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Tuesday, May 8, 2007

Chair

Mr. Colin Mayes

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● (1110)

[*English*]

The Chair (Mr. Colin Mayes (Okanagan—Shuswap, CPC)): Welcome to this meeting of Tuesday, May 8, 2007, of the Standing Committee on Aboriginal Affairs and Northern Development. Committee members, you have the mandate in front of you. We're continuing our study of C-44, An Act to amend the Canadian Human Rights Act.

Today as witnesses we have, from the Anishinabek Nation—Union of Ontario Indians, John Beaucage, grand council chief; from Barreau du Québec, we have David Schulze, a lawyer with Hutchins, Caron & Associés, and Nicole Dufour, a lawyer in the research and legislation service; and from the Nishnawbe Aski Nation, we have Deputy Grand Chief RoseAnne Archibald.

Welcome, witnesses.

We will begin with the presentation by Mr. Beaucage.

Grand Council Chief John Beaucage (Anishinabek Nation - Union of Ontario Indians): Thank you very much. It's a pleasure to be here.

I'd like to start out first by saying that the Union of Ontario Indians, the Anishinabek Nation, supports the repeal of section 67 of the Canadian Human Rights Act. There is a process that we must follow. Overall, we don't support the timeframe or some of the aspects of Bill C-44, in that it doesn't protect some of the aboriginal and treaty rights in a way that we would like to see done, in terms of the collective and individual interests of first nations. It fails to provide first nations with the capacity and training dollars to make sure that the implementation of Bill C-44 is carried out in a way that looks after some of our traditional and customary aspects of community life. We would also look at having a non-abrogation and a non-derogation clause included in Bill C-44. That would actually provide greater certainty for aboriginal and treaty rights, but then we would want an interpretive clause as well on the individual and collective rights of first nations.

Overall, we would look into perhaps going further than what Bill C-44 is purporting in terms of a first nations human rights act, which goes even beyond what we have in Bill C-44, and something that we can call our own. It's something that we can go further with in terms of looking after customary and traditional aspects of our communities right across the country. We would look at taking Bill C-44 and maybe stretching it out beyond the six months, looking at maybe a 30-month phase-in. Part of the phase-in would be the development —and a consultation process to create our own first nations human rights act, which would be enforced or worked for by our own process within our own community context on a region-by-region basis.

I think that's something the committee probably has not heard yet, but I haven't seen all of the information you've had. I think it's something new, but it's also something that is somewhat exciting: having first nations jurisdiction and first nations buy-in to the entire process of making sure that human rights take a very high place within the context of law in Canada, aboriginal law, and first nations traditions and laws.

We would look at having this process ongoing after a three-year period. That's one of the other things I wanted to talk about as well: the six-month timeframe that's currently within Bill C-44 does not give us enough time to institute and train our people for the human rights legislation, nor are there any resources there to make sure we have the appropriate capacity to look after this change that is encompassed within Bill C-44. So we do need to have those resources available to us. We do need a little bit of extra time.

I think eventually we will need to move on towards a first nations human rights act and a first nations human rights commission. There will be a written presentation that will have a summary of a number of recommendations on Bill C-44, and also recommendations on a first nations human rights act in summary. That will be provided to the committee as soon as the document is translated.

I don't think I've taken my full five minutes, but I'd like to thank you all for listening.

Gitchi-Meegwetch.

The Chair: Thank you.

I'll ask Deputy Grand Chief RoseAnne Archibald to speak now, please. Thank you.

Deputy Grand Chief RoseAnne Archibald (Nishnawbe Aski Nation): Thank you, committee members, for the opportunity to make this presentation today. I'd like to say some of my introductory remarks in my own language.

[*Witness speaks in Cree*]

What I said in Cree was greetings to all of you. My name is RoseAnne Archibald. I'm from a community called Taykwa Tagamou, formerly known as New Post. I'm here to say a few words because our Grand Chief, Stan Beardy, was unable to make it to the committee today.

I feel it is important to speak some words in my own language, *ininimoyan*, as my presentation has more to do with linking the human rights issue with the natural laws and teachings of our people.

First let me reiterate that the 49-member first nations that belong to Nishnawbe Aski Nation honour the human rights of every citizen and have continually fought for social justice, individual rights, and the collective rights of our first nations citizens.

This standing committee has undoubtedly heard many presentations on Bill C-44 that have highlighted the need for proper consultation, or how we must balance individual and collective rights, or the need to protect women's rights, or the impact of this proposed legislation on first nations jurisdiction and self-government.

At Nishnawbe Aski Nation, we concur with other first nations and aboriginal organizations on these matters. Further, Grand Chief Stan Beardy has expressed support in principle for the repeal of section 67, as long as it becomes a means to gain access to universal rights that will in turn vastly improve the socio-economic conditions of our first nations.

So why aren't all first nations embracing the proposed legislation? The introduction of Bill C-44 insinuates that an external law is required to force first nations to honour the human rights of its own citizens. No such force is required because, first, we have a deep desire to improve the circumstances of our communities, and second, we have our own teachings to guide us in relation to human rights.

I want to talk briefly about the seven grandfather teachings, or the seven sacred teachings, as they relate specifically to Bill C-44. The seven sacred teachings form the principles upon what could be described as our own human rights code. The seven sacred teachings are: wisdom, truth, humility, bravery, honesty, love, and respect. Healthy and harmonious individuals, families, and communities are a natural result when individuals and groups follow the standards of behaviour as outlined in the seven sacred teachings.

Due to the limited time given for my presentation, I will highlight three main teachings as they relate to Bill C-44: wisdom, honesty, and respect.

Wisdom is about more than only acquiring knowledge. It is the proper use of knowledge to gain deeper insight and understanding of the world around us. Through our own wisdom, we can pass these teachings on to the next generations so that they can survive and thrive. One measure of wisdom is to reach your highest human potential by living a good life. When there is a proper consultation with first nations, we will have shared knowledge to make wise decisions on Bill C-44. To have real insight into human rights issues for first nations people, we must ask ourselves, “What are the real barriers to achieving justice and human rights for first nations people in Canada?” The answers will reveal more complex solutions than simply repealing one section of the Canadian Human Rights Act. Wisdom and insight can only be achieved through the thorough examination of Bill C-44. Moreover, rushing first nations through a six-month consultation/implementation process is not only unwise, it is unfair.

Honesty is more than simply speaking truth. It is embracing each person based on their true nature rather than projecting our own expectations onto them. It is a test of vulnerability that is achieved through our forthright acceptance of self and others. To honestly embrace who you truly are leads to a life of integrity.

● (1115)

For our people, we must honestly tell you that we will never be like everybody else in Canada. Our core values as nations, as Mushkegowuk, Ininew, or Anishinabe, are built around themes of collaboration and the balance between collective and individual rights. Despite your efforts to colonize and assimilate our people, we remain a society that, at our very best moments, understands our spiritual connection to everything; therefore, we will always place the well being of others equally to individuals. We must respectfully move forward with coexisting beliefs, which may mean modifying the current trajectory of your government in relation to Bill C-44.

The third sacred teaching I want to touch on is respect. Respect comes from within and it is always earned. When we conduct ourselves with dignity, we earn respect and goodwill in all of our relationships. Actively listening to others leads to respect. Respect and the golden rule are linked: treat others as you want them to treat you. In order to gain the respect of first nations peoples, we must be given the opportunity and forum to explore how Bill C-44 may affect our lives and our future generations.

Goodwill can be achieved between first nations and your government by actively listening to each other's concerns. As previously mentioned, social justice and human rights for our people are equally high priorities for our leadership. Let's be productive by cooperating to find comprehensive solutions to human rights issues. Through respect we can create an environment of trust where we can find common ground on our shared goal of a just society for first nations.

In conclusion, I respectfully request and recommend that we use the seven sacred teachings as the basis for future discussions on Bill C-44 and for all matters related to human rights.

Gitchi-Meegwetch. Thank you.

● (1120)

The Chair: Thank you.

Mr. Schulze.

Mr. David Schulze (Lawyer, Hutchins, Caron & Associés, Barreau du Québec): I believe Maître Dufour will say a few words first.

[*Translation*]

Ms. Nicole Dufour (Lawyer, Research and Legislation Service, Barreau du Québec): I am responsible for the Barreau du Québec's aboriginal law committee. With me is Mr. David Schulze who is an active member of our committee. He will be presenting our organization's position. I would just like to point out that he is a graduate of both York University and the University of Montreal, and he has been a member of the Barreau du Québec since 1995. His main area of practice is aboriginal law. He has pleaded cases before many courts, including the Supreme Court. He will now make his presentation.

Mr. David Schulze: Thank you, Ms. Dufour.

I will give my presentation in French, but I will be pleased to answer your answers in either English or French, depending on the language of the question. You should all have received the letter on Bill C-44 signed by the President of the Quebec Bar.

Before I start, I simply want to make it clear that I will be speaking on behalf of the Bar and not any clients I represent in my law practice.

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Mr. Chairman, I would like to know whether all committee members have received the letter signed by the President of the Quebec Bar. If not, we will make sure it is distributed, Ms. Dufour. I think this is very important.

Mr. David Schulze: That would be great.

[*English*]

The Chair: It was distributed electronically, so all members should have that.

Is there anybody who does not have it?

Okay, thank you.

Continue.

[*Translation*]

Mr. David Schulze: The Barreau du Québec believes section 67 should be repealed. To provide you with a context, I will show you how section 67 creates inconsistencies which the committee may not be aware of.

Section 67 only applies to Indian bands governed by the Indian Act. It does not apply, for instance, to Quebec's Cree and Naskapi tribes, nor does it apply to most of the Yukon's first nations. Let me give you an example of how these inconsistencies play out. If you are a member of the Innu tribe, or the Montagnais, as they used to be called, which is located in Matimekush-Lac John and Schefferville, under section 67 you cannot file certain types of complaints with the Canadian Human Rights Commission. But if you live 50 or 80 kilometres away, in Kawawachikamach, that is, on land owned by Quebec's Naskapi tribe, you are not governed by section 67 and you can file a complaint against your band council. So you won't oppose this provision.

That being said, the Barreau du Québec, along with most other bodies, committees and taskforces which have studied the matter, supports the inclusion of an interpretive clause and let me tell you why.

I'll give you a concrete example. The Canadian Human Rights Commission issued a restrictive directive for any named court, which says that the Canadian Human Rights Commission does not allow a band council to give preferential treatment to its own band members in its hiring practices. Incidentally, there may have been other complaints, because section 67—I hope you understand this—does not prevent all complaints from being filed against a band council, just certain types of complaints.

You can file a complaint under section 67 respecting employment matters. The Canadian Human Rights Commission told its tribunal that an employment policy giving preferential treatment to natives was acceptable if it applied to natives in general, but not to members of one's own community. Tribunal members are bound by the commission's interpretation.

However, there is an agreement on government autonomy which now has the force of law in the community of Westbank, B.C. Under this agreement, which was quoted in the letter of the President of the Quebec Bar, the interpretation and implementation of the Canadian Human Rights Act as it relates to the Westbank first nation allow it to give preferential treatment to its members when hiring employees.

I point this out because that is exactly the kind of problem the commission and members of the tribunal will have to solve. What on first glance may seem discriminatory, based on a strict interpretation of the Canadian Human Rights Act, would be considered by many communities has being a good thing and normal policy reflecting the reality of these communities. There is one set of rules for Westbank and another for other first nations.

This leads us to say that, as is mentioned in the Library of Parliament report, in other human rights codes there are provisions which say that in cases involving an organization dedicated to the defence or promotion of the interests of a specific group, the organization may give preferential treatment to its members, and that this does not constitute discrimination. We have provided you a copy with section 18 of the Ontario Human Rights Code. This means that, in Ontario, a seniors' home or a home care centre for seniors from a particular ethnic community is not engaged in discrimination when it gives preferential treatment to members of its own community.

● (1125)

There is no similar provision in the Canadian Human Rights Act. I don't know all the reasons why this is so, but the scope of the Canadian legislation is somewhat different from that of provincial legislation. Because of the way power is shared, most activities in society are governed by provincial laws. The areas governed by federal legislation are rather unique: they are areas of federal involvement, including banking, railways and airlines—I've missed a few, but the list is not very long—as well as native affairs.

The Canadian Human Rights Commission usually deals with federally-regulated activities or those of certain inter-Canadian trade enterprises. It also deals with native issues, but native governments are neither federally-regulated entities nor business enterprises. The reasoning is different. It is probably the only non-profit area which is not federally regulated and which is governed by the Canadian Human Rights Act.

I am explaining all of this to you because, in practical terms, the application of the Canadian Human Rights Act will be problematic in communities which fall under the act if section 67 is repealed.

Lastly, the proposed implementation period for section 67 seems rather short. As we indicated in our letter, when the Supreme Court invalidates legislation, it will often suspend its ruling for 12 months. It seems that a six-month period to consult with communities and plan the implementation is extremely brief.

That concludes our remarks. I would be pleased to answer any questions you may have.

● (1130)

[*English*]

The Chair: Thank you very much.

We'll move to the question period, beginning with a seven-minute round. The seven minutes will include both questions and answers.

Madam Neville.

Hon. Anita Neville (Winnipeg South Centre, Lib.): Thank you very much.

I have questions for everybody, but I'll start with you, Deputy Chief Archibald.

When you outlined the seven teachings, you talked about respect. You talked about being given the opportunity and the forum to explore how it will affect your lives.

We heard when the department was here that no impact analysis had been done on it. I wonder if you could elaborate on how you anticipate Bill C-44 might affect your lives, or the lives of your communities.

Deputy Grand Chief RoseAnne Archibald: Can you be a bit more specific?

Hon. Anita Neville: You looked at the legislation, and you said here that you need a forum to determine what the impact will be in your communities. Have you thought through what you think the impact will be, how it will affect issues related to housing, schools, and quality of water, and the capacity to respond to it? Have you looked at that in any way?

Deputy Grand Chief RoseAnne Archibald: On the specific impacts in relation to my presentation, I haven't gone into that type of analysis. I understand that as a standing committee you hear our recommendations, and those recommendations can either be taken or discarded in your process. I think the history of having our input on legislation that impacts our communities has often fallen into the category of being discarded.

My point in the document is that we need to create a forum where that mutual respect can happen; where people at the community level can really begin to understand what their human rights are and how their human rights fit into the larger picture of Canada.

When I think about the whole idea of the Canadian Human Rights Act in relation to the seven sacred teachings, this is another way for the federal government to sort of impose on or cover up our existing laws. We understand that if we use the seven sacred teachings in how we deal with everybody, we will have a society that is whole and healthy. We had that society prior to contact. For thousands of years we certainly survived and thrived based on those seven sacred teachings, as one of the tenets of how we treated each other.

● (1135)

Hon. Anita Neville: Thank you.

Grand Chief Beaucage, I wonder if you can also give us your thoughts on the impact of Bill C-44 in your communities.

My other question is to the Quebec Bar Association. When members of the Indigenous Bar Association were here they raised a number of concerns. One overriding concern was that this piece of legislation was the beginning of the dismantling of the Indian Act by chipping away at it. I welcome your comments on that.

On the occupational requirements provision of the Human Rights Act, sections 15 and 16, the special programs provision, one member said:

> I think there's some doubt that those provisions would be adequate to address the kinds of balancing that would be required to recognize the specific historical and constitutional place that first nations occupy within the Canadian legal framework.

I wonder if you can comment on that as well.

Grand Council Chief John Beaucage: Thank you very much.

The thoughts on that are quite complex and probably go back many years, as to what band councils have to do to set policies and procedures in their communities for housing, post-secondary education, and any of the services that are provided to their members. All of these policies have been developed over the years to look after traditional customs and processes, and not to take into account the specific aspects of human rights legislation. They look at a local community dispute resolution process.

If there were opportunities for band members to dispute decisions made by the band council, say for housing, where there are not enough resources to look after all of the housing that most communities require.... You may have a situation where a band council chooses one family over another, for whatever reason. The family that doesn't get a house says their human rights are being violated. It might occur dozens of times in many communities. Maybe there is a good reason for the decision, but the basic thing is that we don't have the resources and a decision has to be made.

The same could be said for post-secondary education. There isn't enough money for post-secondary education, so band councils have to decide who gets it and who doesn't. The people who don't get it say their human rights to education are being violated. This can be multiplied in community after community.

I mentioned having our own human rights legislation. If we have our own local dispute resolution process, rather than going to a human rights commission or a court of law outside of the communities, these disputes can be looked after within the community context and at the local level where there's understanding by elders, by community people. These disputes can be worked on in a community milieu where everybody understands what's going on.

As we look at communities that have too few resources and too much demand on community services, there could be concepts of human rights violations in many different aspects. I think our community members, our community administration people, need to understand what a human rights violation is and what it isn't in the context of Bill C-44. We also need to have the resources to make sure we can look after it.

The Chair: Thank you.

Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: Mr. Schulze...

[*English*]

The Chair: We've run out of time. You're on your seven minutes now.

[*Translation*]

Mr. Marc Lemay: Don't worry, Mr. Schulze, you will have an opportunity to answer.

Thank you for joining us. It is an honour to welcome all of you here.

I have to say that I am of two minds with regard to this issue. It would be hard for me not to be. Mr. Schulze, I heard what you said and I would like you to explain something to me. You said that section 67 currently does not apply to Quebec's Cree and Naskapi communities.

● (1140)

Mr. David Schulze: That is how I interpret it, as it is the Cree-Naskapi (of Quebec) Act, and not the Indian Act, that gives Cree and Naskapi band councils their powers. Section 67 only refers to the Indian Act. If a Cree or Naskapi community seeks to uphold a right under the Cree-Naskapi (of Quebec) Act, it can plead however it sees fit; however, I'm at a loss to see how it could invoke section 67.

Mr. Marc Lemay: Section 67 applies to the Anishinabe, in other words the Algonquin, as long as they are living on reserve.

Mr. David Schulze: Exactly, but as long as it is a power set out in the Indian Act that is at issue.

Mr. Marc Lemay: As a representative of the Quebec Bar, would you be prepared to recommend that we suspend our study on Bill C-44 and come back to it later after having evaluated how it would impact first nations, or would you prefer that we continue our study, but introduce your amendments?

Mr. David Schulze: I am reluctant to go beyond the position set out by the President of the Quebec Bar in his letter.

Mr. Marc Lemay: Mr. Rivard would not be upset with you. Tell him to call me—I know him well.

Do self-government agreements provide for the inclusion of Canada Human Rights Act provisions? I am obviously only referring to those with which you are familiar.

Mr. David Schulze: Allow me to briefly explain the difference between the various types. We have the modern treaties, the comprehensive land claim agreements that we have in the Northwest Territories, in Nunavut, in the Yukon, and with the Nisga and the Inuit in Labrador. Self-government is part of these agreements, but they also address wider matters. In addition to these agreements, the Department of Indian Affairs and Northern Development is also in the process of negotiating self-government agreements that do not have treaty status, for example, the agreement with the Westbank first nation that is now in force.

The Westbank agreement includes a specific provision addressing the application of the Canadian Human Rights Act; it provides for a different application of the act so that the Westbank community can give preferential treatment to members of its own community. You have to realize that, with regard to the Westbank case, there are many non-aboriginals living on reserve in the Okanagan Valley.

Mr. Marc Lemay: I will wait until Ms. Archibald comes back before asking my next question. I will give her time to get her coffee. I feel that I ought to wait, because I have an excellent question for her, and for you, Chief Beaucage. Take the time you need, Ms. Archibald. It's an important question.

I have two very specific questions for the two chiefs that are here with us today. Our committee also feels that a minimum transition period is required. In my opinion, the time frame needs to be extended to 36 months. We should have both an interpretive clause and a non-derogation clause.

That being said, would you be prepared to ask us to suspend our study of Bill C-44 until your communities have been directly consulted?

Secondly, could you explain in your own words what you understand by satisfactory consultation with your communities?

[*English*]

Grand Council Chief John Beaucage: My colleague asked me to go first, so I will.

I agree that six months is not adequate. At least 30 months is required to look at moving into this new regime. When we did our community consultation on matrimonial property we went out to nine different locations and took into account 42 different communities over a period of four months. That's what we determined as our consultation requirements for legislation that is so important to our communities.

The timeframe is not adequate, and we need to have the capacity to get education to our communities.

● (1145)

Deputy Grand Chief RoseAnne Archibald: I agree with Grand Chief John Beaucage that more time is required and there needs to be a suspension of the activities while we build a forum that is more conducive to a cooperative effort between our nations, so to speak.

The Chair: Thank you.

We'll move on to Madam Crowder, please.

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

This is a really important matter, and I think what we've heard consistently from most witnesses—and I can certainly speak on behalf of New Democrats—is that we do support the repeal of section 67. However—and it's a big “however”—we've heard a lot about duty to consult. I think there is little trust in any Government of Canada to approach human rights in a way that is equitable and fair because of the fact that we've been cited in a number of international conventions that we violate human rights.

There's a recent Senate report on the convention on the rights of the child that specifically singles out aboriginal children as being discriminated against in Canada, because of the lack of funding, because of inadequate housing, because of inadequate health care and water. On CEDAW, the convention on the elimination of discrimination against women, aboriginal women have been specifically cited for lack of access to transition houses and violence against women that continues to unfold.

So I think there's little trust that simple repeal of section 67 will all of a sudden make everything right in first nations, Métis, and Inuit communities in this country.

I think the crux of the matter seems to be around consultation, and I would argue that if we had adequate consultation, an interpretive clause, non-derogation, section 35 of the Charter, then adequate timeframes would come out of an appropriate consultation clause.

In the court case of Halfway River First Nation v. British Columbia (Ministry of Forests), the justice said that:

> The duty to consult, however, goes beyond giving notice and gathering and sharing information. To be meaningful, the Crown must make good faith efforts to negotiate an agreement. The duty to negotiate does not mean a duty to agree but rather requires the Crown to possess a bona fide commitment to the principle of reconciliation over litigation.

I know you've started to comment about duty to consult, but can you comment on how important the duty to consult is before legislation of any sort comes forward?

Deputy Grand Chief RoseAnne Archibald: In relation to my presentation, I think I really want to focus on what I presented to the committee in terms of those seven sacred teachings, because there's a larger picture to what we're looking at, rather than just this smaller piece of legislation.

In Canada, first nations are continually striving to heal the impacts of colonization, and part of that is to take those things from the past that are helpful about our laws, things that can contribute to the health of our communities, and bring them forward.

In terms of consultation, for us in the Nishnawbe Aski Nation it does come back to the issue of jurisdiction and self-government, in that when you're talking about consulting, you're still talking about the old paradigm of bringing legislation forward to us and asking "Will this work for you?" That, to me, is not really a part of the broader solution that first nations really need, which is a respect for the fact that for thousands of years prior to the establishment of this government, we had our own processes in place that worked for us. And those things can still work today in some way where we could coexist, because it's not necessarily talking about removing all things that are Canadian legislation but really figuring out how we balance those things.

So consultation becomes not so much what you're talking about, which is how do we consult with you, but how do we have meaningful dialogue so that the whole issue of human rights really is addressed in a meaningful way.

● (1150)

Grand Council Chief John Beaucage: I agree with my colleague wholeheartedly, and I'll just add a little bit to that. The aspect that occurred prior to recent Supreme Court decisions has always been the government telling us what to do, the government letting us know what is best for us, and then asking afterwards, "What do you think?" That is not consultation.

Negotiations have really been carried out for land claims and other kinds of processes over the years by us going to a table and asking permission. We're not going to do that anymore. The aspect of duty to consult is a process of consultation, accommodation—which is actually a way of asking "How do we consult and what is the best way to consult?"—and then what we at the Union of Ontario Indians say is engagement.

If we are consulted, if we have the process of how we consult and we are engaged in the consultation, then that is a true consultation, where we have buy-in from all of our communities and our community members. And the buy-in is so important that we move ahead and that we're all in agreement and that we do have this good, meaningful dialogue that will allow us to be fully engaged in new legislation, to be fully engaged in economic development processes, to be fully engaged in land claims and additions to reserves, treaty negotiations where there are no treaties, and self-government negotiations.

The Chair: You have a little over a minute.

Ms. Jean Crowder: Do you want to comment, Mr. Schulze?

Mr. David Schulze: I won't speak to the consultation, but I would say that it is worth keeping in mind that the whole model of the Canadian Human Rights Act, which has many good points, is about individuals making complaints. The abrogation of section 67 will expand the number of points on which a member of the community can complain about how the limited resources of that community are distributed. The Canadian Human Rights Act is not something that lends itself very well to that community getting more resources from the federal government or from other places. This could push the conflict inward over how limited resources get distributed.

The Chair: Mr. Bruinooge.

Mr. Rod Bruinooge (Winnipeg South, CPC): Mr. Albrecht is going to proceed.

Mr. Harold Albrecht (Kitchener—Conestoga, CPC): Thank you, Mr. Chair, and thank you to each of the witnesses for appearing today.

I'm certainly committed to moving ahead on giving first nations peoples on reserve the same rights that other Canadians have. We all know it has been 30 years since the Canadian Human Rights Act was implemented, and section 67 was there as a temporary method to alleviate some concerns. But 30 years, to me, seems like a long time. It is time we moved ahead on that, especially as it relates to the protection of individual rights, especially women's rights, which I understand is one of our primary areas of concern.

I want to speak briefly to Deputy Grand Chief Archibald, to commend you on your reference to the seven sacred teachings. All of us can agree that those are certainly commendable, and good points to begin working in a successful society.

But human nature being what it is, the reality is that not everyone will always follow those good teachings. I'm wondering if you could outline what your practice has been within your communities for those who choose not to follow those teachings. There has to be some mechanism in place to address those shortcomings.

Deputy Grand Chief RoseAnne Archibald: As I mentioned, in the traditional sense of "prior to contact", our view of the world is that of the collective and the need to collaborate for survival. That is the place we come from. If somebody in our community was not necessarily contributing to the survival and was doing things that were detrimental to the community, the most extreme example is that they would be banished. They would be sent outside that community to face the world on their own. That is the extreme of how we dealt with situations where unhealthiness occurred in our communities.

Today, I suppose I'm an eternal optimist in that I really believe in the goodness of everybody. One of the codes I live by is from Goethe, who was a Dutch philosopher. Goethe said: "If we treat people as they are, we make them worse. If we treat people as they ought to be, we help them become what they are capable of becoming." That is the philosophy from which we come. We look at the individual as having perfection as a spiritual gift, which they're given to walk in this world with. From that, people always rise up.

Western society looks at it the other way, which is to pick apart the failings of individuals. In my personal experience, and in my experience in leadership, when you focus on the failings of the individual, you call more of that forth, so society begins to break down.

I'm not sure if I'm—

● (1155)

Mr. Harold Albrecht: I think it's helpful. Human nature lends itself to focusing on the few negatives that exist out there instead of focusing on the success stories. That's true at the individual level but even more so at the community level. We've heard all kinds of success stories from first nations groups. I think we need to herald those stories across Canada.

I'm going to take a different tack now.

Mr. Schulze, in your letter you comment on section 25 of the charter. It's not your letter; it's from your group. You indicate that "Parliament has in fact incorporated such an interpretive clause in the Canadian Charter of Rights and Freedoms, in section 25". If that interpretive clause is in the charter, and if removing section 67 would allow all first nations people equal access, why would we need an additional interpretive clause to ensure those kinds of things? When there are 600 different first nations communities, different practices, would it not be very cumbersome to have one interpretive clause that would fit all those different applications when the charter, it appears to me—I'm not a lawyer—has some of those safeguards already?

Mr. David Schulze: I'll answer the second part of your question first. I don't think an interpretive clause that would work for a large number of different communities is necessarily that difficult, because it could be drafted in a way that would require a certain amount of evidence. You would set out certain principles and say this is how these rights are to be applied in an aboriginal context in view of this and these elements, and then it would be up to the first nation making the argument to show why in their community that threshold was met. I'm giving you a quick answer to that part.

Drafting the interpretive provision would be a challenge I think, but I don't think it would be impossible.

Mr. Harold Albrecht: I think the evidence that it would be a challenge lies in the fact that there have been a number of attempts at bringing some of those forward in some of the previous studies that have been done. To this point, I haven't seen one that has gained widespread acceptance, so that is a concern I would have.

Mr. David Schulze: Like Grand Chief Archibald, I have confidence in parliamentarians.

Mr. Marc Lemay: Don't trust us.

Some hon. members: Oh, oh!

Mr. David Schulze: To answer the first part of your question, though, section 25 is an interpretive provision about the charter. The charter rights are similar to the rights in the Canadian Human Rights Act, but they're not the same thing. If I'm before the Canadian Human Rights Tribunal, I can't ask them to apply section 25 of the charter because they'll say, "No, no, this isn't the charter. You've been accused of discrimination contrary to the Canadian Human Rights Act, not discrimination contrary to section 15 of the charter."

Mr. Harold Albrecht: Do I have a little more time?

The Chair: You have 20 more seconds, but I'll add it to the next —

Mr. Harold Albrecht: No, I won't take more than 20 seconds.

In 1977, when the Canadian Human Rights Act was implemented, my understanding is that it was implemented within one year. So I'm somewhat surprised to hear from many of our witnesses that we need 36 months to implement it in this case. Could you respond to that?

● (1200)

Grand Council Chief John Beaucage: I talked about it earlier, that there have been many processes set up in first nations right across the country that may not fall within the confines of the present human rights legislation, and it really deals with the paucity of resources available to these communities. There are situations in which decisions are made saying that people can't have houses, or people can't have an air ambulance, or people can't have a post-secondary education, because of no resources. I think we need to have education, we need to have a local dispute resolution process within the community, so that we don't have to go outside the community and so there's better understanding within the community context.

The Chair: Thank you.

Mr. Russell.

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

Good morning to every one of you.

Some very interesting points are being raised. There are a lot of questions being directed at witnesses about what their interpretation of "adequate consultation" is. What is it, about two years since the Taku and Haida decision came down? Have any of you ever seen the government policy that is supposed to enact around what its obligations are with regard to consultation? Have any of the witnesses ever seen this document, with the government's own...?

Grand Council Chief John Beaucage: No.

Mr. Todd Russell: So that's two years after a Supreme Court decision came down. I use it as a point, when people say sometimes the transition period is too short or...well, some people say it's too long if we go to 36 months. You know, it takes time for communities to adjust, once you repeal a law or bring in a law. I simply use that as a point, that the government itself doesn't even have its own vision of consultation down, but then it demands of aboriginal people to define what their vision of adequate consultation is.

I think there needs to be some coming together of that.

I would like to ask Mr. Schulze a question. The government has said, "Well, we don't need this sort of non-derogation clause, or we may not even need this interpretive clause, because people can always appeal to section 35 of the Constitution." They're referring to the existing aboriginal treaty rights and that type of thing, subsections 35(1) and 35(2), but the government has fought every single one of those in court. Every time an aboriginal group or individual has brought an action based on section 35 rights, the government has fought that. It has usually taken 10 years, on average, at the cost of millions of dollars.

How do you see section 35 as part of this whole debate around Bill C-44?

Mr. David Schulze: It's not a point the Barreau chose to address directly in their letter. As a lawyer in the field, I have a lot of thoughts on it, and I'll try to limit my comments to the Barreau's position.

I think the point you made, Mr. Russell, is a good one. Proving a section 35 right is a very complicated and generally very expensive undertaking. Honestly, the community that wanted to argue a section 35 right would really have to budget. I don't want to put a figure on it, but it's a great deal of money to lead the expert evidence that would satisfy a tribunal that this was really a constitutionally protected right that took precedence over the Canadian Human Rights Act. It's legally true, but I'm not sure if it's a very practical solution.

Mr. Todd Russell: That has been some of the debate: we don't need this interpretive clause, this non-derogation clause, because you can appeal to section 25 of the charter or you can appeal to section 35 of the Canada Act of 1982. To me, they do not seem to be adequate measures for us to go on, or an adequate avenue to explore. The reason I say that's so important is if people believe you can go somewhere else for a remedy, but it's not really there as a remedy, then we've got to come back to what other people are saying about the need for these interpretive clauses, the need for these non-derogation clauses under the Canadian Human Rights Act.

I was also very interested in hearing what you were saying. Could you give us an analysis? It seems this legislation would apply to some aboriginal communities and not others. There would be a different law for Westbank than for other groups. Could you give us a clearer sense of what you mean?

● (1205)

Mr. David Schulze: I made two points.

The first point is to the extent that there are communities that are not under the Indian Act, of which there are quite a few now: the Cree-Naskapi of Quebec, the Nisga'a, Yukon first nations, and Dene and Dogrib of the Northwest Territories, without even going into the Inuit. If they're not under the Indian Act they can't invoke section 67, as far as I can see. I fear one day I'll argue the opposite and someone will pull out these minutes, but I have trouble seeing it as a winning argument to say that a first nations government that's not under the Indian Act can still use section 67 as a shield against a complaint under the Canadian Human Rights Act. That was the first point I made.

The second point I made was about Westbank in particular. The Canadian Human Rights Commission has the power to issue directives on how certain parts of the act will apply. They've said they've issued an aboriginal preference policy that says preference to aboriginals in hiring is okay; preference by a council to members of its own community is not okay. I can't pretend to explain the reasoning. However, when the federal government negotiated a special self-government agreement with Westbank, which ended the application of parts but not all of the Indian Act to the Westbank First Nation, they included a special provision that says the Canadian Human Rights Act applies, but Westbank has the right to give preference in hiring and contracting to its own members.

I would say we're probably already in a situation where the Canadian Human Rights Act applies one way in Westbank and another way in most Ontario reserves.

The Chair: Thank you.

On the government side, Mr. Storseth, please.

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

I want to thank you all for coming forward today. It's been rather enlightening.

Deputy Grand Chief Archibald, I listened very intently to what you had to say. You talked about the seven sacred teachings as the basis of how you live your life. Can you explain to me how that's different, how those seven points you brought up aren't in the Charter of Rights?

Deputy Grand Chief RoseAnne Archibald: How is it different is your question?

Mr. Brian Storseth: Yes.

My point is I think all seven are touched on in the Charter of Rights that we as Canadians try to live our lives by as well.

Deputy Grand Chief RoseAnne Archibald: It's different in that first nations people don't have the same rights as everybody else.

Mr. Brian Storseth: That's the problem.

Deputy Grand Chief RoseAnne Archibald: I don't think it's a problem. I think it's a reality of the history of our country, which is our people welcoming others, and having your laws suppress and replace and sort of cover up the original laws of our people.

Why I talk about the seven sacred teachings is to let the committee know that while the repeal of section 67 is one small thing that can be done, the larger issue of dealing with human rights in the first nations community must come from the values of our people, and those are our values.

We can actually find common ground. I think that through meaningful dialogue and a process other than our coming to the committee and making presentations, we could actually begin to find the common ground between what you're saying and what I'm saying. That is exactly what we want. We want to find areas where we can be mutually respectful of each other's values, and have those as the basis of how we proceed in this country.

Earlier Mr. Albrecht talked about why we can only do it in a year, why we are asking for so much time. Well, it's because our rights, the basis of our rights and the basis of our existence in Canada, are like nobody else's in North America. That's where we come from, that deep history that actually precedes all of this government process. That's the thing that keeps us moving forward as a people. It's a spiritual principle.

It's hard to take a spiritual principle and try to figure out the western law application of that. What we have to do is just find the areas where we can work together, and we are willing to work together.

● (1210)

Mr. Brian Storseth: I'm a little confused. We've had some witnesses come forward with a little different suggestion, basically saying that they agree that there should be human rights given to first nations people, the same as there are for all other Canadians, but that it's a matter of money and timing, and we need more money.

What I'm hearing from you—and tell me if I'm wrong, because I'm trying to get your feedback on this—is that you don't actually believe that the people you represent should have the same human rights as average Canadians do.

Deputy Grand Chief RoseAnne Archibald: That's not what I'm saying.

Mr. Brian Storseth: Okay. Could you clarify that for me?

Deputy Grand Chief RoseAnne Archibald: I think I just did.

Mr. Brian Storseth: Then, in regard to repealing section 67, you're not in favour of that whatsoever?

Deputy Grand Chief RoseAnne Archibald: That's not what I said either.

What I've brought to this committee is a larger view, not so much to pick apart the legislation or to pick apart specifics of the process, but to look at the bigger picture of what this means. So the repeal of section 67 is one small part of that solution to having first nations have the same standards of living, the same kinds of opportunities that everybody else in this country has.

I'm not saying we're opposed to anything. I'm just saying let's look at the larger picture. And I'm asking you, for example, to understand the values that I've just presented to you as the seven sacred teachings and to have some kind of mutual respect for that, for the values that the Canadian Human Rights Act has, the principles of basic human rights, and how those things are linked together.

I'm not being combative in any way.

Mr. Brian Storseth: No, and I'm not trying to be combative either. Actually, I agree with what you said when you talked about giving people the ability to rise up and meet their goals and their abilities in life. I believe that's exactly what this legislation does. It gives people the opportunity to stick up for themselves. It gives them the basic fundamental framework that they need to be able to accomplish some of these things.

Thank you. We'll continue later.

The Chair: Mr. Lévesque.

[*Translation*]

Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ): Good afternoon to the four of you. I'm delighted you could join us today.

We are on a kind of treadmill that is very difficult to get off. The department is having a very hard time coming up with the necessary funds for housing, drinking water and sanitation on reserves. Several aboriginal women came and told us that they had undertaken consultations but that they had run out of money and resources to finish those consultations. More resources must be made available. I assume the same is true for first nations.

There was a court ruling, Weyerhaeuser ("Haida") and Ringstad v. Taku River Tlingit, that lead some individuals to believe that there is a legal obligation to consult. The minister has said that this does not necessarily meet the conditions and that there is no obligation. For example, I absolutely agree with Ms. Archibald and Mr. Beaucage who say that respect between nations and individuals implies consultation and agreement. Both the Prime Minister and a minister promised that in the future consultations would be carried out when new legislation was being developed.

I have some questions with respect to what you consider to be consultation. Would consultations be carried out by band councils or by the Assembly of First Nations? Do you need 18 months, 30 months or 36 months to consult, as you and most other parties have stated? How do you think consultations should proceed?

Grand Counsel Chief John Beaucage: Thank you for the question.

[*English*]

I think the duty to consult does go beyond just going out to band councils. The whole idea or concept of collective rights is very important to us. Deputy Grand Chief Archibald talked about the aspect of survival, that it's based upon collective well-being. Even today we have a process of collective rights, consulting our community members whenever anything is important to the community.

When we consult, we go beyond just the band councils. Band councils are elected as spokespersons for the community at large, but when there's an important issue, all of the community has to be consulted. That doesn't necessarily mean going out community by community, 633 times across this country. Maybe it just means going to, say, the first nations along the north shore of Lake Huron, or maybe it means going to the first nations in the southeast of Ontario —as a grouping, to get feedback, to provide information, to get a consensus on what is required. Consensus-building is very important to us, and that's where the importance of the collectivity is involved.

At the Union of Ontario Indians, we've already determined that a good consultation process for our 42 communities takes about six months. We can get consensus in six months for very important issues. That's a milestone. It may be different for different types of legislation, but at least we have an idea of what it takes for us.

Each Nishnawbe Aski—I'll turn this over to Deputy Grand Chief Archibald in a moment—will have a different idea of what consultation is for their communities. The same goes for Alberta and Saskatchewan and Manitoba. Because we're diverse, because we're a little bit different, it means something a little different to each one of us.

● (1215)

Deputy Grand Chief RoseAnne Archibald: Thank you.

I want to add to Grand Chief Beaucage's comments in that when we look at the specifics of consultation, the actual on-the-ground kind of work that needs to be undertaken, we have many issues because of the fact that our first nations are remote. They're accessible only by air for most of the year and sometimes by winter road, depending on nature.

So with us, the actual process of consultation is more than just saying, “Here's the document, have a look at it, and we'll get back to you, or you get back to us”. It is an inclusive process that includes issues like education.

Getting back to the linkages between, for example, our values and those seven sacred teachings, what are the linkages we can make with basic human rights that are considered across the world? How are they connected to our own sense of belief?

So the consultation process does take time. It's just the nature of the number of communities we have, and six months is really inadequate in terms of a timeframe.

The Chair: Thank you.

We'll go to the government side now.

Go ahead, Mr. Bruinooge.

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

Perhaps I'll just go back to some of the comments made earlier. I believe that somebody—I'm not sure if it was you, Deputy Grand Chief Archibald—referenced the resources in the community, for instance, how post-secondary education funding is allocated to members in your community. I don't know if within your community there is a set policy in terms of how funding for students is allocated.

Deputy Grand Chief RoseAnne Archibald: Actually, that was Grand Chief Beaucage who talked about post-secondary.

Mr. Rod Bruinooge: Sure, it was Grand Chief Beaucage.

Grand Council Chief John Beaucage: Yes, I guess that's one of the aspects that concerns me in terms of the right to education. The right to education is ameliorated by the aspect that there are not enough dollars to go around. Most communities have long waiting lists of students who wish to partake of the post-secondary education funding, and just about every community has a different policy on how to allocate the dollars.

I'll even refer to my own community, the Wasauksing First Nation. I was chief there for eight years, and we had enough funding to fund around 50 to 60 students per year in post-secondary. We would often have 100 applications. So then you would have to hold back some applications, and they would have to either wait another year or get student loans to carry on with their education.

We would allocate first to the people who lived on reserve and allocate next to the people who lived off reserve, and if there was enough money to go around, it was a first come, first served kind of situation. But somebody was always left out, and somebody was always upset.

Whether or not that could result in a human rights complaint... perhaps it could in terms of how some first nations are made up. Some first nations have chief and council all from one family. Say that all the applications for housing and education were allocated to members of that family; then maybe there is a human rights violation. But it really can be in the eye of the beholder, I guess, because each first nation has its own policies.

● (1220)

Mr. Rod Bruinooge: So academics aren't necessarily the primary reason for allocation.

Grand Council Chief John Beaucage: Some communities probably do have academics. I know that many communities will require the students to have a minimum grade point average to carry on. Initially, it just could be all over the place. But mostly, it's that the people who live on the first nation come first.

Mr. Rod Bruinooge: So the band council can choose to allocate based, really, on their own jurisdiction, their own decision-making. It's really based on whom they would like to see receive the funding. For instance, if a student on reserve wanted to make an appeal because he or she was the best student in the high school based on academics and didn't get any funding because, as you said, the person might not be part of the right family, do you see the Canadian Human Rights Act as a vehicle for the student to lodge a complaint?

Grand Council Chief John Beaucage: It could very well be, yes. Normally what would happen, and I've seen it happen several times, is that the student who was turned down would actually make a presentation to chief and council and present a case to chief and council. In my own community this happened several years back, and the young lady came to the chief and council, made a very good presentation, and we were able to find some extra dollars. Eventually this lady took a business course at Harvard University and graduated with a master's degree after that, because she was very high in marks and a very driven young lady. We congratulated her. She is now working with first nations throughout Ontario.

There are some success stories, but the fact of the matter is there are too few resources. It's a very, very difficult job to spread out funding for 10 people between 20 people who are asking for it.

Mr. Rod Bruinooge: I agree with you. That is a challenge that's faced throughout our country in a lot of communities.

Don't you believe that if section 67 was repealed, this would help ensure that all communities might achieve that degree of success that you talked about, where academics are considered more of an important factor?

Grand Council Chief John Beaucage: At the Union of Ontario Indians we believe that section 67 should be repealed. We see no problem with it being repealed. We're just looking at the aspect of how it's implemented, the timeframe of implementation, the capacity to have what we consider a local dispute resolution process, rather than a dispute resolution process with, say, a non-native human rights commission. I believe there should be a first nations human rights commission to look after some of the issues and some of the traditional and customary aspects of what's required at a community level.

Mr. Rod Bruinooge: Okay, thank you.

The Chair: Madam Crowder.

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

On the matter of education, I think it's simplistic to indicate that simply a repeal of section 67 of the Canadian Human Rights Act will somehow or other afford band members who want education the access and opportunity, given the very serious underfunding, which of course this committee studied, and we made some strong recommendations about additional funding. A simple repeal of section 67 will not improve water, housing, or education on communities, given the detailed analysis that's been done across the board on the underfunding.

On the back and forth around the questions here—and I'm looking at language like "giving people the rights on reserve"—there was some suggestion that perhaps the traditional ways weren't respectful of human rights.

Grand Chief Archibald, I really take your point about thousands of years of history, that people lived in peace and harmony and respect for each other. The crux of this really seems to be the lack of recognition on a nation-to-nation status. It seems to me that without appropriate consultation, what we again have is one nation imposing their laws on another nation. That's how it seems to me, and I wonder if you could comment on that. You've talked about the seven sacred teachings and the way your people have lived for thousands of years. I wonder if you could comment on that—and others as well.

● (1225)

Deputy Grand Chief RoseAnne Archibald: First of all, I want to go back to your original comment, which came from the other member's comment about education, and to add to what Grand Chief Beaucage said. The repeal of section 67 won't be a great valve that will open up educational opportunities for people in our communities. It is one part of a larger picture.

In terms of our own status in Canada and the nation-to-nation relationship that is evident in the history of our country, if I think about the question in a pragmatic way on the issue of self-government and what government was like prior to contact, if we had real consultation and meaningful discussion about where first nations would fit into Canada, I think we'd be in a different place today. There would have been more of a mutual respect for us as nations for building Canada into the new society it is today. But it didn't happen.

A lot of negative things have happened in the past that have brought us to the state where we are today. First nations are continually inundated with policies, procedures, and legislation. Everybody focuses on those things as the solution and are blinded to the fact that there are thousands of years of history.

When I talk about this forum, a place where we could have meaningful dialogue, I don't have a specific idea on how we can do it. To me, it would be making the same mistake that Canadian governments have always made with us, which is to suppose and to think they have the solution, to bring it forward, and to ask what we think.

I'm not going to put myself in a position to bring it forward. I'd only say that if we mutually build the process, then the society in which we live in Canada will be more just and we will have this sense of equality we're all striving towards.

At the same time, there has to be room to respect the perspective from which first nations come. I heard a member talk about individual rights being the paramount thing in Canada. How do we reconcile these two ideas so that they can live side by side in this country? I think that ultimately individual rights need to be balanced with collective rights.

We have to start talking about those things in a meaningful way. We have to actually start coming up with mutual solutions, as opposed to coming at each other with our own perspectives or with what we think is right.

The Chair: Mr. Bruinooge.

● (1230)

Mr. Rod Bruinooge: To follow up on some of those points—it's again only an opinion, but I'm a politician with a few opinions.

In my view, Canada is seen in the world as a beacon for human rights. In fact, people from nations all over the world, with histories dating back tens of thousands of years, are travelling to Canada because we have a human rights record that is second to none. Yet we have this problem where we don't extend human rights to our first nations people. It's been in place for 30 years now through this exemption.

I'd have to ask you this question, Vice Chief Archibald. As a parliamentarian, knowing we're in a minority government and we might not have the opportunity again to repeal this blight on our history, and knowing the world looks to Canada for human rights and they see this terrible blight on our record, how can I sit here and not actually move forward with this important exemption? What am I to do, as a parliamentarian? Should I sit here and not repeal it?

Deputy Grand Chief RoseAnne Archibald: I think you're focusing on section 67 as being this magic solution that will transform first nations societies, when the real transformation has to happen on two levels. One is internal. We have to take responsibility for our own healing from the different impacts of colonization. What are we going to do to heal ourselves and bring ourselves to a place of health, where we can be contributing to a picture of Canada that is more positive? That's one part of that.

The second part of the equation is that government has to start talking to us and finding those solutions to bring the standard of living up to the levels of other Canadians. Part of the issue in the past has been serious underfunding. I recently read a memorandum that was circulated in Indian Affairs that said continued underfunding of first nations is killing them. That is one part of it as well.

But if we can come together and really find solutions that meet the objectives we both have, then I think we can get there. This process of our coming to you and offering recommendations, to me, is not the building that we really need to do in this country. I'm thinking forward and trying to have leading-edge thinking in terms of where we are going in this country. How do we reconcile our human rights record internationally when it comes to first nations? I really want to see our first nations people have the same opportunities and the same standards that everybody else has. Right now, when I go to some communities—not all—I see sad situations that need to be corrected.

Mr. Rod Bruinooge: And you think that just funding and resources alone will correct that?

Deputy Grand Chief RoseAnne Archibald: No, I didn't say that. I said that's one component.

Mr. Rod Bruinooge: Are you saying that the memorandum gave just an opinion then?

Deputy Grand Chief RoseAnne Archibald: No. What I'm saying is that the idea of underfunding is one component of fixing—

Mr. Rod Bruinooge: And system reform is another?

Deputy Grand Chief RoseAnne Archibald: Yes.

Mr. Rod Bruinooge: That would be our argument all along, that it's the system itself that needs changing. This is part of that process.

Deputy Grand Chief RoseAnne Archibald: I think it's one small part that you keep focusing on, that you think is going to create a floodgate of opportunities—

Mr. Rod Bruinooge: But the system needs to be fixed.

Deputy Grand Chief RoseAnne Archibald: —and it's really not. It's one piece. And I'm not saying that repealing is an invalid suggestion. I'm just saying there's a larger picture that we have to look at. We have to be strategic in our thinking, and we, government and our people, have to be innovative in how we proceed into the future.

● (1235)

Mr. Rod Bruinooge: But would you suggest that funding this broken system is the best means for delivering resources to first nations people?

Deputy Grand Chief RoseAnne Archibald: I'm not sure what you're getting at.

Mr. Rod Bruinooge: The system is broken. We both agree on that. So you're saying increasing the funding to this broken system is an effective means of delivering resources to first nations people on the ground level.

Deputy Grand Chief RoseAnne Archibald: I'm not sure that's what I'm saying. I think that's what you're saying.

Mr. Rod Bruinooge: That's definitely what I would say.

Deputy Grand Chief RoseAnne Archibald: Well, that's what you're saying.

Mr. Rod Bruinooge: So I'm asking you the question. Do you agree with that? Do you agree with funding a broken system?

The Chair: That's five minutes. That's all the time we have. We'll move on to the next.

Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): Thank you.

Thank you all for coming. It's been very helpful.

Before I ask Mr. Schulze a question, I just wanted to come in on Mr. Albrecht's suggestion of why you want more than a year when the Human Rights Act took only a year. I think they probably did some consultation in advance of the Human Rights Act. We've heard time and time again that there was no consultation in this. That would go a long way. Second, of course, the Human Rights Act was passed inside a nation that was used to having laws passed for them. Now we're dealing with a whole bunch of other nations, and an entirely different culture and a whole different coordination, so it's a much larger task.

Mr. Schulze, right at the beginning you talked about people side by each—I think maybe in Quebec, but very close—who had two different laws applying to them. I'm just curious, if nothing were to change, if this didn't happen, and if some of those people were charged and they were under a different regime, they could go to court and say it's not constitutional because they're not under the equality provisions of the charter, that they're being charged under something that wouldn't apply to someone else.

Mr. David Schulze: That kind of argument has been made and I don't think it would work. The courts generally haven't seen residence as a source of inequality; people, young offenders, are treated differently in different provinces and the courts have said that's okay. That's just part of living in a federal system.

Hon. Larry Bagnell: I was interested in the Canadian Human Rights Commission's aboriginal employment preferences policy. The first thing that struck me was that there was no mention of Inuit in it, but my other question was about where it says they do not allow preference to be given to a member of a particular first nation band or tribe, even though preference may be given to first nations people in general. But all across Canada, in municipalities, provinces, territories, and the federal government, if there's a project in the community they'll write a deal that gives that particular first nation tribe or band employment preferences or economic preferences for a project such as a mine or something.

It seems a little strange that they're all doing something that seems to be in contradiction....

Mr. David Schulze: I've worked on human rights files, but it's not my principal area of expertise. I do know that under the Quebec charter, which serves a similar role to human rights codes in other provinces, there was in fact a case that went to the Supreme Court of Canada, where Longueuil, I believe it was, had a residence requirement, and it was struck down as being contrary to—I can't remember what right. I think it had to do with family status and privacy.

So it's not clear whether that's always legal, even elsewhere in the municipality.

Hon. Larry Bagnell: My understanding is that under the affirmative action sections of the charter, though, you can make such provisions, and it could be for a single first nation.

Mr. David Schulze: That may be, and this lets me answer the question from Ms. Neville that I never got to. There is what's called a bona fide occupational requirement defence for discrimination. It's open to a first nation to say a requirement of such and such a job is that you have to understand, let's say, Anishnabe culture, and if they can satisfy the Human Rights Commission, or the tribunal if it goes to a hearing, that a knowledge of Anishnabe culture is a bona fide and good faith requirement of that job, a bona fide occupational requirement, then it will be held not to be discrimination. You can do that.

Hon. Larry Bagnell: Yes, but I was actually going much farther than that and saying the Province of Ontario would give permission to open this mine here as long as you give the Cold Lake First Nation so many jobs.

Mr. David Schulze: Yes. I'm sorry, I wasn't answering your question completely. You're right.

There's a second thing, which comes under...I'm just going to make sure I don't misinform the committee. Yes, there is also the power to create equity programs, which is in the Canadian Human Rights Act, and the guidelines that we cited in the letter from the *bâtonnier* talk about how the Canadian Human Rights Commission has interpreted that power to create equity programs. They've said equity programs mean you can give a preference to aboriginals in hiring, but it doesn't mean that in a particular community you can give preference to members of that community.

● (1240)

Hon. Larry Bagnell: So certain provinces can give local employment benefits, but we can't give local employment benefits to first nations.

Mr. David Schulze: Of course, you realize, if we're talking about decisions by a province or by most private sector employers, we're out of the realm of the Canadian Human Rights Act and into provincial human rights codes. But it's certainly open to give preferences in hiring to aboriginals to recognize their historic lower participation rate in the economy. Maybe I could just say that's nice, in terms of the big picture, and maybe it's not entirely for me to speak about this because I'm the lawyer from the city, I don't live in the communities, but there are a lot of communities where, after the gas station, the band council is about it for employers. So to say you're going to give preference to aboriginals doesn't get you very far, because the issues are more complicated.

The Chair: Is there a comment from the government side?

Mr. Harold Albrecht: We're concerned that the cultural practices are acknowledged and respected, and I tend to agree with that. What do we do in a situation where a cultural practice in itself is discriminatory, for example, on the basis of gender? The cultural practice of the last thousand years is discriminatory on the basis of gender. How would we address that in terms of respecting the rights of that person?

Deputy Grand Chief RoseAnne Archibald: First of all, if we go back again to traditional practice—and I wish I had the document in front of me—our societies are built on the idea of balancing roles and including women in the decision-making process. That is the basis of our societies. What has happened is that the Indian Act and patriarchal practices were introduced to our communities, primarily through the Indian agents and so on.

For example, I recently read a document—and I wish I had brought it with me—that actually said—I think it was the Indian agent or the government official, the treaty official, who said to the men in the community, “Why are you consulting with your women? Why are you including them in your decision-making process? That's wrong.” That was a non-native coming to our communities and telling us that it was wrong to have women in the decision-making process.

If we return to the valuable past, the things that are valuable from the past—and I'm not saying let's go back and live there, but there were principles in the past that are extremely valuable, and one of them is the balancing of roles.

By working with our communities, you will discover that these practices existed and that they can be revitalized. There are processes outside of this table that we can undertake to ensure that women's rights and women's issues are dealt with in a fair manner by our leadership.

Mr. Harold Albrecht: I guess to follow up on your last comment, a lot of this is happening without a specific law to mandate it. Would it not also be true that if this section is repealed, we wouldn't have to count on a lot of actual challenges to the Canadian Human Rights Act, but that just by the fact that the new law exists, first nations communities would want to comply without facing a number of challenges? I think one of the concerns we keep hearing raised is, are we going to have this flood of challenges that we won't be able to deal with? In fact, for the number of communities that currently aren't excluded under section 67, we haven't had that experience. It would seem to me that we could trust—going back to your point of seeing the good—first nations communities to also willingly comply with this without facing a number of human rights challenges.

Grand Council Chief John Beaucage: I'd like to jump in on this one.

There may be a flood, but it's an issue that is very complex in that most communities across Canada are still under the Indian Act. The Indian Act is an outdated piece of legislation that really keeps us poor. Until we start getting into a self-government process where we have our own dispute resolution process, where we have our own governments that are stable for longer than two years, we're always going to have issues on elections, and problems, and so on.

To go back to some points that Deputy Grand Chief Archibald mentioned, there are inherent rights that are provided to us by the Creator, and these rights are continuing on despite human loss. The roles set out for men and women are very specific. If we followed our traditional teachings the way we should have, without having the colonialist aspect that has diverted us, then we wouldn't have any of these difficulties that we have presently. Many of the difficulties are caused by the colonialism, by the Indian Act, and by the oppression that has occurred for the past several hundred years.

● (1245)

Mr. Harold Albrecht: In the current system, we are operating under the Indian Act, unfortunately. So we have to begin to try to find ways to mitigate the negative impact of that. I think by repealing section 67 we will take one small step. I agree that it won't be the be-all and end-all, but it will take one small step in that direction. That's our concern here, and I think I've heard all of you unanimously say you support the repeal. Your problems are on implementation and interpretive clauses—those are the two primary ones—and adequate consultation.

Deputy Grand Chief RoseAnne Archibald: And a third point, actually, which is the integration of our own values into the process.

The Chair: Thank you.

We'll go to the Bloc now. Will it be Mr. Lévesque, Mr. Lemay...?

Okay, Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: Ms. Archibald, what do you think about the consultations undertaken by the government, with Ms. Grant-John's support, on matrimonial real property? Consultations took place across the country to determine people's opinions on this. I believe you were there and I would therefore like to know what the experience was like for you and Grand Chief Beaucage. Did everything go well? Were your concerns well received? Are you satisfied with the report's recommendations?

[*English*]

Deputy Grand Chief RoseAnne Archibald: It's interesting that you asked both of us, because we both had a separate consultation process outside of the AFN and Native Women's Association of Canada. The result of that was the set of recommendations we made specifically on the amount of time the government wants to implement the matrimonial real property issue.

It does always come down to the unilateral actions of government toward our people. This is always a core issue for us—not so much give us more time for consultation as let's build these things together. This process of, for example, repealing section 67 is not a joint process. It probably has more to do with the idea of making individual rights a priority in our communities. It seems that's more of what drives this forward, the individual human rights that people have versus the collective human rights.

To get back to your question, we do want these consultative processes to be all-encompassing, educational, and moving us forward together so that we come up with solutions together as opposed to responding to government on their piece of legislation of what they think is good for us.

Grand Council Chief John Beaucage: At the Union of Ontario Indians, we rejected the process of the consultation through the AFN and the federal government. We undertook to go through our own consultation process, which we did in a period of about six months. We developed our own law on matrimonial real property that takes into account all of the basics that most provincial laws have across this country.

We have had first and second reading of this law. We are going to proclaim our own matrimonial real property act law, for 42 communities, in June of this year.

● (1250)

[*Translation*]

Mr. Marc Lemay: Mr. Schulze, there's a point I would like to understand. We agree that the Canadian Charter of Rights and Freedoms is Canada's supreme law.

Mr. David Schulze: The Constitution is the supreme law, and the Charter is a part of that, yes.

Mr. Marc Lemay: Should the Canadian Human Rights Act be interpreted based on the Charter or does it have its own formula and should it therefore be interpreted based on its own contents and on jurisprudence?

Mr. David Schulze: It must be interpreted in light of what is contained in the Constitution, including the Charter and the way in which the Supreme Court has interpreted the Charter. I believe we agree up to that point.

Mr. Marc Lemay: Where's the problem?

Mr. David Schulze: Are you referring to the question that your colleague, Mr. Albrecht, asked?

Mr. Marc Lemay: Yes.

Mr. David Schulze: The problem is that I was asked if the interpretive clause in section 25 of the Charter was enough. I have the impression that I am being asked to defend the argument.

If I were before a human rights tribunal, I would tell people to interpret the Canadian Human Rights Act in accordance with section 25. My fear is that members of the tribunal would reply that section 25 spells out how the Charter should be interpreted, that they are applying the provisions of the Canadian Human Rights Act and that their interpretation must be consistent with the Charter, but that the Canadian Human Rights Act may go farther than the Charter. Sometimes it does. If section 25 were to limit the right to equality guaranteed under section 15 of the Charter—and I am now speaking as a tribunal member—and if I didn't have the equivalent of section 25 of the Charter in the Canadian Human Rights Act , I would allow the right to equality set out in the Canadian act to go farther than the Charter. As a tribunal member, I would tell the counsel for the first nation that the right to non-discrimination set out in the Canadian Human Rights Act is in no way limited by the aboriginal rights outlined in section 25, unless he could prove to me that a right protected by section 35 of the Constitution existed.

I hope I have not described too many steps.

Mr. Marc Lemay: It is very clear. That is what I thought, but I just wanted to be certain. We're both on the same wavelength.

Mr. David Schulze: We should be associates.

Mr. Marc Lemay: Indeed.

[*English*]

The Chair: Mr. Bruinooge, please.

Mr. Rod Bruinooge: I know we're down to the last few minutes here. I'll try to be brief.

I want to go back to something Grand Chief RoseAnne Archibald said. I believe you indicated that you would want the process to include the implementation of your own values. I think those were your words.

My question for you would be this. I imagine you're speaking for your community of first nations and perhaps larger groups of first nations. Do you see those values as being the same or congruent with neighbouring communities and with communities on the west coast? Do you imagine a process where all those values could be encompassed within one body?

Deputy Grand Chief RoseAnne Archibald: Yes, across Canada there are probably core values that we can agree on. Are we the same? No, we're not.

Mr. Rod Bruinooge: Going back to previous words that you used, you talked about the pre-colonial moment as having a value system that was perhaps better. Maybe you didn't use the word "better". I'll let you describe that pre-colonial moment.

Deputy Grand Chief RoseAnne Archibald: I'm sorry, I don't quite understand.

Mr. Rod Bruinooge: How did you describe it? I know you talked about the pre-colonial moment in previous testimony. Could you describe it again?

● (1255)

Deputy Grand Chief RoseAnne Archibald: Yes. I see it as valuable. It's something that can be brought into the present so as to be beneficial to all people, not only for us but for all Canadians.

Mr. Rod Bruinooge: Are you saying it's a better system, the pre-colonial system?

Deputy Grand Chief RoseAnne Archibald: I didn't say that, no.

Mr. Rod Bruinooge: It's not a better system. Is it a worse system?

Deputy Grand Chief RoseAnne Archibald: I'm not saying that either. You're trying to be quantitative.

Mr. Rod Bruinooge: I'm only getting you to define it.

Deputy Grand Chief RoseAnne Archibald: No, you can't be quantitative about values.

Mr. Rod Bruinooge: Is it the same, better, or worse?

Deputy Grand Chief RoseAnne Archibald: I can't be quantitative about values. All I can tell you is they can be beneficial to us.

We're not saying let's go back to the past and live there. We're saying let's bring forward those things that can help us to live peacefully in this country, because we want the same things that everybody wants.

Mr. Rod Bruinooge: You want to bring forward the good values from that period.

Deputy Grand Chief RoseAnne Archibald: Yes, we can bring them forward.

Mr. Rod Bruinooge: But we should only bring forward the good values.

Deputy Grand Chief RoseAnne Archibald: Yes, obviously.

Mr. Rod Bruinooge: Okay. We agree on that.

Perhaps there are also bad values that were associated with the pre-colonial period?

Deputy Grand Chief RoseAnne Archibald: That I can't speak to.

Mr. Rod Bruinooge: Do you not know?

Deputy Grand Chief RoseAnne Archibald: I can't speak to bad values of the past.

Mr. Rod Bruinooge: Do you know if they existed?

Deputy Grand Chief RoseAnne Archibald: It's hard for me to say because I wasn't there.

Mr. Rod Bruinooge: However, you do know the good values, right?

Deputy Grand Chief RoseAnne Archibald: Yes. Again, you're trying to be quantitative.

Mr. Rod Bruinooge: I'm trying to get an understanding of your perspective.

Deputy Grand Chief RoseAnne Archibald: We can find common ground. I don't think it can be done in the last few minutes of this committee.

Mr. Rod Bruinooge: Okay, we can agree on that.

The Chair: That's great.

We have finished the round of questioning. I want to thank the witnesses very much for being here today, for informing the committee on your views and for giving us some insights into other areas having to do with Bill C-44. Thank you very much.

The meeting is adjourned.

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