say the agreement strips them of basic rights and protections.

Self-government must fit within our constitution so that the aboriginal people can rest assured that they retain their rights as Canadians and Canada's ongoing unity may be assured.

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