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**EVIDENCE**

## Thursday, March 22, 2007

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## Chair

**Mr. Colin Mayes**

# Standing Committee on Aboriginal Affairs and Northern Development

**Thursday, March 22, 2007**

● (1105)

[*English*]

**The Chair (Mr. Colin Mayes (Okanagan—Shuswap, CPC)):** I open this meeting of the Standing Committee on Aboriginal Affairs and Northern Development.

Committee members, you have the orders of the day before you. Appearing today will be the Honourable Jim Prentice, Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians.

Welcome, Minister.

We also have witnesses from the Department of Indian Affairs and Northern Development: Daniel Watson, senior assistant deputy minister, policy and strategic direction, and Daniel Ricard, director general, litigation management and resolution branch. We also have, from the Department of Justice, witnesses Douglas Kropp, senior counsel, resolution strategy unit, and Christine Aubin, legal counsel.

Welcome to our meeting.

Minister, I understand you're going to give a presentation first. Then we'll move to questions.

**Hon. Jim Prentice (Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians):** I'll speak first, Mr. Chair, with your permission. Then I'm pleased to answer any questions.

I know that Mr. Lemay is anxious to have a dialogue on this, and I always enjoy that.

Mr. Chairman, thank you for the opportunity to discuss Bill C-44. I'm pleased that the committee members are undertaking a review of this important *projet de loi*. It is human rights protection legislation that will repeal section 67 of the Canadian Human Rights Act. Bill C-44 proposes to end an exemption that was included in the original legislation when it was enacted some time ago, actually in 1977.

As a result of this exemption, individuals, mostly residents of first nation communities, have had limited recourse under the Canadian Human Rights Act should they feel their rights have been violated. This fundamental injustice represents a black mark on Canada's democracy. I would draw to your attention a number of reports to the United Nations that have singled this out and recommended change.

Section 67 clearly permits discrimination against a particular group of citizens, and Bill C-44 proposes to ensure that the laws of the country will apply equally to all Canadian citizens.

[*Translation*]

This is not the first time that Parliament has tried to repeal section 67. Bill C-108 was introduced nearly 15 years ago, only to die on the Order Paper. More recently, attempts to repeal section 67 through Bills C-7 and S-45 suffered a similar fate. Parliamentarians now have an opportunity to see the job through.

Support for the repeal of section 67 comes from a wide variety of groups, including this very committee. In its report on matrimonial real property on reserves, *Walking Arm in Armto Resolve the Issue of On-Reserve Matrimonial Real Property*, members of this committee called for the repeal of section 67.

[*English*]

Your committee's position on this matter was based largely on the testimony of representatives from several key groups, including the Native Women's Association of Canada. In fact, I would point out that Beverley Jacobs said this before your committee at that time, as follows:

> —many first nations women have no recourse at all when their rights are being violated in their communities. They have no recourse to challenge their band councils for discriminating against them and for forcing them out of their own communities. We demand basic human rights for our women and children.

As minister, I take that statement to heart. Nothing will change unless action is taken, and that is precisely what we have done with this legislation.

Over the years, calls for the repeal of section 67 have come from a wide variety of sources, including the Assembly of First Nations, the Congress of Aboriginal Peoples, the Canadian Human Rights Commission itself, and other independent commentators who have filed reports with the UN.

The fundamental injustice engendered by section 67 has also attracted international attention, unfortunately earning Canada censure from the United Nations Human Rights Committee.

[*Translation*]

Mr. Chairman, in my opinion, it all boils down to a simple issue of human rights. Canada must not perpetuate the discrimination inherent in section 67.

I appreciate that some groups have raised concerns about Bill C-44, despite its noble goal. Most critics focus on three points: a perceived lack of consultation, the absence of an interpretive clause and concerns about the potential impact.

Today, I will address each of these criticisms in turn.

[*English*]

On the perceived lack of consultation, I would contend that in fact there's been a significant amount of discussion and consultation on the repeal of section 67, all of which has informed the bill that is before you today. There have been, really, 30 years of discussions since 1977 about the repeal of section 67.

Perhaps the most comprehensive consultation was launched in 1999 as part of a formal review of the Canada Human Rights Act. As you know, the Canada Human Rights Commission itself has spoken on this issue.

Among the many regional and national aboriginal organizations to participate in the review were the Native Women's Association of Canada, Alberta's Aboriginal Human Rights Commission, and New Brunswick's Aboriginal Peoples Council.

The final report issued by the review panel in 2000 recommended the repeal of section 67, and two years ago consultation with aboriginal groups informed a special report on section 67, completed and filed by the Canadian Human Rights Commission itself. Again, repeal was the recommended option.

In 2003 section 67 was also discussed as part of the committee's hearings into Bill C-7, the controversial First Nations Governance Act. During these hearings, several aboriginal groups lobbied for the repeal of section 67, a position restated during hearings that were held in 2005 on matrimonial real property on reserve. The Assembly of First Nations has also expressed its views on the public record.

[*Translation*]

While not every stakeholder and aboriginal person has had the opportunity to participate in consultations, there can be no doubt that a determined effort has been made to gather relevant opinions. And that the consensus was and continues to be clear: section 67 must go. Thirty years is long enough.

[*English*]

A second criticism of Bill C-44 concerns the absence of an interpretive clause. In this regard, an interpretive provision is required in the Canadian Human Rights Act to balance the interests of individuals seeking protection from discrimination with aboriginal community interest. That is the argument put forward.

I share the view that the Canadian Human Rights Act should be applied in a manner that is sensitive to particular circumstances of aboriginal communities, but the truth is that three factors preclude the need for an interpretive clause in the legislation. The first is that laws already exist that provide for a balancing of individual and collective rights. I refer to the constitutional protection already in place for the recognition of collective aboriginal and treaty rights in section 35 of the Constitution Act, which remains as the paramount authority in our legal system.

Given these protections, members of the Canadian Human Rights Tribunal, the body that will adjudicate complaints under the statute, are required by the act to be sensitive to human issues as they pertain to aboriginal and treaty rights. They can also be expected to interpret the existing defences in the act, bearing in mind these concerns. With these protections in place to help guide the application of the Canadian Human Rights Act and the commission, there's no need to add an interpretive clause to Bill C-44. In effect, the Constitution Act provides that overall interpretive umbrella itself.

The second factor has to do with the critical role of the Canadian Human Rights Commission itself. The commission is charged with the administration of the Canadian Human Rights Act, which means that it not only processes complaints but also engages in educational activities concerning the act. Since it was created nearly 30 years ago, the commission has acquired unsurpassed expertise in interpreting and in resolving cases involving discrimination—that is what they do, and they're good at it. The commission's efforts to prevent discrimination have also been remarkable.

● (1110)

[*Translation*]

Rather than relying on a specific statutory interpretive clause to safeguard theirs interests, aboriginal groups can discuss the future operation of the Act with the Canadian Human Rights Commission. In fact, many aboriginal governments have had experience with complaints under the Act, situations where section 67 has not applied.

[*English*]

The commission has vowed to work directly with aboriginal groups on implementation. In fact, the commission's aboriginal program is already established and a series of regional workshops are planned. The workshops will provide guidance and support to aboriginal groups that need help to exercise and carry out the new responsibilities under the act. Additionally, the Canadian Human Rights Act already grants the commission the power to establish guidelines or regulations on how the act should be applied to a particular class or group of complaints. These guidelines are statutory instruments with the same legal weight as regulations, but they are flexible enough to be adapted as required. I have full confidence that, given its mandate, its track record, and in dialogue with first nations, the Canadian Human Rights Commission is best placed to offer advice on how the act should be applied, and to do so over time. With passage of Bill C-44, this work will begin formally.

Thirdly, we know from experience with the interpretive clause, which was originally proposed in the First Nations Governance Act, Bill C-7, that it is extremely difficult to capture in a single clause fail-proof language that would address all the competing considerations for handling a Canadian Human Rights Act complaint in a first nations context. To attempt to distill the interpretive power of the Human Rights Commission into a single clause, I submit, is quite problematic. Additionally, an interpretive clause, if passed into law, would have to be interpreted by the commission and the Canadian Human Rights Tribunal, in any event, in specific cases, and would obtain clarity really only after the litigation of many complaints and conflicts, undoubtedly, with the charter.

In summary, with the protection offered by Canada's legal framework, the support provided by the commission, and the scope that already exists within the Canadian Human Rights Act and the powers of the commission, I'm personally convinced that the full application of the Canadian Human Rights Act can be implemented in a manner that is sensitive to aboriginal communities. I have confidence that the Human Rights Commission is best able to provide that oversight and that interpretive responsibility.

Other aspects of the legislation are helpful to consider. The mandatory review included in Bill C-44, for example, offers additional protection for those who are concerned about its impact. The legislation proposes that a parliamentary committee undertake a comprehensive review of the effects of the repeal of section 67, within five years. I think this is a useful fail-safe.

On this point, I would like to draw to the committee's attention that it is within Parliament's authority to undertake such a review earlier. I would respectfully caution against so doing, but this remains the prerogative of Parliament.

● (1115)

[*Translation*]

I acknowledge that the repeal of section 67 will have a significant impact on many groups, including First Nations and federal departments. To ensure that First Nations have time to prepare for these impacts, Bill C-44 proposes a delayed application to First Nations' governments six months after royal assent is granted.

[*English*]

With the support of the Canadian Human Rights Commission, which has already begun to engage and to raise awareness of human rights legislation with representatives of national and regional aboriginal organizations, I believe this period provides the appropriate balance between, on the one hand, proceeding with repeal in a timely fashion while on the other hand allowing first nations to take measures to prepare for full implementation.

The question of resources has been raised, but until the bill is passed, these costs remain hypothetical. Yes, it will be important to assess what resources might be needed, and I invite your advice on that topic.

Mr. Chairman and members of the committee—and we have a knowledgeable group of parliamentarians at this table today—the time has come to ensure that all Canadians are treated equally before the law of this country. Bill C-44 proposes a fair, realistic approach to ending 30 years of sanctioned discrimination in this country. This committee, in a non-partisan way, can seize the opportunity before it and ensure access to full human rights protection as provided to all. Now is the time for us to act to end the injustice that was created as a so-called temporary measure against first nations citizens 30 years ago. This is an historic opportunity for this Parliament, for all the parties in this House of Commons at this time, to accomplish something very significant. I urge you, as committee members, to review Bill C-44 and to support it.

[*Translation*]

Thank you. I will do my best to answer the questions from Mr. Lemay and others.

[*English*]

**The Chair:** Thank you, Mr. Minister.

Turning to the Liberals, Madam Neville, please.

**Hon. Anita Neville (Winnipeg South Centre, Lib.):** Why did you refer only to Mr. Lemay, Mr. Minister?

**Hon. Jim Prentice:** I don't wish you to feel slighted. There was a bit of repartee before we began about Mr. Lemay having a chance to cross-examine the minister.

**Hon. Anita Neville:** Let me begin, Mr. Chair, and I hope you will indulge me.

I think it's important to correct the record that's been presented in the House of Commons. I say this to you, Mr. Minister, and I say it to you with respect: I have never indicated a lack of support for Bill C-44 or for the reform of matrimonial real property. I believe if you check the records, both in this committee and in the House of Commons, I have never indicated a lack of support on my own part or on the part of my party.

We have concerns about the issues of process. We will probably speak to them today, and we will speak to them in the ensuing weeks as we review this bill. But in terms of the intent of this bill and the intent of matrimonial real property reform, I am supportive of it and my party is supportive of it. We believe these are important issues to be addressed. I hope the record is clear on that after today.

Minister, you spoke about several issues, and you anticipated the concerns about the bill. You spoke about the issue of consultation.

I was part of Bill C-7. I sat around the clock for many days, as did my colleague here, in 24-hour and 48-hour sessions. I know the bill and I understand the importance to many groups of the repeal of section 67. But I can say that part of the lack of success of Bill C-7 was the abbreviation of the consultation process.

While you spoke to the fact that we have had 30 years of discussion—and I underline the word “discussion”—I believe there's a difference between discussion and consultation. We have not had consultation prior to the introduction of this bill. We've not had consultation with first nations, native women's associations, and a entire litany of groups as it relates to this bill.

There are a number of concerns. My own belief is that we're going to be doing the consultation after the introduction rather than prior to the introduction, which will in fact delay the progress of this bill. I'd like your comments on why there was not a real consultation on this bill, specific to this bill, in the introduction of the bill.

I'd also like your comments on the abbreviated timeframe of six months, when we know the Human Rights Commission recommended a minimum of an 18-month to 30-month implementation.

I have more questions, but I'll start with that.

● (1120)

**Hon. Jim Prentice:** If the honourable member and her party are supportive of the intent, I certainly hope they will support this legislation, at the end of the day.

I reiterate my comment that it's a historic opportunity for all of us as parliamentarians to achieve something that's significant in this country vis-a-vis human rights. It'll be a chance someday for all of us to look back and see that something meaningful was achieved on this subject.

In terms of consultation, the record we have as a nation of discussing this issue is 30 years long. The effective clause in the bill is eight words long; it's that "Section 67 of the *Canadian Human Rights Act* is repealed." It's as simple as that.

There was a legislative attempt in 1985 to deal with this. There was a legislative attempt in 2005 to deal with it. There was a respected panel, the Canadian Human Rights Act Review Panel, chaired by Gerard La Forest in the year 2000, with which I think you're well familiar. It had extensive consultation with aboriginal organizations. The aboriginal organizations have called for the repeal of section 67 themselves. There have been recommendations by the Canadian Human Rights Commission itself, following consultation with first nation leaders and others. There have been at least two reports to the United Nations that included consultation with first nation groups.

At some point we have to act. At some point we have to move forward in this country. Consultation cannot be employed as an excuse for inaction or as a method of paralysis. This is a very straightforward piece of legislation that provides citizens in this country who have been segregated on the basis of race some human rights protection. I think there has been adequate consultation to repeal section 67.

For sure there will be a consultative process carried on by the Human Rights Commission about implementation and the interpretation. That's how it should be. It's something they're good at, and they will do a fine job. But Parliament has to act.

● (1125)

**Hon. Anita Neville:** With respect, Minister, you cite what has gone on, but you neglect to cite the Supreme Court rulings that speak about the duty to consult. I think we are abbreviating the process, circumventing the rulings we have had several times from the Supreme Court on the duty to consult.

While I accept that it's a straightforward bill, I would say to you that it has left out much that is important that might have been included in the legislation had the appropriate consultation process taken place. It is simple in its appearance, but it is complex in its implications.

I too would like to see this issue addressed. I would like to see human rights for aboriginal peoples in all their manifestations addressed. I don't want to get into a debate with you on the many other human rights violations that we know aboriginal peoples suffer.

I support it and I want to see it passed, but I want to see it done in an appropriate manner that brings everybody along in the group so that everybody subscribes to the bill when it's completed, and not in a manner of imposing it.

**Hon. Jim Prentice:** I say respectfully, if you wish to make the case publicly that you do not think first nation citizens should have the same human rights as other Canadians because a period of 30 years of continual public parliamentary consultation and discussion is inadequate, you can make that case, but you won't convince me.

**Hon. Anita Neville:** I would make the case that aboriginal people are entitled to housing, water, and education as well, Mr. Minister.

**Hon. Jim Prentice:** Well, this will help them get there.

**The Chair:** I have a schedule of speakers, and Mr. Lemay is the speaker.

[*Translation*]

**Mr. Marc Lemay (Abitibi—Témiscamingue, BQ):** I will try not to take too much time. I respectfully remind you, Mr. Minister, that we had asked your presence for two hours, since this is probably one of the most important pieces of legislation regarding Aboriginal peoples that your government has and, regrettably, will introduce.

Over the last few days and weeks, since the bill has been tabled, I have met with many Aboriginals. They told me there had been consultations, and that, on the whole, it is a good idea to repeal section 67, but that they did not have time to discuss fully the impacts of this abrogation because they have too many issues to deal with from day to day. They did not take the time to ponder this important issue.

I have to admit, Mr. Minister, that I am somewhat torn about this matter and I mentioned it to Mr. Ricard, when I met him. I understand the difference between collective and individual rights. You do not need to belabour that point. After all, I have 25 years of experience as a lawyer. Aboriginals in this country do not get the consideration they deserve and they have many problems. However, I am not certain we are ready to go ahead with this section because the collective rights of First Nations people protect them at the present time against a large number of claims and legal challenges.

You have experienced difficulty with a similar situation this week, Mr. Minister. Let us suppose a member from Kashechewan brings a complaint against his or her community because of the lack of clean water or hydro power, in the case of Pikangikum, for example. I have a hard time seeing how this situation could be resolved by the time the bill is passed.

I hope you will agree with me that passage of this bill will give precedence to individual rights over collective rights, which are the rights of aboriginal peoples. Are we on the same page? Do you share my interpretation?

● (1130)

**Hon. Jim Prentice:** You are a very well-respected lawyer in your community and your profession. If you mean to say that collective rights are more important than individual rights because otherwise things would be too difficult and complicated, I do not agree with you.

[*English*]

At the end of the day, how can we not proceed to provide first nations citizens with the same human rights as other Canadians on the basis that it's too complicated? I don't accept the premise of that, and I'm surprised that you as a lawyer would. I don't think you do.

[*Translation*]

**Mr. Marc Lemay:** Mr. Minister, I am not saying that collective rights should take precedence over individual rights. What I am saying is that in the end, Aboriginals are presently grappling with huge problems. How are we going to bring them up to the same standard as the other people in Quebec and Canada, while they do not even have drinking water or hydro power on some reserves? This is where I have difficulty. We have to bring them up to a certain level. They tell us that collective rights give them better protection than individual rights.

This is the heart of the discussion, Mr. Minister. I believe I am right at the heart of the issue.

**Hon. Jim Prentice:** I appreciate your concern about social problems in the communities, including poverty. I accept your proposition but if I understand what you say, individual rights would present a problem.

**Mr. Marc Lemay:** Yes, they could. A person could, under the Canadian Human Rights Act, sue the band council because he or she does not have running water. I read the Act and I know it almost by heart. There are also matrimonial rights.

Let me give you an example. Under the Canadian Human Rights Act, a woman has the right to deliver her baby under the best conditions possible. An aboriginal woman living on a reserve 300 kilometres away from an urban centre could sue her band council based on the fact she is not given access to a hospital.

Do you understand the issue? I am neither for nor against such an action, but it raises questions. What will happen after the passage of bill C-44? Do you understand, Mr. Minister? It is an important question.

**Hon. Jim Prentice:** I will express myself in English.

[*English*]

Let me say, taking your illustration of access to health care services, that surely we want a country where a first nation citizen has the same ability to raise a human rights complaint about access to medical services as someone who is not a first nation citizen. Surely we want a country where there is equality and where a Canadian citizen, irrespective of status as an Indian or not, can voice or articulate a complaint and take it to the authorities.

It's not simply the band council that is responsible, if section 67 is repealed; it is the government authorities generally, in particular the federal government. I appreciate there are complications, and I appreciate that this will change the circumstances for many people, but that surely is the reason to do it. It's to put the woman you have described in a position where she can make that complaint, because now she can't. Now she has no cause for grievance, because there is a sealed door at the entry of the Human Rights Commission that she can't access. I don't see how you can keep that door closed on the premise that it's too complicated to open.

● (1135)

**The Chair:** Okay. Thank you.

Madam Crowder, please.

**Ms. Jean Crowder (Nanaimo—Cowichan, NDP):** Thank you, Mr. Chair, and thank you, Mr. Minister, for coming before the committee today.

I think I'm fairly safe in stating that a number of us support the repeal of section 67, but the devil is in the details, and I think what we're seeing is a fundamental difference on what we consider is adequate consultation. It's a philosophical difference, it's an ideological difference, and it's a cultural difference. That's the crux of the matter.

The Chiefs of Ontario have said that in their view there has not been formal government-to-government discussion on the issue specifically focused on real proposed legislative language. In many people's view, their experience with the mid-1980s Bill C-31—and you and I have spoken about this before—reinstated women into their community, but paragraph 6(2)(b) has had the unintended consequence of stripping status from people who share the same family. That's part of the concern that's coming forward from people.

I have a broad question and a specific question for you. I'll ask them both so that you can have the time to respond to them.

Although I'm going to cite an international convention—I'm going to talk about the Universal Declaration of Human Rights, article 26, and about the United Nations declaration on indigenous rights, which, unfortunately, Canada didn't sign on to. It is article 14 in that particular one. Both of those articles deal specifically with the right to education. Under the universal declaration it's the right to education and the full development of the personality, and under the United Nations declaration on indigenous rights it's the right for indigenous peoples to establish and control their educational systems.

My general question is just about how we might expect that band councils will deal with the issue around the fact that they could well see a number of complaints about the differences in education that first nations people on reserves get versus the education of the general public. That's the broad general question around that, how band councils can deal with and anticipate it.

The second question I wanted to ask was around a specific reserve, which Mr. Lemay referenced already. I would expect that the people of Kashechewan could line up to file complaints about the lack of access to adequate housing, the lack of access on a consistent basis to drinking water. I wonder if you can provide any guidance about how the council in Kashechewan could deal with potential human rights complaints and what kinds of resources they would have for that.

Could you address those?

**Hon. Jim Prentice:** Those both seem like specific questions, but let me try to wrestle with them as best as I understand.

In terms of the position of band councils, I would reiterate the point that if you have a barrier in the Human Rights Act to the protection of first nations citizens in this country, and that is lifted, it puts all governmental authorities in a position where they're going to have to be in a position to respond. They're going to have to be in a position to defend their actions and defend the situation. That's why I think that the repeal of section 67 is so important, because we want a country where all citizens are in that position where they can call upon governmental authorities to defend their actions and to defend —whether it's in the education system, the health care system, allocation of resources within the community—decisions by governments and ministers of the crown.

I personally think we need to repeal section 67 so all governmental authorities are subject to that scrutiny. I'm pleased that you are supportive of the bill.

● (1140)

**Ms. Jean Crowder:** No, I said I'm supportive of the repeal of section 67.

**Hon. Jim Prentice:** You will have a chance, then, to show your support for that proposition.

I think it's an important step forward. In terms of education, to cite a specific example, why would you wish to see a situation where a mother of a first nation child—let's assume it's a child with a learning disability—does not have access to the Canadian Human Rights Code to ensure that her child is being protected in the education system? You can talk all you like about how much consultation there's been over the past 30 years, but if you fall into not supporting this legislation because there's been inadequate consultation, that mother in that circumstance is there because of your vote.

**Ms. Jean Crowder:** Mr. Minister, I think the mother in those circumstances would actually be there because of inadequate funding rather than because of my vote.

**Hon. Jim Prentice:** Well, your vote holds the possibility to change that and to hold people accountable.

**Ms. Jean Crowder:** But it would simply be an ability to file a complaint. It wouldn't provide the band with any additional funding. It would simply be a complaint.

Unless the government is prepared to step up to the table and provide the funding that's required for special education—and we know there's a huge gap in special education funding—the ability to file a complaint isn't going to substantially have an impact on that child's life. By the time the complaint plays itself out and actually informs government policy, the child will be years down the road.

**Hon. Jim Prentice:** I'm a little more optimistic than that. My experience in life is such that when you empower citizens to stand up and advocate on behalf of themselves and their children, they will increasingly hold governments to account. There will be progress as a result, and I think that's a good thing.

**The Chair:** You have a little over a minute.

**Ms. Jean Crowder:** I want to go back again to the consultation process for a moment.

Given the fact that the Auditor General has cited the fact that the federal government has not developed a policy around the duty to consult, and given the fact that this section of the act has been in place for 30 years, I don't know how it can be unreasonable to allow appropriate consultation.

You cited a number of instances around consultation, but my understanding is that those consultation pieces were not specifically around developing legislation or dealing with the repeal of section 67. They were often in the context of other larger issues.

**Hon. Jim Prentice:** To be fair, Gérard La Forest, one of the most respected jurists in Canada, chaired the Canadian human rights review panel in the year 2000. There were extensive consultations specifically about repealing section 67. They were held extensively with national and regional first nations organizations over an extensive period of time. The panel recommended that section 67 be removed and that the removal be applied to all self-governing first nations until such time as they could put their own codes in place.

There has clearly been consultation. It's been going on. I'd say to the honourable member that we've been wrestling with this as a country for 30 years.

This is a six-word or seven-word repeal of section 67. It is not that complicated.

**Ms. Jean Crowder:** But the very people it's going to have an impact on feel they haven't been consulted.

**The Chair:** Okay, Ms. Crowder, that's enough.

**Ms. Jean Crowder:** How can you say the consultation has been adequate?

**The Chair:** Mr. Bruinooge, please.

**Mr. Rod Bruinooge (Winnipeg South, CPC):** Thank you, Mr. Chair.

I'd like to thank the minister for coming today.

I'm very surprised at my colleagues across the way and their perspectives on this. It's rather surprising to not want to actually bring liberty to first nations people and to give them access to human rights that all of us in Canada accept. I find it very surprising.

● (1145)

**Hon. Anita Neville:** You're putting words in her mouth.

**Mr. Rod Bruinooge:** Perhaps we can talk a bit about the Taku and Haida rulings Ms. Neville raised and the obligation on government to consult.

If you were to consider a scenario where the repeal of section 67 were to occur, can you imagine any court in the land overturning this repeal and removing first nations people from the Human Rights Code, thereby removing their human rights? Can you imagine that scenario ever occurring?

**Hon. Jim Prentice:** Well, it's a fair question.

Much has been said and written about the duty to consult. If one reads the Supreme Court of Canada decisions in the Haida and Taku and other cases fairly, I think it's obvious that the duty to consult is an elastic duty and it is a duty of which the content is informed by the specific decisions under discussion. The duty to consult in the context of a resource project is one thing. The duty to consult in the context of the repeal of a human rights barrier, I would submit to you, is something entirely different.

There is kind of a sense in some quarters that the obligation to consult is an obligation to achieve unanimity, and I don't accept that. There is an argument in some quarters that the obligation to consult basically vests a veto in the hands of a number of parties in this country, before we actually start to deal with some of the injustices. I don't accept that either.

I looked at the parliamentary record, the public discourse record in this country since 1977, and in particular since 1999, on the repeal of section 67. I'm satisfied there has been continuous and extensive public discussion and consultation with first nations leadership on this issue.

Virtually no one is standing up to say section 67 of the Human Rights Act should not be repealed. That being the case, I think there has been adequate consultation. I think there is in fact a consensus on this, and I think we should move forward.

If someone has the temerity to stand up publicly and suggest there is a risk of a judicial authority revoking the repeal of section 67 on the basis that there was inadequate consultation, I would encourage them to make that argument, but I frankly don't see it passing muster.

There have been some very respected jurists in this country who have called upon us to do this. The issue at the end of the day is whether all of the parties in the House of Commons have the courage to set aside partisanship and pass this. It's as simple as that.

If you wish to hide behind this argument or that argument, fair enough, but I don't think it's appropriate. I think we have an historic chance to get this done.

I think this committee has a role to play in the sense that if you wish to address some of the details that surround this, there is ample opportunity for the committee to do so and to call witnesses and take part in the consultative process.

**Mr. Rod Bruinooge:** How much more time do I have?

**The Chair:** You have three minutes.

**Mr. Rod Bruinooge:** Okay.

Mr. Minister, you've obviously taken a lot of interest in on-reserve families and how the laws of Canada treat those families. It is one of the reasons you began the process of matrimonial real property consultations. Could you explain how this repeal is integral to the eventual bill that we might see and how the process to bring matrimonial real property to on-reserve families might happen?

**Hon. Jim Prentice:** I would like to think that there would be at this table a consensus, an agreement, that part of what we need to do in this country is to empower aboriginal women and specifically ensure that aboriginal women are in a position to advocate on behalf of themselves and their children and to take steps that will be protective of themselves and their children.

That's why reforms to the education system are so important, that's why reforms to the child welfare system are so important, and that's why both this legislation and the provision of matrimonial property rights for first nation women are also important. All of these steps, in the case of education and child welfare, will not only improve the system for children, but will also allow first nation women to stand up and advocate on behalf of their kids. That's why they are so important.

There's an overlap here between education, in particular, and the Canadian Human Rights Act. In my private life I've been in a circumstance where I've had to exercise, on behalf of parents of kids with learning difficulties, the authorities in provincial school acts to stand up and fight for those children to make sure they are getting the quality of education they're entitled to in law. The only children in Canada whose parents are not in that position, the only children who live in this legislative lacuna, are first nation children. First nation mothers do not have the capacity to stand up and make an argument that their children are receiving a substandard quality of education—a child with a learning disability, for example—and changing this will change that. It will empower those women to advocate on behalf of their children.

How can we as parliamentarians, with full knowledge, countenance a situation where those women don't have the ability to do that because it's too complicated to afford them that right?

● (1150)

**The Chair:** Thank you.

We're on the five-minute round now.

Madam Karetak-Lindell, please.

**Ms. Nancy Karetak-Lindell (Nunavut, Lib.):** Thank you.

I'm very saddened by the approach that you have chosen to take, when you talk about changing lives for aboriginal people in a positive way. I really feel that the way we could have done it was through mutual respect, partnerships, providing the resources and the power to change in the community, within the community, by the people. For me, that was Kelowna, and that was the start.

What I see with your approach, Mr. Minister, is a very adversarial way of achieving what you feel we need to achieve. Part of it is saying that the bands would not be responsive to the people unless there's legislation forcing them to, instead of saying it's the lack of resources in their communities and it's the capacity-building that we need to move towards. I'm very concerned that these measures are very divisive measures, instead of having collaboration and a group of people working together for a positive change.

None of us are saying that human rights should not be respected, but I'm also very troubled by your statement that individual rights trump collective rights. That's the basis of a misunderstanding of where you come from and where I come from.

Land, for example.... When we do land claims agreements, we keep that land in a collective right. That's the basis of most of our land claims. If you say that individual rights trump collective rights, then all of us in land claims agreements are in the danger of losing that parcel of land to someone else because an individual right won over a collective right. I think there needs to be a balance. That's why the interpretive clause is so important to us.

The timeframe is also really troubling—six months. Six months to enable a band to be in a position to deal with the fundamental change I don't think is fair.

There are more comments. I'm really troubled by the approach. We're not getting enough time, we're not getting enough resources, and there isn't a partnership approach and a mutual respect for the actual communities that are going to have to deal with this change.

Again, I'm just very worried about the position you have taken in the approach to this legislation.

● (1155)

**Hon. Jim Prentice:** I didn't hear a question in that. But if we're going to get into statements, I would point out that for the previous 13 years, the prior Liberal government—

**Ms. Nancy Karetak-Lindell:** We had interpretive clauses in those.

**Hon. Jim Prentice:** —did not get the job done.

**Hon. Anita Neville:** Bill C-7 had an interpretive clause.

**Hon. Jim Prentice:** You were the government for 13 years. You did not repeal section 67 of the Canadian Human Rights Act. So you can make all the assertions you wish today, but you had 13 years to consult in partnership and collaboration and all the ways you've described, and you did nothing. We're moving forward.

**Ms. Nancy Karetak-Lindell:** That is not true.

**Hon. Jim Prentice:** It is absolutely true.

**Ms. Nancy Karetak-Lindell:** You don't get the relationship part of this, and I'm sorry, you're never going to get it if you don't have it by now.

**Hon. Jim Prentice:** In terms of your comments about my stating that individual rights trump collective rights, "trump" is not a word that's in my vocabulary. I'd like you to find a statement anywhere in which I've ever said that. I haven't. So I don't know what you're talking about, and I find it gratuitous.

Clearly, there has to be a balancing of rights in all of this, and that's what we're searching for. As I said in my opening comments, the responsibility to achieve that balance rests where it should, which is with the Canadian Human Rights Commission. That's the job they're in. That's what they're good at, and that's what I fully expect, as a Canadian, they'll do a fine job of carrying forward.

But to do nothing, to stand back and say there hasn't been enough discussion about that—For 13 years we did nothing, and now we're going to do nothing again—I don't buy it.

**The Chair:** Your time is up.

Mr. Albrecht, please.

**Mr. Harold Albrecht (Kitchener—Conestoga, CPC):** Thank you, Mr. Chair.

I would just like to correct the record. Mr. Lemay indicated that we asked for two hours. My recollection is that we wanted two hours, but this committee decided we would pre-empt that by doing the housing study today. So I don't think we can put that onto the minister.

In reviewing the chronology of this entire scenario, it's obvious to me that there have been numerous attempts to correct this injustice. I find it completely unacceptable that aboriginal people continue to have less recourse to human rights protection than other Canadians. Over the past 30 years, as has been pointed out, a lot of bills have been tabled and a lot of reports have been tabled. In fact, the most recent was in March 2006, when the UN Human Rights Commission recommended that this section be repealed immediately. So there's no question in my mind that the action is needed now.

Up until now on this committee, there's been a lot of time devoted to discussing potential challenges and complaints and very little time given to preventative aspects of enabling this part to be removed. As a former dentist, I spent a lot of time in prevention, because I found I got the greatest reward in prevention, as opposed to dealing with problems.

On page 12 of your comments, Mr. Minister, you pointed out that the Human Rights Act not only processes complaints but also engages in educational activities concerning the act. The notes go on to say, "The Commission's efforts to prevent discrimination have... been remarkable."

I'd like us to consider for a few moments what some of the potential benefits of having section 67 removed are, and just the educational aspect of improving the lives of aboriginal people, as that relates to their inability to have their rights protected.

**Hon. Jim Prentice:** You make a very good point, that in the restoration of the appropriate balance here in the country, where first nation Canadians have the same rights as other Canadians, we all have a responsibility to fulfill. It's my responsibility as the minister to put forward a legislative solution. It's the responsibility then of all of us, as members of Parliament, to decide whether we are prepared to stand and be counted and support that. At the end of the day, once it's passed, it's the responsibility of the Human Rights Commission to breathe life into the new rights that first nations citizens will have.

As I said earlier, this is something the commission is experienced at, that they are properly resourced to do, and that they will carry forward and do. They will engage not only in educational activities with first nations; they have the capacity to pass interpretive guidelines that will help wrestle with some of the issues that some of our colleagues are raising. It's an authority that they exercise in other contexts, and they do quite a good job of it. I believe their authority will carry on.

I don't know whether your intent is to hear from them, but I know they are readying themselves now. They're in preparation to be in a position to discharge this responsibility.

I don't think, again, we should lose of sight of the fact that over these 30 years of continual discussion of this, one of the voices that has spoken the loudest about repealing section 67 is that of the Canadian Human Rights Commission itself. It has called upon us as parliamentarians to do this, along with the many other groups whose respective counsel have done so.

● (1200)

**Mr. Harold Albrecht:** My point, Mr. Chair, is that once legislation is enacted, it doesn't matter which new legislation is enacted, you don't expect every single issue is going to be confrontational. There's an educational component to the new law, be that seat-belt laws or whatever, that people just begin to live by that new legislation, and I think we can expect a lot of that as well.

I'm not aware that there's been a huge increase of human rights complaints from aboriginal groups who no longer fall under this section. I've asked that question previously, and the answer I got was that there hasn't been a huge influx of complaints in terms of the follow-up. So I think that's one thing we can be less concerned about, although I'm sure there will be complaints.

For the record, could we clarify again this concept of duty to consult? I keep hearing this, and I certainly feel we have ample evidence that there's been a lot of consultation. Could we clarify? I think in some of our briefing sessions that was addressed. Mr. Ricard addressed that at one point.

**Hon. Jim Prentice:** I'm not aware of any case authorities that have examined the duty to consult in the context of human rights legislation. I stand to be corrected, but I'm not aware of any case authority, at any level, that has said there is a duty to consult before ensuring that first nations people have the same human rights protection as other Canadians. And I'd actually be surprised if that is the assertion.

However, there is a developing body of law, particularly with respect to government decisions that affect lands and resources, that there is a duty on the part of the crown to consult with the affected first nations and make sure their voices are heard in the decision-making process.

As I said earlier, there's quite a bit of confusion about how far this duty to consult goes and what the content of the duty is. Some people interpret it as a veto, which I don't think is the case, but its application to the legislative authority of Parliament I think is something that's very much undecided.

**The Chair:** On the Bloc side, who would like to speak?

Mr. Lévesque.

[*Translation*]

**Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ):** Mr. Minister, we have always had very civil discussions. However, I am disappointed by the way your parliamentary secretary interprets our words.

Obviously, my colleague and myself both really take to heart the rights of aboriginal peoples. The same goes for individual rights. Today, we raise what could be recognized as a problem once all this data is analyzed. Let us remind you that all the first nations chiefs as well as the aboriginal women's groups have asked you for a delay and for funding in order to undertake consultations on this matter. Up to now the main objection of first nations is due to the fact they do not have the funds required to do this.

It is our belief—and the aboriginal chiefs agree—that at the present time equal rights are not matched by equal means. Contrary to the Quebec and Canadian nations, these people do not have the means nor the infrastructure that would allow them to fully respect the type of individual rights that we take for granted.

This is why we believe it is very risky to implement them without giving these people the opportunity to make recommendations based on their experience. It is an experience that we cannot imagine and that we would be very sorry to go through.

I would like to provide in the bill for a sufficient delay and the opportunity for these people to make recommendations based upon their experience. I do not know if you have considered the matter and taken these aspects into account. In any case, this is our recommendation.

● (1205)

[*English*]

**Hon. Jim Prentice:** I think we've covered much of that already.

I would say that there is a phase-in period that's been provided here. If you don't feel that is adequate, I welcome your thoughts on a period that is appropriate. Clearly, there will have to be resources assigned once the legislation is passed. Clearly, the Human Rights Commission, in particular, will have to be in a position to deal with any grievances that are filed. There will have to be a period of time over which everyone becomes familiar with the capacity of first nations citizens to file these kinds of grievances.

But I return to the point that I don't believe that the complexity of this should frustrate action. I don't believe that giving first nation Canadians the same rights as other Canadians should be delayed because it is complicated. I think we will have to figure out some of the complications once they have the same rights as other Canadians. Until we do, until they are in that position of equality, from my perspective it remains as an embarrassment that this country should address.

I don't disagree that there are other issues surrounding poverty that need to be addressed, and we're doing the best we can with respect to that. That job will carry on for many years in this country. But I can't countenance a situation where first nation citizens don't have the same ability to advocate on their own behalf as any other Canadian. I think it's abhorrent.

**The Chair:** Two minutes.

[*Translation*]

**Mr. Yvon Lévesque:** Mr. Minister, I could agree with you on the urgency of implementing this bill but if the problems we raise are not solved by the date of implementation, will the government commit to ensure equal resources for these people until such time as they are able to achieve equality for themselves? In other words, are we going to transport people who need hospital care, are we going to bring them water and provide sanitation? The complaints will be filed against first nations governments but in reality, when we pass legislation that is not tailored to the people's experience or to the structural means at their disposal, we make ourselves responsible for the problems that the community will encounter vis-à-vis individual rights.

[*English*]

**Hon. Jim Prentice:** Of course, not to stray outside the debate about this bill, Bill C-44, but once you're into the whole question of how first nation communities are resourced and whether that resourcing is adequate, there's room for reasonable people to disagree in terms of how money is being allocated, how much money is being allocated, how it's being spent, whether the right priorities are being defined, whether success has been achieved in the way that's required.

My point is that give and take, that dialogue, is something that will go on for a long time. It will never be a perfect solution. In the meantime, we have a chance as parliamentarians to advance equality for first nation citizens. I think this is the way forward, and resourcing will inevitably follow.

**The Chair:** Thank you.

Mr. Storseth, please.

**Mr. Brian Storseth (Westlock—St. Paul, CPC):** Thank you very much, Mr. Chair.

Thank you, Mr. Minister, for coming forward today.

I think we can all agree that the status quo simply is not working. I don't want to ask you another question on consultation because, quite honestly, 30 years of consultation is far too long; in 1985, 2000, 2005, we were getting the same message. The people in the communities that I represent, northeastern Alberta, give me the same message, that the status quo is simply not working.

Any time we look at a democracy, any time we talk about democracy, the first thing that people address is the fundamental human rights that citizens have within that democracy. Quite honestly, when you talk about addressing solutions for the future for a people, you would think that fundamental human rights would be a part of that.

One of the myths that the former government continually perpetuated was the so-called Kelowna Accord. Minister, I would like to ask you, did this so-called accord actually deal with fundamental human rights, such as the repealing of section 67?

● (1210)

**Hon. Jim Prentice:** I think the question is whether there was any discussion at Kelowna on the repeal of section 67 of the Canada Human Rights Act. I stand to be corrected, but I don't believe there was. I don't recall. Certainly it didn't form part of any press release that was issued thereafter.

**Mr. Brian Storseth:** Thank you very much, Mr. Minister.

One of the questions that came up today was about creating the fundamental steps for some of the solutions that we have for first nation communities on things such as housing and water. Can you tell me and this committee a little bit about how repealing section 67 will address that?

**Hon. Jim Prentice:** The repeal of section 67 will provide first nation citizens, in particular first nation women, with the ability to do something that they cannot do right now, and that is to file a grievance in respect of an action either by their first nation government, or frankly by the Government of Canada, relative to decisions that affect them. This could include access to programs, access to services, the quality of services that they've accessed, in addition to other issues, such as membership, I assume, as well.

There's a wide variety of decisions on which first nation women in particular would be able to advocate on their own behalf now. At this point, these Canadians live in the circumstance of inhabiting what is very much a legislative vacuum, where there are no standards for education, where there are, until we deal with the issue, no standards for water, and so on. This will empower those individual Canadians to stand up and say this is not acceptable, and to challenge governmental authority. It is an extraordinarily important remedy to put in the hands of first nation Canadians.

**Mr. Brian Storseth:** Thank you very much, Mr. Minister.

Now I'm going to ask you a tougher question. The Assembly of First Nations has advocated for the inclusion of an interpretive clause. Can you tell this committee a little bit about why no such clause has been put in this legislation?

**Hon. Jim Prentice:** Well, this is something the committee needs to discuss. As soon as you are into a context where you are trying to repeal section 67, to give first nation citizens access to human rights, and you engage in an interpretive clause, to some extent you are at risk of watering down the human rights that you are giving to individual citizens. It's a very complicated thing to do.

The point I made earlier was that all of this happens within the framework of our Constitution. Section 35 of our Constitution makes it clear that aboriginal Canadians have treaty rights and other aboriginal rights. No individual legislation of Parliament can trench on those aboriginal or treaty rights, so they are protected. It provides an overall interpretive umbrella, if you will, to anything that happens under the Canadian Human Rights Act or the Canadian Human Rights Commission.

In light of that, I don't personally believe that an interpretive clause is necessary. I have looked at different iterations of the interpretive clause over time. Mr. Lemay may have as well. It's very difficult to define an interpretive clause that doesn't water down the human rights protection but that contains acceptable language. Any of the attempts I've seen fail me. They don't seem to achieve balance; they just seem to achieve complexity. They themselves will then be the source of interpretations and litigation.

● (1215)

**The Chair:** Thank you. That's the end of questioning.

Madame Crowder.

**Ms. Jean Crowder:** Thank you, Mr. Chair.

I'm ever hopeful that we actually don't have to wait for the repeal of section 67 to talk about standards in education, housing, and water. I would hope that we're not waiting for that to be the driver to look at some equality issues in communities.

**Hon. Jim Prentice:** No, and you're quite right. Just this morning I tabled in the House of Commons a report on the substantial progress that this government has made on the delivery of water.

So I'm not suggesting that to first nation communities. I'm not suggesting that we hold back on all of the important housing infrastructure questions that I know you share my concern about. I'm not suggesting we hold back at all, but we need to advance on a number of different fronts to empower and advance the interests of aboriginal people, and this is one of them.

**Ms. Jean Crowder:** I know that one of the concerns that has been raised by first nations is around funding. Certainly many communities are feeling pressure right now with the 2% cap that continues to be in place. It's a rising population and the fastest-growing demographic in Canada. Certainly the Auditor General identified that as well, in terms of the gap between the increasing population and the funding cap.

I wonder if the department has taken a look at whether there would be some additional money to help bands deal with first nation complaints. I also wonder about the impact on the department itself.

I assume there will be additional resources required in the department to deal with complaints if the repeal of section 67 goes through. I know part of the concern is that they don't want to see, for example, department lawyers diverted from claims and treaty processes, and into human rights complaints. Has there been any analysis done on that?

**Hon. Jim Prentice:** There certainly has been discussion about it. There has been discussion with the Department of Justice, because the justice department in particular would be in a position as legal counsel to the Government of Canada. We accept that this is something that, in terms of resourcing, we will have to discuss with individual chiefs and councils.

**Ms. Jean Crowder:** Is there any analysis available that could be tabled before the committee? I assume various scenarios have been played out around potential numbers of complaints and the resources that might be required. For many rural and remote communities, for example, there will be travel costs involved, whether the Canadian Human Rights Commission travels to that community or whether the community members have to travel out. That money has to come from somewhere.

**Hon. Jim Prentice:** The Canadian Human Rights Commission has addressed those questions specifically, and we've taken steps to ensure that they will be adequately resourced to be able to discharge their responsibility to deal with the educative parts and the interpretive parts. But none of that can happen if the legislation isn't passed.

**Ms. Jean Crowder:** Is the analysis available for the committee, though, about potential impacts on band councils and what resources they might require? Has there been an analysis of it that's available for the committee so that we can consider it?

**Hon. Jim Prentice:** There has been discussion about that. I'm not aware of an analysis, to use your term, that analyzes it across the country. But I'm happy to share anything we have.

**The Chair:** Mr. Minister, it is 12:20, if you wish to be excused.

I'm wondering if the other witnesses are going to stay for further questions. Does the committee want to ask questions of the other witnesses? Was there an intention for that to happen?

**Hon. Jim Prentice:** If I might just say something in closing, Mr. Chairman, I thank the committee members for the dialogue.

I do hope you will seize upon the historic opportunity that this presents. The country has been discussing this for thirty years, and this is an opportunity to pass this bill, to repeal section 67, and to move forward. I welcome your recommendations about how we do that and about issues that you feel need to be addressed, but at the end of the day, it will have to be through the action of Parliament that section 67 is repealed. If not now, when? If not by this Parliament, then by which Parliament?

In all of the voices that have spoken—like the Canadian Human Rights Commission or former Justice La Forest, one of the most respected lawyers in the country—there have been thirty years of calls for Parliament to repeal section 67, and this is our chance to do it.

Thank you very much.

● (1220)

**The Chair:** Thank you, Mr. Minister.

**Hon. Anita Neville:** The parliamentary secretary ascribed opinions, motives, or I'm not quite sure what you want to call it, to members on this side. I'm speaking for my colleagues in terms of not caring about women and not caring about human rights. That is a false assumption. I clarified at the outset that we are equally concerned about human rights—

**An hon. member:** More so.

**Hon. Anita Neville:** —perhaps more so, as my colleague says—and to do that is misleading and fraudulent.

**The Chair:** Thank you, Madam Neville. The chair will take note of that and try to keep the discussion at a civil level.

We'll recess for a couple of minutes while the witnesses leave.

[*Proceedings continue in camera*]

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