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Thursday, April 26, 2007

Chair

Mr. Colin Mayes

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● (1105)

[*English*]

The Chair (Mr. Colin Mayes (Okanagan—Shuswap, CPC)): I'd like to open this Standing Committee of Aboriginal Affairs and Northern Development meeting of Thursday, April 26, 2007.

Committee members, you have the orders of the day before you. We're going to continue with the review of Bill C-44, An Act to amend the Canadian Human Rights Act.

With us today as witnesses from the Department of Indian Affairs and Northern Development are Daniel Watson, senior assistant deputy minister, policy and strategy direction; and Daniel Ricard, director general, litigation management and resolution branch.

From the Department of Justice, we have Christine Aubin, counsel, operations and programs section, legal services unit.

Later, from the Congress of Aboriginal Peoples, we'll have Patrick Brazeau, national chief.

It was the desire of the subcommittee to bring these witnesses together at one time, so we won't have a break and we will use the time as best we can. I say this because I didn't want anybody to be concerned about the association between departmental officials and Mr. Brazeau—just so you're aware of that.

We do not have an opening statement from the Department of Indian Affairs and Northern Development, nor from the Department of Justice, so we're going right into questioning.

Mr. Brazeau is going to be a little late; he said about 11:15 to 11:20. So if you want me to proceed this way, I'll let Mr. Brazeau make his statement when he arrives. Would that be acceptable to the committee, and then we can continue right through?

Some hon. members: Agreed.

The Chair: Thank you.

We'll begin with questions to the departments.

Welcome, and thank you very much for being here.

Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): I assume that you've done your homework, read the first debate, and have some of the concerns that were outlined by previous witnesses.

As my colleague just said, a number of points were brought up by the witnesses and in our speeches, at least on this side in the House. So I'll give you a chance to comment on whether you have any suggested changes to or defence of those particular items.

I don't have my speech here from the debate, but the points I remember were: first, the aboriginal people said there was a total lack of recent consultation on this particular initiative; second, as we heard yesterday from the Law Commission, there should be a derogation clause to make sure that in something so sensitive, rights aren't impugned; third was definitely a longer implementation time period for something so difficult, in order to give people time to adjust; and my last point was an interpretive clause.

If any of my colleagues can think of any other major points.... Also, as sort of a corollary, do you have plans for training and also to provide resources?

Obviously, band councils that aren't used to this could cause all sorts of complaints and court cases against themselves, if they're not properly trained. It would help to train them, and that would be preventive. Second, they'll need some money to go to court and some training in advance so that hopefully they don't have to.

Did we hear any other major complaints from the witnesses? I think those are the major points. If you could respond to those, because I'm sure you're prepared and have heard them.... I think it was pretty universal between members of the opposition and the witnesses that those were areas of concern. I think they're fixable, but I'd be interested in hearing your responses.

Mr. Daniel Watson (Senior Assistant Deputy Minister, Policy and Strategic Direction, Department of Indian Affairs and Northern Development): Thank you very much for the opportunity to be here today and to answer questions.

Maybe I can take these in reverse order and follow up on some of the questions that arose when we were here last time with the minister.

On thinking through and planning how this would play out in the communities, there are a number of issues that are useful to keep in mind that we've tried to think through as we've gone through this set of scenarios.

There is already some knowledge and experience in this area. It's not entirely new. Despite section 67, first nations have had the Canadian Human Rights Act apply in some aspects of their operations and work until now. We understand there are 35 to 50 cases a year in some areas under the CHRA, so it's not as if we're in a situation where we're going from an absolute lack of application in all aspects of first nations business to full application. We do have some baseline data there. On that front, I thought a couple of issues might be useful to go through.

Currently, about 60 potential complaints involving first nations are received each year by the CHRC. This is data we have from our research with them, rather than departmental data. Of course, people can submit complaints, and one of the procedural issues is that the commission decides whether or not to accept them. On average, 60 a year are made and 40 a year are retained for further review. I can't speak to the actual disposition of those ultimately, but something like 40 go to subsequent steps.

Complaints that are filed against first nations are different, from what we understand. For example, 15% are on the basis of disability compared to over 40% in the rest of the caseload the CHRC sees. About 12% are on family status compared to about 4% in the rest of the population, if you look at the types of complaints the CHRC receives.

From the information we have, complaints against first nations are more likely to be settled than other complaints. That's consistent with a number of the comments first nations have made about the importance of being able to deal with issues outside the traditional litigation processes. They are less likely to be referred, but they are more likely to be sent on to a tribunal once they are referred to the commission. About 14% end up going to a tribunal, as opposed to 4% in the rest of the business the commission deals with. So there is a certain body of experience so far that we can actually take a look at.

Again, this isn't entirely new. Certainly there are some significant changes here, but it's a good baseline.

Self-governing first nations are, of course, subject to the Canadian Human Rights Act, so we've taken a look at that as well. There was not an enormous influx of complaints launched the moment the gates were lifted, as it were—when it ceased to be an Indian Act regime and went to a self-governing regime. That would be a significant issue in the Yukon and some other places around the country.

The other part we looked at and thought through is that the federal government, and most particularly first nations governments, are already subject to litigation in any number of areas that give rise to CHRC complaints. We have looked at the fact that first nations governments already need to deal very much in an environment where their decisions are subject to not only political review by the citizens of the first nation but to potential litigation as well, and that litigation does come. One of the key differences in the context of the CHRC and the CHRA is that there's a built-in mechanism to have a very different type of mediation in informal processes that you simply don't have built into most civil litigation contexts.

The impact of the repeal flows naturally into federal government machinery. Daniel Ricard, who is here with me, is our director general of the litigation management resolution branch. We handle over 1,000 cases at any given time.

● (1110)

We have mechanisms in the federal government to deal with these things, but I'm aware that first nations and aboriginal groups that have spoken are not as concerned with the department's ability to handle this as they are about their own.

When we think this through and look at the CHRC in its 30 years of experience in managing these types of situations, complaints, and processes, we recognize that first nations already have some significant systems of dispute resolution in place in some cases. We wonder sometimes if that has had an impact on the increased level of being able to resolve issues at the community level that the CHRC has found, as opposed to what we see in other circumstances.

● (1115)

The Chair: Can I just interrupt you? We've gone over the seven minutes and are in the question part now.

I would like to move on to Mr. Lemay for questions.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Thank you, Mr. Chairman.

I listened carefully—

[*English*]

The Chair: If you want him to continue, that's fine, but it's going to take up your question time.

[*Translation*]

Mr. Marc Lemay: You're right; I think it would be better to go back to the question raised by my colleague earlier.

Mr. Watson, Mr. Ricard and Ms. Aubin, I would like to give you my own impressions. I am pleased to see you here at this stage in our consideration of Bill C-44. I have been comparing your comments to those made by witnesses who appeared previously, including the Indigenous Bar Association in Canada, and I see that we are dealing here with two completely different viewpoints.

On the one hand, departmental officials say they will have no trouble handling this. According to them, after 30 years working in this area, they have seen other such challenges. On the other hand, the Indigenous Bar Association quotes the words of Justice Muldoon of the Federal Court. I do not wish to make a mess of His Lordship's statement, but in the case in question, the title and title of which I've forgotten, the judge handed down a ruling in which he said that interpreting decisions made by the Human Rights Commission under the Canadian Human Rights Act was tantamount to assimilating Aboriginal people and shutting down the reserves. My description is rather harsh. However, that is what he meant and that is what we were told by people representing the Indigenous Bar Association.

I have to say that everything I've been hearing this morning seems very ambiguous. I would like you to provide some clarification. We need to know who is right and who is wrong. The people representing the Assembly of First Nations want there to be an interpretive clause, but representatives of the Human Rights Commission tell us that it would be possible to put a provision in the Bill that would define an interpretive clause, so as to have some warning of what is to come. The First Nations want a derogation clause.

What is your position this morning on the demands made by the Indigenous Bar Association and the Assembly of First Nations? Are they of no concern to you?

Mr. Daniel Watson: In answer to your question about how implementation of this legislation will proceed, I would just like to give you an idea of the context and talk a little bit about the research we have done. Of course, predicting what would happen under a piece of legislation is an art, rather than a science. We have looked at what happened in similar cases in the past.

With respect to the question regarding the objective of the legislation, I can only repeat what Minister Prentice said before the Committee. I have the English version in front of me, and I would like to read it to you:

[*English*]

> —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.

[*Translation*]

In my opinion, that is a summary of the Bill's intent. It doesn't affect the reserves in the sense that this is about developing new policies. Instead, the intent is to create the same rights for people living on reserve under the Indian Act.

Mr. Marc Lemay: Mr. Watson, please don't spend the entire morning repeating what the Minister said; I know what he said.

At the present time, the First Nations are saying that they will not be able to start implementing Bill C-44 in its current form overnight. According to them, that would lead to absolute chaos. When I asked them what we should do, they suggested adding an interpretive clause. You read it. Do you agree? Is the Department prepared to act on that? Is it prepared to talk about developing and incorporating an interpretive clause and a non-derogation clause?

My question is very specific—at least, I hope it is.

● (1120)

Mr. Daniel Watson: When he last appeared before the Committee, the Minister, in response to a question regarding the timeframe for implementing the legislation, which is obviously an important part of the comments that have been made here, said he was prepared to consider advice in that respect. That continues to be the case.

In fact, we carefully read the testimony of witnesses who appear before the Committee, and we listen to what they have to say. We know that a number of stakeholders have suggested an 18- to 30-month timeframe. We are obviously aware of that and, as I would emphasize once again, the Minister has shown openness to the idea of considering that advice.

As regards the matter of interpretation, we have often received comments, both in this Committee and elsewhere, from people who wanted it to be clear that certain programs that benefit band members will continue to exist under the legislation, as is the case for other sectors of Canadian society. We heard that.

These are not principles that are already laid out in the legislation. The proposal would in no way diminish an Aboriginal group's right to take action in order to benefit its members. So, as regards an interpretive clause, I suppose that the principle that has been expressed by people is achievable. It's a matter of looking at the issue and clarifying it. However, we're not talking here about fewer opportunities for Aboriginal groups, and particularly First Nations, to benefit from programs that are available to other sectors of Canadian society.

[*English*]

The Chair: Thank you.

I have to move to Madam Crowder now.

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): Thanks, Mr. Chair.

Thank you for coming before us today.

I want to take this from the theoretical to the practical and give you a specific example.

In 2004, the Auditor General did a report saying that the K to 12 school system on reserve was in a lot of trouble, and the department was going to respond with a framework agreement and a policy agreement. I understand that the policy work is essentially stalled and that the collaborative funding formula process that was ongoing has halted fairly recently as well.

When the minister came before the committee in March, he talked about the repeal of section 67. He said:

> 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.

Now, in the department's own briefing documents, they highlight a huge inequity. They say, “Based on the above described analysis, there is a national comparability funding gap of $64 million in the band school system for the year 2004-2005.” So in the department's own material, they acknowledge that there are some inequities.

The bar association, when it came forward, said there could be an inadvertent effect from taking apart the Indian Act without any real transparent process. Given that the department says that, for example, band schools are seriously underfunded, I could anticipate that we could get appeals. And the minister says that the repeal of section 67 is a mechanism to deal with inequities in education.

Have you anticipated or examined circumstances where you could anticipate a complaint under the tribunal—based on the department's own data that there are inequities—against the government, from either band councils or band members who feel they don't have access to education like other Canadians do?

● (1125)

Mr. Daniel Watson: I see two parts in that question. First of all, what I hear is this. Could there be a complaint? Obviously there will almost certainly be a complaint.

Ms. Jean Crowder: Have you examined the department's information where they say there are inequities?

Mr. Daniel Watson: The second part of that is, would the department's information be used as part of that complaint process? The answer is—

Ms. Jean Crowder: No, actually that's the question. The question is this. Have you looked at the department's own data currently that already acknowledges there are inequities and examined the impact on the department, or the potential impact on band councils, when we already know there are existing inequities?

Mr. Daniel Watson: The easiest way to answer that is to say we have all sorts of information and data. We're already in a number of litigation processes, and I'll have my colleague Daniel Ricard maybe speak to some of the litigation. We know that information is discovered all the time in all sorts of different legal processes, sometimes to the tune of hundreds of thousands of pages. So yes, it will be used.

Ms. Jean Crowder: Maybe I'm not being really clear then. We already know the department acknowledges that there are some challenges. In this case they're saying there's a $64 million gap in what first nations children on reserve can access.

We know there are these inequities. Has the department examined department-identified cases where there are existing inequities, and have they examined what the potential impact is on the department? If I handed this over to every reserve that has an on-reserve school in the country and said, “I suggest you file a human rights complaint because the department is saying there's a $64 million inequity”, has the department examined all those inequities that the department itself has identified and determined what the impact would be on the department if every nation in Canada filed a human rights complaint?

Mr. Daniel Watson: Let me start a little further back. There will be complaints. People will use our information. Some of the conclusions that the department has come to they will use to advance the complaints they are making. Obviously it's not our place to stand in the position of the tribunal and come to some sort of definitive conclusion on that, but the very fact that we've—

Ms. Jean Crowder: The question is this. Has the department looked at this?

Mr. Daniel Watson: I'm not sure exactly which document we've done, but are you suggesting that—

Ms. Jean Crowder: Well, any one of a number of documents. The Auditor General herself has clearly identified inequities in the system, for example. So my question is this. Has the department actually examined specific cases where inequities have been identified to determine what the impact would be? It's not whether people could use data in the future. Have you looked at what's already on the books?

Mr. Daniel Watson: To the extent that you're talking about one of our documents, yes, we looked at it and we're aware of it, in that a document like that sounds like one we would have created.

Ms. Jean Crowder: Can we have the analysis then? Can the committee have the analysis that you've done on any documents where inequities have already been identified?

Mr. Daniel Watson: Again, it would be the question of a subject of a complaint that would come forward that would be specific to facts and circumstances and dealt with through the process of dealing with those things. It's not our place to prejudge what the outcome of that might be. It is our job to figure out programs and to design them in a way that respects not only the law but also the policy objectives that the department has and that Parliament approves. That's our role. Obviously, as we're developing those things, we see challenges from time to time. We work towards fixing those challenges. To go from there to trying to figure out how to play a role that is more along the lines of the role of a tribunal or a court is obviously different.

Ms. Jean Crowder: That wasn't the question. I wanted to know if you had done an analysis.

The Chair: We are on to the—

First of all, I'd like to welcome National Chief Patrick Brazeau to the committee.

I'm just going to finish the first round of questioning, and then we'll move on and ask you for your opening statement.

From the government side, Mr. Bruinooge.

● (1130)

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

Thank you to everyone who's come before the committee today.

If I were to start my line of questioning, it would be mostly in relation to the consultation that has occurred over the last, well, 30 years now. In terms of the Canadian Human Rights Act being introduced, it dates back to 1977. Perhaps you could talk a bit about the process, where this exemption has been debated through the years.

I know there was some debate in 1985, as well as in 1992, and extensive debate in the year 2000. I'm not sure if there's anyone amongst you today who was a part of that departmental process. Perhaps you could talk a bit about the different types of submissions that have been made throughout the 30 years we've been considering this very act.

Mr. Daniel Watson: Okay. Thanks.

In 1977, the act was introduced. In 1985, Bill C-31 made some amendments to the Indian Act, and there was significant discussion across the country at that time and after about some of the provisions in the act that were seen as quite discriminatory.

In 1992, Bill C-108 at the time, an act to amend the CHRA, was introduced. The repeal of section 67 was a part of that. That bill died on the order paper. There was a dissolution of Parliament in 1993.

In 2000, there was the CHRA review panel report, and you referred to that. Mr. Justice Gérard La Forest chaired it, and that again had extensive consultations, particularly about section 67, held across the country with national and regional aboriginal organizations as part of that in-depth process. That panel, as you may know, recommended that section 67 be removed and that the act apply to self-governing aboriginal communities until such time as aboriginal human rights codes applied. The panel also discussed a variety of other issues during the consultations, but again, the summary, going to the question on consultation, is that there was a significant consultation on it at that time.

In 2002, the joint ministerial advisory committee's final report to the Minister of Indian Affairs and Northern Development came up with the same recommendations as the review panel report a couple of years earlier.

In 2002 again, Bill C-7, the First Nations Governance Act, was introduced, and it too, as you may remember, proposed the repeal of section 67. That bill obviously was one that was discussed at length across the country.

In addition to that, in 2005, Bill S-45 came forward, again to amend the Canadian Human Rights Act. *A Matter of Rights* was published, a special report of the CHRC on the repeal of section 67.

There have been significant consultations in this context on this issue for nearly 30 years. I would suggest there would not be a whole lot of areas of public policy that have received this level of review on this single issue over that period of time. I stand to be corrected on that, but it is certainly one that has received a significant amount of considered attention.

Mr. Rod Bruinooge: Mr. Chair, how much time do I have left?

The Chair: About a minute.

Mr. Rod Bruinooge: I'm not sure if the justice official could elaborate as well, but my question would be in relation to the Taku and Haida rulings. Has any specific suggestion of time allocation come from these rulings in particular cases? Would there be a suggested timeframe that consultation must achieve, or is it left up to the government or the parliamentary committee?

● (1135)

Mrs. Christine Aubin (Counsel, Operations and Programs Section, Legal Services Unit, Department of Justice): If you're referring to the cases that stood before the Supreme Court of Canada on Haida and Taku, no strict timelines were prescribed by the court. However, there were simply broader guidelines as to how Canada should conduct itself in the context of consultations. In Haida and Taku, the court has not alluded to duty to consult, for example, in the context of preparation of legislation. Rather, Haida and Taku dealt with a very different scenario of facts. In that context, certainly some of the guidelines that were provided tended more toward giving a contextual approach to what would be reasonable, meaningful consultations, given the specific context of the program, or transaction, shall we say, being discussed.

Mr. Rod Bruinooge: Specifically on resource environments, a community would be seeing a potential incursion into their resources versus perhaps what we're doing here. Is there a direct correlation between the ruling and perhaps what Parliament might be engaging in, in bringing a repeal to a specific part of the act?

Have we seen Taku and Haida applied outside, I guess, the resource environment?

Mrs. Christine Aubin: Again, Haida and Taku were not decisions that dealt with the duties of the Crown in the preparation of legislation. In actuality, we don't have direction yet from the Supreme Court of Canada with respect to any legal duty to consult during, for example, a parliamentary process or in the preparation of legislation. The duty arises outside of that context.

The Chair: Thank you. You're out of time.

We're going to take the opportunity for Mr. Brazeau to give us a submission.

Welcome, again.

Chief Patrick Brazeau (National Chief, Congress of Aboriginal Peoples): Thank you, Mr. Chair.

Good morning, and thank you for the opportunity to speak to you today.

On behalf of the Congress of Aboriginal Peoples, l am pleased to appear before you today to discuss our perspectives on the draft Bill C-44 under study by the members of this committee.

There are three areas that the congress wishes to address today relative to the implications of the draft Bill C-44. These include our comment on the Indian Act as an impediment to effective human rights protection in first nations communities; our views around band councils and on governance in general in first nations communities; and the need for education and outreach to increase awareness, allay concern, and engender understanding of the value of the provisions of the Canadian Human Rights Act.

Since 1982, Canada's Constitution and its Charter of Rights and Freedoms, which is the highest law of the land, has specifically recognized three groups of aboriginal peoples: Indians, Inuit, and Métis. However, some 25 years after the repatriation of our Constitution, the gap between theoretical equality and government practice in respect of the recognition and protection of aboriginal rights afforded by its provisions is a matter of daily issue for the constituents of the Congress of Aboriginal Peoples. Their concerns and aspirations continue to be dismissed by all levels of government. Time and time again they continue to have to contend with exclusion and ignorance.

l have said many times that the Indian Act should be, and in fact must be, replaced. This archaic legislation represents an artificial and foreign imposition of “Indian-ness” on aboriginal peoples. l reassert this call once again to the committee members present here today.

The Indian Act has resulted in the deconstruction of traditional, historical aboriginal nations. Under its prescriptive provisions, these historical communities were reassembled into Indian reserves, many of which have been home to social and economic hardship for aboriginal peoples for more than a century.

In addition to the establishment of the reserve system, the Indian Act, under section 6, prescribes who is entitled to registration as a status Indian. From that designation flows specific entitlements to programs and services. These include things like funding for post-secondary education, for non-insured health benefits, as well as access to housing and some income tax exemptions. Beyond the written words of the Indian Act and the bureaucratic system that sustains and enforces its colonial provisions are aboriginal peoples and their families.

Right now in Canada there exist many aboriginal families in which individuals within the same family do not share the same access to programs and services based solely on their entitlement, or lack thereof, to Indian Act registration. Reasonable people do not have to spend a lot of time pondering the implications of, for example, the fact that while one parent or sibling can access prescription medications, dental care, or eyeglasses, the other parent or child cannot.

Every parent wants their children to have a better life than they do. Imagine for a minute that parents who have successfully accessed post-secondary funding for themselves may see their own children denied the same access because of the application of the tenets of the Indian Act.

Clearly, the Indian Act, both directly and indirectly, is the foundation for discrimination against the majority of the aboriginal population in Canada today. There is a profound lack of federal-provincial consensus around jurisdiction and financial responsibility for programs and services for registered Indians. This includes education, health care, and social services such as income assistance and assisted living services. While federal and provincial governments argue about who should pay for what, aboriginal families and individuals go without.

That said, does the Congress of Aboriginal Peoples support the repeal of section 67 of the Canadian Human Rights Act? Absolutely and unequivocally.

The fact that the Indian Act has substantially escaped human rights scrutiny for three decades is unacceptable in a country that is otherwise held up throughout the world as an example of a successful and prosperous democracy.

The federal government has spent a great deal of time, effort, and money in trying to support the establishment of the modern fundamentals of good governance on Indian Act reserves. It has also spent an extraordinary amount of money and effort defending the Indian Act from court challenges. Much of this effort has stemmed from the Indian Act's outdated and inadequate direction on governance-related matters within the act's band council governance system.

Since 2003, when the proposed first nations governance act was withdrawn, we have waited for government and first nations communities to present viable alternatives to the much publicly maligned proposed Bill C-7. Nearly four years later we are still waiting. For people who live on Indian Act reserves, the band council is the be-all and end-all in their community. It is the source of jobs, housing, income assistance, education, and training.

● (1140)

CAP and its affiliates across the country continue to be contacted by band members, many of whom have left the reserves because of disputes over access to programs and who report numerous grievances and concerns. They cannot obtain copies of program criteria or policies. They are denied access to redress mechanisms or have had their appeals adjudicated by the same people who denied them access to those programs in the first place.

The provision of on-reserve programs and services is typically done by means of funding from Indian and Northern Affairs Canada under standardized contribution agreements with band councils and their organizations and agencies. These agreements include funding for education, health, social programs such as income assistance, child and family services, family violence, and assisted living. Contribution agreements require band councils to deliver programs with processes that adhere to principles of transparency, disclosure, and redress.

We are aware of a band bylaw that was passed that forced family members to reside separate and apart because spouses or children are not band members. There are also electoral processes that deny individuals the right to run for councils on the basis of their religion, marital status, or residency.

How can we permit these grievances to perpetuate? How we, as aboriginal leaders, and you, as parliamentarians, cannot be morally moved to remedy these situations with speed, conviction, and precision is quite frankly beyond me.

There remains a great deal of debate and controversy in this country about what constitutes a human right and whether or not aboriginal peoples enjoy the same human rights as Canadian citizens generally do.

Sadly, at this point in our history we know that Canada has failed to address a significant source of real and potential discrimination against its aboriginal peoples. Thankfully, the repeal of section 67 from the Canadian Human Rights Act will begin to deal with this pressing issue.

There is an enormous need for education at the individual, band council, organizational, and federal and provincial government levels in order to mitigate and manage what may be a significant conflict of values, program standards, and jurisdictional issues as a consequence of the repeal of section 67.

We, at the Congress of Aboriginal Peoples, are under no illusions that the application of the Canadian Human Rights Act to the Indian Act and the full implementation of the Canadian Human Rights Act on reserve will be anything but challenging and at times perhaps even overwhelming. That being said, we do not wish to see a prolonged implementation period for these measures. Human rights are not negotiable, and cannot be deemed negotiable, and their application cannot, and again must not, be deferred in 21st century Canada.

In summary, we strongly encourage the committee to make strong and specific recommendations to the government about the need to work with aboriginal peoples, their band councils, and representative organizations in order to ensure that the implications of the repeal of section 67 are understood and embraced by impacted individuals, communities, and federal-provincial government departments whose existing programs and services have been tied to Indian Act registration and processes.

We live in a nation that enjoys almost boundless prosperity. We, in Canada, are indeed “the true north strong and free”. We need to move quickly and sincerely to ensure that our first nations sisters and brothers, be they youth or elder, living both on or off reserve, enjoy the full freedom, benefit, and protection of the provisions afforded by Canada's Human Rights Act.

So we applaud Minister Prentice and Prime Minister Harper for taking the necessary steps to make this occur, and we encourage the committee to help make these plans a reality.

Meegwetch, *merci*, and thank you.

● (1145)

The Chair: The chair would like to mention to the witnesses that because we bridge over the lunch hour, we have lunch brought in, so the committee members and you are also invited to participate if you wish to have something. We do not stop for lunch, but it is available. Just so you know.

We're going to continue on the second round, and I'm going to start with Madam Neville, please.

Hon. Anita Neville (Winnipeg South Centre, Lib.): Thank you very much, Mr. Chair, and thank you too for coming.

I have five minutes, Mr. Chair?

The Chair: Yes, you do.

Hon. Anita Neville: Mr. Watson, I'll come back to you. I don't like to beat up on bureaucrats, but I have to tell you that I'm finding your responses to the questions, as I've heard them, very difficult to follow and certainly, not providing—and maybe it's me—much clarity to the issue.

I'd like to follow up on Ms. Crowder's comments, and Mr. Brazeau mentioned it in passing in his, and I'll come back to it. I'm really struck by the fact that you're not able to tell us in a more comprehensive way what analysis you have done on the impact of the repeal of section 67 on first nations communities. We know there are internal government reports that have advised the minister on health issues, housing issues, education issues. We know that. Some of us have some of these reports. The exposure is there.

What kind of analysis have you done to prepare for the potential impact and to mitigate it with the communities so that they have a capacity to respond? I'm not hearing that from you.

Mr. Brazeau makes a comment in his presentation that he's aware that there are many processes in place that will be set upside down. Those are my words, not his.

Help us, because right now I'm not hearing anything.

Mr. Daniel Watson: I apologize if I'm not being helpful. It's certainly not by design.

In terms of responding on the ongoing operations of the department, we're aware that we have many areas of significant challenge. We work to improve education systems, we work to improve child and family services, we work to improve water quality, we work to improve any number of areas. We do that because we know there are challenges there. We know there are-

● (1150)

Hon. Anita Neville: Do you know what, Mr. Watson? I understand all of those challenges. I don't mean to be rude and to interrupt you. I think we all understand the challenges. We understand the resource issues, but we want to know what kind of analysis you have done on the impact of the implementation of this bill on all of these issues that you're identifying, and issues that the department has given advice to the political decision-makers on. We need to know that before we make this kind of decision here.

Mr. Daniel Watson: I'll ask my colleague, Daniel Ricard, to speak in a moment about the carriage of litigation, because that's part of how we think through this.

We are aware that there will be complaints that come up. Those complaints will be spec-specific, they will be circumstance-specific, and they will be arguing specific points of law.

Hon. Anita Neville: I'm sorry to interrupt, but I want some answers. They will be complaints based on information that you already have and have supposedly provided to the minister on shortcomings that are in place already. What analysis have you done on the basis of that?

Mr. Daniel Watson: It won't only be on the basis of information that we have. People will base their complaints—

Hon. Anita Neville: I understand that, but I am asking you specifically, based on the information that you have provided....

Mr. Daniel Watson: We haven't gone out and tried to figure out what the pleadings might be by a specific plaintiff who might launch a complaint. We know there are areas in which we are trying to do better to avoid the need for complaints in the first place. For example, recently in child and family services in Alberta, we launched an initiative that will take a very different look at trying to deal with the way child and family service issues are dealt with by first nations there. We do that because we know there is that problem.

What we would like to do is design programs so that we don't have complaints. That's where we focus our efforts. It is on designing them so the people don't feel the need to make a complaint. But we haven't sort of tried to craft what the complaints would be by plaintiffs and tried to apply that as a lens to a program design.

Hon. Anita Neville: Thank you.

The Chair: It's the government's turn. The chair would like a question around that, and I would like to direct my question to Madam Aubin.

With respect to what we're talking about, do you believe the determination of adequate housing, a safe and sufficient water supply, reasonable access to education, will be determined by the courts to better direct the department as to what level of service they need to provide?

Mrs. Christine Aubin: The examination—the small “s” study, if you will—of the issues of housing, family services, and so on are twin-faceted. They stem from policy considerations, which obviously I'm not in a very good position to speak to, and they flow from socio-economic considerations. They may also flow from directions given by the courts.

You've alluded to the criteria of reasonability. There are various fact scenarios that may arise in the broader analysis of section 67, its repeal, the analysis of the CHRA. At this point in time we have the background of existing litigation, which is directed either against first nations or the Crown with respect to some of these subject areas.

We must always keep in mind the scope of the CHRA when examining complaints or potential allegations. The extent that these areas of operation or services are deemed to be services within the meaning of the act is how we may better direct the lens of the examination, if you will.

Again, while policy may be directed by considerations such as socio-economic, cultural, or other social considerations, there is also some breadth that will be given by the courts, further guidelines and development of case law, with respect to the adequacy of services. It's difficult to speculate on what those particular circumstances will be. They may change from case to case. They may change from community to community. That may certainly be one of the advantages of developing case law on the matter.

● (1155)

The Chair: I guess that's the unknown. The challenge for the department is to determine a sufficient level of service, and the expectation of the aboriginal community as to what they think is a sufficient level of service needs to be determined by somebody—and whether Bill C-44 will give that access to make those determinations through case law.

I find some of the questions are really unknowns. Is the amount of money that's needed to bring a sufficient level of service for education $68 million? Is it more or less? Who is to determine that? That was my direction of the question.

We'll move on to the Bloc.

[*Translation*]

Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ): We are currently discussing the repeal of section 67, which deals with protection of the Indian Act, and having the Charter of Rights and Freedoms apply.

Once that has been established, as part of the process of developing measures to implement the legislation, many associations, including the Quebec and Labrador First Nations Association, the First Nations Association of Canada, the Congress of Aboriginal Peoples, represented today by Mr. Brazeau, and the various community chiefs, did they have the time and the means to consult each and every First Nations band here in Canada? Did they have an opportunity to do that?

Also, did you establish a timeframe and provide the necessary funding to allow associations to inform their members of the repercussions of these changes? You have been talking about that for the last little quite. You expect that things could happen in a number of cases. Did you make the Aboriginal people aware of areas where there could be differences of opinion, prior to the final repeal of section 67 and full implementation of this Bill?

Mr. Daniel Watson: Yes. I would just like to come back to the testimony of the Canadian Human Rights Commission last week. They spoke at length of the implementation process and the need to work with Aboriginal communities to determine how the legislation could be implemented. In some cases, the communities may want to develop their own procedure for resolving conflicts in the community before going any further within the system.

We will be contributing to that process in a number of ways. The Commission recognizes that it has an important role to play. We expect it will continue to carry out the work it has been doing for the last 30 years, particularly working with the communities affected by the legislation, developing various procedures and approaches, educating the public, and so on.

● (1200)

Mr. Yvon Lévesque: Pardon me for interrupting. Given your 30 years of experience, can you tell me whether, with respect to the implementation of this legislation, recommendations were made regarding areas that you consider to be particularly controversial—for example, water and health care? If the legislation were to be implemented without the various band councils and First Nations chiefs being properly informed, the result could be bankruptcy for certain band councils or assemblies.

Have you brought forward those controversial issues and made recommendations with respect to implementing the new legislation?

Mr. Daniel Watson: We are currently in the process of doing that. We continue to work with Aboriginal groups to ascertain the areas in which they would like to receive assistance. It is mainly employment that is the source of many complaints. We expect it will be necessary to work with Aboriginal groups to determine, among other things, what the source of those complaints is and how they can be resolved. In a particular context, we expect to be doing that work, which will be done not only by the Department of Indian Affairs and Northern Development, but also by the Commission itself, which has expertise in that area.

Mr. Yvon Lévesque: And what is the timeline for implementation?

Mr. Daniel Watson: It is currently six months. However, the Minister has expressed a desire to receive advice in that regard. We note that a timeframe of 18 to 30 months has often been mentioned in the testimony.

[*English*]

The Chair: Mr. Albrecht, you have five minutes.

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

Thank you to each of the witnesses for appearing here today. I have a number of questions, but before I address my questions, I would like to make a comment on what I think is a very simplistic approach to assessing the potential impact of whatever the number of complaints might be based on documents that outline certain shortfalls in one particular arm of government. Shortfalls exist in all arms of government, and to start assuming we could somehow forecast the number of potential complaints we would get is I think simplistic at best.

However, on to my questions. Chief Brazeau, thank you for being here today. Thank you for the passion with which you shared your speech and the articulate speech you've given us, and also for your representation of aboriginal peoples across Canada.

I have a question that I think you're silent on in your speech, although I'm sure you have an opinion on it, and that is the issue of an interpretive clause. Many of the groups that have appeared before this committee have called for an interpretive clause. We've had positions stating that the current charter in sections 15 and 25 and the Constitution in section 35 are adequate to deal with the balancing of the individual and collective rights. I would like to have your opinion on that.

Chief Patrick Brazeau: Thank you, Mr. Albrecht, for your question.

Simply put, the congress does not necessarily see a need for an interpretive clause, because we feel that section 35 does cover and at least minimally tries to strike a balance between collective and individual rights.

But on that issue, it's important to note as well that in terms of human rights, no right is absolute. If you look a the jurisprudence over the years, the courts have always struck that balance between individual and collective rights.

One example of that is the 1999 Corbiere decision on the off-reserve right to vote in band elections. The court clearly struck a balance in that Supreme Court decision.

It's important to note as well when we're dealing with individual and collective rights that it's always going to depend on the facts presented to the courts and the conditions surrounding those particular facts. We feel very comfortable that the courts will continue to do the good work they have been doing in striking that balance.

Just as a note on some of the suggested language, in terms of interpretive clauses we would be against any attempt at undermining individual rights for groups of people claiming rights over those individual rights and undermining the actual repeal of section 67 and its intended purposes.

● (1205)

Mr. Harold Albrecht: Mr. Brazeau, you are obviously familiar with a lot of first nations groups. It seems to me one of the challenges we would have in trying to insert an interpretive clause is that there are 600 first nations communities across Canada. Do you feel that if in fact the committee decided we should include an interpretive clause, there would be a problem in having a "one size fits all" within that clause?

Chief Patrick Brazeau: I think that is probably a reality and a fact. Given the reality that we have more than 600 reserves in this country, some might try to put in their own interpretive clause, just to undermine the purpose and intent of the repeal of section 67, which we would not agree with.

Mr. Harold Albrecht: One other point that has come up frequently is this need to consult. Obviously we want to consult. We want to have all the input we can get. But it would seem to me that at some point we need to move on with action.

In your opinion, what would adequate consultation look like?

Chief Patrick Brazeau: It depends what context the consultation is in. If on the one hand the consultation is on the intent and purposes of the repeal of section 67, I don't think we need to further consult. There have been 30 years of discussion of this issue. Our organization participated back in 1999 and 2000. We also participated through these consultations in 2001, when the proposed First Nations Governance Act was on the table. As a matter of fact, it was the Congress of Aboriginal Peoples that had recommended at the time that the federal government take a look at repealing section 67.

As to consulting on the implementation of the repeal of section 67, I think consultation is needed on that basis. But having said that, again, what constitutes proper consultation? Back in 2001, for example, there were some groups that decided to not take part in those consultations. Is that a "lack of consultation", or is it just boycotting a process? We took part in the consultations, we made recommendations, and we're glad that we're seeing those efforts come to life today.

The Chair: Thank you.

Madam Crowder.

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

Just on the matter of consultation, I know Justice La Forest's report has been quoted, and I want to quote from his section around consultation.

He says:

> Any effort to deal with the section 67 issue must ensure adequate input from Aboriginal people themselves.

Further on, he's talking about the potential impacts, and he says:

> These points raise huge questions about the social and economic structure of Aboriginal life and its legal underpinnings. Such matters deserve far more study than we have been able to give them.

So even in this report in 2000, clearly the justice himself says that there's far more need for consultation.

My question is more around whether, in this context, the department currently considers whether or not it's violating human rights.

Just a yes or no will do, because I have a follow-up.

Mr. Daniel Watson: We consider all Canadian law.

Ms. Jean Crowder: I would assume, then, in subsequent situations where there may be appeals, that the department will be defending its current policies.

Mr. Daniel Watson: There's a long history of the department working very hard to change its programs to get better results, because we recognize that there's a need to have better results, long before there's litigation.

● (1210)

Ms. Jean Crowder: The Auditor General, herself, has talked about the fact that the challenges, in many cases, have been launched when the department has vigorously defended existing policies that were subsequently struck down. In many cases, the department is also the one that makes the decision about whether something is going to proceed.

So with the passage of Bill C-44, it really isn't going to change how the department currently behaves then.

Mr. Daniel Watson: Well, certainly in the instance of a complaint being launched and the tribunal, for example, if it goes that far, ordering a different set of behaviours, obviously it will.

Ms. Jean Crowder: It will only be in response to behaviour. So the department isn't going through some process currently to look at where it may be open to complaint. Again, we have plenty of documentation that says there are inequities in the policy. So the department isn't examining where it currently may be in violation.

Mr. Daniel Watson: What I would say is that we have a constant look—not just legally but in terms of policy objectives—at where we're not achieving the objectives we want. Sometimes those things are bound by the charter, sometimes they're bound by other pieces of legislation—environmental, for example—and sometimes they're bound by policy directions that don't sort of have their basis in any particular legislative requirement.

Ms. Jean Crowder: From what you're saying, it really doesn't sound like there is going to be any change in how the department currently operates, whether Bill C-44 is in place or not.

Mr. Daniel Watson: Well, what I would say is that the ongoing attempt to make sure we meet the spirit and letter of the law in Canada will continue. But part of the law of Canada would change in that people who currently do not have the opportunity to bring certain complaints against us will. To the extent that we take a different position at that point in time, for example, but are perhaps required to respond through a tribunal process and are found not to have been acting consistently with the act, absolutely, there will be a change on that front too. So that's a second—

Ms. Jean Crowder: Right. But it sounds like there's nothing proactive that's going to happen. The department will wait until complaints are brought before the tribunal and then they'll respond.

Mr. Daniel Watson: No. The first part of my comment was that today we do an active review to make sure we are consistent with the spirit and intent of the law—any number of laws, not, obviously, just the Indian Act or the charter, but any number of directives and pieces of legislation. So that's a critical part of it.

If this law changes, then obviously that will be part of that mix in a different way than what exists today, when that isn't part of the law of Canada.

So I think it's important to recognize that the first part is in fact, in a sense, where, in a perfect world, we would always be, in that we would understand perfectly what the law is and we would be able to respond perfectly to what it says. But obviously we don't respond perfectly and we don't understand perfectly all the time. That's why we have these processes in place, to, in a sense, make clear where we're off track in some instances.

The Chair: Okay. Thank you.

We'll move on to Mr. Albrecht again.

Mr. Harold Albrecht: Thank you again, Mr. Chair.

Again, I just want to respond to this idea of the department doing some study to assess all the what-ifs. I think, first of all, that would be a waste of time, even if it were clear that this committee was going to move ahead.

But in these last few studies, it appears that the opposition has been intent on dragging its feet in allowing us to move ahead to address some of the concerns we have in terms of equality in Canada for all our first nations people.

On the matter of implementation time, I wonder, Chief Brazeau, if you'd be prepared to comment. There has been a wide range suggested, anywhere from six months to 30 months. What would you feel would be an adequate time lapse from the time this act is passed into law to implementation within the first nations communities?

Chief Patrick Brazeau: Well, in terms of consultation on the implementation, acknowledging that if indeed it happens, I think there has been some precedence set, again using the Corbiere decision, where the Supreme Court gave an 18-month timeframe in terms of consultation and implementation.

If you look at even recent exercises of past governments, for example, with respect to the round table process, that too was roughly an 18-month process. Anything beyond 18 months is, I believe, far too long, and anything below—it's for people to make their own assessment. To be quite fair, I think 18 months would serve the purposes of implementing this piece of legislation.

● (1215)

Mr. Harold Albrecht: Another concern—and this may be addressed to whoever wants to respond to it—that has been expressed is the potential huge influx of complaints that may arise if this legislation is passed. I don't think anyone disputes that there will be an increase in cases. But I think to assume that there will be a huge influx doesn't give enough credit to our first nations people.

All of us know that when new laws are enacted in our country, or in any country, 95% or more of the people will begin to comply with that law before they wait to be charged by the new law. I would hope that would be true in this case as well, even though my colleagues across the way may disagree.

Can we not assume that the large majority of first nations communities will already have begun to understand some of the implications that we're dealing with here? With the help of the commission, with the help of the department, with the help of other first nations, larger groups have begun to take some preparatory steps to avoid this huge influx of cases that will potentially come to the table.

Mr. Ricard, would you like to respond to that?

Mr. Daniel Ricard (Director General, Litigation Management and Resolution Branch, Department of Indian Affairs and Northern Development): Thank you.

I'll just say that I think that is a fair assumption. In fact, as the representatives from the commission mentioned when they came, they have created an aboriginal subgroup within the commission's internal structure with a view precisely to work on that front. I think it is a fair assumption that much work will be done in advance of the repeal being effective with respect to first nations.

Mr. Harold Albrecht: Thank you.

I think it's important that we allay the fears of all Canadians to think that somehow we'll be inundated with this huge flood. As I said, I agree there probably will be an increase, but—

Mr. Daniel Ricard: Just on that point, it is difficult to predict exactly how much there will be or how long that will last. It is not inconceivable, for instance, that in the first year or two there may be more, simply because you will have had sort of 30 years of denying. It's not inconceivable that there will be a larger number coming in the initial years.

About the question of whether this will remain or subside over time, we don't know. All we know is that if you look at the examples of where self-government provisions make those self-governing first nations subject to the act, that has not been the case. If you look at the number of cases that are already being filed with the commission against other provisions of the Indian Act, again, the numbers have tended to be pretty stable.

Mr. Harold Albrecht: I think you said roughly 60 per year, which is manageable.

Mr. Daniel Ricard: That's right, and my understanding is that those numbers have also been fairly stable. I guess that's what we know, but as for the rest, it's a lot of speculation.

Mr. Harold Albrecht: I think it's important that we look at this realistically and rationally and not fall into the trap of using hyperbole in trying to assess what the potential impacts will be.

The Chair: You're out of time, Mr. Albrecht.

Mr. Harold Albrecht: You've got to be kidding.

The Chair: No, I'm not.

I do have a question. Who should the consultations be between? Obviously, the aboriginal leadership and the communities, but on the government side should it be the department, the Department of Justice, or should it be the committee? Who should be the other party? I'm curious. Is anybody else curious about that?

I would ask Mr. Watson.

Mr. Daniel Watson: I guess when we look to the court decisions, the court speaks to consulting with the potential rights holders, or the actual rights holders would be my lay description of it. Obviously, there are any number of ways that consultation can take place. First nations can group together to do that, or other aboriginal groups can group together, or they may wish to speak individually on the subject.

In terms of the government side, as my colleague from the Department of Justice who spoke earlier said, there hasn't been explicit direction through the legislative development process yet from the Supreme Court of Canada. Most of what we have seen has been more of a regulatory nature and sort of program driven.

● (1220)

The Chair: To me, the determination of the amount of time it is going to take has a lot to do with how you'll facilitate and be that channel for that consultation.

Mr. Brazeau, do you have any thoughts on that, as far as who on the government side should be speaking or sitting at the table on behalf of the government? Would it be the department, this committee, or the minister?

Chief Patrick Brazeau: I'd certainly suggest that first and foremost the department should be the ones consulting on behalf of the government with the band councils and aboriginal representative organizations, because in our view they are the lead on this topic. They have the vested interest in reserve communities, so I think they should be the primary group.

The Chair: Thank you.

Mr. Russell.

Mr. Todd Russell (Labrador, Lib.): Thank you, Mr. Chair.

Good morning to each and every one of you, and a special good morning to Patrick, because I've known Patrick for quite some time.

I certainly don't agree with much of what you've written in your submission, or at least the politicized comments. Probably we can take that up at another point.

By its own admission, Mr. Albrecht, the Congress of Aboriginal Peoples says that the implementation may at times, perhaps, be overwhelming. It is fair of us as a committee, when we have a significant piece of legislation, to ask questions, to have an investigation into a significant piece of legislation that is before us. So there's nothing wrong with asking questions.

Nobody around this table and not one witness who has ever appeared before this committee has said we should not repeal section 67. It is how best to do it and the process by which we do it that is important.

I have a question to Mr. Ricard. The Canadian Human Rights Commission was before us. This is the same organization through which we want first nations people to now have recourse to for the repeal of section 67. That organization itself has said that we need a longer transition period, we need some kind of interpretive clause, or, in the absence of it, we need some binding guidelines.

They say there'll be an increase in terms of complaints, because we have 60 now without any recourse. So how many will we have when we have full recourse? There will obviously be an exponential number of complaints coming forward, so we need additional resources for first nations, for maybe the CHRC, and maybe even the government will require additional resources itself, to defend itself with the repeal.

With all of these groups saying transition time extension or a further transition time, resourcing, interpretation, or something like that, why was none of that included in this bill? I am sure that in all the consultations, adequate or not, that have been conducted since 1977, that would have been there; that would have formed part of the consultation. With all that arose out of most of the consultations that took place, why did the government decide not to include these things in this particular bill? What is the government's own policy? Outside of law as such, what policy does the government itself have in place for consultation with aboriginal people prior to the introduction of legislation? Do you have a policy that says we should do this, that, or the other thing, prior to submitting legislation? I only want to know, do you have a policy, an internal operating principle?

Mr. Daniel Ricard: Thank you for that.

With respect to the reasons why there are no provisions in the bill with respect to resources, it's simply because we don't believe this is something that necessarily belongs in the bill. The minister did speak to that when he came. We are looking to this committee to provide advice on that, but the issue of resources is not an issue that normally you will find in a piece of legislation.

With respect to the interpretive clause, that is an issue we have given thought to. It's an issue that's been debated for a long time. I think everyone's views are well known on this.

As the minister indicated, we don't believe that an interpretive clause is required. We do believe that the provisions within the Constitution Act are sufficient, and I'm specifically referring to section 35, section 15, and section 25, which tries to make a link or find an equilibrium between the collective and individual rights.

● (1225)

Mr. Todd Russell: On that, very briefly, when has an aboriginal right ever been asserted under section 35 that hasn't been contested by the federal government?

Mr. Daniel Ricard: Repeat that, please.

Mr. Todd Russell: Has there ever been an aboriginal right, that you can think of, that's been asserted or claimed by an aboriginal group and has not been contested by the federal government?

Mr. Daniel Ricard: Well, in fact I'm not necessarily an expert in this area, but if I understand the BCTC process, we're not saying that in the context of the BCTC process we are challenging the existence of aboriginal rights. We do recognize that some rights possibly exist. But as you know, the specifics of those rights in terms of their nature, the scope, the geographical location, are very difficult issues and often in fact specific.

So going back to the bill, then, with respect to the interpretive clause, as I said, the view has been that the provisions of the Constitution Act are probably sufficient to provide the equilibrium needed.

Now, with respect to the policy on consultation with respect to legislation, it varies from case to case. There is no standard rule that requires there be *x* period of time allocated for consultation. It does vary from bill to bill or from legislation to legislation. It varies from one to the other.

The Chair: Okay. Thank you. We're out of time.

We're going to finish this five-minute round, which will end at Madam Crowder, and then we'll go into committee business.

Mr. Bruinooge.

Mr. Rod Bruinooge: Thank you, Mr. Chair.

Thanks again to the committee members.

Perhaps I'll start by asking a question of Mr. Brazeau.

As a treaty Indian from Quebec, have you had the opportunity in your life on reserve to witness the allocation of resources in a way that you feel may be perhaps subject to challenge by the Canadian Human Rights Act if it were applied on reserve?

Chief Patrick Brazeau: Just as clarification, I'm a status Indian from Quebec, not a treaty Indian, because there are no treaties in Quebec, except for the modern James Bay treaty.

From my experience, not just in my own community but throughout others as well, obviously there have been some questionable practices against band members for a wide variety of reasons.

As a matter of fact, there are three individuals who are with me. There's Erin Wolski, who's a member of the Chapleau Cree First Nation in northern Ontario, and her son, Rudy, who is a non-status aboriginal person. There's also Irene Goodwin, who's a member of the Dalles First Nation in northwestern Ontario, and her one-year-old granddaughter, Cassidy, who is also non-status. There is also Cathy Graham, who's a non-status person, and her son, Michael. Michael's father was a member of the Mississauga First Nation and his grandmother attended residential school, and Michael is also non-status. These are grassroots people or grassroots organizations, as Mr. Russell would also be able to appreciate, having sat on our board for quite a number of years.

So allocation of resources is one question, but it's also more specifically with section 6 of the Indian Act, in terms of registration and entitlement. That has created a lot of problems for CAP's constituency in particular, which—well, we'll see what happens if this legislation passes.

● (1230)

Mr. Rod Bruinooge: I'm not sure if you've had the opportunity to look at any of the interpretive clauses that have been put forward over the years, but recently we had a submission from the Assembly of First Nations. They laid out a suggested interpretive clause for consideration by this committee in relation to our work. It's something that I've wanted to work through on numerous committee hearings, as I feel parts of it, perhaps, go right to the very essence of what we're attempting to do by providing human rights to people on reserve. And a certain clause within that suggested text talks about allowing chief and band council to be able to allocate resources based on preference. What would your interpretation of text like that be in relation to what we're doing?

Chief Patrick Brazeau: I have seen the interpretation clause as recommended by the Assembly of First Nations. First and foremost, CAP rejects that interpretation clause because we feel it certainly demonstrates the true colours of some chiefs in the repeal of section 67 of the Canadian Human Rights Act.

If leaders are willing to be true champions of human rights, then even under self-government, leaders have to operate and offer the fundamental human rights that people deserve. So I think it's an attempt at undermining the intent and purposes of the repeal of section 67, and it's just basically giving powers to band chiefs and councils to further undermine—Basically the status quo would remain if that were to be adopted.

Mr. Rod Bruinooge: Thank you.

The Chair: The Bloc? Any further questions?

Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: Mr. Brazeau, I must admit that I'm having a great deal of trouble following you. I am divided. But let's deal with it right here and now: I am a White man who lives in the Abitibi region, where there are seven Anishnabe, or Algonquin communities. Those seven communities have all asked me to do what I can in this Committee to ensure that section 67 is repealed. Everyone agrees that section 67 should be repealed. However, in order for that to happen, they need time for consultation and they especially need time to prepare for the implementation of this new legislation, which will play a critical role in the future of First Nations.

These communities are asking for time—at least 24 to 36 months—because not all band councils are located near towns, nor are they organized. They need time. You are telling us today that we should get rid of it immediately without any further consideration and, the sooner, the better.

Is that not what you're telling me?

Chief Patrick Brazeau: That is not what I said.

Mr. Marc Lemay: Then, what are you saying?

Chief Patrick Brazeau: I said that section 67 should be repealed immediately, but that there should be an 18-month consultation process following the amendment. The case law has—

Mr. Marc Lemay: All right.

With no interpretive clause?

Chief Patrick Brazeau: I don't think we need an interpretive clause.

Mr. Marc Lemay: But how will we ensure that rights are protected? Mr. Brazeau, the Canadian Human Rights Act applies to individuals. How then are we to protect the collective rights of the communities? That is what we are being asked to protect. That is what I find puzzling about your position.

Chief Patrick Brazeau: We have already discussed the issues with respect to the Indian Act. I have trouble understanding exactly what the collective rights of a reserve are. I can understand the need for collective rights for nations, such as the Algonquin Nation. However, in the case of a First Nation, a reserve or a band council, we are not talking about collective rights.

As regards an interpretive clause, we believe that section 35 of the Constitution already guarantees those rights. If courts of law are asked to rule on this or ensure the appropriate balance between individual and collective rights, they will do so. Indeed, they already have. I referred earlier to the *Corbiere* decision handed down by the Supreme Court in 1999, which struck a balance between individual and collective rights, and stated that no right in this country is absolute. Rights are relative and courts of law have always done a good job in terms of balancing those two types of rights.

● (1235)

Mr. Marc Lemay: I agree with you. So, that means that if a pregnant woman lives in an Aboriginal community located 450 kilometers north of Toronto or Montreal which has no clean water supply, as a pregnant woman, she will have to sue her band council and the Department. That will cost money. How is that going to work? That is the problem at the present time.

Chief Patrick Brazeau: We should not be anticipating problems. At some point, people will have to admit that, as far as Aboriginal communities are concerned, the problem is the Indian Act. The chiefs, ourselves, everyone will have to admit that. Trying to find answers to problems that already exist as we go along will not solve anything.

I can see the potential issues, but we're talking about human rights here. What is the point of thinking about potential issues ahead of time and anticipating the cost of dealing with them, while ignoring the real solution, which is to recognize the rights of people who didn't have any rights for 30 years?

[*English*]

The Chair: Madam Crowder.

Ms. Jean Crowder: Thanks, Mr. Chair.

I want to come back to a question. Maybe Monsieur Ricard can take a stab at it this time, because I don't feel that we got an answer.

When the Canadian Bar Association came before us, they quoted Justice Muldoon, who speculated about the possible consequences of repealing section 67 in relation to the Indian Act as a whole. He stated, "If it were not for section 67 of the CHRA, human rights tribunals would be obliged to tear apart the Indian Act, in the name and spirit of equality of human rights in Canada".

Mr. Brazeau makes a good point. Many others have spoken about the colonial, perhaps even racist, aspects of the Indian Act. But the Canadian Bar Association clearly said that to take it apart piecemeal rather than in a planned way could present all kinds of problems that nobody had anticipated.

So has the department considered that approach? Have they considered the impact if this Indian Act is taken apart clause by clause, instead of in a planned way?

Mr. Daniel Ricard: History shows that attempts to amend the Indian Act have been difficult at least.

Ms. Jean Crowder: But has the department considered the impact of a section 67 repeal on the Indian Act?

Mr. Daniel Ricard: I will repeat what my colleague said. You cannot look at potential issues in a vacuum and say that by definition they're going to lead to the striking out of a provision of the Indian Act.

● (1240)

Ms. Jean Crowder: Hang on for a second. So you're saying there was no analysis of this.

Mr. Daniel Ricard: We expect that there will be challenges. We've talked about that. When those challenges come forward we will review the merit of those arguments.

As Monsieur Watson indicated, we have more than 1,000 litigations against the Crown, ranging from the Indian Act to whatever else. About 300 of those are active. So it's a normal course of business for us to review the cases that are in, look at the arguments made, and, as the case proceeds, on the basis of the evidence that comes up, assess and decide whether or not it is something we want to pursue because we think there is a good reason to litigate the matter. It could be that on balance we think the position we hold is right, or that this is a very important issue that we want the courts to adjudicate.

Ms. Jean Crowder: Forgive me for interrupting, but I have only five minutes for questions. I think we have the gist of what you're saying.

Many of us in this room were business people, and any time we took on a new business case we did a risk analysis. That's just good business practice. I'm concerned that the department hasn't done some kind of risk analysis, given previous court decisions, Auditor General reports that talk about where there are deficiencies, and the department's own analysis of where there are significant gaps in the delivery of policy. So I'm curious why the department did not do a risk analysis. I know you can't anticipate where the complaints might come from, but surely there would be a high-level look.

Mr. Daniel Ricard: The short answer to your question is that—

The Chair: That would be appreciated, because we're just about out of time.

Mr. Daniel Ricard: The short answer to the question is that this decision to proceed with repeal of section 67 was made on the basis of principle. It was made on the principle that you've had the situation going on for 30 years, and the time to repeal it is long overdue. If there are consequences along the lines of what you say—well, we'll see, but the reality is that it's been on the books for far too long, and the minister thought the time had come to repeal it.

The Chair: Thank you.

On behalf of the committee, I want to thank the witnesses for their attendance. You had some great insights into what we're doing with Bill C-44, and we really do appreciate that.

We're going to suspend now for two minutes.

● _____ (Pause) _____

●

● (1245)

The Chair: We'll now reconvene.

First of all, does everybody have a copy of the motions from Madam Crowder and Madam Neville?

Second, what is the pleasure of the committee? Do you want to have this in open session, or do you want to go in camera to speak to this?

I see that open is fine, so we'll move to the first motion, which is from Madam Crowder.

The motion is for the Standing Committee on Aboriginal Affairs to invite the members of the independent blue ribbon panel to report on their findings and recommendations in regard to grants and contributions to first nations, Métis, and Inuit.

Would you like to speak to that, Madam Crowder?

Ms. Jean Crowder: Yes, thank you, Mr. Chair.

I thought it would be important for the committee to hear from this panel. They published a report called *From Red Tape to Clear Results* in December 2006. I thought it would be important because, particularly over these last couple of months, the minister has been talking about the fact that $10 billion has been going to first nations communities and has been using figures like $16,000 per individual. Under "Grants and Contributions", the blue ribbon report actually says that only $4.9 billion goes into first nations communities in grants and contributions. So I think it would be helpful for the committee to hear from the blue ribbon panel the kinds of things they considered and how they came up with these kinds of numbers. Now, this is in 2004-05, but we know the funding hasn't gone up substantially since that period in time.

I think it would be helpful for us to get a good handle on what those numbers look like, how they were assigned to communities, and what the direct results are, and I did make some recommendations for how money needs to be accounted for.

● (1250)

The Chair: Okay. Is there further discussion? Does anybody wish to speak to this motion?

Mr. Rod Bruinooge: This would be after the current study.

The Chair: Would this be after the current study?

Ms. Jean Crowder: Yes, it would be after Bill C-44 is concluded.

Mr. Harold Albrecht: It could be next January.

Mr. Marc Lemay: Could it be in the next Parliament?

Hon. Larry Bagnell: It could be, if we have witnesses like that.

The Chair: All in favour of Madam Crowder's motion, please indicate.

(Motion agreed to)

The Chair: That's with the understanding that it will be after the Bill C-44 study.

We'll move on to the next motion, which is from Madam Neville.

The motion is that the Standing Committee on Aboriginal Affairs and Northern Development call Professor John Borrows to present his analysis of the cumulative impact of aboriginal case law in Canada and its potential impact on federal land claims policy development, the duty to consult, and other aboriginal policy development.

Madam Neville, would you like to speak to the motion?

Hon. Anita Neville: Thank you, Mr. Chair.

I put forward this motion some time ago in another context. What I was thinking as I was listening to the discussion today was really the importance of hearing from somebody like Mr. Borrows. If the committee is agreeable, I would welcome having him as part of the discussion on this bill, particularly as it relates to the duty to consult and to policy development as it relates to aboriginal people.

I hadn't thought of it in that context until I heard...pardon?

Mr. Rod Bruinooge: It's a somewhat different motion. Your motion seemed to indicate you wanted this individual to come as a witness after Bill C-44.

Hon. Anita Neville: My original motion was that he come in and of himself, just to give us his expertise. When I heard the lack of information we got from the witnesses today, I would be interested, if the committee were agreeable, to have him as a witness. But let's deal with the motion.

The Chair: If you wish to have him speak to Bill C-44, I think the proper way to deal with that would be to recommend it to the subcommittee, but this is separate.

Are there further comments on the motion as presented?

(Motion agreed to)

The Chair: In terms of the planning calendar for the committee, Madam Neville, if you want to request that the clerk add that person to the witnesses, we have an opportunity on May 17. We've just reserved a meeting with legal experts, and we have a question mark after that, so there is that possibility, if the subcommittee so desires.

Go ahead, Madam Crowder.

Ms. Jean Crowder: When is the subcommittee going to meet? I had put forward the Westbank band as well, as a potential witness.

The Chair: Did we determine any dates, Madam Clerk?

The Clerk of the Committee (Ms. Bonnie Charron): We're still waiting to hear back from some offices. We're trying for next Tuesday afternoon.

The Chair: Okay.

Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: What was the question and what was the answer? I did not understand what Ms. Charron said.

[*English*]

The Chair: The question is, when will the subcommittee meet? We're trying to plan a date, and currently we're looking at Tuesday, if we can coordinate it with your office, Madam Crowder's office, and Madam Neville's or Madam Karetak-Lindell's.

We'll just have to continue to do that, and we'll have some things on the agenda for that. I would advise Madam Neville to make that request known with regard to Mr. Borrows being one of the witnesses.

Is there anything further regarding the calendar?

● (1255)

[*Translation*]

Mr. Marc Lemay: Yes.

[*English*]

The Chair: Mr. Bruinooge.

Mr. Rod Bruinooge: When the subcommittee meets again there may be other witnesses who are suggested and discussed at that time. I think, for instance, the individual that Ms. Neville brought forward can be discussed at that time. Let's do it at the subcommittee.

The Chair: Okay.

Nothing further?

The meeting is adjourned.

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